IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EASTERN BAND OF CHEROKEE INDIANS 88 Council House Loop Cherokee, NC 28719 Plaintiff, vs. UNITED STATES DEPARTMENT OF THE INTERIOR 1849 C Street, N.W. Washington, D.C. 20240, UNITED STATES BUREAU OF INDIAN AFFAIRS 1849 C Street, N.W. Washington, D.C. 20240, DAVID BERNHARDT, in his official capacity as Secretary of the United States Department of the Interior 1849 C Street, N.W. Washington, D.C. 20240, TARA KATUK MAC LEAN SWEENEY, in her official capacity as Assistant Secretary for Indian Affairs 1849 C Street, N.W. Washington, D.C. 20240, and R. GLEN MELVILLE, in his official capacity as Acting Regional Director for the Bureau of Indian Affairs Eastern Regional Office 545 Marriott Drive Suite 700 Nashville, TN 37214, Defendants.	)	Civil Action No. 1:20-cv-757

COMPLAINT

Plaintiff the Eastern Band of Cherokee Indians ("EBCI") brings this action to protect and preserve the EBCI's sovereign cultural authority over lands, religious sites, burials, and cultural patrimony within traditional Cherokee treaty territory. Several federal laws are in place to protect

the inherent right of Tribal Nations to assert their sovereign cultural authority over lands within their treaty territory. Defendants *ulta vires* actions have violated nearly all of them.

On March 12, 2020, Defendant Assistant Secretary Tara Sweeney took final agency action and signed her Decision ("March 12 Decision") instructing Defendant Eastern Region Acting Director Glen Melville to "immediately acquire the land into trust" at the Kings Mountain Site, in Cleveland County, North Carolina, for Catawba Indian Nation ("Catawba"), a Tribe headquartered in South Carolina. *See* Ex. A. The land at issue, the Kings Mountain Site, sits squarely within Cherokee's treaty territory.

Federal laws, specifically the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq*., the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq*., the National Historic Preservation Act ("NHPA"), 54 U.S.C. § 300101 *et seq*., prohibit any and all federal agencies from taking "final agency action" with regards to lands within a Tribal Nation's traditional treaty territory until and unless that federal agency has consulted in good faith with the Tribal Nation's Tribal Historic Preservation Officer ("THPO") regarding the Nation's cultural patrimony, sacred sites, and burials located within the territory.

Defendants Department of the Interior ("DOI") and Bureau of Indian Affairs ("BIA") know this. Defendants routinely engage in good faith consultation with the EBCI's THPO concerning final agency actions Defendants are considering undertaking in Cherokee treaty territory in what today constitutes North Carolina. *See* Declaration of Russell Townsend, Eastern Band of Cherokee Indians Tribal Historic Preservation Officer, March 16, 2020 ("Townsend Decl."), ¶ 6.

This time, however, Defendants did not. Instead of abiding their trust duties and obligations under federal law to consult with the EBCI concerning the issues and concerns the EBCI raised with regards to Defendants' proposed final agency action (*see* Ex. B), Defendants

ran roughshod over the APA, NEPA, and the NHPA and took final agency action on March 12, 2020, without issuing a Final Environmental Assessment ("Final EA") or Finding of No Significant Impact ("FONSI"), in direction violation of the APA and NEPA.

Defendants' failure to abide by the routine procedural requirements in the APA, NEPA, and the NHPA come with profound consequences. If Defendants are not enjoined from taking further action on this final agency action, and if Defendant Acting Regional Director Glen Melville is permitted to take the Kings Mountain Site into trust for Catawba, "the land will fall under the sovereign governance of the Catawba Nation, and the EBCI THPO will lose the right to consultation on and protection of Cherokee religious and cultural sites." Townsend Decl., ¶ 21. The threat of this irreparable injury warrants the Court's immediate imposition of injunctive relief.

Defendants' actions are shocking since Defendants routinely comply with federal law and engage in good faith consultation with Tribal Nations concerning any potential final agency action Defendants are considering undertaking within a particular Tribal Nation's treaty territory. Here, however, Defendants issued the Draft Environmental Assessment ("Draft EA") on the land acquisition on December 19, 2019—prior to any invitation to the EBCI to consult in the process. The EBCI issued its formal comments on the Draft EA on January 22, 2020, *see* Ex. B., listing numerous significant concerns and highlighting serious deficiencies in the Draft EA. Ordinarily, Defendants would sincerely respond to concerns of this nature and engage in a good faith consultation process. *See* Townsend Decl., ¶ 12 ("Having worked with the BIA for many years on these issues, concerns such as those raised in the EBCI comments would trigger a process where the BIA would work with me, as the EBCI THPO, to conduct a cultural survey on the land at issue so we could determine whether religious or cultural items were present at the site."). That did not happen.

The reasons this did not happen are largely political—albeit unlawful. Defendants have faced enormous political pressure to find a way—no matter the legal barriers—to take land into trust for Catawba in North Carolina for gaming purposes. And while Defendant Assistant Secretary Sweeney's March 12 Decision achieves this political purpose, it does so in direct violation of governing federal law.

Defendants' rushed, flawed, outcome determinative process has resulted in a final agency action that violates the plain language of federal law. Congress—the branch of the federal government with exclusive authority over Indian affairs—has stated explicitly that "[t]he Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to the [Catawba] Tribe." The Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 ("1993 Settlement Act"), Pub.L. No. 103–116, § 14, 107 Stat. 1118, 1136 (1993). Federal courts interpreting the plain language of the 1993 Settlement Act have concluded the words in the 1993 Settlement mean what they say they mean. *See TOMAC v. Norton*, 193 F. Supp. 2d 182, 194 n.8 (D.D.C. 2002), *aff'd sub nom. TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852 (D.C. Cir. 2006). Defendants, therefore, are without the requisite statutory authority to exercise *any* discretion with regards to taking land into trust for Catawba for gaming purposes under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. *2701 et seq.*, unless or until Congress amends, replaces, or rescinds the 1993 Settlement Act.

This same federal law, the 1993 Settlement Act, also eliminated the BIA's authority to take land into trust for Catawba under the Indian Reorganization Act ("IRA"), Sec. 5, 25 U.S.C. § 5108 (formerly codified at 25 U.S.C. § 465) which Defendants erroneously and arbitrarily rely on in the March 12 Decision.

Plaintiff, therefore, seeks judicial intervention to overturn the *ultra vires*, arbitrary, and capricious actions of Defendant U.S. Department of the Interior ("DOI"), Defendant U.S. Bureau

of Indian Affairs ("BIA"), Defendant DOI Secretary David Bernhardt, Defendant Assistant Secretary for Indian Affairs Tara Sweeney, and Defendant Acting Regional Director R. Glen Melville, and furthermore, to enjoin Defendants from engaging in further conduct contrary to federal law, as well as Defendants' trust duties and obligations to the EBCI. The EBCI challenges the March 12 Decision and seeks an order permanently enjoining Defendants from transferring this parcel of land into trust status for Catawba, and, alternatively, ordering Defendants to properly carry out procedural and substantive responsibilities that protect Cherokee cultural resources and the environment.

PARTIES

1. Plaintiff the Eastern Band of Cherokee Indians is a federally-recognized Tribal Nation with its headquarters located on the Qualla Boundary, the Eastern Band Cherokee Reservation, at 88 Council House Loop, Cherokee, North Carolina, 28719

2. Defendant Department of the Interior ("Interior" or "DOI") is a federal executive department of the United States government, which was established by Congress and charged with responsibility for managing and administering certain federal authorities and obligations related to Indian Tribes.

3. Defendant Bureau of Indian Affairs is an agency within the U.S. Department of the Interior with delegated responsibilities for the administration and management of certain federal authorities and obligations related to Indian Tribes.

4. Defendant David Bernhardt is the Secretary of the United States Department of the Interior, whose office is located at 1849 C Street, N.W., Washington D.C., 20240. In his capacity as Secretary, Congress has authorized and delegated responsibilities in the 1993 Settlement Act and other laws to carry out federal administration of tribal lands acquisition and programs. The Secretary has delegated his authority to take lands into trust to the Assistant Secretary for Indian

Affairs by Part 209, Chapter 8 of the Departmental Manual. He is sued in his official capacity only.

5. Defendant Tara Katuk Mac Lean Sweeney is the Assistant Secretary for Indian Affairs, whose office is located at 1849 C Street, N.W., Washington D.C., 20240. The Assistant Secretary has direct line authority over the Buruea of Indian Affairs ("BIA") Regional Offices, including the Eastern Region. She is sued in her official capacity only.

6. Defendant R. Glen Melville is the Acting Regional Director for the Eastern Regional Office of the BIA, whose office is located at 545 Marriott Drive, Suite 700, Nashville, Tennessee, 37214. Director Melville oversees the transfer of title from fee simple to tribal trust and has been directed to "immediately" take the lands in North Carolina into trust upon completion of ministerial tasks. He is sued in his official capacity only

JURISDICTION AND VENUE

7. This Court has subject matter and personal jurisdiction over Plaintiff's claims as they present civil actions arising under the laws of the United States (28 U.S.C. § 1331), are brought by a federally recognized Indian Tribe wherein the matter in controversy arises under federal law (28 U.S.C. § 1362), and are premised upon legal wrongs committed by a federal agency under the APA, 5 U.S.C. §§ 702, 706. This case challenges the legality of Department decisions and actions based on the 1993 Settlement Act, IRA, NEPA, NHPA, and IGRA and the federal regulations implementing them.

8. Venue is proper in the U.S. District Court for the District of Columbia under 28 U.S.C. § 1391(b) and (e)(2) because the United States and federal officers acting in their official capacities and under color of legal authority are Defendants, and substantial parts of the events giving rise to these claims occurred in the District.

9. The United States has waived its sovereign immunity from suit in 5 U.S.C. § 702.

10. The March 12, 2020 Decision declares that it is a final agency action subject to judicial review under the APA, 5 U.S.C. § 704, *see* Ex. A, and in accordance with 40 C.F.R. § 1500.3, the NEPA claims involve actions that will result in irreparable injury to the EBCI.

STATEMENT OF FACTS

A. EBCI and Its Treaty and Historical Territory

11. The EBCI is a federally-recognized Tribal Nation based in Cherokee, North Carolina.

12. With about 15,000 tribal citizens, the EBCI is comprised of the descendants of Cherokees who resisted forced federal removal from the Cherokee territory by finding refuge in the Great Smoky Mountains, as well as Cherokees who made the walk on the Trail of Tears to the Indian Territory (now Oklahoma) then returned to their homeland in North Carolina.

13. Before contact with non-Indians, the Cherokee lived in and governed the southeastern part of what is now the United States, in the states of North Carolina, South Carolina, Alabama, Georgia, Kentucky, Tennessee, and Virginia.

14. Today, the Qualla Boundary is the home of the EBCI. Comprising about 57,000 acres land, the Qualla Boundary is held in trust by the federal government and is located next to the Great Smoky Mountains National Park.

15. The EBCI has tenaciously fought to preserve its separate history, culture, language, and sovereignty. Because of this commitment, the EBCI continues to have fluent speakers of the Cherokee language, continues to collect plants in its territory—both on and off reservation—for food and medicine, and continues cultural practices that have existed since time immemorial.

16. The EBCI also has fought to protect from disturbance Cherokee remains and items of cultural patrimony within Cherokee treaty and traditional lands.

17. The EBCI, primarily through its Tribal Historical Preservation Officer ("THPO"), relies on NHPA and NEPA requirements to protect Cherokee patrimony within the Cherokee historical territory. The EBCI THPO consults with federal agencies, private organizations and companies, and individuals to ensure NHPA and NEPA compliance, reviewing between 2,500 and 5,000 cultural resource consultation requests per year. Townsend Decl., ¶ 6.

18. Through the Cherokee Treaty of July 20, 1777, the Cherokees agreed to cede certain lands in present-day North Carolina to the Commissioners from the State of North Carolina. The 1777 Treaty cession area includes present-day Cleveland County, North Carolina.

19. The 1884 Royce Map of Cherokee Land Sessions (Ex. G), which was relied upon by the federal Indian Claims Commission in adjudicating the EBCI's claims against the United States, also demonstrates that present-day Cleveland County is located within the Cherokee historical and treaty territory. *Eastern Band of Cherokee Indians v. United States*, 28 Ind. Cl. Comm. 386 (1972).

20. Because Cleveland County is within the Cherokee historical and treaty territory, federal agencies, as a matter of course, contact the EBCI and the two other federally recognized Cherokee Tribes now based in Tahlequah, Oklahoma–the United Keetoowah Band of Cherokee Indians ("UKB"), and the Cherokee Nation—to protect Cherokee cultural resources.

21. The EBCI continues to exercise cultural sovereignty over the Cleveland County area—which borders South Carolina—through cultural resource protection through the EBCI THPO. Townsend Decl., ¶ 4.

B. Catawba Agrees to No Trust Lands or Gaming Outside of South Carolina

22. After decades of protracted litigation between Catawba and the State of South Carolina concerning Catawba land claims, Congress passed the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 ("1993 Settlement Act"), which (1) approved,

ratified, and confirmed the Settlement Agreement voluntarily entered into between Catawba and South Carolina; (2) authorized and directed the Secretary to implement the terms of such Settlement Agreement; (3) authorized certain actions and appropriations for implementing provisions of the Settlement Agreement and the 1993 Settlement Act; (4) removed the cloud in titles in the State of South Carolina resulting from Catawba's land claims; and (5) restored the trust relationship between Catawba and the United States. 1993 Settlement Act § 2.

23. The 1993 Settlement Act incorporated the Agreement in Principle ("Settlement Agreement") (Ex. E) entered into between Catawba and the State of South Carolina, as well as the South Carolina's Catawba Indian Claims Settlement Act ("State Act"), both explicitly and by reference. The 1993 Settlement Act specifically affords the Settlement Agreement and the State Act treatment as federal law. 1993 Settlement Act § 4(a)(2) ("the Settlement Agreement and the State Act are approved, ratified, and confirmed by the United States to effectuate the purposes of this Act, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.").

24. The 1993 Settlement Act was controversial at the time of its passage due to the restrictive nature of the Act, with BIA officials expressing concerns about limitations within the Act. The BIA Eastern Region Director testified that the Settlement Act:

> [D]iminishes the Department's authority and its ability to discharge its duty as trustee. The bill would relinquish much of the Secretary's authority to the State with regard to trust land transactions. It mandates the Secretary to seek the approval of State and local governments in administering its trust responsibilities to the tribes. . . The bill would also restore the federal relationship to the tribe, but would only partially reinstate the tribal status. It would subordinate the tribe to State, County, and city authority, while limiting tribal authority and jurisdiction.[1]

25. Among other things, the 1993 Settlement Act affirmed the State Act and Settlement

[1] *Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993: Hearing on S. 1156 Before the Senate Comm. on Indian Affairs*, 103rd Cong. 341, at 269 (1993).

Agreement that restored the federal-Tribe relationship for purposes of eligibility for federal programs, created a Catawba-specific process for trust land acquisition and excluded the general IRA process, and specifically replaced the generally applicable tribal gaming statute—IGRA—with a Catawba "games of chance" law.[2]

26. Nevertheless, Catawba indicated that they understood the restrictive nature of the 1993 Settlement Act and accepted the restrictions.[3] This sentiment was echoed by the attorney who represented Catawba in settlement negotiations, Don Miller, with the Native American Right Fund ("NARF"). Specifically, Miller stated that the "particular circumstances" of Catawba warranted Congressional approval:

> [T]he manner in which the parties' agreement divides and allocates the respective jurisdictional powers of the Tribe and State and Federal governments reflects the particular circumstances of the Catawba Tribe and its non-Indian neighbors. These allocations are . . . the wishes of the Catawba Tribe as expressed by an overwhelming vote of support for the settlement agreement.[4]

C. State Act and Settlement Agreement Incorporated as Federal Law

27. With the enactment of the 1993 Settlement Act, Congress "approved, ratified, and confirmed" the Settlement Agreement and the State Act. *Id.* § 4(a)(2). Further, the 1993 Settlement Act incorporates the Settlement Agreement and State Act into federal law, directing that they "shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law." *Id.*

28. Underscoring the importance of applying the State Act and Settlement Agreement in the same manner as if they had been enacted into Federal law, Congress repeated this point in Section 15 of the 1993 Settlement Act the sets forth "General Provisions":

[2] *Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993: Hearing on H.R. 2399 Before the Subcomm. on Native American Affairs*, 103rd Cong. 34, at 195 (1993).

[3] *Id*. at 211.

[4] *Id*. at 193.

> Consistent with the provisions of section 4(a)(2), the provisions of South Carolina Code Annotated, section 27-16-40, and section 19.1 of the Settlement Agreement are approved, ratified, and confirmed by the United States, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.[5]

29. Giving additional weight to federal incorporation of specific South Carolina law provisions, Congress explicitly acknowledged and validated the exclusion of IRA fee-to-trust authority in the Settlement Agreement and State Act. H.R. Rep. No. 103-257, at 20 (1993) ("The Committee substitute . . . incorporates by reference taxation provisions, *limitations on the applicability of the Indian Child Welfare Act and the Indian Reorganization Act contained in the Settlement Agreement and State Act*.") (emphasis added).

D. The 1993 Settlement Act Eliminates the Applicability of Section 5 of the Indian Reorganization Act to Catawba Trust Land Acquisitions

30. The 1993 Settlement Act limits Catawba land acquisitions to Reservation and Non-Reservation acquisitions and provides a process unique to Catawba for each of these acquisition types. 1993 Settlement Act §§ 12-13.

31. For Reservation acquisitions, the Act makes clear that the BIA's "general land acquisition regulations" at 25 C.F.R. Part 151 do not apply to Catawba. 1993 Settlement Act § 12(m). And the 1993 Settlement Act extends this prohibition more broadly through its incorporation of, and reference to the Settlement Agreement. Specifically, the 1993 Settlement Act provides that "[i]f the Tribe so elects, it may organize under the Act of June 18, 1934 (25 U.S.C. 461 *et seq.*; commonly referred to as the 'Indian Reorganization Act' ("IRA")). The Tribe

[5] 1993 Settlement Act § 15(e) (affirming South Carolina Code Annotated, section 27-16-40 and Settlement Agree § 19.1, which authorize the application of South Carolina law, generally, to Catawba, its members, and any lands or natural resources owned by the Tribe, and any land or natural resources or property "held in trust by the United States" for the Tribe.).

shall be subject to such Act *except to the extent such sections are inconsistent with this Act*." 1993 Settlement Act § 9(a) (emphasis added).

32. To determine what sections of the IRA are *inconsistent* with the 1993 Settlement Act, Congress added guideposts in § 10 of the Settlement Act that direct back to the Settlement Agreement and the State Act. Congress elaborated that "[a]ll matters involving tribal powers, immunities, and jurisdiction, whether criminal, civil, or regulatory, shall be governed by the terms and provisions of the Settlement Agreement and the State Act, unless otherwise provided in this Act." 1993 Settlement Act § 10(1). More specific to the application of the IRA, Congress determined that regardless of whether Catawba organizes under the IRA, Catawba is still authorized to exercise authority only to the extent consistent with the Settlement Agreement and the State Act. *See id.* at § 10(4).

33. The Settlement Agreement leaves no ambiguity or discretion as to which provisions of the IRA are consistent with the 1993 Settlement Act, authorizing Catawba to "organize under the Indian Reorganization Act, 25 U.S.C. Sections 461 - 479, (IRA) and [to] adopt and apply to the Tribe any of the following provisions to the extent they are consistent with this Agreement: Sections 461, 466, 469, 470, 470a, 471, 472, 472a, 473, 475a, 476, 477, 478, 478a , and 478b." Settlement Agreement § 9.1, Ex. E.

34. Section 9.1 of the Settlement Agreement explicitly omitted the IRA provisions applicable to Catawba is Section 5 of the IRA (formerly codified at 25 U.S.C. § 465), the general fee-to-trust authority, in the Settlement Agreement's list of the IRA sections that *would* be applicable to Catawba. Ex. E, § 9.1

35. Applying Section 5 of the IRA, despite its omission from the list of applicable IRA Provisions identified by Settlement Agreement § 9.1., is inconsistent with the 1993 Settlement Act itself. Section 15 of the 1993 Settlement Act outlines General Provisions, and specifically

requires "the provisions of South Carolina Code Annotated, section 27-16-40, and section 19.1 of the Settlement Agreement . . . [to] be complied with in the same manner and to the same extent as if they had been enacted into Federal law." 1993 Settlement Act § 15(e). South Carolina Code Annotated, section 27-16-40 provides:

> The Catawba Tribe, its members, lands, natural resources, or other property owned by the Tribe or its members, *including land, natural resources, or other property held in trust by the United States or by any other person or entity for the Tribe, is subject to the civil, criminal, and regulatory jurisdiction of the State* [of South Carolina], its agencies, and political subdivisions other than municipalities, and the civil and criminal jurisdiction of the courts of the State to the same extent as any other person, citizen, or land in the State, except as otherwise expressly provided in this chapter or in the federal implementing legislation. S.C. Code Ann., section 27-16-40 (emphasis added).

Likewise, section 19.1 of the Settlement Agreement provides:

> Except as expressly otherwise provided in the implementing legislation, the Tribe and its members, any lands or natural resources owned by the Tribe, and any land or natural resources held in trust by the United States or by any other person or entity for the Tribe, shall be subject to the laws of the State and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land in the State. Settlement Agreement § 19.1 (emphasis added).

Ex. E, § 19.1. The State Act and the Settlement Agreement illustrate that Congress intended all lands held in trust by the United States for Catawba to come under the jurisdiction of South Carolina. Accordingly, the BIA is not authorized to operate beyond the terms provided in Sections 12 and 13 of the 1993 Settlement Act for the purpose of acquiring land in trust for Catawba. To acquire land under Section 5 of the IRA outside of South Carolina is entirely inconsistent with the 1993 Settlement Act § 15(e) that explicitly gives the full force and effect of federal law to the provisions of the State Act and Settlement Agreement which state any land or property held in trust by the United States for Catawba is to be under South Carolina jurisdiction.

E. Indian Gaming Regulatory Act Does Not Apply to Catawba

36. In agreeing to the 1993 Settlement Act, State Act, and Settlement Agreement,

Catawba voluntarily relinquished any right to gaming under the IGRA. In the 1993 Settlement Act, § 14(a), Congress states in plain terms: "INAPPLICABILITY OF THE INDIAN GAMING REGULATORY ACT.—The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to the [Catawba] Tribe." The Settlement Agreement at Section 16.1 mirrors the language of the federal statute: "Inapplicability of the Indian Gaming Regulatory Act. The Indian Gaming Regulatory Act, 25 U.S.C. Section 2701 et. seq., shall not apply to the [Catawba] Tribe."

37. After establishing that the generally-applicable Indian gaming statute does not apply to Catawba, the 1993 Settlement Act—through incorporation of the State Act and Settlement Agreement—established the governance of South Carolina law over Catawba "games of chance," both "on and off reservation."

38. The 1993 Settlement Act at Section 14(b) states:

> The Tribe shall have the rights and responsibilities set forth in the Settlement Agreement and the State Act with respect to the conduct of games of chance. Except as specifically set forth in the Settlement Agreement and the State Act, all laws, ordinances, and regulations of the State, and its political subdivisions, shall govern the regulation of gambling devices and the conduct of gambling or wagering by the Tribe on and off the Reservation.

39. The Settlement Agreement also says South Carolina law applies to Catawba gambling:

> This Agreement, and the implementing legislation passed pursuant to this Agreement, and all laws, ordinances, and regulations of the State of South Carolina, and its political subdivisions, shall govern the regulation of gambling devices and the conduct of gambling or wagering by the Tribe on and off reservation . . . .

Ex. E, Settlement Agreement § 16.1.

40. Finally, the State Act says that South Carolina law, not federal law, governs Catawba "games of chance": "[A]ll laws, ordinances, and regulations of the State, and its political subdivisions, shall govern the regulation of gambling devices and the conduct of gambling or wager by the Tribe on and off the Reservation." S.C. Code Ann. SECTION 27-16-110.

41. Accordingly, any provisions typically afforded by IGRA do not extend to Catawba under any circumstances. That is, the 1993 Settlement Act does not provide the Secretary any discretion related to Catawba gaming decisions. Rather, any gaming by Catawba is dictated by South Carolina law. *See TOMAC v. Norton*, 193 F. Supp. 2d 182, 194 n.8 (D.D.C. 2002), *aff'd sub nom. TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852 (D.C. Cir. 2006) ("When Congress intends to prohibit a tribe from gaming activity, it says so affirmatively. *See, e.g.,* Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, Pub.L. No. 103–116, § 14, 107 Stat. 1118, 1136 (1993)."); *Narragansett Indian Tribe v. Nat'l Indian Gaming Comm'n*, 158 F.3d 1335, 1341 (D.C. Cir. 1998) ("The Catawba Indians . . . regained lands through legislative settlement[] in which they accepted general state jurisdiction over tribal lands. *See* 25 U.S.C. § 941b(e), m(c) . . . . The Catawba Indians' . . . settlement act[] specifically provide[s] for exclusive state control over gambling. *See id*. § 941l(a).").

F. Catawba's Land Into Trust Application

42. No part of the Catawba Reservation is located outside of South Carolina.

43. On August 30, 2013, Catawba submitted a mandatory trust application pursuant to the 1993 Settlement Act to the BIA demanding that the Department transfer 16.57 acres of original Cherokee aboriginal land in North Carolina, known as the "Kings Mountain Site," into trust for the purpose of constructing an off-reservation casino and mixed-use entertainment complex. *See* March 12, Decision 37, Ex. A.

44. The sole reason Catawba, based in South Carolina, has indicated it wants to acquire land in North Carolina is to find a more accommodating legal environment to build a casino. EBCI Resolution, Ex. F.

45. On March 23, 2018, the Deputy Secretary of the Interior denied the application,

concluding that the mandatory trust authority of the 1993 Settlement Act did not extend to areas located outside of South Carolina.

46. On September 17, 2018, Catawba submitted a discretionary application pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108 (formerly codified at 25 U.S.C. § 465), and implementing regulations at 25 C.F.R. Part 151, requesting an off-reservation acquisition. Catawba also requested a determination on whether the Site is eligible for gaming. *Id*.

47. On May 1, 2019, the EBCI—through Principal Chief Richard Sneed—provided testimony to the Senate Committee on Indian Affairs during a hearing on a bill introduced by South Carolina's U.S. Senator Lindsey Graham, which would address the 1993 Settlement Act's prohibition on the application of IGRA to Catawba and would explicitly authorize the BIA to take the Kings Mountain Site into trust for Catawba for the purpose of building a casino—thus applying Section 20 of IGRA, alone, to Catawba.

48. Upon information and belief, Senator Graham and other elected and appointed officials supportive of the casino developer—former member of Graham's campaign finance committee Wallace Cheves—brought undue political influence on DOI and other federal officials in their quest to obtain BIA approval of a casino in North Carolina.

49. In December 2019, the BIA published a Draft Environmental Assessment ("Draft EA") online on a non-governmental website (http://catawbanationclevelandcountyea.com) for the transfer of the Kings Mountain Site into federal trust status for Catawba for the purpose of building and operating a casino and entertainment complex. The Draft EA listed Catawba as Applicant, and the Department of the Interior, BIA, Eastern Region Office as Lead Agency. The EBCI was not among parties consulted prior to the Draft EA. The BIA also published Notices of

Availability for the EA in the *Charlotte Observer*, on December 22, 2019, *Gaston Gazette* on December 28, 2019, and *Shelby Star* on January 3, 2020.

50. On December 23, 2019, EBCI Principal Chief Richard Sneed received an email from David Lambert with the BIA's Eastern Regional Office Natural Resources Department saying the Eastern Regional Office Natural Resources Department is "requesting your review and comments on this draft Environmental Assessment for the King's Mountain site."

51. The Draft EA states that Catawba's casino development project will be a massive construction undertaking, including a casino and mixed-use entertainment complex totaling approximately 195,000 square feet (sf). The gaming area will consist of 75, 128 sf with approximately 1,796 electronic gaming machines and 54 table games. The facility will also include a 940-seat restaurant, a small retail space . . . , and 2,130 parking spaces.

52. Although the Draft EA assessed the development of the Kings Mountain Site, it makes no mention of the Site being within historic Cherokee treaty or historic lands.

53. Despite acknowledging that the EBCI would likely be interested in the Draft EA, the BIA did not attempt to invite the EBCI to consult on the project beyond offering public comments after the Draft EA was published. *See* Ex. C. At no point before the preparation of the Draft EA did the BIA extend an offer to consult, or attempt to engage in any consultation with the three federally-recognized Cherokee Tribes—the EBCI, the UKB, or the Cherokee Nation—as required by § 106 of the NHPA, which is incorporated into NEPA—to "make a reasonable and good faith effort to identify any Indian tribes . . . that might attach[] religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties." 36 C.F.R. § 800.3(f)(2).

54. The BIA failed to make a good faith or reasonable effort to involve the EBCI as an interested Tribe under the NHPA.

55. To date, the BIA has not published a Final EA, Finding of No Significant Impact ("FONSI"), Environmental Impact Statement ("EIS"), or a statement about why an EIS is not appropriate.

56. On January 22, 2020, the EBCI submitted formal comments ("EBCI Comments") to the BIA Eastern Regional Office alerting the BIA to significant deficiencies in the Draft EA and requesting that the deficiencies be addressed through the preparation of an EIS. EBCI Comments 1, 6. Ex. B. The EBCI Comments specifically identified several deficiencies in the published Draft EA:

a. **The Draft EA fails to protect Cherokee cultural resources:** "Because the 16.57 acres . . . is located within the Cherokee aboriginal and historic territory, the Department of the Interior owes legal trust responsibilities to the EBCI to protect Cherokee lands, assets, and cultural resources . . . [A]ny attempt to consult with the EBCI, as required by § 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA), is noticeably absent from the EA." Ex. B, 1.

b. **The Draft EA fails to consider alternatives in South Carolina:** "Because the lands would encroach on Cherokee aboriginal and historical territory, and the Department lacks the requisite legal authority to take lands into trust in North Carolina for the Catawba . . . , the Department must fully assess whether alternative locations for Catawba land acquisitions in South Carolina would be more appropriate." Ex. B, 2.

c. **The Draft EA fails to properly assess impacts on biological resources:** "[W]etlands or waters of the U.S. on adjacent properties are disclosed in the Natural Resources Technical Memo. The EA does not discuss the potential for the

off-site improvements, including the stormwater detention basin, utility extensions and roadway improvements to affect these resources." Ex. B, 2.

d. "The EA does not disclose the details of the field survey for dwarf-flowered heartleaf, including when it was conducted, who conducted the survey, and what methods were used. A proper survey report should accompany the document." Ex. B, 2.

e. "A proper evaluation of potential impacts to migratory birds should consider trees within 500 feet of both on and off-site construction activities. Mitigation such as pre-construction surveys should be included to ensure avoidance." Ex. B, 2.

f. **The Draft EA fails to disclose relevant consultation information:** "The EA does not identify basic details regarding . . . consultation, including how they were consulted and when they were consulted. Without this information, it is unclear whether the document includes the relevant expertise and review of applicable resource agencies with jurisdiction over the site." Ex. B, 3.

g. **The Draft EA fails to assess the impacts of tin prospecting on the site:** "The EA mentions throughout the document that tin prospecting occurred onsite but fails to elaborate further on what activities took place and what impacts this may have had on the site." Ex. B, 3.

h. **The Draft EA includes unsubstantiated statements on land resources:** "For example, the EA states . . . that the 'NPDES General Construction Permit requirements would reduce any potential adverse impacts to less than significant.' The EA does not explain what thresholds were considered, what impacts would be reduced, or how the permit requirements would reduce these impacts." Ex. B, 3.

i. **The air quality assessments in the Draft EA are insufficient:** "The EA does not analyze the construction or operational emissions that would result from the project . . . Air quality modeling should be conducted for both mobile and stationary emissions during construction and operation for criteria pollutants and disclosed within the document." Ex. B, 4.

j. **The London & Associates Economic Impact Study is not provided:** "We request a copy of the Economic Impact Study prepared by London & Associates . . . The lack of inclusion of this document goes against the purposes of an open public review process under NEPA and its implementing regulations." Ex. B, 4.

k. **The Hazardous Materials/Phase I and II assessments are out of date:** "The Phase I ESA was completed in 2013 and is considered out of date, particularly for a financial transaction which could represent a new liability to the federal government." Ex. B, 4.

l. **The Draft EA does not address impacts to public services and utilities:** "The EA does not quantify impacts to law enforcement or fire protection agencies . . . the EA should quantify the additional number of staff and/or equipment that would be needed to provide service to the project while maintaining response times to existing homes and businesses." Ex. B, 4.

m. "[T]he EA makes no consideration of the significant jurisdictional limitations the Catawba Indian Nation would have in North Carolina under the terms of the Catawba Indian Tribe of South Carolina land Claims Settlement Act of 1993." Ex. B, 5.

n. **The Cumulative Impacts/Climate Change analysis is insufficient: "**The EA does not analyze the greenhouse gas emissions from construction or operations that would result from the project but makes an unsubstantiated conclusion that effects would be less than significant. Emissions modeling should be conducted to disclose the cumulative contribution of the project to greenhouse gas emissions." Ex. B, 5.

o. **The analysis on indirect effects is insufficient:** "The EA concludes that off-site traffic mitigation and wastewater collection improvements would have no significant impacts. The EA provides no evidence for this finding such as biological or cultural survey reports which cover the full extent of these improvements." Ex. B, 5.

p. "The EA mentions that an electrical substation would be developed near the project site but fails to identify the location or the potential impacts of this substation." Ex. B, 5.

q. "The EA mentions that electrical and natural gas line extensions will be needed but fails to disclose their locations and connection points." Ex. B, 6.

r. "The EA states that 'all stormwater would be retained on site' (pg. 29) however, Figure 9 of Appendix B shows a detention basin located west of the project site. Either the EA project description is incorrect, or the off-site basin has not been analyzed in the EA**.**" Ex. B, 6.

s. **The Draft EA is improperly formatted: "**The document is not formatted in accordance with the standards of Section 508 of the Rehabilitation Act of 1973. For example, PDF bookmarks are missing, and many do not work." Ex. B, 6.

t. **The Department must require an environmental impact statement (EIS):** **"**An EA is insufficient to assess the impacts on the environment and impacted parties. As a result, the EBCI demands that the deficiencies in the document be addressed through the preparation of an Environmental Impact Statement (EIS)." Ex. B, 6.

57. As the EBCI's Tribal Historic Preservation Officer ("THPO"), Mr. Russell Townsend, noted: "I was surprised to learn of this Draft EA because the BIA would typically consult with me and other Cherokee THPOs prior to the release of a draft EA for lands within the Cherokee treaty and historical territory." Townsend Decl., ¶ 9.

58. The fact that BIA did not reach out to the EBCI *prior* to drafting, creating, and publishing the Draft EA was indeed surprising, since, as Mr. Townsend explained:

> As part of government-to-government consultation, the BIA consults with the EBCI THPO multiple times per week on various projects in the Cherokee traditional aboriginal territory. The BIA typically reaches out early to us in the process, so we can participate in the development of research design and scopes of work, not simply review completed documents.

Townsend Decl., ¶ 10.

59. Mr. Townsend himself, as the EBCI's THPO, has identified numerous inconsistencies and errors in the Draft EA. Specifically, he has noted that "contrary to the information in the Draft EA, State of North Carolina site files show that there is evidence of an archeological investigation on the Kings Mountain Site." Townsend Decl. ¶ 17.

60. On January 31, 2020, Chet McGee, the Regional Environmental Scientist for the BIA emailed EBCI's THPO, Mr. Townsend, to share the Draft EA that had previously been published on a non-governmental website.

61. The EBCI's THPO expected the BIA to engage in good faith consultation after

receiving the EBCI's January 22 Comments to address the issues raised therein. As Mr. Townsend explains: "Having worked with the BIA for many years on these issues, concerns such as those raised in the EBCI comments would trigger a process where the BIA would work with me, as the EBCI THPO, to conduct a cultural survey on the land at issue so we could determine whether religious or cultural items were present at the site." Townsend Decl., ¶ 12.

62. Mr. McGhee's email on January 31, 2020 attached a letter from Acting Director, Eastern Region, R. Glen Melville stating: "we would like to verify with your office that the proposed project will not impact any specific sites having potential religious or cultural significance to the Eastern Band of Cherokee Indians." Acting Director Melville's letter did not address any of the significant impacts already communicated by the EBCI in the EBCI Comments, or an expected time for a response. Ex. C.

63. Notably, the January 30, 2020 letter from Acting Director Melville omitted the specific statutes that govern land acquisition for Catawba. *See* Ex. C.

64. The January 30, 2020 letter did not list NEPA, NHPA, or the 1993 Settlement Act, nor did the letter mention any kind of "consultation." *See* Ex. C.

65. The January 30, 2020 letter states that the North Carolina State Historic Preservation Office reviewed the project and "was not aware of any historic resources in the area of the project." However, the EBCI THPO was able to identify at least one archaeological site within the project location recorded in the North Carolina State Archaeological Site Inventory that should have triggered, at a minimum, an archaeological survey to determine the nature and extent of the archaeological material on the site. Townsend Decl., ¶ 17.

66. Mr. McGhee's January 31 email, attaching the January 30 letter from Acting Director Melville, did not respond to, acknowledge, or address any of the concerns the EBCI raised in the EBCI Comments. *See* Townsend Decl., ¶ 14 (noting that the letter itself, "did not respond to,

acknowledge, or address any of the concerns EBCI raised in the January 22 comments, and did not have a date for an expected response.").

67. No one from the BIA ever informed anyone at the EBCI that Defendants were moving forward with *final agency action* and that Defendants would not, in this instance, work with the EBCI's THPO to conduct the cultural survey that ordinarily the parties would collaboratively undertake.

68. Without the good faith consultation process guaranteed by the NHPA, the EBCI THPO is unable to determine whether this final agency action will destroy or harm Cherokee religious or cultural sites. *See* Townsend Decl. ¶ 17 ("This information should have triggered an archeological survey to determine the nature and extent of the archeological material on the site . . ."); *id.* ¶ 15 (informing Mr. Chet McGhee, of the BIA, that "Until we receive the data about the site, we cannot determine whether Cherokee religious or cultural sites exist at the site.").

G. The Department's March 12, 2020 Decision

69. On March 12, 2020—ignoring the IRA and IGRA prohibitions and without engaging in proper tribal consultation and without publishing a Final EA, FONSI, or EIS—Defendant Tara Sweeney, Assistant Secretary for Indian Affairs, signed and issued a Decision permitting the transfer of the Kings Mountain Site into trust for Catawba and allowing the operation of tribal gaming, constituting a final agency action for purposes of judicial review. March 12 Decision, Ex. A.

H. The March 12 Decision Relies on Laws that Do Not Apply to Catawba

70. The March 12 Decision flagrantly violates statutes that prohibit Catawba trust land acquisition and its gaming eligibility approval—namely, the 1993 Settlement Act, Section 5 of the IRA, and IGRA. But the Department also willfully violates NEPA and NHPA procedural requirements.

71. The Assistant Secretary's Decision is foundationally flawed in four ways:

a. The Decision interprets the 1993 Settlement Act as explicitly affirming the applicability of Section 5 of the Indian Reorganization Act to Catawba, and the Assistant Secretary's broad sweeping authority to apply Section 5 of the IRA to Catawba outside of South Carolina, including 25 C.F.R Part 151;

b. The Decision interprets Catawba's restoration under the Indian Gaming Regulatory Act rather than by the limitations outlined in the 1993 Settlement Act;

c. The Decision applies the Indian Gaming Regulatory Act and 25 C.F.R. Part 292 regulations to Catawba, despite the 1993 Settlement Act's explicit prohibition of any application of IGRA to Catawba;

d. The Decision utilizes the March 10, 2020 *Carcieri* m-opinion to analyze Catawba's right to have land in trust for gaming purposes, effectively expanding the authority and rights of the Catawba in contradiction to Congress's clear language in the 1993 Settlement Act.

72. The Assistant Secretary's March 12, 2020 Decision marks a radical departure from what Congress intended, and how this Court has consistently interpreted the 1993 Catawba Settlement Act. Indeed, the Decision reflects the first time the 1993 Catawba Settlement Act has been interpreted in a way other than prohibitive for Catawba's ability to take land into trust and engage in gaming. The 1993 Settlement Act does not support the Assistant Secretary's conclusion in her March 12 Decision that she has broad sweeping authority to take land into trust for Catawba outside of South Carolina. To support her assertion, the Assistant Secretary points only to the explicit terms within the 1993 Settlement Act, providing analysis in a vacuum that ignores Congress's call to treat the terms of the State Act and Settlement Agreement as federal law. The Assistant Secretary arbitrarily and erroneously draws parallels between the 1993

Settlement Act and the Connecticut Indian Land Claims Settlement Act and the Maine Indian Claims Settlement Act. These separate acts of Congress, however, cannot be used to displace the clear congressional intent behind the 1993 Settlement Act. Congressional intent concerning the 1993 Settlement Act is reflected in Committee hearings and reports on the measure, and that intent establishes that the 1993 Settlement Act is unique and developed as a result of complexities unique to Catawba and South Carolina.[6]

73. Picking and choosing from the 1993 Settlement Act and Settlement Agreement, the Assistant Secretary has issued a land into trust Decision that omits key, controlling provisions, all for the sake of reaching a predetermined outcome. Specifically, the Assistant Secretary asserts that "[t]hrough the Settlement Act, Congress broadly extended the benefits of the IRA, including the land-acquisition provisions contained in Section 5 of the IRA to the Nation," but omits that the Settlement Agreement specifically articulates the provisions of the IRA that *do* apply to Catawba—provisions that do not include Section 5.

74. The Assistant Secretary provides no analysis as to why IGRA and 25 C.F.R. Part 292 apply to Catawba's land into trust application when the 1993 Settlement Act broadly asserts that "[t]he Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to the Tribe," (1993 Settlement Act § 14(a)).

75. The Assistant Secretary provides no explanation about how Catawba has any

[6] H.R. Rep. No. 103-257, at 22 (1993) ("The Committee notes that this legislation creates an unprecedented jurisdictional scheme between the State of South Carolina and the Catawba Indian tribe which is unique in Federal Indian law. The Committee understands that the Catawba Tribe has compromised certain principles in an effort to reach this settlement. The Committee views the Catawba as a unique situation . . . . Other tribes should view this as a South Carolina-Catawba specific bill and not as a model that the Committee in any way recommends or endorses.").

rights outside of South Carolina when their restoration, through the 1993 Settlement Act, specifically limits any special jurisdiction Catawba might have otherwise had through its restoration to the terms specifically outlined by the 1993 Settlement Act and the State Act. 1993 Settlement Act § 4(e) ("This Act shall not be construed to empower the Tribe with special jurisdiction or to deprive the State of jurisdiction other than as expressly provided by this Act or by the State Act. The jurisdiction and governmental powers of the Tribe shall be solely those set forth in this Act and the State Act.").

76. The Assistant Secretary's action to take land into trust in North Carolina for Catawba, and to authorize the acquisition for gaming purposes, is an unlawful, *ultra vires*, rushed attempt, unsupported by controlling law, and forecloses any opportunity for meaningful consultation with the EBCI where the EBCI can assert its opposition to the proposed acquisition, outline its legal support, and ultimately, protect its historical territory.

77. In response, the EBCI now seeks a declaration from this Court that the Assistant Secretary's March 12 Decision is unlawful—that agency action is contrary to federal law and arbitrary and capricious.

78. The EBCI also seeks injunctive relief. It requests that this Court permanently enjoin the BIA from taking the land into trust pursuant to the Assistant Secretary's March 12 Decision, and from imposing Section 5 of the IRA, 25 C.F.R. Part 151, IGRA and 25 C.F.R. Part 292 in conjunction with Catawba's current efforts to acquire land into trust in North Carolina for gaming purposes, and any future Catawba application for land into trust in North Carolina for any purpose.

I. The March 12 Decision Does Not Comply With the Laws the BIA Applied to the Decision

79. In addition to the foundational flaws, the March 12 Decision falls far short of

complying with the APA, NEPA, and the NHPA.

a. The March 12 Decision does not include any mention of tribal consultation under § 106 of the NHPA.

b. The March 12 Decision does not consider at all the fact that the Kings Mountain Site is located within Cherokee aboriginal lands.

c. The March 12 Decision does not consider the EBCI, UKB, and the Cherokee Nation's significant cultural and historical ties to the Kings Mountain Site.

d. The March 12 Decision does not at all consider the EBCI's January 22, 2020 Comments alerting the BIA to substantial deficiencies in the Draft EA.

e. The March 12 Decision claims that a "final" EA was completed in March 2020, but the final EA has not been published or provided to the EBCI. At the time of the filing of this Complaint, the EA website still only contains the "draft" EA.

80. Simply put, the Assistant Secretary's imposition of inapplicable laws and regulations to Catawba is contrary to law, arbitrary, capricious, and constitutes an abuse of discretion.

81. The Assistant Secretary's issuance of a Decision before the Final Environmental Assessment and Finding of No Significant Impact have been published, and before any meaningful consultation with the EBCI has occurred, constitutes bad faith.

82. On March 16, 2020, surprised that Defendants had moved forward with final agency action in issuing the March 12 Decision without responding to the issues raised in the EBCI's January 22 Comments, the EBCI's THPO, Mr. Townsend, sent a letter to Mr. McGhee at the BIA, noting that the EBCI has ongoing "concerns with the NEPA and Section 106 review and documentation for the King's Mountain Land-to-Trust Project." Ex. D.

83. Mr. Townsend expressed the EBCI's concerns "that nowhere in the public NEPA

documentation is there mention of consultation including Tribal Nations with Traditional Territory or ceded lands at the project location." Ex. D. Mr. Townsend informed the BIA that the March 12 Decision "is concerning, because the EBCI submitted a letter with questions about the draft EA in January but has not received a response to date. Additionally, there has not been consultation for the 106 review." Ex. D.

84. Mr. Townsend is particularly concerned that Defendants have arbitrarily abandoned their obligation to undertake an archeological survey at the Kings Mountain Site, *before* undertaking final agency action. As Mr. Townsend explained: "There appears to be no documentation supporting this, and according to our records there actually is an archaeological site recorded within the project location listed in the NC State Archaeological Site Inventory. Additionally, there is no evidence of an archaeological survey at this location in those records, and that should have triggered an archaeological survey be conducted to determine the nature and extent of the recorded archaeological site." Ex. D.

85. Mr. Townsend noted that "[u]ntil we receive the data about the site, we cannot determine whether Cherokee religious or cultural sites exist at the site." Ex. D.

86. Mr. Townsend concluded with: "In conclusion, the BIA has not made a reasonable or good faith effort to consult with the EBCI or other nations with traditional territory in Cleveland County as set forth by NHPA (Article 52 and 36 CFR 800). Additionally, the Section 106 review was not adequately addressed in the supporting documentation. Consultation with the Eastern Band and other Tribal Nations with an interest in the area should "commence early in the planning process, in order to identify and discuss relevant preservation issues" (800.2) and this did not occur." Ex. D.

87. If injunctive relief is not imposed to maintain the status quo, the EBCI will be

irreparably harmed because the EBCI will have lost its sovereign right, as a Tribal Nation, to engage in NHPA § 106 consultation concerning a major federal action within traditional Cherokee homeland. *See* Townsend Decl. ¶ 21 ("If the Kings Mountain site is taken into trust for the Catawba Nation, the land will fall under the sovereign governance of the Catawba Nation, and the EBCI THPO will lose the right to consultation on and protection of Cherokee religious and cultural sites.").

CLAIMS FOR RELIEF

COUNT I: Violation of the Administrative Procedure Act through *Ultra Vires* Conduct Prohibited by Congress in the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, Specifically: Applying IRA § 5, 25 C.F.R. Part 151 to Catawba's Request for Land Into Trust)

88. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

89. The BIA, as it relates to Catawba, may only exercise authority in a manner consistent with the Catawba Indian Tribe of South Carolina Lands Claims Settlement Act of 1993 ("1993 Settlement Act"). *See* 1993 Settlement Act § 4(a)(2) ("Restoration of the Federal Trust Relationship and Approval, Ratification, and Confirmation of the Settlement Agreement.--On the effective date of this Act the Settlement Agreement and the State Act are approved, ratified, and confirmed by the United States to effectuate the purposes of this Act, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.").

90. The Catawba Indian Tribe of South Carolina land Claims Settlement Act of 1993 provides no authority to the Assistant Secretary of the Interior to take lands into trust for Catawba in North Carolina, provides no authority to take lands into trust for Catawba pursuant to Section 5 of the IRA.

91. The Assistant Secretary's imposition of the IRA § 5 and 25 C.F.R. Part 151 to

Catawba's land into trust application affords the Assistant Secretary and the BIA authority that the terms of the 1993 Settlement Act prohibit. *See* 1993 Settlement Act § 12(m).

92. The APA requires courts to hold unlawful and set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; "contrary to constitutional right, power, privilege, or immunity"; or "in excess of statutory jurisdictions, authority, or limitations[.]" 5 U.S.C. § 706(2)(A)-(C). The Act further demands courts to "compel agency action [that is] unlawfully withheld or unreasonably delayed." *Id.* § 706(1).

93. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff is entitled to a Declaratory judgment that the Assistant Secretary is without the statutory authority to use the IRA § 5, 25 C.F.R Part 151, to take land into trust in North Carolina for Catawba, and in doing so, has abused her discretion under the APA. Plaintiff is also entitled to a permanent injunction preventing the Assistant Secretary of the Interior and the BIA's Acting Regional Director for the Eastern Region from putting the North Carolina land into trust for Catawba.

COUNT II: Violation of the Administrative Procedure Act through *Ultra Vires* Conduct Prohibited by Congress in the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, Specifically: Applying IGRA and 25 C.F.R. Part 292 to Catawba's Request for Land Into Trust)

94. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

95. The BIA, as it relates to Catawba, may only exercise authority in a manner consistent with the Catawba Indian Tribe of South Carolina Lands Claims Settlement Act of 1993 ("1993 Settlement Act"). *See* 1993 Settlement Act § 4(a)(2) ("Restoration of the Federal Trust Relationship and Approval, Ratification, and Confirmation of the Settlement Agreement.--On the effective date of this Act the Settlement Agreement and the State Act are approved, ratified, and confirmed by the United States to effectuate the purposes of

this Act, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.").

96. The Catawba Indian Tribe of South Carolina land Claims Settlement Act of 1993 provides no authority to the Assistant Secretary of the Interior to take lands into trust for Catawba in North Carolina, provides no authority to take lands into trust for Catawba pursuant to Section 5 of the IRA, and provides no authority to apply IGRA and the Part 292 regulations to Catawba.

97. The Assistant Secretary's imposition of IGRA and the Part 292 regulations to Catawba's land into trust application affords the Assistant Secretary, and the BIA, authority that the terms of the 1993 Settlement Act prohibits. *See* 1993 Settlement Act § 14(a).

98. Because the stated purpose of the Part 292 regulations which the agency used to qualify the Kings Mountain Site as "restored lands" is to promulgate regulations for the agency to determine applicable exceptions to IGRA's requirements, and the 1993 Memorandum of Cooperation between the State of South Carolina and Catawba Nation as well as the 1993 Settlement Act specifically state IGRA shall not apply to the Tribe as a condition of the Tribe's restoration as a Tribal Nation, it is arbitrary and capricious for the agency to consider the Tribe's claim to restored lands under 25 C.F.R. Part 292.

99. In addition to constituting an arbitrary and capricious agency action because the 1993 Settlement Act expressly prohibits the agency action, the March 12 Decision fails to comport with the guidelines articulated for the four mandatory requirements for the Restored Lands Exception in § 292.7.

100. The agency arbitrarily and capriciously found Catawba's request to acquire lands in

trust at the Kings Mountain Site met all criteria of the Restored Lands Exception. Specifically, the agency arbitrarily and capriciously found the Site met the criteria of restored lands in § 292.11 and necessarily, the requirements of § 292.12 regarding historical connection to the land.

101. In support of its determination, the agency cites to Catawba's continuous use and occupancy of lands within the vicinity of the Site. Ex. A, 9.

102. Section 292.12(b) defines "significant historical connection" in part as land located "within the boundaries of the tribe's last reservation under a ratified or unratified treaty." 25 C.F.R. § 292.12(b).

103. The agency relies entirely on Catawba's Memorandum which states the Kings Mountain Site "*may* be located within the boundaries of the Nation's last reservation in North Carolina under the 1760 Treaty of Pine Hill" to satisfy the treaty provisions of 25 C.F.R. § 292.12(b). Ex. A, 9 n.46. (emphasis added). Furthermore, Catawba's claims to any historic or aboriginal territory is not permitted, as Catawba, in their 1993 Settlement Act, relinquished any and all claims to aboriginal title, rights and claims. 1993 Settlement Act § 6.

104. The agency itself arbitrarily refers to the 1760 Treaty as "lost to history," and does not provide any other documentation to support Catawba's assertion of historical ties to Cherokee ancestral homeland. Ex. A, 9 n.46.

105. Further, Defendants erroneously refer to the Kings Mountain Site as "*likely* within the Nation's last reservation in North Carolina" to constitute "further evidence" of a "significant historical connection. Ex. A, 9 n.46. This is insufficient to satisfy the regulatory requirements. As stated in the EBCI January 22 Comments, Catawba cannot demonstrate "significant historical connection" under the regulations in lands which are located in the historic territory of the EBCI and the Cherokee Nation. Ex. B.

106. It is arbitrary and capricious for the agency to find that Catawba demonstrated

"*significant* historical connection" under 25 C.F.R. § 292.12(b) based on a treaty lost to history that no one can read, review, or substantiate.

107. The EBCI, the UKB, and the Cherokee Nation assert more than simple "aboriginal ties" to the Site in question. The three Tribes have well-documented ties to the area in question, based upon a treaty.

108. The APA requires courts to hold unlawful and set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; "contrary to constitutional right, power, privilege, or immunity"; or "in excess of statutory jurisdictions, authority, or limitations[.]" 5 U.S.C. § 706(2)(A)-(C). The Act further demands courts to "compel agency action [that is] unlawfully withheld or unreasonably delayed." Id. § 706(1).

109. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that the Assistant Secretary is without the statutory authority to apply IGRA, and 25 C.F.R. Part 292, to Catawba's request that Defendants take land into trust on Catawba's behalf and authorize that trust acquisition for gaming purposes. In doing so, the Assistant Secretary has abused her discretion under the APA. Plaintiff is also entitled to a permanent injunction preventing the Assistant Secretary of the Interior and the BIA's Acting Regional Director for the Eastern Region from putting the North Carolina land into trust for gaming purposes for Catawba.

COUNT III: Violation of the Administrative Procedures Act through Arbitrary and Capricious Action, Interpreting Ambiguity and Broad Authority in the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 That Does Not Exist

110. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

111. The Assistant Secretary's decision to apply Section 5 of the IRA to Catawba is inconsistent with the terms of the 1993 Settlement Act, which requires "[a]ll properties[—not just South Carolina properties—]acquired by the Tribe [][to] be acquired subject to the terms and

conditions set forth in the *Settlement Agreement,*" (1993 Settlement Act § 12(f)) (emphasis added), which does not permit the application of Section 5 of the IRA to Catawba for the purpose of Catawba acquiring land in trust. *See* Settlement Agreement § 9.1. (outlining the sections of the IRA that are consistent with the terms of the Settlement, sections that do not include § 5.).

112. The Assistant Secretary's March 12 Decision to take non-contiguous land into trust for Catawba pursuant to 25 C.F.R. Part 151 ignores the terms and conditions of the 1993 Settlement Act, which specifically prohibit the application of 25 C.F.R. Part 151, (1993 Settlement Act § 12(m)), for the purpose of taking non-contiguous tracts of land into "Reservation status" for Catawba. 1993 Settlement Act § 12(d).

113. The Assistant Secretary's decision to apply IGRA and IGRA's implementing regulations, 25 C.F.R. Part 292, to justify approving Catawba's land acquisition for gaming purposes directly violates the 1993 Settlement Act, which specifically prohibits the application of IGRA to Catawba, generally. 1993 Settlement Act § 14(a) ("Inapplicability of Indian Gaming Regulatory Act.--The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to the Tribe.").

114. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that the Assistant Secretary's imposition of the IRA § 5, 25 C.F.R Part 151, IGRA, and 25 C.F.R. Part 292, for the purpose of taking land into trust in North Carolina for Catawba, and authorizing that trust acquisition for gaming purposes, is arbitrary and capricious. Plaintiff is also entitled to a permanent injunction preventing the Assistant Secretary of the Interior and the BIA's Acting Regional Director for the Eastern Region from putting the Kings Mountain Site into trust for Catawba.

Count IV: Violation of the APA and the NHPA

115. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

116. The APA requires a court to set aside an agency's actions if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

117. The Defendants' failure to provide adequate notice and consult with the EBCI constitutes an arbitrary and capricious action that violates the NHPA and, as a result, the APA.

118. Section 106 of the NHPA, 56 U.S.C. § 306108, requires that agencies of the United States, "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property."

119. Prior to approval of a federal undertaking, the agency must: (a) identify the "historic properties" within the area of potential effects; (b) evaluate the potential effects that the undertaking may have on historic properties; and (c) resolve the adverse effects through the development of mitigation measures. 36 C.F.R. §§ 800.4; 800.5; 800.6.

120. The regulations implementing the NHPA recognize and honor the government-to-government relationship the United States maintains with Indian Nations, and consequently, in implementing the NHPA, the regulations establish a framework through which consulting with local Indian Nations is not optional, but instead, is mandatory.

121. Consultation with an Indian Tribe must recognize the government-to-government relationship between the Federal Government and the Tribe, and the consultation should be conducted in a manner "sensitive to the concerns and needs of the Indian Tribe . . ." 36 C.F.R. § 800.2(c)(2)(ii).

122. Consultation should provide the Tribe with "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on

the undertaking's effects on such properties, and participate in the resolution of adverse effects." 36 C.F.R. § 800.2(c)(2)(ii)(A).

123. Tribal consultation should be conducted concurrently with NEPA analyses, as historic and cultural resources are expressly included among the factors to be considered under NEPA's own requirements. 36 C.F.R. § 800.8.

124. The regulations acknowledge that Indian Tribes have special expertise in identifying historic properties. See 36 C.F.R. § 800.4 (c)(1) ("The agency official shall acknowledge that Indian tribes . . . possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.")

125. In initiating the § 106 process, Defendants were required to make a "reasonable and good faith effort" to identify Indian Tribes who may attach "religious and cultural significance" to historic properties that may be affected by the proposed undertaking and invite them to participate as consulting parties in the § 106 process. 36 C.F.R. § 800.2(c)(2)(ii) (A)-(D); § 800.3(f)(2).

126. Defendants were also required to consult with interested parties, including Indian Tribes, in the identification of potentially affected historic properties. To satisfy the requirement of reasonable, good faith efforts to determine potential adverse effects, Defendants were required to gather information from a variety of sources, including a review of "existing information on historic properties within the area of potential effects." 36 C.F.R. § 800.4(a)(2).

127. Defendants were required to "[s]eek information" from "consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area and identify issues relating to the undertaking's potential effects on historic properties." 36 C.F.R. § 800.4(a)(3).

128. In addition, the governing regulations required Defendants to "[g]ather information

from any Indian tribe . . . to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them . . . recognizing that an Indian tribe . . . may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites." 36 C.F.R. § 800.4(a)(4).

129. Defendants' obligation to make a reasonable and good faith effort may include "background research, consultation, oral history interviews, sample field investigation, and field survey." 36 C.F.R. § 800.4(b)(1).

130. Defendants must "take into account" "the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects." 36 C.F.R. § 800.4(b)(1). The area of potential effects is defined as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties." 36 C.F.R. § 800.16(d).

131. The NHPA regulations also establish criteria for determining an adverse effect on a historical site.

132. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative. 36 C.F.R. § 800.5(a)(1).

133. After applying these and other considerations, if and when Defendants make a finding of no adverse effect, Defendants are required to notify the consulting parties of that finding and provide them with specific documentation sufficient to review the finding. 36 C.F.R. § 800.5(b) and (c).

134. Despite the aforementioned laws and governing regulations, Defendants did not make

reasonable efforts to consult with the EBCI in good faith during the environmental review process encompassing the historic preservation analysis.

135. Defendants failed to consult with Plaintiff in good faith during the environmental review process, and as a result, Defendants' actions were arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA.

136. The only effort Defendants made to engage in consultation was the emailing of a single letter on January 30, 2020. Ex. C. Nothing in this letter indicated that the BIA had read, considered, or any way reviewed the concerns the EBCI raised in its official comments to the Draft EA, submitted on January 22, 2020. Ex. B.

137. Following the January 30, 2020 letter, Defendants never called an elected leader, the THPO, or any employee at the EBCI or sent a representative to the tribal headquarters to follow up with a good faith attempt to consult.

138. The mailing of one single letter does not, alone, satisfy Defendants' obligation to engage in good faith consultation, and thus Defendants' failure to engage in good faith consultation constitutes an arbitrary and capricious abuse of discretion, one that is not in accordance with law in violation of the APA.

139. The EBCI reached out in good faith to voice its concerns about Defendants' EA and proposed land acquisition.

140. Defendants acted arbitrarily and capriciously and with abuse of discretion by choosing not to consult with any of the impacted Tribal Nations regarding the land acquisition and choosing to ignore the EBCI's good faith attempt to consult.

141. Defendants acted arbitrarily and capriciously and with abuse of discretion by issuing a Decision permitting the "immediate transfer" of aboriginal Cherokee lands into trust status for Catawba without ever publishing a Final EA, FONSI, or EIS.

142. As a result, the ECBI never had a chance to exercise its sovereign right to protect Cherokee cultural patrimony and cultural resources, including potential burials, and now faces the imminent threat of losing access to its aboriginal territory forever.

143. As a result of the allegations in this Complaint, Defendants have violated NHPA (56 U.S.C. § 306108) and the APA (5 U.S.C. § 706(2)(A)).

Count V: Violation of the APA and the NEPA

144. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

145. The APA requires a court to set aside an agency's actions if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

146. NEPA's procedural requirements are triggered where a federal agency engages in a "major Federal action[ ] significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C).

147. Pursuant to the Council on Environmental Quality's implementing regulations, federal agencies may comply with NEPA by preparing either an environmental impact statement ("EIS") or an environmental assessment ("EA"). 40 C.F.R. § 1501.4.

148. An EA is a public document containing information relating to the need for the proposed action being considered, other alternatives, the environmental impact of the proposal and its alternatives, and a listing of agencies and persons consulted. 40 C.F.R. § 1508.9(b).

149. Although an EA is less burdensome than an EIS, it still represents a meaningful analysis of the potential environmental impacts of a proposed action.

150. If Defendants determined that an EIS is not necessary, NEPA and its

implementing regulations require Defendants to issue a "Finding of No Significant Impact." 40 C.F.R. § 1508.27. Defendants have failed to publish either a Final EA or a FONSI, despite taking final agency action on March 12, 2020. *See* Ex. A.

151. Defendants' Draft EA is fundamentally flawed for the reasons outlined in EBCI's January 22 Comments, as well as the paragraphs above, in this Complaint.

152. Defendants' Draft EA does not satisfy Defendants' obligations under NEPA because the Draft EA lists no Tribes with whom Defendants consulted, in violation of 40 C.F.R. § 1508.9(b).

153. Defendants' failure to consult with the EBCI in preparing the Draft EA is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA.

154. Defendants' failure to publish a Final EA or a FONSI demonstrates their failure to comply with the mandate that NEPA documentation present the public and the decision maker with a "hard look" at the impacts of the federal action.

155. NEPA and its implementing regulations require that federal agencies take a "hard look" at environmental impacts of proposed projects and measures to mitigate these environmental impacts. Agencies are required to develop, discuss in detail, and identify the likely environmental consequences of proposed mitigation measures. 40 C.F.R. § 1508.25(b); 40 C.F.R. § 1502.14(f); 40 C.F.R. § 1502.16(h); 40 C.F.R. § 1505.2(c).

156. Defendants issued a Draft EA that contained *no* alternative courses of action. The omission of these alternatives from the Draft EA (there is no Final EA to speak of) failed to comply with the mandate that NEPA analysis and documentation be based on a reasonable range of alternatives. 42 U.S.C. §§4332(C)(iii) & (E).

157. NEPA requires that agencies consider, evaluate and disclose to the public

"alternatives" to the proposed action and "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of resources." 42 U.S.C. §§ 4332(C)(iii), (E). NEPA's implementing regulations require federal agencies to "rigorously explore and objectively evaluate all reasonable alternatives" to the proposed action. 40 C.F.R. §1502.14. Additionally, the evaluation of alternatives must constitute a "substantial treatment," presenting the impacts of the alternatives in comparative form "sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and public." *Id.*

158. The "alternatives" section is "the heart of the environmental impact statement." 40 C.F.R. § 1502.14.

159. Defendants' decision to consider *no* alternatives in preparing their Draft EA is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA.

160. NEPA regulations require that a Finding of No Significant Impact be made "available to the affected public" and that the public and other affected agencies shall be involved in NEPA procedures. 40 C.F.R. §§ 1501.4(e)(1), 1506.6.

161. Adequate notice requires a meaningful effort to provide information to the public affected by Defendants' actions. "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. §§1500.1(b), 1506.6(b)(1) ("In all cases the agency shall mail notice to those who have requested it on an individual action."). NEPA implementing regulations additionally provide extensive public involvement requirements. *Id.* at §1506.6.

162. Defendants' failure to publish either a Final EA or a FONSI establishes that Defendants have failed to provide adequate public notice.

163. NEPA's regulations require Defendants to "send the FONSI notice . . . *to the appropriate tribal,* local, State and Federal agencies . . . ." 24 C.F.R. § 58.43(a) (emphasis added). Defendants have failed to do so.

164. Defendants violated NEPA and its implementing regulations, acted arbitrarily and capriciously, abused their discretion, failed to act in accordance with law and therefore violated the APA, 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE**,** Plaintiff respectfully requests:

1. The Court declare that Defendants violated the APA and the 1993 Settlement Act by applying Section 5 or the Indian Reorganization Act and accompanying regulations, as well as the Indian Gaming Regulatory Act and its accompanying regulations, when the 1993 Settlement Act states explicitly the BIA and Defendants are without the authority to do so;

2. The Court declare that Defendants violated the APA and NHPA §106 consultation process by failing to engage in good faith consultation with the EBCI and that these actions were arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA, 5 U.S.C. § 706(2)(A);

3. The Court declare that Defendants violated the APA and NEPA and its implementing regulations by failing to consult with the EBCI, failing to consider reasonable alternatives, and failing to provide complete and publish a Final EA and FONSI prior to taking final agency action, and that these actions were arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA, 5 U.S.C. § 706(2)(A);

4. The Court issue a Preliminary Injunction enjoining Defendant United States Department of the Interior, Defendant United States Bureau of Indian Affairs, Defendant DOI Secretary David Bernhardt, Defendant Assistant Secretary for Indian Affairs Tara Sweeney, and Defendant Acting BIA Eastern Regional Office Director R. Glen Melville from taking 16.57 acres of land into trust at the King Mountain Site, in Cleveland County, North Carolina, for the benefit of Catawba, a Tribe headquartered in South Carolina;

5. The Defendants, their agents and employees, be ordered to initiate and conduct good faith consultation with the EBCI;

6. The Defendants be ordered to complete an Environmental Impact Statement;

7. The Defendants be assessed the costs of this action;

8. That attorneys' fees be awarded to Plaintiff as authorized under 54 U.S.C. § 307105 for claims brought under the NHPA through the APA; and

9. The Plaintiff have such other and further relief as the Court deems just.

Respectfully submitted this 17th day of March, 2020.

By: /s/ Mary Kathryn Nagle
Wilson Pipestem (OBA No. 16877)
Mary Kathryn Nagle (OBA No. 33712)
Abi Fain (OBA No. 31370)
Pipestem Law, P.C.
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Attorneys for Plaintiff Eastern Band of Cherokee Indians

CERTIFICATE OF SERVICE

I, Mary Kathryn Nagle, certify that a true and correct copy of the above and foregoing was served this 17th day of March, 2020, via U.S.P.S. certified mail, to the following:

UNITED STATES DEPARTMENT OF THE INTERIOR
1849 C Street, N.W.
Washington, D.C. 20240

UNITED STATES BUREAU OF INDIAN AFFAIRS
1849 C Street, N.W.
Washington, D.C. 20240

DAVID BERNHARDT
Secretary of the U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

TARA KATUK MAC LEAN SWEENEY
Assistant Secretary for Indian Affairs
1849 C Street, N.W.
Washington, D.C. 20240

R. GLEN MELVILLE
Acting Regional Director
BIA Eastern Regional Office
545 Marriott Drive Suite 700
Nashville, TN 37214

WILLIAM BARR
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

CIVIL PROCESS CLERK
United States Attorney's Office, District of Columbia
555 Fourth Street, N.W.,
Washington, D.C. 20530.

By: /s/ Mary Kathryn Nagle
Mary Kathryn Nagle

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EASTERN BAND OF CHEROKEE INDIANS	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No.
	)	
UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL,	)	
	)	
	)	
Defendants	)	

DECLARATION OF RUSSELL TOWNSEND,
EASTERN BAND OF CHEROKEE INDIANS TRIBAL HISTORIC PRESERVATION OFFICER

In accordance with 28 U.S.C. § 1746 and LCvR 5.1(f)(2), Russell Townsend declares:

1. My name is Russell Townsend. I reside in Bryson City, North Carolina, and I am fifty-three years of age.

2. I am a citizen of Cherokee Nation and serve as the Tribal Historic Preservation Officer ("THPO") for the Eastern Band of Cherokee Indians ("EBCI"), a federally recognized tribe based in Cherokee, North Carolina. I have a Master's degree in Anthropology with a specialization in Cherokee archaeology from the University of Tulsa. I have completed my work toward a PhD in Archaeology, except the dissertation, at the University of Tennessee.

3. I have served as the EBCI THPO for 16 years. I previously worked for the EBCI as the Director of the Sequoyah Birthplace Museum in Vonore, Tennessee. I left the Museum to document the Trail of Tears site in the North Carolina Mountains. I came back to the EBCI in 2001 and was appointed as the Deputy THPO. In 2004, I became the THPO.

4. The EBCI through the THPO consults with federal agencies, private organizations and companies, and individuals to ensure they are complying with the National Historic Preservation Act ("NHPA") and the National Environmental Policy Act ("NEPA") within the Cherokee aboriginal and historical territory, which includes parts of North Carolina—including Cleveland County where the land the Department of the Interior plans to take into trust for the Catawba Nation is located—and portions of seven other states.

5. As THPO, I work closely with the THPOs from the Cherokee Nation and United Keetoowah Band of Cherokee Indians, the two other federally recognized Cherokee tribes.

6. The EBCI THPO office reviews between 2,500 and 5,000 cultural resource consultation requests per year.

7. On December 23, 2019, David Lambert from the BIA Eastern Region sent an email to EBCI Principal Chief Richard Sneed requesting review and comments on the Draft Environmental Assessment for the Kings Mountain site in Cleveland County, North Carolina.

8. The Kings Mountain site is within the Cherokee treaty and historical territory; the Cherokee ceded this land to the State of North Carolina in the Treaty of July 20, 1777.

9. I was surprised to learn of this Draft EA because the BIA would typically consult with me and other Cherokee THPOs prior to the release of a draft EA for lands within the Cherokee treaty and historical territory.

10. As a part of government-to-government consultation, the BIA consults with the EBCI THPO multiple times per week on various projects in the Cherokee traditional aboriginal territory. The BIA typically reaches out to us early in the process, so we can participate in the development of research design and scopes of work, not simply review completed documents.

11. On January 22, 2020, the EBCI through its legal counsel submitted comments on the Draft Environmental Assessment to the BIA. The EBCI comments make clear that

    a. "the 16.57 acres proposed for federal trust acquisition is located within the Cherokee aboriginal and historic territory";

    b. "any attempt to consult with the EBCI, as required by § 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA), is noticeably absent from the EA";

    c. the EA claim that "'[n]o historic properties, known archaeological sites or cultural materials are currently located within the Area of Potential Effects,' is incorrect and conflicts with another part of the EA that says, "'[t]here is always a possibility, however, that previously unknown archaeological or paleontological resources could be encountered during construction'"; and

    d. "the BIA has failed to fulfill its duty to make 'a reasonable and good faith effort' to consult with the EBCI since, to date, no effort has been made, and no invitation has been sent, inviting the EBIC to consult over this proposed federal action."

12. Having worked with the BIA for many years on these issues, concerns such as those raised in the EBCI comments would trigger a process where the BIA would work with me, as the EBCI THPO, to conduct a cultural survey on the land at issue so we could determine whether religious or cultural items were present at the site.

13. On January 31, 2020, I received an email from Chet McGhee, the Regional Environmental Scientist for the BIA, that shared the same Draft EA that had previously been published. Mr. McGhee's email attached a letter from Acting Director, Eastern Region, R. Glen Melville stating: "[W]e would like to verify with your office that the proposed project will not impact any specific site having potential religious or cultural significance to the ECBI."

14. The January 31st email from Mr. Ghee did not respond to, acknowledge, or address any of the concerns EBCI raised in the January 22 comments, and did not have a date for an expected response.

15. On March 15, 2020, I sent a letter to Chet McGhee stating our concerns about the process and lack of consultation on this issue, stating, "Until we receive the data about the site, we cannot determine whether Cherokee religious or cultural sites exist at the site."

16. Based on my email communication with the Cherokee Nation THPO, the BIA did not consult with them on matters of Cherokee religious or cultural patrimony at the Kings Mountain site.

17. Contrary to the information in the Draft EA, State of North Carolina site files show that there is evidence of an archaeological investigation on the Kings Mountain site. Using the site for borrowed dirt, the North Carolina Department of Transportation (NC DOT) made an incidental discovery of an historical pottery kiln and prehistoric lythic scatter—human made stone tools. This information should have triggered an archaeological survey to determine the nature and extent of the archaeological material on the site, and the impact of a 2005 North Carolina Department of Transportation (DOT) activity at the site. The EBCI THPO is not permitted to disclose the specific information in the North Carolina site files because of an agreement with the North Carolina Division of Archeology to protect data items from "treasure mapping" and leading looters to the site.

18. The Draft EA reports appendices that the soils are deep with deep residuum. Any buried cultural features or features that were excavated into the subsoil have a potential to be intact if they are deeper in the subsurface matrix than the impacts caused by North Carolina DOT in 2005. If there are any human remains at the site, then they are potentially intact below the zone of impact from the 2005 work. The Section 106 review process is meant to address these types of concerns prior to ground disturbance at a project location. Until we receive data about this site, we cannot determine whether Cherokee religious or cultural sites exist at the proposed location.

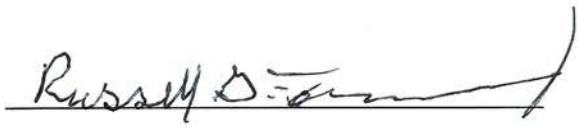
19. The Draft EA states that other studies have the potential to impact the EBCI and other Tribal Nations, and there is no documentation to indicate consultation on the merit of

those studies either. The Draft EA also states that the multiple resource agencies were consulted (pg. 4) including U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, U.S. Department of Agriculture - Natural Resources Conservation Service, U.S. Environmental Protection Agency, State of North Carolina, North Carolina Department of Transportation, Cleveland County and City of Kings Mountain. The Draft EA does not identify basic details regarding the consultation, including how they were consulted and when they were consulted. Without this information, it is unclear whether the document includes the relevant expertise and review of applicable resource agencies with jurisdiction over the site. This lack of detail demonstrates that not enough consultation has taken place.

20. The BIA has not made a reasonable or good faith effort to invite the EBCI to consult on the Draft EA nor has it made a reasonable or good faith effort to actually consult with the EBCI for cultural patrimony at the site it intends to take into trust for the Catawba Nation.

21. If the Kings Mountain site is taken into trust for the Catawba Nation, the land will fall under the sovereign governance of the Catawba Nation, and the EBCI THPO will lose the right to consultation on and protection of Cherokee religious and cultural sites.

I have personal knowledge of the facts stated herein, and, if called to do so, I would competently testify to these facts. I declare under penalty of perjury that the foregoing is true and correct. Executed on March 16, 2020.



Russell Townsend

Swain County, North Carolina

I certify that the following person(s) personally appeared before me this 16th day of March, 2020 each acknowledging to me that he or she signed the foregoing document:

Russell G. Townsend

Name(s) of Principal(s)

Date: 3/16/2020

Larissa R. Teesateskie

Signature of Notary Public

LARISSA R. TEESATESKIE NOTARY My Comm. Exp. 12-12-2021 PUBLIC SWAIN COUNTY, NC

Larissa R. Teesateskie, Notary Public

Notary Public Printed Name

12-12-2021

My Commission Expires

Exhibit A

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 12 2020

The Honorable William Harris
Chief, Catawba Indian Nation
996 Avenue of the Nations
Rock Hill, South Carolina 29730

Dear Chief Harris:

On September 17, 2018, the Catawba Indian Nation (Nation)[1] submitted to the Bureau of Indian Affairs (BIA) an application to transfer into trust approximately 16.57 acres of land known as the Kings Mountain Site (Site) in Cleveland County, North Carolina, for gaming and other purposes.[2] The Nation also requested a determination whether the Site is eligible for gaming. The Nation proposes to construct a casino and mixed-use entertainment complex.

Decision

We have completed our review of the Nation's request and the documentation in the record. As discussed below, it is my determination that the Department of the Interior (Department) will accept transfer of the King Mountain Site into trust for the benefit of the Nation. Once acquired in trust, the Nation may conduct gaming on the Site.

Prior Proceedings

In 1993, after more than a century of asserting aboriginal land claims against the State of South Carolina (State),[3] the Nation and State negotiated a Settlement Agreement[4] resolving existing claims. On October 27, 1993, Congress enacted the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 (Settlement Act),[5] incorporating the terms of the Settlement Agreement. Among other things, the Settlement Act restored the federal trust relationship between the Nation and the United States.[6] The Settlement Agreement and Settlement Act contain various provisions pertaining to the trust acquisition of land by the Secretary of the

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[1] Until 2020, the Catawba Indian Nation was known as the Catawba Tribe of South Carolina. *See* 85 Fed. Reg. 5,642 (January 30, 2020).
[2] Letter to Bruce Maytubby, Regional Director, Eastern Regional Office, from Gregory A. Smith, Hobbs Straus Dean & Walker (Sept. 17, 2018) (hereinafter Nation's Application).
[3] *See, e.g., South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498 (1986); *Catawba Indian Tribe of South Carolina v. State of South Carolina*, 865 F.2d 1444 (4th Cir. 1989); *Catawba Indian Tribe of South Carolina v. State of South Carolina*, 978 F.2d 1334 (4th Cir. 1992); *Catawba Indian Tribe of South Carolina v. United States*, 24 Cl. Ct. 24 (1991).
[4] Agreement in Principle, Agreement between the Catawba Indian Tribe of South Carolina and the State of South Carolina (provided as an attachment to the state settlement act, S.C. CODE ANN. § 27-16-10 *et seq.*
[5] Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, Pub. L. No. 103–116, formerly codified at 25 U.S.C. § 941 *et seq.* (omitted from the editorial reclassification of Title 25).
[6] Settlement Act at § 4 (Restoration of Federal Trust Relationship).

Interior (Secretary), use of such land for gaming, and the applicability of the Indian Gaming Regulatory Act (IGRA).[7]

In 2013, the Nation submitted an application (Mandatory Application) to the BIA requesting that the Department transfer the Site into trust under the Settlement Act's mandatory acquisition provisions.[8] On March 23, 2018, the Deputy Secretary of the Interior (Deputy Secretary) issued a memorandum clarifying that the mandatory trust authority of the Settlement Act did not extend to the Site because it was located outside South Carolina.[9] The Deputy Secretary concluded that the mandatory acquisition provisions negotiated between South Carolina and the Nation could not be applied to a sovereign state that was not a party to the Settlement Agreement.[10]

On April 4, 2018, following the Deputy Secretary's memorandum, the Nation withdrew its Mandatory Application.[11] On September 17, 2018, the Nation submitted its Discretionary Application pursuant to the Department's land acquisition regulations at 25 C.F.R. Part 151.

Description of the Project

The Site is located approximately 33 miles west of Charlotte, North Carolina, and 34 miles northwest of Rock Hill, South Carolina, the location of the Nation's headquarters.[12] The Site is also located approximately 33 miles from the Nation's existing Reservation and 19 miles from its Historic Reservation.[13] The Site is within the Nation's congressionally established Service Area.[14] The Nation entered into a Purchase Agreement for the Site on September 14, 2018.[15]

The Nation proposes to construct a casino and mixed-use entertainment complex totaling approximately 195,000 square feet (sf).[16] The gaming area will consist of 75,128 sf with approximately 1,796 electronic gaming machines and 54 table games. The facility will also include a 940-seat restaurant, a small retail space for the sale of Native artwork and crafts, and 2,130 parking spaces to accommodate both patrons and employees.[17]

The legal description of the Site is enclosed.

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[7] *See, e.g.*, Settlement Act at § 12 (Establishment of Expanded Reservation); § 13 (Non-Reservation Properties); § 14 (Games of Chance).
[8] Application of the Catawba Indian Nation to Acquire 16.57 Acres +\- in Kings Mountain, North Carolina Pursuant to 25 U.S.C. § 941j (Aug. 30, 2013).
[9] Memorandum to Secretary, Mandatory Trust Authority Under the Catawba Settlement Act, from Deputy Secretary (Mar. 23, 2018) (Deputy Secretary's Memorandum).
[10] Deputy Secretary's Memorandum at 2.
[11] Letter, Chief William Harris to Deputy Secretary Bernhardt (Apr. 2, 2018).
[12] Environmental Assessment, Catawba Indian nation Trust Acquisition and Multi-Use Entertainment Complex (hereinafter EA) at § 2.2.
[13] *See* Memorandum from the Acting Regional Director, Eastern Region, to the Assistant Secretary – Indian Affairs (March 10, 2020) (hereinafter Acting Regional Director's Findings of Fact) at 1.
[14] Nation's Application at 7.
[15] *Id.* at 28.
[16] EA § 2.3.2.
[17] Nation's Application at 17.

Eligibility for Gaming Pursuant to the Indian Gaming Regulatory Act

Congress enacted the Indian Gaming Regulatory Act, to in part, provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development and self-sufficiency.[18] 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. Congress expressly provided several exceptions to the general prohibition. One such exception exists for lands taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition" (Restored Lands Exception).[19]

As discussed below, the Nation meets the requirements of Section 20 and 25 C.F.R. Part 292, the Department's regulations implementing Section 20. Specifically, the Nation meets the requirements of Sections 292.7-.12, and, therefore, meets the requirements of the Restored Lands Exception.

Background

In 1993, after more than a century of asserting aboriginal land claims against the State, the Nation and State negotiated an agreement[20] resolving existing claims. On October 27, 1993, Congress enacted the Settlement Act[21] that incorporated the terms of the prior agreement and restored the federal trust relationship between the Nation and the United States.[22] The Settlement Act contains various provisions pertaining to the trust acquisition of land by the Secretary, use of such lands for gaming, and the applicability of IGRA.[23]

Analysis - Restored Tribe

Upon review of the record, we find that the Nation meets the criteria of Section 292.7(a)-(c) and Sections 292.8-10, and, thus, is a "restored tribe."

Section 292.7 - The requirements for the Restored Lands Exception

Part 292 provides that the Restored Lands Exception applies "only when all of the following conditions in this section are met":

(a) The tribe at one time was federally recognized, as evidenced by its meeting the criteria in § 292.8;

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[18] *See* 25 U.S.C. § 2702(2).
[19] 25 U.S.C. § 2719 (b)(1)(B)(iii).
[20] Agreement in Principle, Agreement between the Catawba Indian Tribe of South Carolina and the State of South Carolina (provided as an attachment to the state settlement act, S.C. CODE ANN. § 27-16-10 *et seq.*
[21] Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, Pub. L. No. 103–116, formerly codified at 25 U.S.C. § 941 *et seq.* (omitted from the editorial reclassification of Title 25).
[22] Settlement Act at § 4 (Restoration of Federal Trust Relationship).
[23] *See, e.g.*, Settlement Act at § 12 (Establishment of Expanded Reservation); § 13 (Non-Reservation Properties); § 14 (Games of Chance).

(b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;
(c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition by one of the means specified in § 292.10; and
(d) The newly acquired lands meet the criteria of "restored lands" in § 292.11.[24]

We address each requirement in turn.

Section 292.8 - The Nation at one time was federally recognized

Section 292.8 provides four specific ways, and one catch-all provision, by which a tribe may demonstrate that at one time it was federally recognized:

(a) The United States at one time entered into treaty negotiations with the tribe;
(b) The Department determined that the tribe could organize under the Indian Reorganization Act or the Oklahoma Indian Welfare Act;
(c) Congress enacted legislation specific to, or naming, the tribe indicating that a government-to-government relationship existed;
(d) The United States at one time acquired land for the tribe's benefit; or
(e) Some other evidence demonstrates the existence of a government-to-government relationship between the tribe and the United States.

The Nation meets three of the requirements of Section 292.8: (b), (c) and (d). In March and April of 1944, the Solicitor of the Interior Department determined that the Nation could organize under the Indian Reorganization Act (IRA).[25] The Department officially approved the Catawba IRA Constitution on June 30, 1944.[26] The Department documented the Nation's organization under the IRA in the 1947 Haas Report.[27] The Haas Report describes that the Secretary approved the Catawba Constitution and By-Laws pursuant to the IRA, and that the "Act applies [to the Nation] since [the] Indians did not vote against its application."[28] Accordingly, the Nation satisfies Section 292.8(b), establishing that it was federally recognized at one time.[29]

Section 292.9 - The Nation was subject to legislative termination and, therefore, lost its government-to-government relationship with the United States

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[24] *Id.* at § 292.7.
[25] Fowler Harper, Interior Solicitor Memorandum, "Catawba Tribe–Recognition Under IRA" (March 20, 1944); Fowler Harper, Interior Solicitor Memorandum, "Questions of the Catawbas' Identity and Organization as a Tribe and Right to Adopt IRA Constitution" (April 11, 1944).
[26] Constitution and By-Laws of the Catawba Indian Tribe of South Carolina (June 30, 1944).
[27] Theodore Haas, *Ten Years of Tribal Government Under I.R.A.*, United States Indian Service (January 1947).
[28] *Id.* at 19.
[29] The Nation also meets the criteria in both §§ 292.8(c) and (d). In 1848, 1854, and 1941, Congress enacted appropriations legislation specific to the Nation, which are clear evidence that a government-to-government relationship existed between the United States and the Nation. Furthermore, on December 14, 1943, the United States acquired 3,434 acres in trust for the Nation's benefit. The appropriations enactments and the land acquisition satisfy the requirements of Sections 292.8(c) and (d) and provide indisputable evidence that the Nation was at one time federally recognized prior to termination.

To show that a tribe lost its government-to-government relationship, a tribe must meet one of the following requirements under Section 292.9:

(a) Legislative termination;
(b) Consistent historical written documentation from the Federal Government effectively stating that it no longer recognized a government-to-government relationship with the tribe or its members or taking action to end the government-to-government relationship; or
(c) Congressional restoration legislation that recognizes the existence of the previous government-to-government relationship.

In 1959, Congress enacted An Act to Provide for the Division of the Tribal Assets of the Catawba Indian Tribe of South Carolina Among the Members of the Tribe, and for Other Purposes, terminating the United States' government-to-government relationship with the Nation.[30] The Nation, thus, satisfies Section 292.9(a), demonstrating that it lost its government-to-government relationship.

25 C.F.R. § 292.10 - The Nation was restored to federal recognition pursuant to congressional restoration legislation

To demonstrate that a tribe was restored to federal recognition sometime after it lost its government-to-government relationship, a tribe must meet one of the following requirements in Section 292.10:

(a) Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe (required for tribes terminated by Congressional action);
(b) Recognition through the administrative Federal Acknowledgment Process under § 83.8 of this chapter; or
(c) A Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States.

In 1993, Congress restored the Nation's federal recognition through enactment of the Settlement Act, and, thus, the Nation meets the requirements of Section 292.10(a). Section 2(b) of the Settlement Act expressly states that one of the Act's intended purposes is "*to restore* the trust relationship between the Tribe and the United States (emphasis added)."[31]

For the reasons stated, the Nation meets the regulatory requirements Sections 292.8–10 and, therefore, qualifies as a "restored tribe" under IGRA.[32]

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[30] *See* An Act to Provide for the Division of the Tribal Assets of the Catawba Indian Tribe of South Carolina Among the Members of the Tribe, and for Other Purposes, Pub. L. No. 86-322, 73 Stat. 592 (Sept. 21, 1959).
[31] Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, Pub. L. No.103–116.
[32] 25 U.S.C. § 2719(b)(1)(B)(iii).

Analysis – Restored Lands

25 C.F.R. § 292.11 – The Kings Mountain Site is "restored lands"

The Site is located approximately 33 miles from the Nation's existing Reservation and 19 miles from its Historic Reservation (established pursuant to the Treaty of Augusta), immediately off Interstate 85 in Township 4, just outside the city limits of Kings Mountain, Cleveland County, North Carolina.[33]

Section 292.11 provides, in relevant part:

> (a) If the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe, the tribe must show that either:
> (1) The legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area; or
> (2) If the legislation does not provide a specific geographic area for the restoration of lands, the tribe must meet the requirements of § 292.12.[34]

The Settlement Act does not include language that either requires or authorizes the Secretary to take land into trust for the Nation within a specific geographic boundary;[35] therefore, the Nation must also meet the requirements of Section 292.12.

Section 292.12 provides that to establish a connection to the newly acquired lands for purposes of the "restored lands" exception, the tribe must meet the following:

> (a) The newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe's governmental presence and tribal population, and the tribe must demonstrate one or more of the following modern connections to the land:
> (1) The land is within reasonable commuting distance of the tribe's existing reservation;

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[33] Memorandum, Analysis Of The Applicability Of The Restored Lands Exception Under The IGRA To The Catawba Indian Nation, Submitted on Behalf of the Catawba Indian Nation by Gregory A. Smith, of Hobbs, Straus, Dean & Walker, LLP (September 12, 2019) at 7 (hereinafter Catawba Restored Lands Exception Memorandum); *See* Attachment D, Map Showing Location of Site in Relation to Nation's Existing Reservation; Attachment F, Map Showing Location of Site in Cleveland County, North Carolina; and Attachment G, Site Survey.

[34] Section 292.11 also provides pathways to analyze restored lands for tribes restored through the Federal Acknowledgment process under § 83.8 or by a Federal court determination. But those paths are not relevant here.

[35] In its Memorandum, the Nation argues that section 4(b) of the Settlement Act accords special significance to the Nation's service area and when read in a manner most favorable to the Nation, authorizes the Secretary to take land into trust in North Carolina. But the regulation at § 292.11(a)(1) reads, "[t]he legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe *within a specific geographic area* (emphasis added). We conclude that the Settlement Act does not expressly authorize the Secretary to take land into trust within a specific geographic area in North Carolina. Catawba Restored Lands Exception Memorandum at 18.

(2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;
(3) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or
(4) Other factors demonstrate the tribe's current connection to the land.

(b) The tribe must demonstrate a significant historical connection to the land.
(c) The tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. To demonstrate this connection, the tribe must be able to show that either:
(1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or
(2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

25 C.F.R. § 292.12(a) - The Nation demonstrates modern connections to the Site

To meet the requirements of Section 292.12(a) the Site must be located in a state where the tribe has both a governmental presence and a tribal population. As discussed below, the Site meets these two requirements.

The Nation provided the Department with a tribal roll that confirms a tribal population of 253 in North Carolina.[36] In the Settlement Act, Congress recognized that the Nation has a tribal population in North Carolina, and in the definition section of the Settlement Act, identified six North Carolina counties as service areas for the Nation, including Cleveland County where the Site is located.[37]

In order to advance the general welfare of its enrolled members in North Carolina, the Nation operates many governmental programs and provides various services in North Carolina, including but not limited to:

- First time home buyer's assistance
- Childcare assistance
- Crime Victims Assistance services
- Substance abuse services
- Indian Child Welfare Act (ICWA) notifications

[36] Catawba Indian Nation Tribal Citizens living in N.C. (Nov. 27, 2019).
[37] "The term 'service area' means the area composed of the State of South Carolina and Cabarrus, Cleveland, Gaston, Mecklenburg, Rutherford, and Union counties in the State of North Carolina." Settlement Act, 25 U.S.C. § 941a(3)(9) (omitted), Pub. L. No. 103–116, §3, Oct. 27, 1993, 107 Stat. 1120.

- ICWA case assistance provided through the Family Services Department, including appearing in North Carolina state court proceedings on behalf of Tribal Members[38]
- Other Family Services Transit services to access Family Services or the Indian Health Service clinic[39]
- College scholarship programs
- Job placement services
- Processing Tribal Historic Preservation requests[40]
- Working with North Carolina state and local governments on this and other projects

By providing these programs and services, the Nation has established a governmental presence in the lives of its enrolled members living in North Carolina, in accordance with Section 292.12(a).

The Nation has demonstrated, therefore, that there is both a tribal population and governmental presence in North Carolina where the Site is located. Next, the Nation must demonstrate one or more of the modern connections listed above in Section § 292.12(a)(1)-(4).

First, the Nation demonstrates that the Site meets the requirement of Section 292.12(a)(1) because the Site is within reasonable commuting distance of the Nation's existing reservation. The Site is located at the intersection of Interstate 85 and Kings Mountain Boulevard in Cleveland County, approximately 33-miles from the Nation's existing 1,020-acre reservation in the vicinity of Rock Hill, South Carolina. The Site is approximately a 35 to 40-minute drive from the Nation's governmental headquarters[41] via Interstate 85, which provides easy access to Highway 74, Highway 321 and Interstate 485. Typical modes of transportation include personal vehicles and public transportation. The geographic accessibility of the Site, the quality of the roads, customarily available transportation, and the usual travel time all support a conclusion that the Site is conveniently located near the Nation's existing reservation for commuting purposes, and satisfies the "modern connections" requirement in Section 292.12(a)(1).

The Nation's modern connections to the Site are also evidenced by numerous events, museum exhibitions, and educational activities participated by enrolled tribal members.[42]

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[38] *See* email from Natalie McPherson of Carroll Law Offices to Gregory Smith of Hobbs Straus (Nov. 27, 2019). The email provides attached documentation of ICWA matters involving North Carolina tribal members. The email and documents establish both tribal population in North Carolina and governmental presence through the work of the Nation's Family Services Department.

[39] On average, 11% of the total visitors to the IHS Catawba Service Unit come from North Carolina, 5% of which are enrolled Catawba Tribal Members that are living in North Carolina. Nation's Submission Memorandum at 13 note 43.

[40] As undertaken by a Tribal Historic Preservation Officer exercising responsibilities provided for in federal law.

[41] Catawba Restored Lands Exception Memorandum at 14.

[42] Catawba Restored Lands Exception Memorandum at 14:

> The Nation maintains a strong cultural presence throughout its service area and North Carolina. The Nation, for example, works with museums in North Carolina to recognize Catawba history in that state. The Schiele Museum of Natural History in Gastonia, North Carolina, for instance, has a permanent exhibit on the

25 C.F.R. § 292.12(b) - The Nation demonstrates a significant historical connection to the Site

Part 292 defines "significant historical connection" as:

> Significant historical connection means the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land.[43]

The evidence of Catawba villages, occupancy, and subsistence use in the vicinity of the Site demonstrates a "significant historical connection" pursuant to Section 292.12(b). The Nation's ancestors continuously used and occupied the lands within the vicinity of the Site.[44] The network of ancestral villages formed the core of the historic Catawba Indian Nation, and the traditionally occupied area is within the boundaries of the Site.[45,46] The Catawba people occupied the land, engaged in subsistence activities, such as hunting and fishing, and gathered clay, among other daily life activities.[47]

Additionally, the North Carolina Office of State Archaeology, which provides professional archaeological services to identify inventory and preserve Native American villages,[48] has documented at least 13 archaeological sites with Mississippian Indian cultural components in the adjacent Cleveland and Gaston Counties in North Carolina. The Mississippian sites are located

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Catawba and hosts an annual celebration of Catawba culture with drummers and dancers from the Nation. The Catawbas' ancestral connection to the land was ceremonially recognized as part of the Charlotte Pride Festival and Parade. Representatives of the Nation are also regularly invited to speak at local academic and community events, such as Belmont Abbey College and Warren Wilson College, and Catawba College in Salisbury, North Carolina, which is the home of the "Catawba Indians" and which provides an annual scholarship for a Tribal Member to attend the school. Additionally, the Nation is working with North Carolina chapters of the Daughters of the American Revolution and Sons of the American Revolution on a monument to Catawba warriors who fought in the Battle of King's Mountain. The City of Kings Mountain itself has hosted events commemorating Catawba contributions during the Revolutionary War, with full participation by the Nation.

[43] 25 C.F.R. § 292.2.

[44] Catawba Restored Lands Exception Memorandum at 17.

[45] Catawba Restored Lands Exception Memorandum at 17.

[46] In its Memorandum, the Nation highlights additionally that the Site may be located within the boundaries of the Nation's last reservation in North Carolina under the 1760 Treaty of Pine Hill. While the original treaty has been lost to history, the Department has held in past restored lands determinations that a "parcel's proximity to a tribe's historic reservation or Rancheria is evidence that the tribe has a significant historical connection to that parcel." (*See* Dept. of Interior, Record of Decision, Trust Acquisition of 35.92 +/- Acres in the City of Elk Grove, California, for the Wilton Rancheria at 67 (Jan. 2017) (noting that the land at issue was within six miles of a tribe's historic Rancheria). A parcel for the Mechoopda Indian Tribe of the Chico Rancheria, for example, was found to satisfy Section 292.12(b), in part, because the land was located only ten miles from its former Rancheria. (*See* Letter from Kevin Washburn, Assistant Sec'y – Indian Affairs, to Dennis Martinez, Chairman of the Mechoopda Indian Tribe of Chico Rancheria at 25 (Jan. 24, 2014). Here, the Site is located within Catawba ancestral lands and is likely within the Nation's last reservation in North Carolina. This is further evidence of a significant historical connection to the land. Catawba Restored Lands Exception Memorandum at 18.

[47] Catawba Restored Lands Exception Memorandum at 16.

[48] *Id.*

within the Nation's ancestral lands in the Piedmont plateau.[49] The Catawbas are the only remaining federally recognized Indian tribe in North Carolina of Mississippian origin.[50]

Though the Site falls within an area where another tribe may assert aboriginal ties, that fact does not detract from the Nation's ties to the land. As the National Indian Gaming Commission explained, "IGRA's restored lands exception does not require the [tribe] to demonstrate that it was the only tribe with historical connections to the area, or that the subject area was the only place where the [tribe] has historical connections."[51]

The evidence of historical connections in this case is similar to those supporting a finding of restored lands in the *Grand Traverse Band* decision.[52] In *Grand Traverse Band*, the district court found that the proposed gaming site was located "at the heart of the region that comprised the core of the Band's aboriginal territory and was historically important to the economy and culture of the Band."[53] The court added that the Band had "occupied the region continuously from at least 100 years before treaty times until the present."[54] Like *Grand Traverse Band*, the Site is within the Nation's ancestral lands,[55] the Nation's ancestors have continuously occupied the region, and the region was historically important to the Nation's economy and culture.[56] The Nation has, therefore, demonstrated that it has a significant historical connection to the Site and satisfies the requirements of Section 292.12(b).

25 C.F.R. § 292.12(c) - The Nation submitted its Discretionary Application within 25-years after the Nation was restored to federal recognition

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[49] *Id.*

[50] "Mississippian" is a geographical, temporal, and cultural term that refers to late prehistoric indigenous cultures in the Southeastern United States. *See* David G. Moore, CATAWBA VALLEY MISSISSIPPIAN: CERAMICS, CHRONOLOGY, AND CATAWBA INDIANS at 8 (2002); *see also* Anton Treur, ATLAS OF INDIAN NATIONS at 61-65 (2014) (noting that the "Cherokee are from the Iroquian language family and likely migrated to the Southeast from the eastern Great Lakes a few centuries before European contact")

[51] Letter to Shawn Davis, Chairman of the Scotts Valley Band of Pomo Indians, from John Tahsuda, Assistant Sec'y – Indian Affairs (Feb. 7, 2019) at 15 (quoting the Memorandum from John Hay, Senior Attorney, to Tracie Stevens, Chairwoman, National Indian Gaming Commission at 12 (April 3, 2012)).

[52] *Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Att'y for the W. Dist. of Mich.*, 198 F. Supp. 2d 920 (W.D. Mich. 2002), *aff'd*, 369 F.3d 960 (6th Cir. 2004).

[53] *Grand Traverse I*, 198 F. Supp. 2d at 925.

[54] *Id.*

[55] Catawba Restored Lands Exception Memorandum at 17 citing Attachments B.i., Maps of Aboriginal Area of the Catawba Indian Nation: Catawba Ancestral Lands in North Carolina; and B.iv. Maps of Aboriginal Area of the Catawba Indian Nation: Historical Cultural and Linguistic Map.

[56] Catawba Restored Lands Exception Memorandum at 16.

> Catawba ancestral villages are located throughout the Piedmont area of the Carolinas, most notably along the Catawba River and in the Waxhaws, sacred Catawba territory that formed the historic core of the Nation. The Catawba Trail that connected the Nation to hunting and gathering grounds, trade routes, and other tribal communities also runs through Catawba ancestral lands in North and South Carolina. The Trail is located approximately 18.5 miles from the Parcel and 22 miles from the existing Reservation. The Catawba hunted, gathered, and engaged in other subsistence and ceremonial activities along the Trail, Catawba River, and within the surrounding region of the Historic Reservation, an area that is today coextensive with the Nation's North Carolina service area. Records from the colonial era show that the Catawba vigorously opposed non-Indian encroachment on their ancestral lands.

Last, the Nation must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration.[57] To demonstrate this connection, the Nation must be able to show that they submitted an application to take the land into trust within 25 years after the tribe was restored to federal recognition and the tribe is not gaming on other lands.[58]

Congress restored the Nation's federal recognition in October 1993. The Nation submitted its application to acquire the Site in trust in September 2018, or 24 years and 11 months after the Nation's restoration. The Nation is not gaming on other lands. The Nation, therefore, meets the requirements of Section 292.12(c) and can demonstrate a temporal connection.

Conclusion

The Catawba Nation has demonstrated that it meets the requirements set forth in Part 292. The Site is, therefore, eligible for gaming under the Restored Lands exception of IGRA.

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

The Secretary's general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act.[59] The Department's land acquisition regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5.

25 C.F.R. § 151.3 – Land acquisition policy

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe:

(1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
(2) When the tribe already owns an interest in the land; or
(3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

Transfer of the Site into trust will facilitate tribal self-determination and economic development, thus, satisfying the criteria of Section 151.3(a)(3).[60]

The Nation needs additional land to facilitate tribal self-determination and economic development for its 2,800 members, including 253 members in North Carolina.[61] The Nation reports that its existing land base and tribal ventures are unable to meet the needs of the Nation.

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[57] 25 C.F.R. § 292.12(c).
[58] 25 C.F.R. § 292.12(c)(2).
[59] 25 U.S.C. § 5108.
[60] Although only one factor in Section 151.3(a) must be met, the Nation's application also satisfies the criteria of subsection (a)(2) because the Nation entered into a Purchase Agreement for the Site on September 14, 2018. *See* Nation's Application, Attachment S.
[61] Acting Regional Director's Findings of Fact at 4.

The Nation has attempted to establish business ventures to produce revenue, but none have produced substantial or stable sources of revenue.[62] The Nation reports that the majority of its programs are dependent on federal funding, which creates uncertainty because that funding is not guaranteed every year.

A lack of consistent funding forced the Nation to cut programs for its members. For example, the Nation cut its after-school program for tribal youth offered at the Catawba Cultural Center after funding for the activities was not renewed under the Community Development Block Grant program. The Nation also had to lay off a Victim Resource Coordinator who provided critical trauma and support services to victims of crime in the community after the loss of an Office on Violence Against Women grant.[63] Further, under the Settlement Act, the Nation is required to pay an out-of-county fee for tribal students attending public schools within the local Rock Hill School District. The Nation reports that this fee was calculated at $500,000 annually, which the Nation was unable to pay. The school district brought legal action against the Nation, and the suit was settled with the Nation transferring significant portions of its fee land to the school district.[64]

The Nation experiences high unemployment rates. According to the U.S. Census Bureau, the Catawba Indian Reservation has an unemployment rate of 13.8 percent, and a median household income of $33,029.[65] South Carolina and North Carolina have average unemployment rates of 4.3 percent and 4.2 percent, respectively, and median incomes of $46,898 and $48,256.[66] The Nation needs resources to provide on-site job training and professional development workshops for its members to gain the skills necessary for the workplace.

The Nation is in the process of developing a Tribal Justice Department that will include tribal court, Healing to Wellness alternative drug court, tribal law enforcement, and related justice services. The Nation reports, however, that it lacks revenue to establish these services and is ineligible to apply for Department of Justice grants.[67] In addition, the Nation needs additional funding to maintain its 33 miles of roads included on the BIA Roads Inventory. The Nation reports that maintaining these roads costs $215,000 annually, but it receives only $25,000 in federal assistance from the BIA each year.[68] The $190,000 difference is taken from the Nation's Department of Transportation Tribal Transportation Roads Program allocation, which in turn

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[62] Nation's Application at 16.
[63] *Id.*
[64] *Id.* at 15 - 16.
[65] "My Tribal Area: Catawba Reservation," United States Census Bureau, 2012–2016 American Community Survey 5-year Estimates, *available at* https://www.census.gov/tribal/?st=45&aianihh=0525.
[66] *See* South Carolina Department of Employment and Workforce, "South Carolina Unemployment Averages 4.3% in 2017" (Feb. 27, 2018), *available at* https://dew.sc.gov/news-details-page/2018/02/27/south-carolina-unemployment-rate-averages-4.3-in-2017; United States Census Bureau, "Quick Facts: South Carolina" (2012–2016), *available at* https://www.census.gov/quickfacts/fact/table/sc/PST045217; North Carolina Department of Commerce, "North Carolina's June Employment Figures Released" (July 20, 2018), *available at* https://www.nccommerce.com/news/state-employment-figures; and, United States Census Bureau, "Quick Facts: North Carolina (2012–2016), *available at* https://www.census.gov/quickfacts/fact/table/nc/PST045217.
[67] Nation's Application at 18-19.
[68] *Id.* at 19.

reduces the amount of available funds that the Nation can use from that account for the construction of new roads for housing and economic development.

The Acting Regional Director determined, and we concur, that acquisition of the Site in trust will facilitate tribal self-determination and economic development.[69]

25 C.F.R. § 151.11 – Off-Reservation Acquisition

The Nation's application is considered under the off-reservation criteria of Section 151.11 because the Site is located outside of and noncontiguous to the Tribe's existing reservation lands. Section 151.11(a) requires the consideration of the criteria listed in Sections 151.10(a) through (c), and (e) through (h), and 151.11(b) through (e), as discussed below.

25 C.F.R. § 151.10(a) – The existence of statutory authority for the acquisition and any limitations contained in such authority

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition and, if such authority exists, to consider any limitations contained in it. This section addresses the Secretary's authority to accept land into trust for the benefit of the Nation, and reviews the effect of the Settlement Act on the Nation's proposed fee-to-trust transfer.

Section 5 of the Indian Reorganization Act (IRA) authorizes the Secretary to acquire lands in trust for "Indians."[70] Section 19 of the IRA defines those "Indians" eligible to take advantage of the Act's benefits.[71] The United States Supreme Court's decision in *Carcieri v. Salazar*[72] addressed the Secretary's authority to take land into trust pursuant to Section 19's first definition of "Indian" (Category 1), and held that the word "now" in the phrase "persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction" refers to the time of the passage of the IRA in 1934. The *Carcieri* majority also acknowledged that for some tribes, Congress expanded the Secretary's authority to accept land into trust through legislation, irrespective of whether the tribe would otherwise meet the IRA's definitions of Indian.[73]

As explained more fully below, we have determined that Section 9(a) of the Settlement Act explicitly extends the Secretary's land acquisition authority contained in Section 5 of the IRA to the Nation, and that the South Carolina-specific limitations contained in the Settlement Act do not proscribe the Secretary's authority to approve the Nation's proposed trust acquisition in North Carolina. Because the Settlement Act independently and expressly authorizes the Secretary to exercise such authority, it is unnecessary for us to determine whether the Nation was under federal jurisdiction in 1934.

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[69] *See* Acting Regional Director's Findings of Fact at 2.
[70] Act of June 18, 1934, ch. 576, § 19, 48 Stat. 984 (IRA), codified at 25 U.S.C. § 5129.
[71] *Id.*
[72] *Carcieri v. Salazar*, 555 U.S. 379 (2009). (hereinafter *Carcieri*).
[73] *Carcieri, 555 U.S. at 392.*

History of the Catawba Indian Nation

The Nation is one of 30 Indian tribes or bands known to have resided in what are today the States of North Carolina and South Carolina prior to European settlement, and is the only federally recognized tribe in South Carolina.[74]

Significant encroachment by settlers on the Nation's lands began around the 1730s.[75] To limit increasing tension between the Nation and settlers, the Colony of South Carolina enacted a statute restricting the purchase of Indian lands in 1739.[76] In 1754, it further barred settlers from residing within 30 miles of the Nation's villages and ordered settlers already in the area to leave.[77] Surveyors for the Colony of North Carolina, disregarding South Carolina's restriction, ran surveys directly through Catawba villages.[78] Led by Great Britain's Superintendent of Indian Affairs, colonial authorities resolved the dispute between North Carolina and South Carolina while also addressing the Nation's concerns by entering into the 1760 Treaty of Pine Hill.[79] Under the Treaty, the Catawba surrendered their claims to an area 30 miles in diameter in exchange for a 144,000-acre (225 square miles) reservation.[80]

Following the end of the French and Indian War in 1763, Great Britain's Secretary of State for the Southern Department directed the governors of the southern colonies to invite the Creeks, Choctaws, Cherokees, Chickasaws, and Catawbas to Augusta, Georgia, to meet with the Indian Agent for the Southern Department to negotiate treaties.[81] Here, the Catawba pressed claims for an expanded reservation that would include additional ancestral lands.[82] In response, the Nation was told by the colonial governors that if they stood by the negotiated terms of the 1760 Treaty of Pine Hill, the Nation's previously-identified reserved lands would be surveyed and marked out for their use.[83] Based on these guarantees, the Catawba in 1763 entered into the Treaty of Augusta, confirming the surrender to Great Britain of its aboriginal territory in North Carolina and South Carolina in return for the permanent home on the 144,000 acres reserved for the Nation's use by the 1760 Treaty of Pine Hill. [84]

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[74] South Carolina Department of Archives and History, https://scdah.sc.gov/historic-preservation/resources/native-american-heritage/federal-and-state-recognized-native (last visited April 4, 2019) (South Carolina extends state recognition to Native American Indian Tribes, Native American Indian Groups, and Native American Indian Special Interest Organizations).

[75] Douglas Brown, *The Catawba Indians, The People of the River* at 124, 164 (1966) (Brown).

[76] *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 512 (1986) (Blackmun, J.) (dissent) (citing 1 The First Laws of the State of South Carolina, 160-61 (J. Cushing ed. 1981)).

[77] Polly Dammann, et al., *History of the Catawba Tribe and its Reservation Lands 1540-1959* (1978) (Dammann), reprinted in *Settlement of the Catawba Indian Land Claims: Hearing before the Committee on Interior and Insular Affairs, House of Representatives, on H.R. 3274*, 96th Cong. at 152 (1979).

[78] *Id.* at 154.

[79] *Id.* at 156-157 (The 1760 Treaty of Pine Hill did not survive the centuries, but is known through references in public records including the South Carolina Gazette, Aug. 9, 1760).

[80] *Catawba Indian Tribe, Inc.*, 476 U.S. 498, 500 (1986); *See* also, Dammann, *supra* note 77 at 157.

[81] Brown, *supra* note 75 at 250; Dammann, *supra* note 77 at 158-59.

[82] *Id.*

[83] *Catawba Indian Tribe, Inc.*, 476 U.S. at 500, n. 1; Dammann, *supra* note 77 at 158-163.

[84] *Catawba Indian Tribe, Inc.*, 476 U.S. at 500-501; 1763 Treaty of Augusta, Art. IV (Nov. 10, 1763), Colonial Records of North Carolina, XI at 199 (R. Vol. V-VI, Ex. 6).

During the Revolutionary War, the Nation fought on the side of the American colonies.[85] George Washington highlighted the importance of the Catawba to his early military campaigns,[86] and as President met with the Catawba to hear their concerns regarding the loss of their land.[87] Following the War, the Nation sought guarantees that the new national government would protect the Nation's lands secured by the 1760 Treaty of Pine Hill and the 1763 Treaty of Augusta. The Nation sent deputies to Congress in 1782 requesting that their land not be "intruded into by force, nor alienated even with their own consent."[88] Congress responded with a resolution recommending that the South Carolina legislature "take such measures for the satisfaction and security of said tribe as the said legislature shall, in their wisdom, think fit."[89] In the decades that followed, the Catawba began leasing their lands, and by 1840, the Nation had leased most, if not all of the land secured by the 1763 Treaty of Augusta to non-Indian settlers.[90] As disputes with the Nation grew, lessees began petitioning South Carolina to arrange a treaty by which the Nation would cede its claims to the leased land.[91]

On March 13, 1840, South Carolina commissioners met with the Nation and negotiated an agreement known as the Treaty of Nation Ford.[92] Under the agreement, the Nation agreed to convey its interests in the lands reserved by the 1763 Treaty of Augusta to South Carolina in return for promises to purchase lands for a new reservation.[93] South Carolina ultimately fulfilled such purchases in 1842, buying 630 acres of land within the area reserved for the Nation by the 1763 Treaty of Augusta.[94] South Carolina proceeded to hold the 630 acres in trust for the Nation until 1993, when the Settlement Act provided for its transfer to the United States in trust for the benefit of the Nation.[95]

In the wake of the Nation Ford agreement, the Nation in 1847 wrote to President James K. Polk asking for "the necessary means of removing us the undersigned Catawba Indians west of the Mississippi River."[96] In 1848, Congress enacted legislation appropriating $5,000 for the removal of the Catawba Indians "to the Indian country west of the Mississippi, with the consent of said tribe, under the direction of the President of the United States . . ."[97] Federal officials made efforts to arrange for the Catawba's resettlement amongst the Cherokee, but the Cherokee were

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[85] Dammann, *supra* note 77 at 150.
[86] Letter, George Washington to Robert Dinwiddie, Governor of Virginia (Apr. 24, 1756) (Washington was serving as commander for all Virginia troops during the French-Indian War).
[87] The Diaries of George Washington, Volume VI, January 1790-December 1799, Published 1979, Library of Congress.
[88] 23 JOURNALS OF THE CONTINENTAL CONGRESS 706-07 (Nov. 2, 1782); *See also* H. Lewis Scaife, *Catawba Indians of South Carolina, History and Condition of the Catawba Indians of South Carolina*, 5-6 (1896) (Scaife).
[89] *Id. See also* Scaife, *supra* note 88 at 5-6.
[90] *Catawba Indian Tribe, Inc.*, 476 U.S. at 501; Dammann, *supra* note 77 at 180.
[91] Dammann, *supra* note 77 at 180.
[92] *Catawba Indian Tribe, Inc.*, 476 U.S. at 501.
[93] *Id*; Dammann, *supra* note 77 at 183.
[94] Brown, *supra* note 75 at 320.
[95] Settlement Act at § 12(a).
[96] Brown, *supra* note 75 at 324.
[97] Act of July 29, 1848, ch. 118 (Act making Appropriations for the Current and Continuing Expenses of the Indian Department), 9 Stat. 252, 264.

unwilling to allow another tribe to share or occupy their land without compensation.[98] In 1854, Congress once again appropriated funds for the Nation's removal to Indian Territory.[99] Over the next several years, federal officials worked unsuccessfully with the Choctaw and Chickasaw Tribes in Indian Territory to resettle the Catawba among them.[100]

Tribal Land Claims

Toward the end of the nineteenth century, the Nation began seeking federal assistance in bringing claims against South Carolina for the unlawful conveyance of its reservation lands through the 1840 Nation Ford agreement. The Nation petitioned the Department in 1887 and 1895 for assistance in resolving its claims, without result.[101] In 1905 and 1908, the Nation again sought the Department's assistance in bringing suit to recover its lands on the grounds that the 1840 Nation Ford agreement was void under the Nonintercourse Act.[102] The Commissioner of Indian Affairs declined the Nation's request, in part on the basis that the Catawba were "state" Indians who had never been recognized by the federal government.[103]

The Commissioner's views of the Nation's federally recognized status were contrary to those of Congress, which twice enacted legislation appropriating funds specifically for the Nation's removal. His views were also contrary to the contemporary and subsequent views of other Departmental officials. In 1910, for example, the Superintendent of the Cherokee Agency reported that the Catawba "should be looked after more closely by the General Government and protected in their rights."[104] He suggested that the Commissioner travel to South Carolina to "investigate the condition of the Catawbas with the view of giving them help in establishing and protecting their rights. . ."[105]

In 1911, however, the Commissioner's Annual Report described the Catawba as having been "more or less" independent of federal supervision, with South Carolina having "assumed sovereign rights over the tribe and its former landed rights" without objection from the federal government.[106] The report on which the Commissioner relied asserted that South Carolina had "assumed sovereign rights over the tribe and its former landed rights, and the federal government

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[98] Scaife, *supra* note 88 at 9.
[99] Act of July 31, 1854, ch. 167 (Act making Appropriations for the Current and Contingent Expenses of the Indian Department), 10 Stat. 315, 316.
[100] *See* Letter, Office of Indian Affairs to F.M. Crutsinger (Apr. 29, 1911), in *Survey of Conditions of Indians in the United States: Hearings before a Subcommittee of the Senate Committee on Indian Affairs, United States Senate*, Part 16, 71st Cong. at 7579. *See also* Memorandum, D'Arcy McNickle to Commissioner of Indian Affairs (1937).
[101] H. Rpt. 103-257 at 16 (Sep. 27, 1993); *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 516-517 (1986) (Blackmun, J.) (dissent).
[102] Testimony, Congressman John M. Spratt, Jr., 9 (Jul. 2, 1993) (Reprinted in hearing on H.R. 2399, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993: before the Subcommittee on Native American Affairs of the Committee on Natural Resources, House of Representatives, One Hundred Third Congress, first session, Jul. 2, 1993, pg. 154-190).
[103] Dammann, *supra* note 77 at 187 (citing Letter, F.E. Leupp, Commissioner of Indian Affairs (Jan. 23, 1906).
[104] Letter, Frank Kyselka, Superintendent, Cherokee Agency to the Commissioner of Indian Affairs, (Mar. 25, 1910).
[105] *Id.*
[106] Annual Report of the Commissioner of Indian Affairs at 44-45 (1911).

has never interposed objection, and in such way, the State has exercised guardianship over the band, and the tribe has been in the position of wards of the State."[107] That report's author, Special Indian Agent Charles Davis, noted that while South Carolina provided schooling for Catawba children, a number of Catawba children also attended the Carlisle Indian School.[108] By 1977, the Solicitor of the Interior Department had concluded that the Department's rationale for refusing to assist the Nation in 1905 and 1908 was incorrect. The Solicitor went on to formally request the Department of Justice (DOJ) institute legal action on the Nation's behalf, a recommendation that contributed to legislation formally restoring the Nation's federal recognition and resolving its aboriginal land claims.[109]

In the United States Senate, the Committee on Indian Affairs (Senate Committee) was directed in 1928 to "make a general survey of the condition of the Indians and of the operation and effect of the laws which Congress has passed for the civilization and protection of the Indian tribes."[110] In carrying out these duties, on March 28, 1930, Committee members Lynn Frazier of North Dakota and Elmer Thomas of Oklahoma held field hearings on the Catawba Indian Reservation in South Carolina, taking testimony and evidence from tribal members, federal officials, and local stakeholders regarding the Nation's status and condition.[111]

The impact of this visit on Senator Frazier and Senator Thomas may be seen in their subsequent discussions of the draft legislation that became the Indian Reorganization Act, and in particular its definition of "Indian."[112] In hearings before the Senate Committee on the draft IRA, Chairman Wheeler, Senators Thomas and Frazier and Commissioner of Indian Affairs John Collier discussed whether the draft IRA's definition of "Indian" would cover the Catawba.[113] It was during this colloquy that Commissioner Collier suggested adding the phrase "now under federal jurisdiction" to the IRA's first definition of "Indian."[114]

In 1942, the Secretary approved an agreement between the Department, South Carolina, and the Nation under which South Carolina acquired 3,434 acres of land near the Nation's existing reservation and conveyed it in trust to the United States for the Nation.[115] In separate memoranda issued in 1944, the Solicitor affirmed the Nation's eligibility to organize and adopt

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[107] Report, Special Indian Agent Davis to Commissioner on Indian Affairs, (Jan. 9, 1911).
[108] *Id.*
[109] *See South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 517-518 (1986).
[110] 69 CONG. REC. 2,368 (Feb. 2, 1928) (Sen. Res. No. 79).
[111] *Survey of Conditions of Indians in the United States, Hearings before a Subcommittee of the Committee on Indian Affairs, United States Senate, Pursuant to S. Res. 79*, S. Res. 308 and S. Res 263 at 7535-7601 (Mar. 28, 1930).
[112] *To Grant to Indians Living under Federal Tutelage the Freedom to Organize for Purposes of Local Self Government and Economic Enterprise: Hearings on S. 2755 and S. 3645 before the Committee on Indian Affairs, United States Senate, Pt. 2*, 73rd Cong. at 263-266 (May 17, 1934) (Sen. Hrgs.).
[113] Sen. Hrgs. (May 17, 1934) at 263; *id.* at 265 (further describing the Catawba as descendants living on a reservation).
[114] *Id.* at 266.
[115] Memorandum of Understanding Between the State of South Carolina, the Catawba Indian Tribe, the United States Department of the Interior and the Farm Security Administration of the United States Department of Agriculture (Jan. 13, 1942).

an IRA constitution.[116] Rebuking the suggestion of Commissioner Collier that the federal government had not previously considered the Catawba as "Federal wards," the Solicitor expressly found the Nation to have been previously "recognized by the Federal government" through legislation enacted for their removal in 1848 and 1854, and the Nation to have "continuously maintained" its tribal organization ever since.[117] Because the Nation existed as such and received recognition by the federal government, it was entitled to vote to organize and adopt a constitution under the IRA.[118] After the Nation did so later that year, the Department included the Catawba in its list of all the tribes to which the Department had found the IRA applicable.[119]

In 1953, Congress passed House Concurrent Resolution 108.[120] This marked the beginning of the "termination era" in which the federal government sought to terminate its supervisory responsibilities for Indian tribes.[121] Consistent with this policy, Congress in 1959 enacted legislation lifting federal restrictions against alienation of the Nation's federal Reservation, distributing tribal assets, and terminating federal supervision of the Nation and its members.[122]

Despite termination of its federal supervision, the Nation was encouraged by aboriginal land claims being brought by other eastern Indian tribes.[123] In the 1970s, the Nation again sought the Department's assistance in pursuing the Nation's long-standing claims challenging the conveyance of the reservation set aside for it by the 1763 Treaty of Augusta to South Carolina under the 1840 Nation Ford agreement.[124] Unlike the Nation's earlier requests, the Department now responded favorably, and in a letter dated August 30, 1977, the Solicitor formally recommended that DOJ consider initiating litigation on the Nation's behalf.[125] The Solicitor concluded that the basis of the Department's earlier refusals to assist the Nation were not legally justified, and that the Nation could establish a *prima facie* claim to the 144,000-acre reservation.[126] After consultation, the Department and DOJ elected to pursue a negotiated

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[116] II OP. SOL. ON INDIAN AFFS. 1255 (Mar. 20, 1944) ("Catawba Tribe – Recognition Under IRA"); II OP. SOL. ON INDIAN AFFS. 1261 (Mar. 20, 1944) ("Questions of the Catawbas' Identity and Organization as a Tribe and Right to Adopt IRA Constitution").

[117] II OP. SOL. ON INDIAN AFFS. 1255 (Mar. 20, 1944). *See also* II OP. SOL. ON INDIAN AFFS. 1261 (Catawba Indians "exist as a tribe and have had a known tribal existence for almost a century").

[118] II OP. SOL. ON INDIAN AFFS. at 1262.

[119] Theodore Haas, *Ten Years of Tribal Government under IRA* (1947) ("Haas Report"). The Haas Report listed reservations where Indian residents voted to accept or reject the IRA, Haas Report at 13 (table A), tribes that reorganized under the IRA, *id.* at 21 (table B), tribes that accepted the IRA with pre-IRA constitutions, *ide* at 31 (table C), and tribes not under the IRA with constitutions, *id.* at 33 (table D).

[120] H.R. Con. Res. 108, 83d Cong, 1st Sess. (1953), 67 Stat B132.

[121] *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 503 (1986).

[122] Pub. L. 86-322 (Sep. 21, 1959), 73 Stat. 592 ("Termination Act"). The Termination Act did not affect the Tribe's 630-acre state reservation, which continued be held for the Tribe by South Carolina. *See* Settlement Act, § 3(4).

[123] *See e.g. Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975) (the court interpreted the Nonintercourse Act restrictions to apply to all tribally held land rejecting the distinction between federally recognized and state Indians).

[124] *Catawba Indian Tribe, Inc.*, 476 U.S. at 516-517.

[125] U.S. Dep't of the Interior, Office of the Solicitor, to U.S. Dep't of Justice, Acting Asst. Atty. Gen. James W. Moorman (Aug. 30, 1977).

[126] *Id.*

settlement in lieu of litigation.[127] When the settlement legislation introduced in Congress failed, the Nation then filed its own suit in federal court in 1980.[128]

Settlement Act and Settlement Agreement

In August 1992, after more than a decade of litigation,[129] the Nation and South Carolina negotiated an approximately fifty page "Agreement in Principle"[130] to settle the Nation's long-standing land claims.[131] As part of the Agreement in Principle, the Nation and South Carolina negotiated extensive provisions regarding land acquisition,[132] gaming,[133] tax treatment[134] and jurisdiction[135] for the Nation's existing and future lands within South Carolina. The Nation and South Carolina then worked to effectuate the Agreement in Principle, including congressional restoration of the Nation's federal trust relationship,[136] through the enactment of state and federal implementing legislation.[137]

The Subcommittee on Native American Affairs for the United States House Committee on Natural Resources held a hearing on July 2, 1993, to accept testimony on federal implementing legislation.[138] On October 27, 1993, Congress passed the Settlement Act implementing the terms of the Nation's agreement with South Carolina and restored the federal trust relationship between the Nation and the United States.[139] The South Carolina legislature approved state implementing legislation on June 14, 1993, with the finalized Agreement in Principle attached and defined as the Settlement Agreement.[140]

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[127] 476 U.S. at 518 (Blackmun, J.) (dissent).
[128] *Id.*
[129] *See, South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498 (1986); *Catawba Indian Tribe of South Carolina v. State of South Carolina*, 865 F.2d 1444 (4th Cir. 1989); *Catawba Indian Tribe of South Carolina v. State of South Carolina*, 978 F.2d 1334 (4th Cir. 1992); *Catawba Indian Tribe of South Carolina v. United States*, 24 Cl. Ct. 24 (1991).
[130] Memorandum of Agreement between the Catawba Indian Tribe of South Carolina and the State of South Carolina, (Nov. 29, 1993)(MOA)(South Carolina Governor Campbell and Catawba Chief Blue signed the MOA memorializing the parties' commitment and agreement to carry out the Agreement in Principle and the federal and state implementing legislation).
[131] MOA at ¶ 2.
[132] *See e.g.*, Settlement Agreement at § 14 ("Establishment of Expanded Reservation").
[133] *Id.* at § 16 (Games of Chance).
[134] *Id.* at § 18 (Taxation).
[135] *Id.* at § 10 (Jurisdiction and Governance of the Reservation); Settlement Agreement at § 15.
[136] Settlement Agreement at § 4 (Restoration of the Federal Trust Relationship).
[137] MOA at ¶ 1.
[138] Hearing on H.R. 2399, *Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993*: before the Subcommittee on Native American Affairs of the Committee on Natural Resources, House of Representatives, One Hundred Third Congress, first session, Jul. 2, 1993.
[139] Settlement Act, §§ 4(a)(1)-(2), (c).
[140] S.C. CODE ANN. § 27-16-10 et seq. (2019)(Catawba Indian Claims Settlement Act); S.C. CODE ANN. § 27-16-30(12)(Agreement in Principle is attached to the copy of the Catawba Indian Claims Settlement Act filed with the South Carolina Secretary of State and is defined as the Settlement Agreement.)(Settlement Agreement).

Applicable laws

The conclusions reached in this decision require analysis of the federal Settlement Act,[141] the state implementing legislation known as the Catawba Indian Claims Settlement Act,[142] and the Agreement in Principle attached to the state implementing legislation defined therein as the Settlement Agreement.[143] The initial focus of the analysis is on the Secretary's authority under the IRA, and whether the Settlement Act extended that authority to the Nation consistent with footnote 6 in the Supreme Court's majority decision in *Carcieri* and previous Solicitor's opinions. We conclude by examining whether any provisions in the Settlement Act or Settlement Agreement are inconsistent with the Secretary's Section 5 IRA authority to process the Nation's fee-to-trust Application. A decision from the United States Court of Appeals for the Second Circuit interpreting comparable language from the Mashantucket Pequot Indian Claims Settlement Act, *Conn. Ex. Rel. Blumenthal v. U.S. Dep't. of the Interior*, provides persuasive authority for the analysis.[144]

Standard of review - Solicitor's Guidance

The first definition of "Indian" applies to "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction."[145] To guide the Department in implementing the Secretary's trust-acquisition authority after *Carcieri*, the Solicitor issued a four-step procedure (Solicitor's Guidance) to determine eligibility under Category 1.[146] At Step One, we must assess whether Congress made the IRA applicable to the applicant tribe through separate statutory authority. Existence of such authority makes it unnecessary to determine if the tribe was "under federal jurisdiction" in 1934. Only in the absence of such authority does the analysis proceed to Step Two.

Analysis

Separate Statutory Authority Made the IRA Applicable to the Nation

At Step One, we must determine whether Congress made the IRA applicable to the applicant tribe through separate statutory authority.[147] Section 5 of the IRA authorizes the Secretary, in his discretion, to acquire "any interest in lands, water rights, or surface rights to lands (...) for the purpose of providing lands for Indians."[148] It further provides that "[t]itle to any lands or rights

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[141] Settlement Act.
[142] Catawba Indian Claims Settlement Act.
[143] Catawba Indian Claims Settlement Act at § 27-16-30(12).
[144] *Conn. Ex. Rel. Blumenthal v. U.S. Dep't. of the Interior*, 228 F.3d 82 (2nd Cir. 2000), *cert. denied*, 532 U.S. 1007 (2001)
[145] 25 U.S.C. § 5129.
[146] *Procedure for Determining Eligibility for Land-into-Trust under the First Definition of "Indian" in Section 19 of the Indian Reorganization Act, Memorandum from the Solicitor to Regional Solicitors*, Field Solicitors, and SOL-Division of Indian Affairs (Mar. 9, 2020)(hereafter Solicitor's Guidance).
[147] Solicitor's Guidance at 1-2.
[148] 25 U.S.C. § 5108.

acquired pursuant to this Act (...) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired."

As noted above, the decision in *Carcieri* specifically addressed the Secretary's authority to take land into trust under the Category 1 definition of "Indian."[149] Based on the facts of the case, the Supreme Court did not address the Secretary's authority to take land into trust for groups that fall under Section 19's other definitions of "Indian," or for groups subject to separate legislation authorizing the Department to apply the IRA or otherwise take land into trust for a tribe's benefit.

The Supreme Court concluded that the term "now" in the phrase "now under federal jurisdiction" unambiguously refers to tribes that were under federal jurisdiction in 1934 at the time of the IRA's passage.[150] In reaching this result, the Supreme Court rejected several arguments by the United States that the term "now" as used in Section 19 was ambiguous. As relevant here, the Supreme Court rejected the claim that the phrase "shall include" in Section 19's introductory clause left an interpretive gap for the agency to fill, concluding instead that Congress had "explicitly and comprehensively defined the term by including only three discrete definitions" of "Indian."[151] In support of its reasoning, the Supreme Court in footnote six of its decision listed examples of subsequent statutes in which Congress expanded the Secretary's IRA authority "to particular Indian tribes not necessarily encompassed" within the definitions of Section 19.[152] Had Congress understood Section 19's use of "include" to encompass tribes falling outside Section 19's three definitions, "Congress would not have needed to enact these additional statutory references to specific Tribes."[153]

Relying on the majority's reasoning and the statutory examples it cites, the Solicitor subsequently issued six opinions identifying six other statutes in which Congress expanded the Secretary's authority to take land into trust under the IRA to particular tribes that might not necessarily be encompassed by Section 19's definition of "Indian."[154] After examining the terms

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[149] Section 19 of the IRA defines those "Indians" eligible for Section 5 IRA benefits as: [1] all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and [2] all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include [3] all other persons of one-half or more Indian blood. Act of June 18, 1934, ch. 576, § 19, 48 Stat. 984 (IRA), codified at 25 U.S.C. § 5129 (bracketed numbers added).

[150] *Carcieri*, 555 U.S. at 395.

[151] *Id.* at 391.

[152] *Id.* at 392 n. 6.

[153] *Id.* at 392.

[154] U.S. Dept. of the Interior, Office of the Field Solicitor, Memorandum to BIA Western Reg. Dir. (May 15, 2009) (Tonto-Apache Tribe, Pub. L. 92-470 (Oct. 6, 1972), 86 Stat. 783); Letter, BIA Western Reg. Dir. to Chairman, Pascua Yaqui Tribe of Arizona (Mar. 26, 2014) (Pascua Yaqui Tribe, Pub. L. 95–375, § 1 (Sept. 18, 1978), 92 Stat. 712); Office of the Solicitor, Memorandum to BIA Eastern Reg. Dir. (Jan. 19, 2017) (Mashantucket Pequot Indian Claims Settlement Act, Pub. L. 98–134, § 9 (Oct. 18, 1983), 97 Stat. 855); Office of the Solicitor, Pac. Northwest Reg. to BIA Northwest Reg. Dir. (Dec. 22, 2016) (Coquille Restoration Act, Pub. L. 101–42, § 3 (Jun. 28, 1989), 103 Stat. 91); Office of the Solicitor, Pac. Northwest Reg. to BIA Northwest Reg. Dir. (Jan. 12, 2017) (Cow Creek Band of Umpqua Tribe of Indians Restoration Act, Pub. L. 97–391, § 3 (Dec. 29, 1982), 96 Stat. 1960, as amended, Pub. L. 100–139, §5 (b) (Oct. 26, 1987), 101 Stat. 827); and Office of the Solicitor, Knoxville Field Office to BIA Eastern Regional Dir. (Jul. 30, 2016) (Coushatta Tribe of Louisiana, Pub. L. 100-411 (Aug. 22, 1988), 102 Stat 1097).

of each statute, the Solicitor concluded that each such statute made the IRA applicable to the particular tribe or tribes for which the statute was enacted.[155] By so doing, the Solicitor concluded that Congress rendered the question of whether such tribes were "under federal jurisdiction" immaterial. We conclude that the terms of the Settlement Act and the Settlement Agreement require us here to reach the same result here.

The Settlement Act Expressly Extends the IRA to the Nation

Section 4(b) of the Settlement Act generally addresses the Nation's eligibility for federal benefits and services upon restoration of the federal trust relationship, providing that the Nation "shall be eligible for all benefits and services furnished to federally recognized Indian tribes and their members because of their status as Indians." Section 9(a) of the Settlement Act specifically made the Nation subject to the terms of the IRA. Section 9(a) reads in pertinent part:

> Indian Reorganization Act. – If the Tribe so elects, it may organize under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the 'Indian Reorganization Act'). The Tribe *shall be subject to* such Act except to the extent such sections are inconsistent with this subchapter.[156]

The language of Section 9(a) parallels that found in the statutes cited by the *Carcieri* majority[157] as well as those later assessed by the Solicitor as having extended the IRA to particular tribes.[158] The Act restoring federal recognition to the Yselta del Sur Pueblo for example provides that:

> (a) Federal Trust Relationship. – The Federal trust relationship between the United States and the tribe is hereby restored. The Act of June 18, 1934 (48 Stat. 984), as amended, and all laws and rules of law of the United States of general application to Indians, to nations, tribes or bands of Indians, or to Indian reservations which are not inconsistent with any specific provision contained in this subchapter shall apply to the members of the tribe, the tribe, and the reservation.[159]

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[155] Mashantucket Pequot Op. (Jan. 19, 2017) (IRA applied to Tribe as a law of general application under the Act); Cow Creek (Jan. 12, 2017) (act applied IRA generally and no language in the Act specifically restricted the application of Section 5); Louisiana Coushatta Op. (Jul. 30, 2016) (Act applied IRA generally and no language in the Act specifically restricted the application of Section 5); Coquille Op. (Dec. 22, 2016) (Act specifically made IRA applicable to the Tribe and its members); Pasqua Yaqui Op. (Mar. 26, 2014) (Act specifically made IRA applicable to the Tribe and its members); Ysleta del Sur Op. (Apr. 15, 2014) (Act applied IRA generally and no language in the Act specifically restricted the application of Section 5); Tonto Apache Op. (May 15, 2009) (Act specifically referenced "25 U.S.C. 461 - 479" which was inclusive of § 465, being Section 5 of the IRA).

[156] Settlement Act at § 9(a)(emphasis added).

[157] *Carcieri* at 392 n. 6 (citing Act of May 1, 1936, ch. 254, 49 Stat. 1250 (extending IRA to Territory of Alaska); Shawnee Tribe Status Act of 2000, Pub. L. 106–568, Title VII, § 707 (Dec. 27, 2000), 114 Stat. 2913; Texas Band of Kickapoo Act, Pub. L. 97–429, § 5 (Jan. 8, 1983), 96 Stat. 2270); Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act, Pub. L. 100–89, title I, § 103 (Aug. 18, 1987), 101 Stat. 667).

[158] *See e.g.*, Ysleta del Sur Op. (Apr. 15, 2014) (Act applied IRA generally and no language in the Act specifically restricted the application of Section 5).

[159] Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act, Title I, §103(a), Pub. L. 100–89 (Aug. 18, 1987), 101 Stat. 667.

The Regional Solicitor concluded that the language in the Ysleta Del Sur Restoration Act indicated Congress' intent to include the Ysleta del Sur Pueblo in the IRA Section 19 definition of "Indian" and that the Act thereby extended to the Pueblo the Secretary's IRA Section 5 land acquisition. Similarly, by making the Catawba eligible to "organize under" and "subject to" the IRA, Congress determined that the Nation was eligible for the benefits of the IRA and extended to the Nation the Secretarial authority to take lands into trust contained in Section 5. That the benefits Section 9(a) makes available to the Nation include the authority for the Secretary to take land into trust for the benefit of the Nation pursuant to Section 5 of the IRA is made amply clear by the many provisions of the Settlement Act and the Settlement Agreement that govern the Secretary's implementation of authority to take land into trust for the Nation.

For example, Section 3(7) of the Settlement Act defines the terms "Reservation" and "Expanded Reservation" as lands "to be held in trust by the Secretary in accordance with this Act." Section 12(m) of the Settlement Act expressly makes the Department's general land acquisition regulations at 25 C.F.R. Part 151 inapplicable to land acquisitions authorized under that section, while Section 14.16 of the Settlement Agreement does the same. Section 15(c) of the Settlement Act renders federal laws that apply to lands held in trust for Indians inapplicable within South Carolina. Section 14.2.5 of the Settlement Agreement identifies certain lands that "the Secretary may take into trust" for the Nation. Finally, Section 14.8 of the Settlement Agreement governs the conveyance of lands purchased by the United States in trust for the Nation.

In sum, the Settlement Agreement restored federal recognition to the Nation and expressly extended the benefits of the IRA to the Nation. The purpose and the provisions of the Settlement Act make clear that these benefits include the ability to have the Secretary take lands into trust for the Nation pursuant to Section 5 of the IRA. To conclude otherwise would be inconsistent with the plain language of the Settlement Act. For these reasons, we conclude that no further analysis is required to determine that the Secretary has authority under Section 5 of the IRA, as made applicable to the Nation by Section 9(a) of the Settlement Act, to take land into trust for the Nation.

The Secretary's Section 5 IRA Authority to Accept the Parcel in Trust

Because application of the IRA to the Nation is limited only to the extent it is inconsistent with the specific provisions of the Settlement Act, it is necessary to determine if any other sections of the Settlement Act restrict or curtail the applicability of Section 5 of the IRA to the Nation. Under the Settlement Act and the Settlement Agreement, the Secretary's trust acquisition authority depends, at least in part, on the location of the Nation's property. Section 12 of the Settlement Act and Section 14 of the Settlement Agreement specifically address the unique issues related to the creation of a federal reservation within South Carolina. Section 13 of the Settlement Act and Section 15 of the Settlement Agreement, by contrast, address non-Reservation lands.[160] The Settlement Act contains no express language either authorizing or restricting the Secretary's authority with respect to lands outside of South Carolina. Thus, whether Congress intended the restrictive trust acquisition provisions contained in the Settlement

[160] Settlement Act at § 13; Settlement Agreement § 15 (Non-Reservation Properties).

Agreement and Settlement Act to apply to the Parcel – which is not located in South Carolina – is ambiguous.[161]

Expanded Reservation

One of the primary purposes of the Settlement Act was to implement the comprehensive Settlement Agreement provisions for establishing the Nation's Expanded Reservation within the State.[162] Section 12(a) of the Settlement Act authorizes the Secretary to receive the Nation's existing 630-acre state reservation and hold it in trust. The Settlement Act also authorized the federal government to appropriate $32 million[163] and collect $18 million from the State and local governmental and private sources in support of the settlement.[164] A portion such funds were to be set aside in a Land Acquisition Trust Fund for costs associated with the Nation's land acquisition of both Expanded Reservation and non-Reservation properties.[165] Sections 12(b) through 12(m) implement Section 14 of the Settlement Agreement, detailing a framework under which the Nation can acquire additional land in trust for the Expanded Reservation within certain defined expansion zones, all located in South Carolina.[166]

Section 14 of the Settlement Agreement defines the boundaries of the primary and secondary expansion zones[167] and allows the Nation to propose different or additional expansion zones, provided that any new zone is first "approved by ordinance of the county council where the zone is located, and by law or joint resolution enacted by the General Assembly of South Carolina and signed by the Governor."[168] The Nation can seek to acquire and convey into trust up to a maximum of 4,200 acres for the Expanded Reservation within these defined expansion zones.[169] Section 12(b)(6) of the Settlement Act expressly authorizes the Secretary to accept conveyance of the Nation's lands within the expansion zones into trust as part of the Expanded Reservation.

Congress made clear its intention that "[a]ll properties acquired by the Nation shall be acquired subject to the terms and conditions set forth in the Settlement Agreement."[170] Further, that under the Settlement Act, the Nation is precluded from requesting that "any land be placed in reservation status, unless those lands were acquired by the Nation and qualify for reservation status in full compliance with the Settlement Agreement, including section 14 thereof."[171] It is self-evident that these restrictive provisions apply to any trust acquisition within the boundaries

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[161] This memorandum reflects the conclusions of the Office of the Solicitor without application of the Indian canon of statutory construction, which states that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985). Should a federal court decide that application of the Indian canon is appropriate in interpreting the Settlement Act, the conclusions reached by memorandum will remain the same, but strengthened.
[162] Settlement Act at § 2(b).
[163] *Id.*at § 5(a).
[164] *Id.*at § 5(c)
[165] *Id.*at § 11
[166] *Id.*at § 12.
[167] Settlement Agreement at §§ 14.3 (Primary Expansion Zone), 14.4 (Secondary Expansion Zone).
[168] *Id.* at § 14.5 (Other Expansion Zone).
[169] *Id.*§ 14.2.5.
[170] Settlement Act § 12(f).
[171] *Id.* § 12(b)(3).

of the Expanded Reservation – an area located entirely within South Carolina. [172] One could argue that the preceding language represents a comprehensive framework for all lands the Nation seeks to convey into trust, including lands located outside South Carolina. Such a narrow reading of the Settlement Act, however, is contrary to the statutory language and the broad extension of the Secretary's general authority to take lands into trust for the Nation under Section 5 of the IRA.

The case of *Conn. ex. rel. Blumenthal*[173] is instructive to our analysis. There, the Second Circuit was required to determine whether the Connecticut Indian Land Claims Settlement Act (Connecticut Act) prohibited the Secretary from taking land outside an area designated by the statute into trust on for the Mashantucket Pequot Tribe of Indians pursuant to the IRA.[174] Like the Settlement Act here, the Connecticut Act expressly authorized the Secretary to accept into trust certain land located within a designated area, but was silent regarding the Secretary's general authority to take land into trust outside that designated area. The Second Circuit viewed this statutory silence as authorizing the Secretary to take such lands into trust, finding that "[n]othing in [the Connecticut Act] supplants the Secretary's power under the IRA to take into trust lands" outside the designated area.[175]

Similar to the Connecticut Act, nothing in the Settlement Act expressly limits the Secretary's power under the IRA to take land that is located outside South Carolina into trust for the Nation. Without such a specific limitation, we cannot find that Congress intended to restrict the Secretary's land acquisition authority under the IRA outside South Carolina.

Comparison with the Maine Indian Claims Settlement Act (MICSA),[176] on which the Settlement Act is modeled,[177] sheds further light on congressional intent. In MICSA, which settled the land claims of the Passamaquoddy and Penobscot tribes in 1980, Congress chose not to extend the Secretary's broad authority to take land into trust under Section 5 of the IRA. Rather, Congress expressly precluded the Secretary from taking any lands into trust under any authority other than the Act providing that "[e]xcept for the provisions of this Act, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians (...)."[178] That Congress omitted similar language in the Settlement Act reflects a conscious decision by

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[172] Settlement Act at § 12(c), *See* also, Map, Catawba Primary and Secondary Expansion Zones.
[173] *Conn. Ex. Rel. Blumenthal v. U.S. Dep't. of the Interior*, 228 F.3d 82 (2nd Cir. 2000), cert. denied, 532 U.S. 1007 (2001).
[174] *Id.*
[175] *Id.* at 88.
[176] Maine Indian Claims Settlement Act of 1980, Pub. L. 96-420, formally codified at 25 U.S.C. §1721 et seq. (omitted from the editorial reclassification of Title 25)(MICSA).
[177] Native American Rights Fund Legal Review, Volume 18, No. 1, pg. 1 (Winter/Spring 1993)(Reprinted in hearing on H.R. 2399, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993: before the Subcommittee on Native American Affairs of the Committee on Natural Resources, House of Representatives, One Hundred Third Congress, first session, Jul. 2, 1993, pg. 866); Testimony of Carroll Campbell, Governor of the State of South Carolina, 9-10)(Reprinted in hearing on H.R. 2399, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993: before the Subcommittee on Native American Affairs of the Committee on Natural Resources, House of Representatives, One Hundred Third Congress, first session, Jul. 2, 1993, pg. 232, 240-41).
[178] MICSA at § 5(e).

Congress not to restrict Catawba land acquisitions in the same manner as those of the federally recognized tribes in Maine.

Non-Reservation Lands

Section 15 of the Settlement Agreement authorizes the Nation to draw on funds from the Land Acquisition Trust Fund to purchase such lands located outside the Expanded Reservation,[179] but these "non-Reservation" lands are held in fee simple by the Nation "as a corporate entity or by a subentity of the Nation."[180] The non-Reservation parcels are not subject to federal restrictions on alienation[181] and South Carolina civil, criminal, and regulatory jurisdiction apply to such parcels in the same manner jurisdiction would apply to any other properties held by non-Indians located in the same jurisdiction.[182] Section 13 of the Settlement Act extends these South Carolina-specific provisions to "all non-Reservation lands." Thus, a literal reading of Section 13 of the Settlement Act would require that *any* lands the Nation acquires outside the Expanded Reservation, including lands outside South Carolina, would be subject to South Carolina civil, criminal and regulatory jurisdiction. However, applying such a reading raises serious jurisdictional conflicts and produces an absurd result if applied to the Site in North Carolina.[183] To avoid such a conclusion the South Carolina-specific provisions of Section 13 should be interpreted as applying to non-Reservation lands outside the Expanded Reservation but within the State.

This interpretation comports with the underlying settlement negotiations. As a party to the Settlement Agreement, South Carolina negotiated terms consistent with its interests, and the terms of the Settlement Act clearly provide limitations on the Secretary's authority to accept land into trust within South Carolina's borders. North Carolina, however, was not a party to the Settlement Agreement and is only referenced in provisions of the Settlement Act that define the Nation's aboriginal territory and service area.[184]

In sum, there is nothing in the Settlement Act inconsistent with the Secretary's authority to take lands into trust for the Nation outside the State. And while the Settlement Act limits the exercise of the Secretary's trust-acquisition authority under Section 5 of the IRA with respect to lands the Nation seeks to acquire in trust within South Carolina, the Secretary's broad authority is otherwise undisturbed by the provisions of the Settlement Act. Thus, any such acquisition in North Carolina, to include the Site, is governed by the IRA and the Department's implementing regulations, policies and procedures.

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[179] Settlement Agreement at § 15.
[180] *Id.* § 15.1.
[181] *Id.* § 15.2.
[182] Settlement Act § 13; Settlement Agreement at §§ 4.3, 15.
[183] *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available"); *see also K Marl Corp. v. Cartier, Inc.*, 486 U.S. 281, 324 n.2 (1988) (Scalia, J. concurring in part and dissenting in part) ("it is a venerable principle that a law will not be interpreted to produce absurd results"). *See also, Mova Pharmaceutical Corp. v. Shalala*, 140 F.3d 1060, 1068 (D.C.Cir.1998).
[184] Settlement Act at § 2(b)(5).

Conclusion

Through the Settlement Act, Congress broadly extended the benefits of the IRA, including the land-acquisition provisions contained in Section 5 of the IRA to the Nation. The South Carolina-specific provisions governing the Expanded Reservation and non-Reservation properties do not expressly conflict or limit in any way the generally applicable provisions of the IRA which otherwise authorize the Secretary to accept in trust Catawba lands outside of South Carolina. Accordingly, we conclude that the South Carolina-specific restrictions contained in the Settlement Act do not bar the Nation's pending fee-to-trust application.

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

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

The Nation's current trust land base of 1,012 acres is subject to development restrictions under the Settlement Act. Additional tribal lands are set aside for cultural and ceremonial purposes, and 56 acres are set aside for agriculture.[185] The Nation prioritizes available trust lands for development for housing, healthcare services, and other public infrastructure and services that benefit tribal members. The Nation's fee lands are limited to 279 acres held as a nature reserve through the Fish and Wildlife Service, and 0.85 acres of undeveloped land slated for sale following the settlement of the Nation's debt with the local school district, as discussed above.[186] The Nation, thus, needs additional land for economic development.

The Acting Regional Director found, and we concur, that the Nation needs additional land.[187]

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

Section 151.10(c) requires the Secretary to consider the purposes for which land will be used in evaluating a trust application.

The Nation proposes to construct a casino and mixed-use entertainment complex totaling approximately 195,000 sf. The gaming area will consist of 75,128 sf with approximately 1,796 electronic gaming machines and 54 table games. The main gaming area would include service bars and a player's club. The facility will also include restaurant facilities with 940 seats (café, sports bar, food court, specialty restaurant), and Back of House (kitchen, staff support, exec offices, service corridors, etc.) of 75,000 sf. The facility will include 2,130 parking spaces to accommodate patrons and employees. The casino would be open 24 hours a day, 7 days a week. The casino and multi-use facility will create a total of 2,600 direct employment opportunities.

[185] Nation's Application at 15.
[186] *Id.*
[187] Acting Regional Director's Findings of Fact at 4.

25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls

Section 151.10(e) requires consideration of the impact on the state and its political subdivisions resulting from removal of land from the tax rolls.

By correspondence dated October 31, 2018,[188] the BIA solicited comments from the following state and local governments regarding the potential impact of the proposed trust transfer on regulatory jurisdiction, real property taxes, and special assessments:

- Governor of North Carolina
- Cleveland County Tax Collector
- Cleveland County Board of Commissioners
- Mayor, City of Kings Mountain

The BIA received responses from the Cleveland County Board of Commissioners, Mayor of the City of Kings Mountain, the Cleveland County Tax Collector, and Jay Rhodes, Kings Mountain City Councilman, Ward 5. The Office of the Governor did not respond. The Site is located in the Cleveland County tax jurisdiction. In 2019, the taxes for the Site were $984.24,[189] which represents 0.0016% of the total value of the Cleveland County taxes.[190]

Economic Development

The proposed gaming facility would result in a variety of benefits to the regional economy, including increases in overall economic output and employment opportunities. Construction and operation of the facility would generate substantial temporary and ongoing employment opportunities and wages, which would primarily be filled by the available labor force in Cleveland County.[191]

An economic impact study prepared by London & Associates concluded that the proposed facility would represent a $273 million investment in Cleveland County, and, once operational, the facility would generate $208 million of direct economic activity.[192]

New one-time employment opportunities would be generated during the construction phase of the project, including an estimated 1,640 total jobs. It is expected that a large portion of the employment and payroll will accrue locally with additional secondary impacts when local business establishments and employees make local purchases. Operation of the facility would

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[188] Acting Regional Director's Findings of Fact at 4

[189] *See* letter to Bureau of Indian Affairs, Eastern Regional Office, from G. Scott Neisler, Mayor, City of King Mountain (Nov. 14, 2018).

[190] Acting Regional Director's Findings of Fact at 5.

[191] EA § 4.6.1.

[192] *See* London & Associates, Economic Impact of the Catawba Entertainment Facility on Cleveland County, NC (February 2020).

create approximately 2,600 new direct jobs, with an additional 656 indirect and 323 induced jobs. Total labor income is estimated to exceed $100 million annually, and the total increase in spending (or value of industry production) in Cleveland County is expected to be $428 million.[193]

Potential effects on local and state tax revenue resulting from the operation of the facility are expected to be positive because of the construction and operation of the facility. Tax revenue would be generated for state and local governments from activities including secondary economic activity generated by tribal gaming. The facility is projected to generate $5.5 million per year in state income and sales taxes. At the local level, $5.1 million per year in local sales, residential, and supporting property taxes will accrue.[194]

The gaming facility will be an important economic driver for Cleveland County and the surrounding region. Including indirect and induced effect in the near term (during construction activity), the projected economic effect is estimated to be $311 million. The annual economic impact on Cleveland County is expected to be $428 million.[195]

The Acting Regional Director found, and we concur, that the removal of the Kings Mountain Site from the tax rolls would be offset by the contributions and economic development provided by the Nation's gaming facility.[196]

25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise

Section 151.10(f) requires the Secretary to consider whether any jurisdictional problems and potential conflicts of land use may arise.

The responses to the BIA's requests for comments from state and local officials raised no concerns over jurisdictional issues or potential conflicts of land use.[197]

Jurisdiction and Land Use

Land use and planning for the Site is guided by the City of Kings Mountain Zoning Ordinance. The Site is zoned for general business, which is a land use designation that specifically allows for commercial and entertainment uses. Surrounding parcels are also zoned as general business, light industrial and heavy industrial, and residential. The facility's entertainment and mixed commercial uses would be compatible with the City's general business designation.[198]

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[193] *Id.*
[194] *Id.*
[195] London & Associates, Economic Impact Study at 5.
[196] Acting Regional Director's Findings of Fact at 9.
[197] *Id.*
[198] EA § 4.8.1.

Currently, the Site is undeveloped, as are the adjacent lots. Directly across Dixon Boulevard is an abandoned boat repair shop, and southwest of the site, approximately 1,000 feet away, are existing residential parcels along Compact School Road. The facility would not physically disrupt neighboring land uses, prohibit access to neighboring parcels, or otherwise significantly conflict with neighboring land uses.[199]

Law Enforcement, Fire Protection & Emergency Services

The Nation entered into an Intergovernmental Agreement on December 5, 2019, with Cleveland County, which includes agreed-upon mitigation measures to reduce potential impacts on the local government.[200] The Nation has agreed to pay voluntarily development impact fees to Cleveland County and the City of Kings Mountain for the proposed facility. As detailed in the Intergovernmental Agreement, Cleveland County will provide emergency medical, law enforcement, and fire response services to the site.

The Cleveland County Sheriff's Office is located on the south edge of the Site and will provide law enforcement services.[201] The Nation plans to hire contracted security officers for on-site services. In the future, the Nation plans to provide tribal law enforcement services after establishment of a Tribal Justice Department. At that time, the Nation would enter into a cross-deputization agreement with federal, state, and local law enforcement agencies.[202] The County Emergency Management Department, County Volunteer Fire District, and the Kings Mountain Fire Department will provide fire protection and first responder services to the Site.[203] Cleveland County Emergency Medical Services will prove emergency medical services.[204] The nearest hospital is 3.8 miles from the Site.[205]

The Acting Regional Director found, and we concur, that the transfer of the Site into trust would not cause conflicts of land use or other jurisdictional problems.[206]

25 C.F.R. § 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

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

The Eastern Regional Office of the BIA, located in Nashville, Tennessee, currently provides technical advice and limited direct field services on trust resources program management matters. Acquisition of the Site in trust should not impose significant additional responsibilities

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[199] *Id.*
[200] EA, Appendix A.
[201] *Id.* § 4.9.1.
[202] Nations Application at 24.
[203] EA § 4.9.1.
[204] *Id.* § 4.9.1.
[205] *Id.* § 2.3.2.
[206] Acting Regional Director's Findings of Fact at 10.

or burdens on the level of services currently being provided to the Nation by the BIA. The Acting Regional Director found, and we concur, that the BIA is able to administer any additional responsibilities that may result from acquisition of the Site in trust.[207]

25 C.F.R. § 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

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

602 DM 2, Land Acquisitions: Hazardous Substances Determinations

A Phase I Environmental Site Assessments (ESA) was prepared in March 2013. No current or historical Recognized Environmental Conditions (RECs) were identified on the Site. One REC was identified on an adjacent property that had Underground Storage Tanks (USTs). It is recommended that a minimum of two groundwater samples be collected to confirm no releases from the USTs. Two other RECs in the vicinity of the Site were identified. It is recommended that a minimum of four groundwater samples be collected and tested for petroleum constituents.[208] A Phase II ESA was prepared in April 23, 2013, for the Kings Mountain Site. The Phase II ESA analyzed the groundwater samples and found no contaminants of concern.

National Environmental Policy Act

The BIA completed an Environmental Assessment (EA) in March 2020. The EA identifies, analyzes, and documents the potential physical, environmental, cultural, and socioeconomic impacts associated with the transfer of the Site into trust for use as a gaming facility. The BIA made the EA available for state and local governments, resource agencies, and public review on December 22, 2019, for a comment period ending on January 22, 2020. The State of North Carolina received an extension until February 10, 2020, to provide comments. The BIA published Notices of Availability for the EA in the *Charlotte Observer* on December 22, 2019, *Gaston Gazette* on December 28, 2019, and *Shelby Star* on January 3, 2020. The BIA also made the EA available online at *catawbanationclevelandcountyea.com.*

The EA evaluated the following four alternatives:

1. *The Nation's Proposed Project Alternative* - Transfer of approximately 16.57 acres of land into federal trust and the subsequent development of a mixed-use entertainment complex and casino. The proposed mixed-use entertainment complex and casino would include approximately 195,000 sf of building area, including 75,128 sf of gaming area.

[207] *Id.* at 11.
[208] EA, Appendix H.

2. *Reduced Intensity Alternative* – This alternative is similar to the Proposed Project Alternative, except that the facility would be reduced in size compared to the Proposed Project Alternative. Under the Reduced Intensity Alternative, the multi-use entertainment complex and casino would include approximately 138,398 sf of building area, including 48,650 sf of gaming area.

3. *Non-gaming Alternative* - Transfer of approximately 16.57 acres of land into federal trust and the subsequent development of the site into a truck stop.

4. *No Action Alternative* - Under the No Action Alternative, the Nation would not acquire the property, the BIA would not transfer the site into trust, and no development would occur.

Findings

The BIA evaluated potential direct, indirect, and cumulative impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic and environmental justice conditions, transportation/traffic, land use, public services and utilities, visual resources, and noise.

The EA describes Best Management Practices (BMPs), which the Nation incorporated into the project design to eliminate or substantially reduce environmental consequences to a less–than-significant level.[209] The Nation entered into an Intergovernmental Agreement on December 5, 2019, with Cleveland County, which includes agreed-upon mitigation measures to reduce potential impacts on the local government.[210] The EA analyzes these additional measures in relation to potential environmental impacts. The EA concludes that the project design, implementation of BMPs, and mitigation measures will ensure that impacts to the following resource areas will be less than significant.

Land Resources (EA § 4.1) - Impacts to land resources will be less than significant. The Proposed Project would be developed on a site that was heavily disturbed when the North Carolina Department of Transportation (NCDOT) used the entire site as a soil borrow pit during the construction of Dixon School Road in 2005. The site has no topographic features, such as shallow bedrock, wetlands, or high groundwater conditions that would affect the grading of the site for the Proposed Project. The soils on the site have a minimal erosion susceptibility based on soil type and slope gradients.

Water Resources (EA § 4.2) - Impacts to water resources will be less than significant. The Proposed Project will have no direct impacts to water resources. The Nation shall comply with the National Pollutant Discharge Elimination System General Construction Permit from the U.S. Environmental Protection Agency for construction site runoff during the construction phase as required by the Clean Water Act, 33 U.S.C. § 1251 *et seq*. The Nation shall prepare a

[209] EA, Table 2-2.
[210] EA, Appendix A.

Stormwater Pollution Prevention Plan for the site. There will be no floodplain or wetland impacts from the proposed development.

The City of Kings Mountain Water Department would provide the water supply for the Proposed Project. The City currently has a 12 million gallon per day (MGD) water supply capacity and a current demand of 6.4 MGD, leaving an excess capacity of 5.6 MGD. The water supply comes from the City's John Henry Moss Lake approximately nine miles from the project site. The operational potable water demand of the Proposed Project would not have a significant impact on regional surface water supplies.

Air Quality (EA § 4.3) - Impacts to air quality will be less than significant. The project site is in an attainment zone for the particle pollution standards, and does not require a project-level conformity determination. Because Cleveland County is an attainment or unclassified zone under the National Ambient Air Quality Standards (NAAQS) for all criteria pollutants, the Proposed Project would not result in stationary source emissions (under the categories of Area and Stationary sources) of any one pollutant in excess of the Federal Class I Areas major source threshold of 250 tons per year.

A variety of heavy equipment including trucks, scrapers, excavators, and graders would be used during the construction phase of the Proposed Project; however, these construction activities are short-term in duration and would not impact air quality with the use of appropriate control measures and BMPs. Therefore, implementation of the Proposed Project would not result in significant impacts on air quality in the area.

Biological Resources (EA § 4.4) - Impacts to biological resources will be less than significant. There are no special status species or sensitive ecosystems within the site. Special-status species were defined in the EA to include those species that are listed as endangered or threatened under the Federal Endangered Species Act, formally listed by the state and/or recognized by state agencies, the North Carolina Natural Heritage Program, or other local jurisdictions because of rarity, vulnerability to habitat loss, or population decline. The Proposed Project will also have no impact on migratory birds or birds of prey. The project site is highly disturbed from previous NCDOT activities with minimal trees and vegetation on the site. There is no habitat for foraging, no maternity roost trees, no nesting sites, nor open water on the site.

Cultural Resources (EA § 4.5) - Impacts to cultural resources will be less than significant. The Proposed Project will not affect historic resources, based on the previous NCDOT work on the site. The BIA submitted a request for records review and comments to the North Carolina State Historic Preservation Office. The BIA received the following comments on February 22, 2019, "We have conducted a review of the project and are aware of no historic resources which would be affected by the project. Therefore, we have no comment on the project as proposed."[211] These comments were made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 C.F.R. Part 800.

[211] Letter received February 22, 2019, from NC State Historic Preservation Office.

Socioeconomic Conditions (EA § 4.6) - Impacts to socioeconomic conditions will be less than significant. The Intergovernmental Agreement between the Nation and Cleveland County includes agreed-upon mitigation measures to reduce socioeconomic impacts on the local government. The Nation has agreed to pay voluntarily development impact fees to Cleveland County and the City of Kings Mountain for the Proposed Project. The Proposed Project will be an important economic driver for Cleveland County and the surrounding region. Accounting for indirect and induced effect in the near term (during construction activity), the projected economic effect is estimated to be $311 million. The annual economic impact on Cleveland County is expected to be $428 million.[212]

The Nation agreed to mitigation to address compulsive behavior, including problem gambling, in the Intergovernmental Agreement. The Nation will provide to Cleveland County one-time and annual monetary contributions to the County Health Department to combat problem gambling.

Environmental Justice EA (EA § 4.6) - The Proposed Project will have no disproportionately high and adverse impacts to minority and low-income populations. The Proposed Project will include positive impacts to minority populations by improving the local economy and creating jobs.

The Proposed Project would provide important economic and social benefits to the Nation by generating the revenue needed to fund a strong tribal government, improve and build tribal housing, and fund a variety of social, governmental, administrative, educational, health, and welfare services to improve the quality of life for the Nation's members.

Transportation/Traffic (EA § 4.7, Appendix C) - Impacts to transportation/traffic will be less than significant in the local area with planned mitigation measures. A Traffic Impact Analysis prepared by Timmons Group in March 2019 evaluated impacts to local traffic from the Proposed Project and identified improvements to traffic flow. The Traffic Impact Analysis was reviewed and approved by the NCDOT Congestion Management Unit. The Nation shall continue to work collaboratively with NCDOT and local governments to develop appropriate traffic mitigation measures throughout project design and roadway improvement activities. The implementation of the recommended mitigation measures will ensure less than significant impacts to transportation/traffic networks.

Land Use (EA § 4.8.) - Impacts associated with local land use plans will be less than significant. Land use and planning for the project site is currently guided by the City of Kings Mountain Zoning Ordinance. The Proposed Project site is currently undeveloped and zoned as general business that specifically allows for commercial and entertainment uses. The surrounding parcels are also undeveloped and zoned as general business, light and heavy industrial, or residential. The Proposed Project would not physically disrupt neighboring land uses, prohibit access to neighboring parcels, or otherwise significantly conflict with neighboring land uses.

Public Services and Utilities (EA § 4.9) - Impacts on public services and utilities will be less than significant. Based on consultation with the local governments and utility providers, there is

[212] *See* London & Associates, Economic Impact Study at 5.

sufficient capacity to provide water, wastewater, electricity, gas, and solid waste services to the Proposed Project. Natural gas and wastewater lines will be extended to the site, but the utility infrastructure work will occur within previously disturbed road rights-of-way. As detailed in the Intergovernmental Agreement, Cleveland County will provide emergency medical, law enforcement, and fire response services to the site. The Proposed Project would not result in substantial increases in population or housing; therefore, there would be minimal impacts on school services and recreational activities in the area.

Visual Resources (EA § 4.10) - Impacts to visual resources will be less than significant. The proposed buildings would be consistent with current city zoning requirements, and would not block views of scenic resources in the vicinity of the site. The lighting associated with the Proposed Project would constitute an increase over the existing ambient light levels on the site; however, lighting would be consistent with the designated commercial use of the site. Implementation of BMPs, including shielded and filtered lighting, ensure no significant adverse impacts associated with lighting would occur.

Noise (EA § 4.11, Appendix G) - Impacts from noise will be less than significant. The closest nearby noise-sensitive land uses are rural residential homes located west of the site over 1,000 feet away. Existing noise measurements were taken at these residences. The existing noise levels range from 56 dBA to 72 dBA. The predicted sound level from construction equipment is approximately 62 dBA. Construction noise BMPs would further reduce noise during construction activities and would limit construction to daytime hours to reduce the potential for sleep disturbance. Because of the distance of sensitive noise receptors to the site, the short-term and temporary nature of construction noise, and implementation of mitigation, and BMPs to reduce construction noise levels to the extent feasible, there would not be a significant adverse impact due to construction noise. Operational noise from the Proposed Project and increased traffic noise were also evaluated and determined to be less than significant.

Hazardous Materials (EA § 4.12) - Incidents associated with hazardous materials that would be most likely to occur during construction include the incidental release of fuels, oil and grease during the operation of construction equipment, as well as accidental releases associated with handling and transferring hazardous material-containing substances. Implementation of BMPs during construction will limit the release of hazardous materials. A Phase I Environmental Site Assessment conducted in accordance with ASTM 1527-13, determined that there are no Recognized Environmental Conditions or contamination concerns with the site.

Cumulative/Indirect Impacts (EA § 4.13) - Cumulative and Indirect impacts from the Proposed Project on all environmental areas discussed above would be less than significant.

Mitigation (EA § 5.0) – Mitigation measures to be implemented during construction and operation of the Proposed Project Alternative are summarized in Table 5-1. All mitigation is enforceable because it is inherent to the project design and required through provisions of the Intergovernmental Agreement, and federal or state statute, where applicable.

Conclusion

Among the project alternatives considered, the Proposed Project Alternative would best meet the purpose and need for Proposed Action of transferring the Site into trust because it would provide the greatest socioeconomic benefit to the Nation. All environmental effects of the Proposed Project Alternative can be reduced to less-than-significant levels with mitigation.

25 C.F.R. § 151.11(b) -The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation

The Site is located approximately 33 miles from the Nation's existing reservation, and is within the Nation's congressionally mandated Service Area. The Site is approximately one mile from the North Carolina-South Carolina border.[213]

Due to the close proximity of the Site to the Nation's trust land and the state border, the Department need not greatly securitize the Nation's justifications of anticipated benefits from the proposed transfer of the Site into trust. Moreover, neither the State nor the local governments having regulatory jurisdiction over the Site raised any regulatory concerns.

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

The Nation provided a Business Plan which analyzed the intended use of the Site for tribal and economic development purposes.[214] The Nation anticipates that the Entertainment Complex will generate a net income of $72 million in the first year of operation and $150 million in year five.[215]

Additional tribal revenue is expected from the sale of Native artwork and handcrafts at the on-site gift shop.[216] The gift shop will feature the work of Catawba artisans and craftspeople, as well as other Native goods and products. Establishing this cultural outlet is of great significance to the Nation. Many Catawba artisans are dedicated to their craft yet struggle to support themselves financially on their craft alone. Given the vital importance of the Catawba pottery tradition to the expression of Catawba identity, the Nation wishes to support its traditional craftspeople. The on-site gift shop will enable the Nation to provide its members with a commercial outlet to help preserve and share the Catawba's' unique artistic and cultural heritage.[217]

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[213] Acting Regional Director's Findings of Fact at 12.
[214] *See* Business Plan to Accompany the Application of the Catawba Indian Nation to Acquire 16.57 acres +/- of Off-Reservation Trust Land in Kings Mountain, North Carolina, Pursuant to 25 U.S.C. § 5108 and 25 C.F.R. Part 151 (Sept. 17, 2018) (hereinafter Business Plan).
[215] Business Plan at 3.
[216] Acting Regional Director's Findings of Fact at 13.
[217] *Id.*

The Acting Regional Director found, and we concur, that the construction, maintenance, and operation of the gaming and entertainment facility will provide a major economic benefit to the Nation.[218]

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

See Sections 151.10(e) and (f) above.

Decision to approve the tribe's fee-to-trust application

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will transfer the King Mountain Site into trust for the Catawba Indian Nation. Further, once transferred into trust, the Nation may conduct gaming on the King Mountain Site pursuant to Section 20 of IGRA, 25 U.S.C. § 2719 (b)(1)(A)(B)(iii). Consistent with applicable law, upon completion of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements, the Acting Regional Director shall immediately acquire the land in trust. This decision constitutes a final agency action under 5 U.S.C. § 704.

Sincerely,

Tara Sweeney
Assistant Secretary – Indian Affairs

Enclosure

[218] Acting Regional Director's Findings of Fact at 13.

Enclosure

Legal Description of Property

Kings Mountain Parcel, 16.57 acres, more or less, in the name of the United States of America in Trust for Catawba Indian Nation upon fulfillment of all Departmental requirements. The 16.57 acres, more or less, are described as follows:

> BEGINNING on a concrete right of way monument having NAD83 NC State Plane Grid Coordinates N: 536550.60 USFT and E: 1292093.25 USFT and being located N 11° 18' 59" W 637.68' (Horizontal Ground Distance) from NCGS "Dixon" having NAD83 NC State Plane Grid Coordinates N: 535925.42 USFT and E: 1292218.36 USFT; running thence S 35° 20' 37" W 83.44' to a concrete right of way monument; thence along an arc of curve to the left having a radius of 906.51', an arc length of 357.87', a chord bearing S 68° 52' 34" W and a chord length of 355.55' to a 5/8" Rebar Set; thence S 57° 19' 29" W 498.70' to a 5/8" Rebar Set; thence along an arc of curve to the right having a radius of 1344.39', an arc length of 113.61', a chord bearing S 59° 44' 45" W and a chord length of 113.58' to a 5/8" Rebar Set; thence a new line N 23° 34' 25" W 751.26' to a 5/8" Rebar Set; thence a new line N 66° 25' 35" E 1026.64' to a 5/8" Rebar Set in the Western Right of Way Line of State Project 8.2800802; thence with the western right of way line N 66° 25' 35" E 43.71' to a 5/8" Rebar Set; thence S 23° 18' 33" E 151.15' to a ½" Rebar Found; thence S 23° 18' 33" E 93.85' to a 5/8" Rebar Set; thence S 67° 29' 04" W 19.83' to a 5/8" Rebar Set; thence S 23° 18' 56" E 237.04' to a 5/8" Rebar Set; thence S 17° 18' 46" E 150.51' to the point and place of beginning and containing 16.573 Acres +/- and shown as Lot 1 according to a survey by TGS Engineers Dated September 17, 2018.

Exhibit B

PIPESTEM LAW

WILSON K. PIPESTEM
PARTNER
WKPIPESTEM@PIPESTEMLAW.COM
918 936 4705 (W)
703 980 2262 (C)

January 22, 2020

VIA EMAIL (chester.mcghee@bia.gov)

Mr. Chet McGhee
Regional Environmental Scientist
BIA Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

Re: Eastern Band of Cherokee Indians Comments on the Environmental Assessment for the Proposed Trust Acquisition of 16.57 acres for the Catawba Indian Nation of South Carolina in Cleveland County, North Carolina

Dear Mr. McGhee:

On behalf of Principal Chief Richard Sneed and the Eastern Band of Cherokee Indians (EBCI), a federally recognized Tribal Nation based in North Carolina, we submit the following comments on the Environmental Assessment (EA) prepared for the Proposed Trust Acquisition of 16.57 acres of land for the Catawba Indian Nation of South Carolina. Based on our review of the document, the EA has multiple deficiencies and lacks the necessary information and analysis to determine whether the project would result in significant effects to the environment. The Department must require that the deficiencies in the EA be addressed through the preparation of an Environmental Impact Statement (EIS). Below are specific comments based upon each issue area and deficiency.

The EA Fails to Protect Cherokee Cultural Resources.

Because the 16.57 acres proposed for federal trust acquisition is located within the Cherokee aboriginal and historic territory, the Department of the Interior owes legal trust responsibilities to the EBCI to protect Cherokee lands, assets, and cultural resources. As one example, any attempt to consult with the EBCI, as required by § 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA), is noticeably absent from the EA. Under the NHPA and NEPA framework, the impacts of a proposed federal action on tribal lands, resources, or areas of historic significance constitute an important part of federal agency decision making. While the EA claims that "[n]o historic properties, known archaeological sites or cultural materials are currently located within the Area of Potential Effects," the EA also noted that "[t]here is always a possibility, however, that previously unknown archaeological or paleontological resources could be encountered during construction."

A request for records review and comments was submitted to the NC State Historic Preservation Office (SHPO), who has authority over non-tribal lands, but contacting a State SHPO in no way abdicates the duty under the NHPA and NEPA to consult with the Indian Tribe or Tribes with historic ties to the land, in this instance, the EBCI. Specifically, § 106 of the NHPA, which is incorporated into NEPA, requires the agency—here, the Bureau of Indian Affairs—to "make a reasonable and good faith effort to identify any Indian tribes . . . that might attached religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties." 36 C.F.R. § 800.3(f)(2). Accordingly, the BIA has failed to fulfill its duty to make "a reasonable and good faith effort" to consult with the EBCI since, to date, no effort has been made, and no invitation has been sent, inviting the EBIC to consult over this proposed federal action.

Furthermore, the EA proposes Best Management Practices (Table 2-2) that include contacting "the Tribal Historic Preservation Officer" (THPO) in the event there is a significant archaeological find." The EA does not specify which Tribal Nation THPOs would be contacted and does not state that the EBCI THPO has managed significant archaeological finds in this area.

The Department Must Assess Whether a South Carolina Lands Would be More Appropriate for Trust Acquisition for the Catawba Nation of South Carolina.

Because the lands would encroach on Cherokee aboriginal and historical territory, and the Department lacks the requisite legal authority to take lands into trust in North Carolina for the Catawba Nation of South Carolina, the Department must fully assess whether alternative locations for Catawba land acquisitions in South Carolina would be more appropriate.

The EA Fails to Properly Assess Impacts on Biological Resources.

The EA states that "[n]o sensitive habitat types, critical habitat, wetlands or Waters of the U.S. occur on or adjacent to the site" (pg. 22). Yet, wetlands or waters of the U.S. on adjacent properties are disclosed in the Natural Resources Technical Memo. The EA does not discuss the potential for the off-site improvements, including the stormwater detention basin, utility extensions and roadway improvements to affect these resources. The pipe for off-site discharge on Figure 9 of Appendix B for example is located within or near a wetland and stream identified on Figure 3 of the Natural Resources Technical Memo.

The EA does not disclose the details of the field survey for dwarf-flowered heartleaf, including when it was conducted, who conducted the survey, and what methods were used. A proper survey report should accompany the document.

The EA states that on-site trees are minimal (pg. 35). A proper evaluation of potential impacts to migratory birds should consider trees within 500 feet of both on and off-site construction activities. Mitigation such as pre-construction surveys should be included to ensure avoidance.

The EA Fails to Disclose Relevant Consultation Information.

The EA states that the multiple resource agencies were consulted (pg. 4) including U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, U.S. Department of Agriculture - Natural Resources Conservation Service, U.S. Environmental Protection Agency, State of North Carolina, North Carolina Department of Transportation, Cleveland County and City of Kings Mountain. The EA does not identify basic details regarding the consultation, including how they were consulted and when they were consulted. Without this information, it is unclear whether the document includes the relevant expertise and review of applicable resource agencies with jurisdiction over the site.

The EA includes correspondence with EPA for the 16.57-acre site but does not detail any actual consultation with EPA regarding potential impacts from off-site improvements. It is unknown whether the other agencies, if consulted, reviewed off-site improvements.

The EA Fails to Assess the Impacts of Tin Prospecting on the Site.

The EA mentions throughout the document that tin prospecting occurred onsite but fails to elaborate further on what activities took place and what impacts this may have had on the site. The project includes 2,130 total parking spaces and estimates approximately 2,600 new employment positions (pg. 8 and 9). While not all employees would work at once, the document should specify how many spaces are dedicated for patrons and provide proof that this number is adequate. Overflow onto adjacent properties or roads could cause additional impacts.

The Best Management Practices table (Table 2-2) should specify what entity with jurisdiction will verify that the measures are adequately completed. They should be included instead as mitigation or within an enforceable agreement as the Catawba Indian Nation has limited jurisdiction to enforce compliance on any of its trust lands pursuant to the Catawba Indian Tribe of South Carolina land Claims Settlement Act of 1993.

The EA Includes Unsubstantiated Statements on Land Resources.

Many statements in the document are cursory and unsubstantiated. For example, the EA states on pg. 26 that the "NPDES General Construction Permit requirements would reduce any potential adverse impacts to less than significant." The EA does not explain what thresholds were considered, what impacts would be reduced, or how the permit requirements would reduce these impacts.

The Air Quality Assessments in the EA are Insufficient.

The air quality discussion does not identify what nearest sensitive receptors were considered (pg. 22).

The EA does not analyze the construction or operational emissions that would result from the project. Even if the County is in attainment, an individual project could still result in adverse emissions. Air quality modeling should be conducted for both mobile and stationary emissions during construction and operation for criteria pollutants and disclosed within the document.

The London & Associates Economic Impact Study is Not Provided.

We request a copy of the Economic Impact Study prepared by London & Associates. The purpose and need for the project as well as impact conclusions in the EA rely on this study. The study may include incorrect assumptions, analysis, or conclusions that could result in negative impacts for other regions of North Carolina. That is, the EA weighs the potential positive impacts for Cleveland County, but disregards the possible impact on counties in western North Carolina. The lack of inclusion of this document goes against the purposes of an open public review process under NEPA and its implementing regulations.

The Hazardous Materials/Phase I and II Assessments Are Out of Date.

This Phase I assessment was conducted in accordance with ASTM 1527-05, the standard for conducting Phase I assessments at that time. The ASTM standard has since been updated from ASTM 1527-05 to 1527-13.

The Phase I ESA was completed in 2013 and is considered out of date, particularly for a financial transaction which could represent a new liability to the federal government. ASTM 1527-13 standard cites a 6-month assessment shelf life.

One possible offsite REC was identified as the former gasoline station and current boat repair facility just east of the project site. The 2013 Phase I assessment stated that the unused underground storage tanks (USTs) are still present and no subsurface environmental testing had been conducted. The 2013 Phase I assessment recommended testing groundwater to determine whether the USTs at the offsite former gasoline station have resulted in contaminated groundwater that may have migrated to beneath the project site. Based on the information contained in the EA, it appears that the recommended testing has not been conducted, and it is unknown whether the former gasoline station has contaminated groundwater and whether that contamination, if any, has migrated to beneath the project site. As discussed below, a Phase II assessment that includes three temporary wells was conducted on the western portion of the project site. However, this is a one-time measurement that did not include accurate survey elevations. In addition, the direction of groundwater flow may vary with the season. Therefore, it is unknown whether contaminated groundwater, if any, has migrated from the former gasoline station to beneath the project site.

While the project does not propose to use on-site groundwater wells at this time, it is unknown whether it would be considered in the future. A limited waiver of sovereign immunity

to restrict future residential uses from the site and/or use of on-site groundwater should be considered, unless it can be determined that there is no on-site contamination.

The Phase II assessment provides some limited information but does not eliminate the possibility that the former gasoline station east of the project site may have contaminated groundwater beneath the eastern portion of the project site. If contamination is present, clean-up activities would become a liability for the federal government following trust acquisition.

The EA Does Not Address Impacts to Public Services and Utilities.

The EA does not quantify impacts to law enforcement or fire protection agencies. The EA simply states that the County will be reimbursed for reasonable costs. The EA should quantify the additional number of staff and/or equipment that would be needed to provide service to the project while maintaining response times to existing homes and businesses. The agreement with the County does not provide compensation to the North Carolina State Highway Patrol which has jurisdiction adjacent to the site and would likely need to address increased incidents on I-85/US-29. More specifically, the EA makes no consideration of the significant jurisdictional limitations the Catawba Indian Nation would have in North Carolina under the terms of the Catawba Indian Tribe of South Carolina land Claims Settlement Act of 1993.

The Cumulative Impacts/Climate Change Analysis is Insufficient.

The EA does not analyze the greenhouse gas emissions from construction or operations that would result from the project but makes an unsubstantiated conclusion that effects would be less than significant. Emissions modeling should be conducted to disclose the cumulative contribution of the project to greenhouse gas emissions. Further, the discussion indicates that Best Management Practices in Section 2 would reduce impacts - however, there are no Best Management Practices in Section 2 related to GHG emissions.

The Analyses on Indirect Effects Is Insufficient.

The discussion of impacts related to off-site improvements is cursory and unsubstantiated (pgs. 62-63). The EA concludes that off-site traffic mitigation and wastewater collection improvements would have no significant impacts. The EA provides no evidence for this finding such as biological or cultural survey reports which cover the full extent of these improvements. The proposed off-site wastewater connection system is several miles long. In fact, the proposed wastewater collection pipeline is located in or near a wetland/stream as discussed above. The EA does not include details on what information was sent to consulting agencies and thus it is unclear if the off-site improvement area was included in consultations.

The EA mentions that an electrical substation would be developed near the project site but fails to identify the location or the potential impacts of this substation.

The EA mentions that electrical and natural gas line extensions will be needed but fails to disclose their locations and connection points.

The EA does not consider the potential impacts of the off-site stormwater detention basin. The EA states that "all stormwater would be retained on site" (pg. 29) however, Figure 9 of Appendix B shows a detention basin located west of the project site. Either the EA project description is incorrect, or the off-site basin has not been analyzed in the EA.

The EA Is Improperly Formatted.

The document is not formatted in accordance with the standards of Section 508 of the Rehabilitation Act of 1973. For example, PDF bookmarks are missing, and many do not work.

The Department Must Require An Environmental Impact Statement (EIS).

An EA is insufficient to assess the impacts on the environment and impacted parties. As a result, the EBCI demands that the deficiencies in the document be addressed through the preparation of an Environmental Impact Statement (EIS).

Sincerely,

Wilson Pipestem

Exhibit C

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

Trust Services
Environmental Management

JAN 30 2020

Mr. Russell Townsend
Tribal Historic Preservation Officer
Eastern Band of Cherokee Indians
Post Office Box 455
Cherokee, North Carolina 28719

Dear Mr. Townsend:

The Bureau of Indian Affairs (BIA) is currently reviewing an application from the Catawba Indian Nation (Nation) to place approximately 16.57-acres into federal trust in Kings Mountain, Cleveland County, North Carolina. Maps of the specific project location have been included. The Nation would subsequently like to develop the parcel as a mixed-use entertainment complex with a casino.

BIA is currently working to identify, analyze and document any potentially significant impacts associated with the proposed project, and we would like to verify with your office that the proposed project will not impact any specific sites having potential religious or cultural significance to Eastern Band of Cherokee Indians. The North Carolina Department of Natural and Cultural Resources -State Historic Preservation Office reviewed the project and was not aware of any historic resources in the area of the project. Please see attached letter.

Historic research of the parcel indicates that it was heavily disturbed when North Carolina Department of Transportation (NCDOT) used the entire site as a soil burrow pit during the construction of Dixon School Road in 2005. The site was later graded by NCDOT in 2006, after road construction was completed. An aerial photograph showing the site in 2005 can be found as Figure 11 in the enclosed maps.

BIA is very interested in hearing from your office regarding this project. For further information or for concerns over potential impacts, please contact our Environmental Scientist Chet McGhee, at (615) 564-6830.

Sincerely,

R. Glen Melville
Acting Director, Eastern Region

Enclosure(s)

North Carolina Department of Natural and Cultural Resources
State Historic Preservation Office
Ramona M. Bartos, Administrator

Governor Roy Cooper
Secretary Susi H. Hamilton

Office of Archives and History
Deputy Secretary Kevin Cherry

February 22, 2019

Kim Hamlin
TGS Engineers
706 Hillsborough Street, Suite 200
Raleigh, NC 27603

Re: Mixed Use Entertainment Complex & Infrastructure, 260 Dixon School Road, Kings Mountain, Cleveland County, ER 19-0718

Dear Ms. Hamlin:

Thank you for your letter of January 31, 2019, concerning the above project.

We have conducted a review of the project and are aware of no historic resources which would be affected by the project. Therefore, we have no comment on the project as proposed.

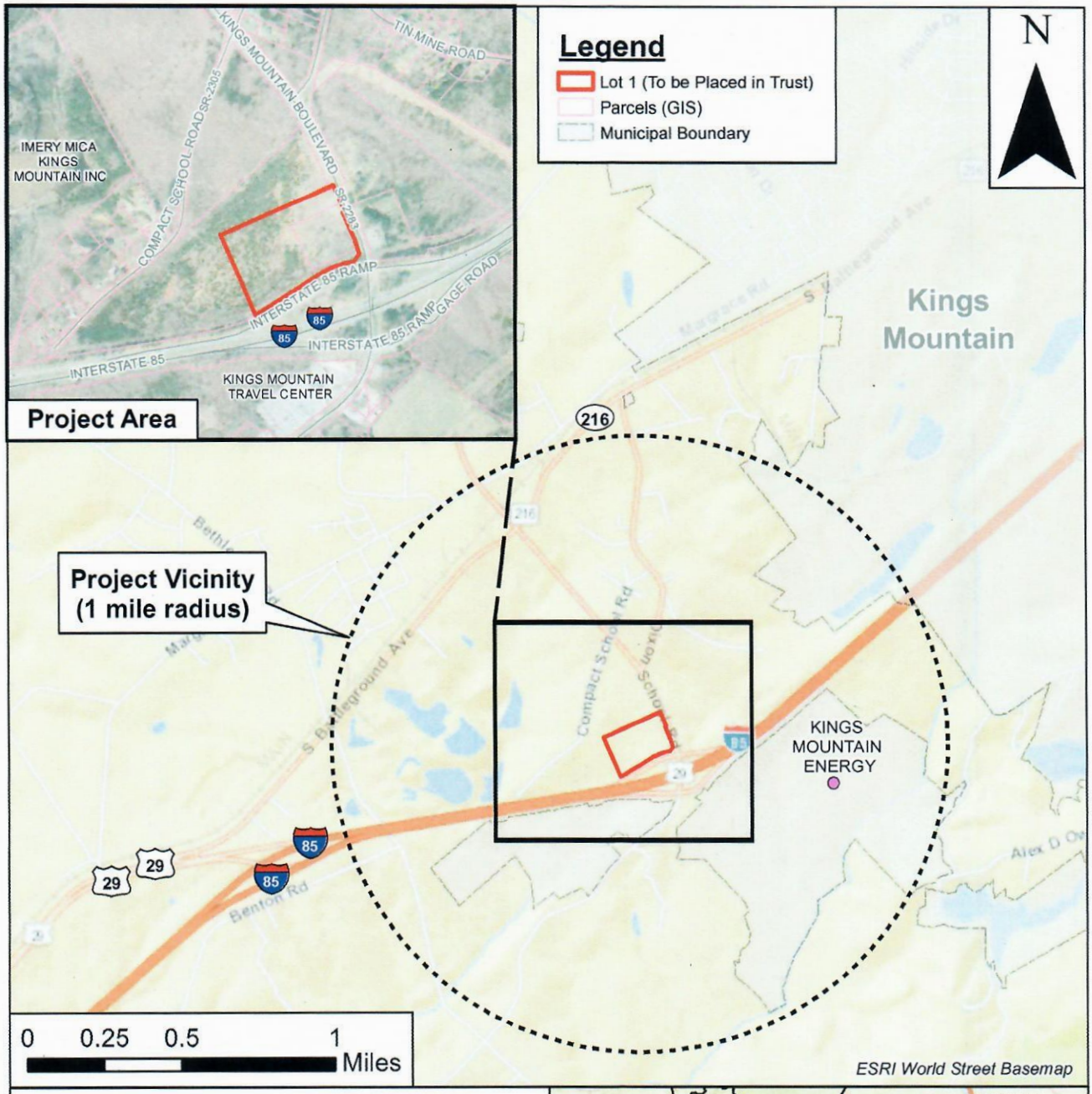
The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-807-6579 or environmental.review@ncdcr.gov. In all future communication concerning this project, please cite the above referenced tracking number.

Sincerely,

Renee Gledhill-Earley

for Ramona M. Bartos

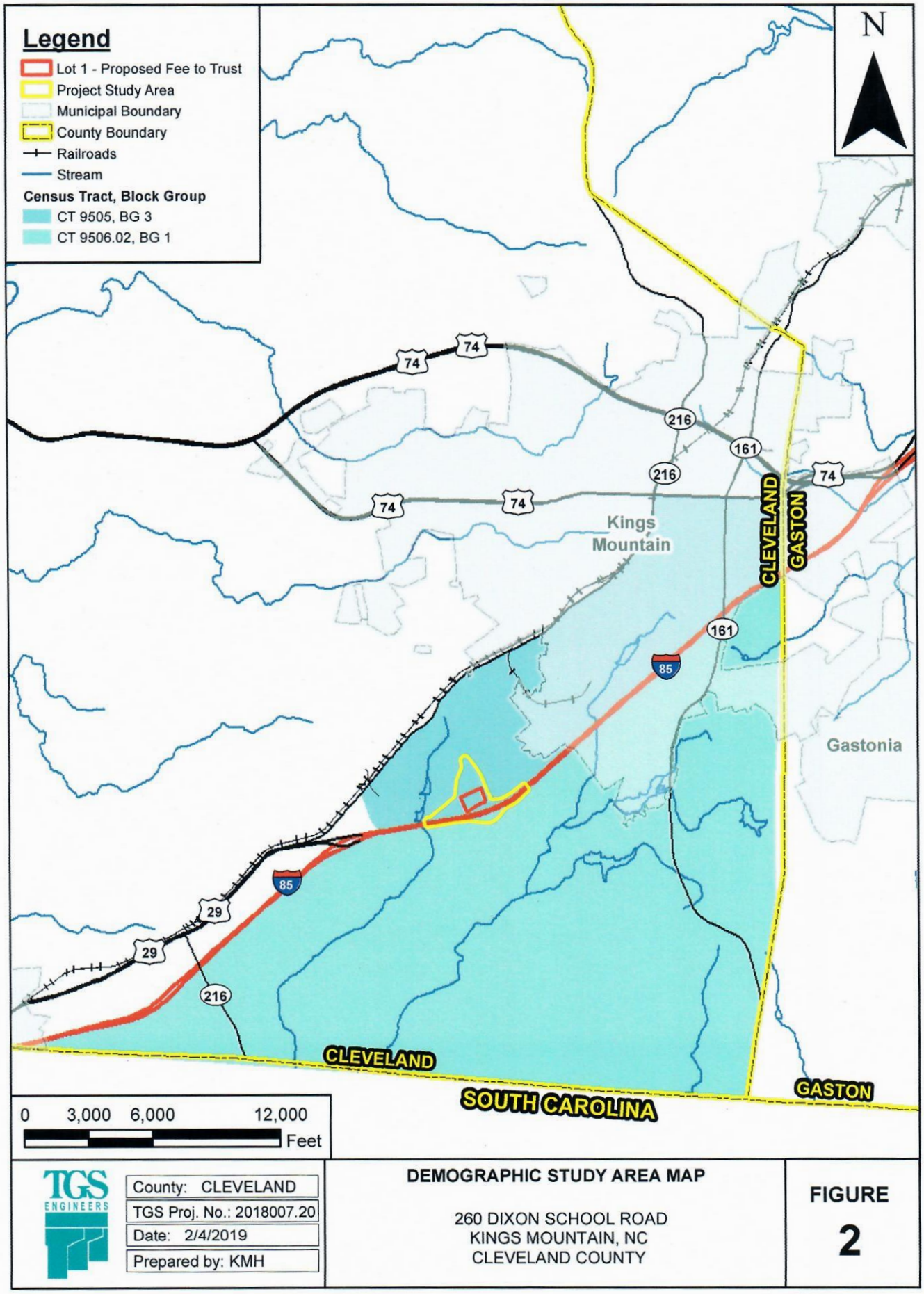


TGS ENGINEERS

County: CLEVELAND
TGS Proj. No.: 2018007.20
Date: 12-17-2019

VICINITY MAP
CATAWBA INDIAN NATION TRUST ACQUISTION
AND MULTI-USE ENTERTAINMENT COMPLEX
260 DIXON SCHOOL ROAD
KINGS MOUNTAIN, NC
CLEVELAND COUNTY

FIGURE
1



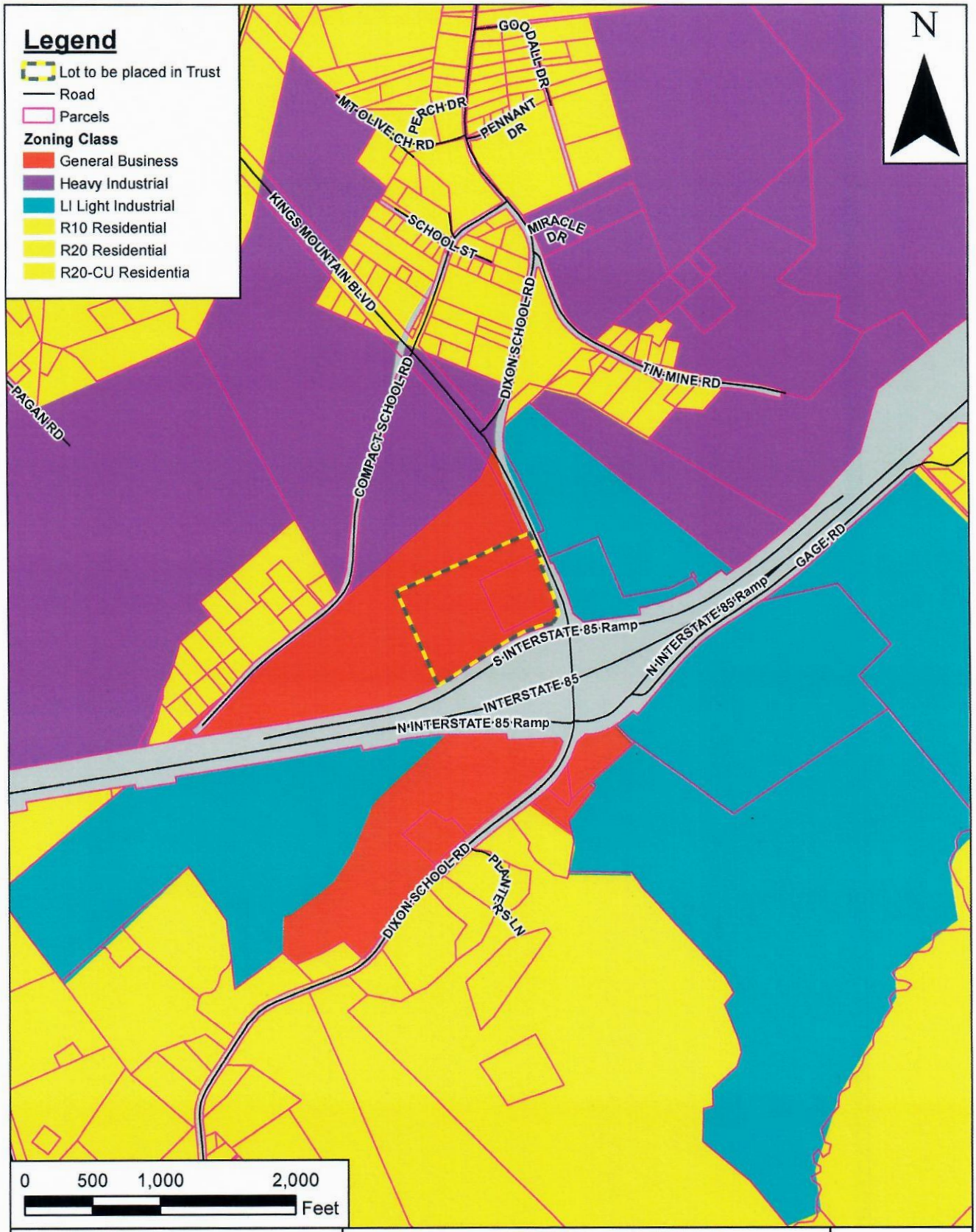
TGS ENGINEERS

County:	CLEVELAND
TGS Proj. No.:	2018007.20
Date:	2/4/2019
Prepared by:	KMH

DEMOGRAPHIC STUDY AREA MAP

260 DIXON SCHOOL ROAD
KINGS MOUNTAIN, NC
CLEVELAND COUNTY

FIGURE 2



TGS ENGINEERS

County:	CLEVELAND
TGS Proj. No.:	2018007.20
Date:	3/8/2019
Prepared by:	KMH

CLEVELAND COUNTY ZONING

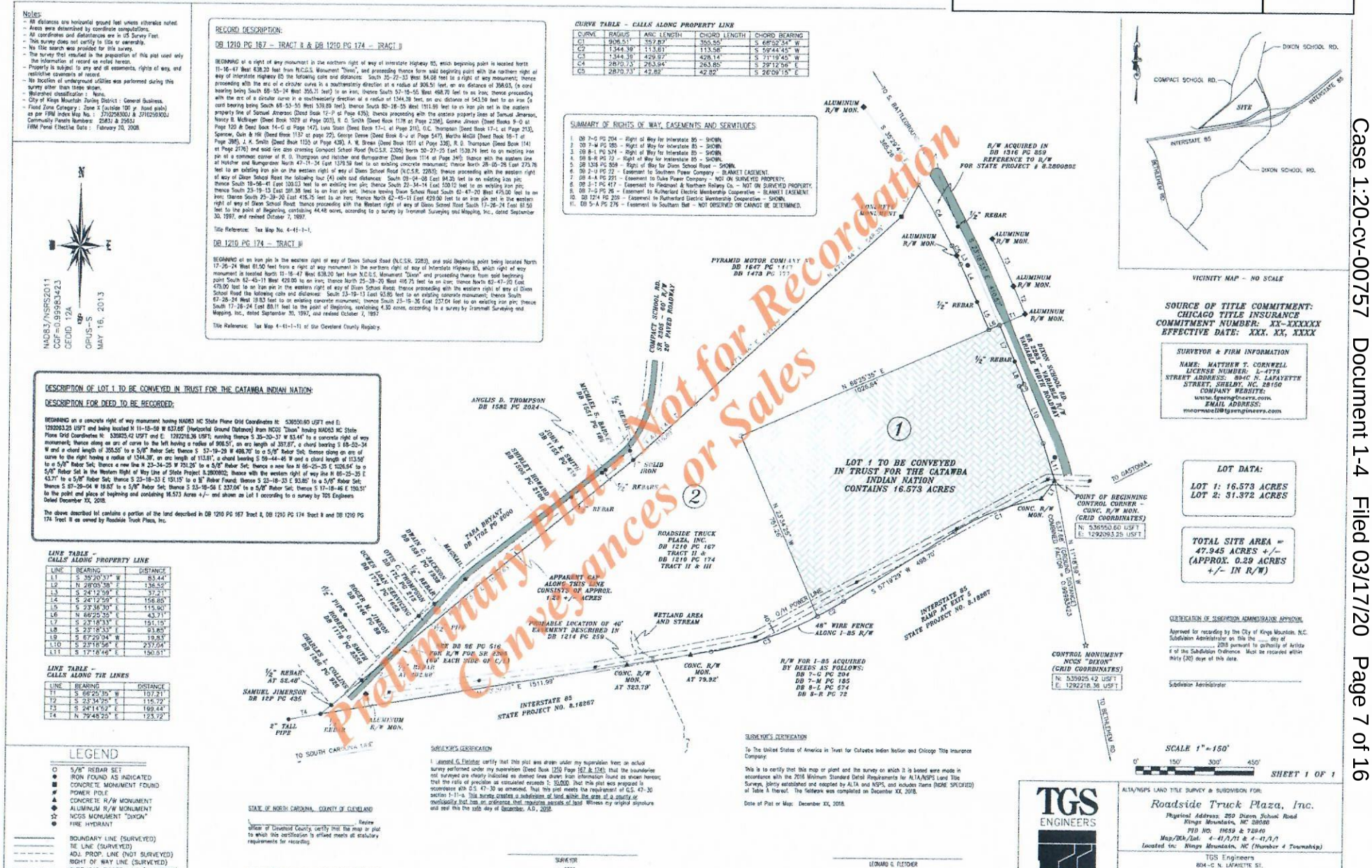
260 DIXON SCHOOL ROAD
KINGS MOUNTAIN, NC
CLEVELAND COUNTY

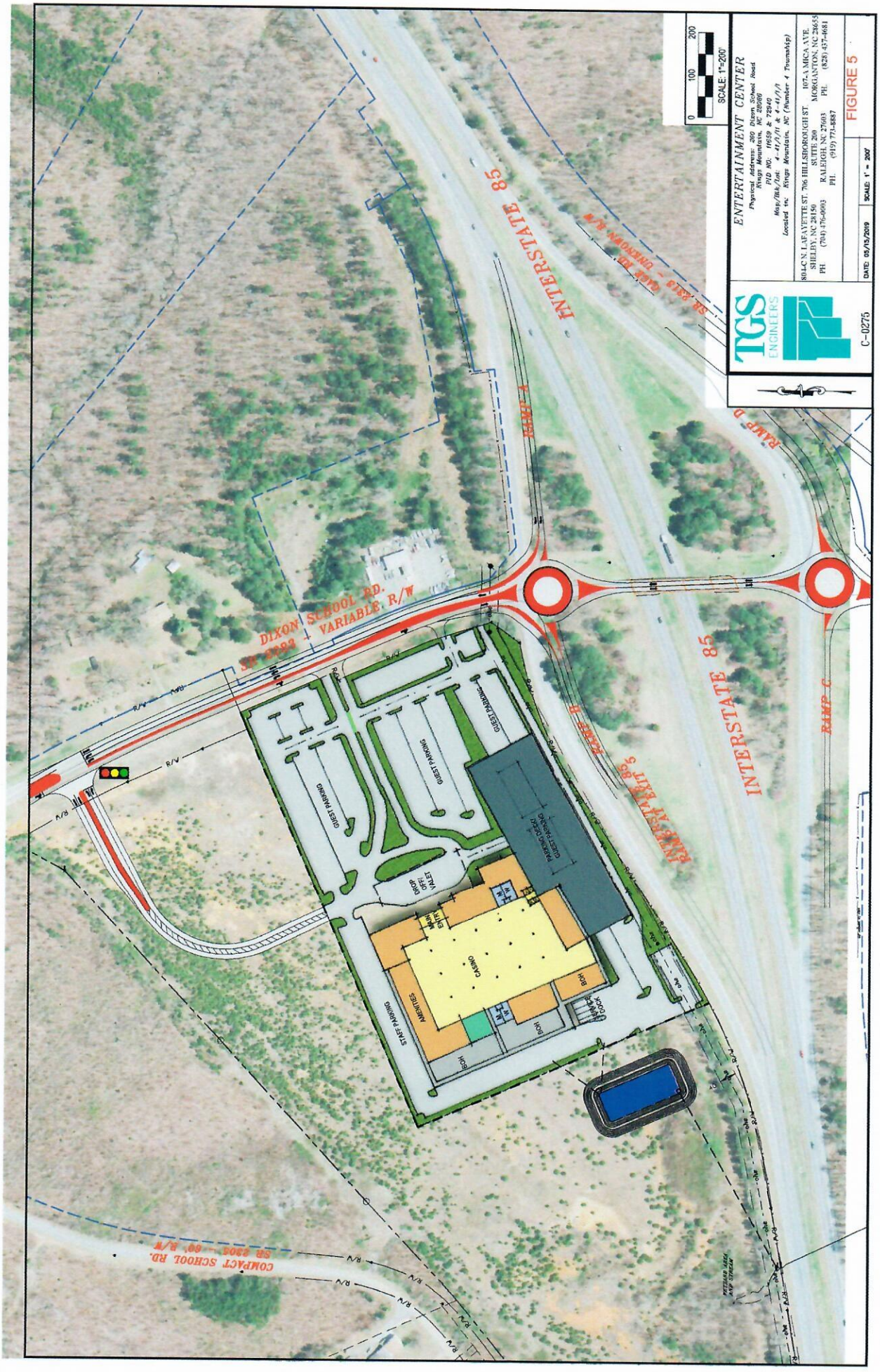
FIGURE 3

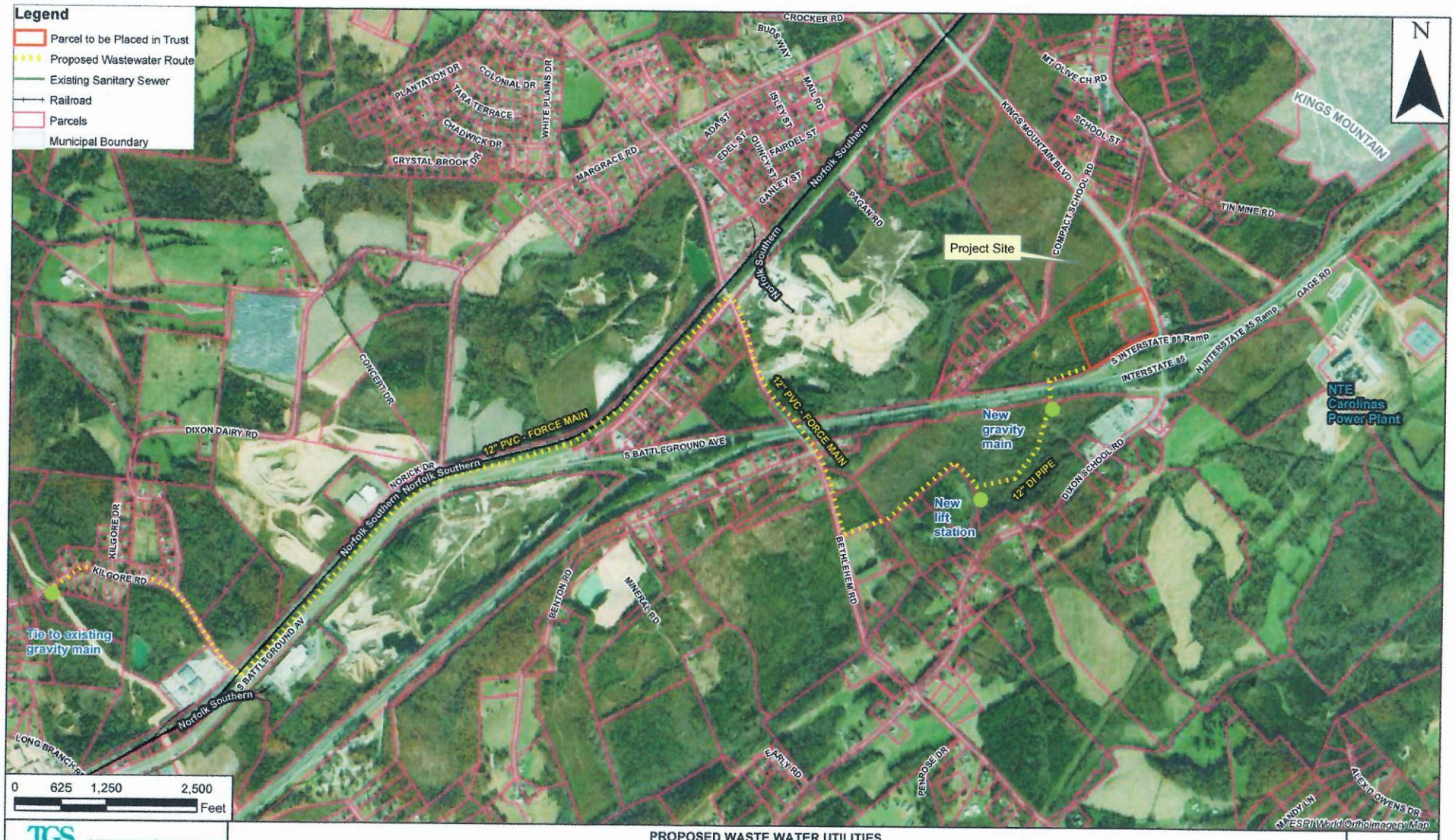
ALTA Survey Map

280 DIXON SCHOOL ROAD
KINGS MOUNTAIN, NC
CLEVELAND COUNTY

FIGURE 4




SCALE: 1"=200'
0
100
200
ENTERTAINMENT CENTER
Proposed Address: 280 Dixon School Road
Kings Mountain, NC 28086
PID NO.: 11659 & 72940
Map/Blk/Lot: 4-41/1/11 & 4-41/1/1
Located in: Kings Mountain, NC (Number 4 Township)
TGS ENGINEERS
810-C N. LAFAYETTE ST. SHELBY, NC 28150 PH: (704) 476-0003
706 HILLSBOROUGH ST. SUITE 200 RALEIGH, NC 27603 PH: (919) 773-8887
107-A MICA AVE. MORGANTON, NC 28655 PH: (828) 437-4681
C-0275
DATE: 05/15/2019
SCALE: 1" = 200'
FIGURE 5
INTERSTATE 85
RAMP A
RAMP B
RAMP C
RAMP D
SR 2312 - CAGLE RD. - DIXON SCHOOL R/W
DIXON SCHOOL RD. SR 2312 - VARIABLE R/W
COMPACT SCHOOL RD. SR 2301 - 60' R/W
GUEST PARKING
STAFF PARKING
AMENITIES
CASINO
DROP OFF VALET
MEN
WOMEN
BOH
OHE
R/W



TGS ENGINEERING

County: CLEVELAND
TGS Proj. No.: 2018007.20
Date: 2/25/2019

PROPOSED WASTE WATER UTILITIES

260 DIXON SCHOOL ROAD
KINGS MOUNTAIN, NC
CLEVELAND COUNTY

FIGURE 7

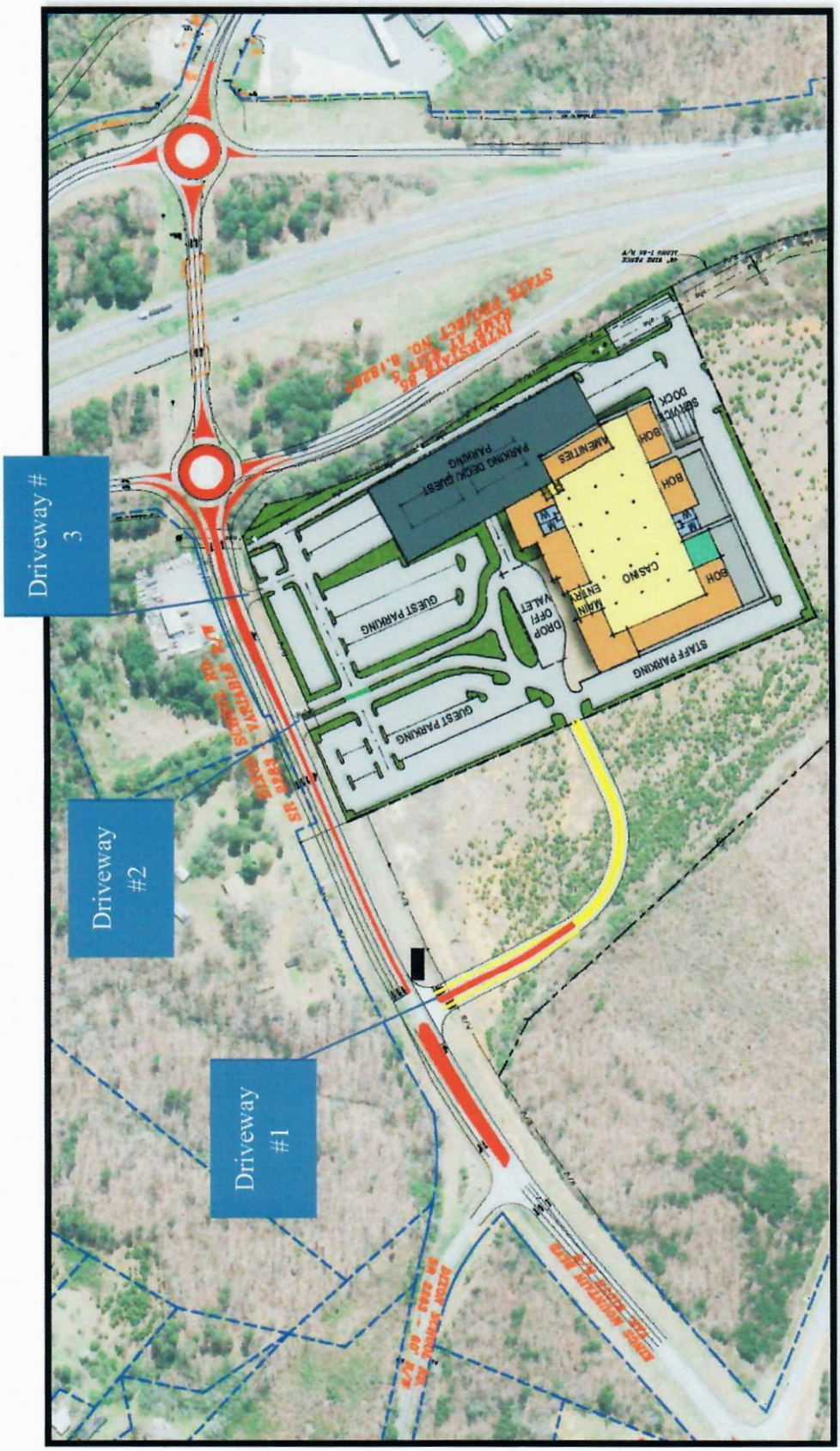
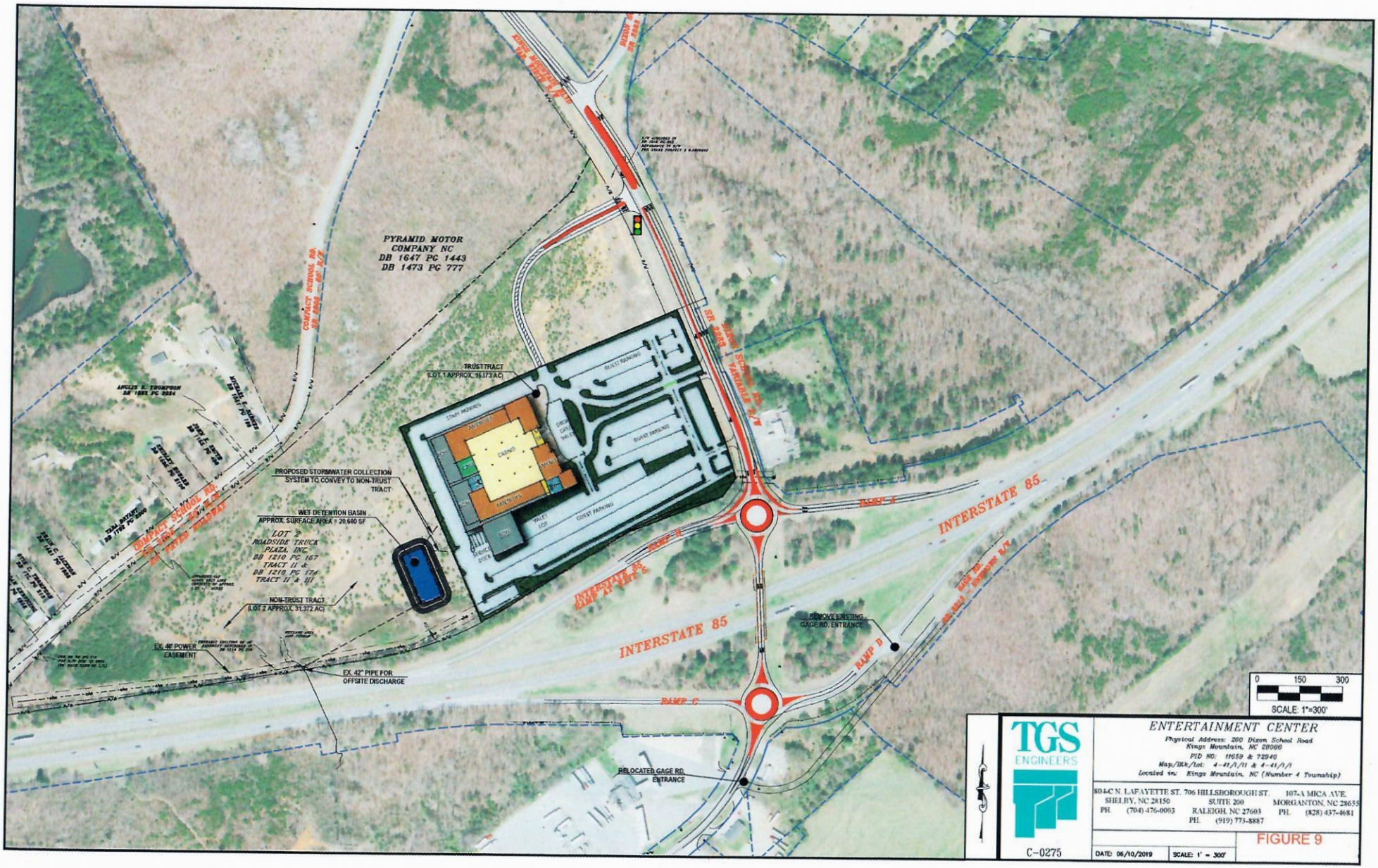
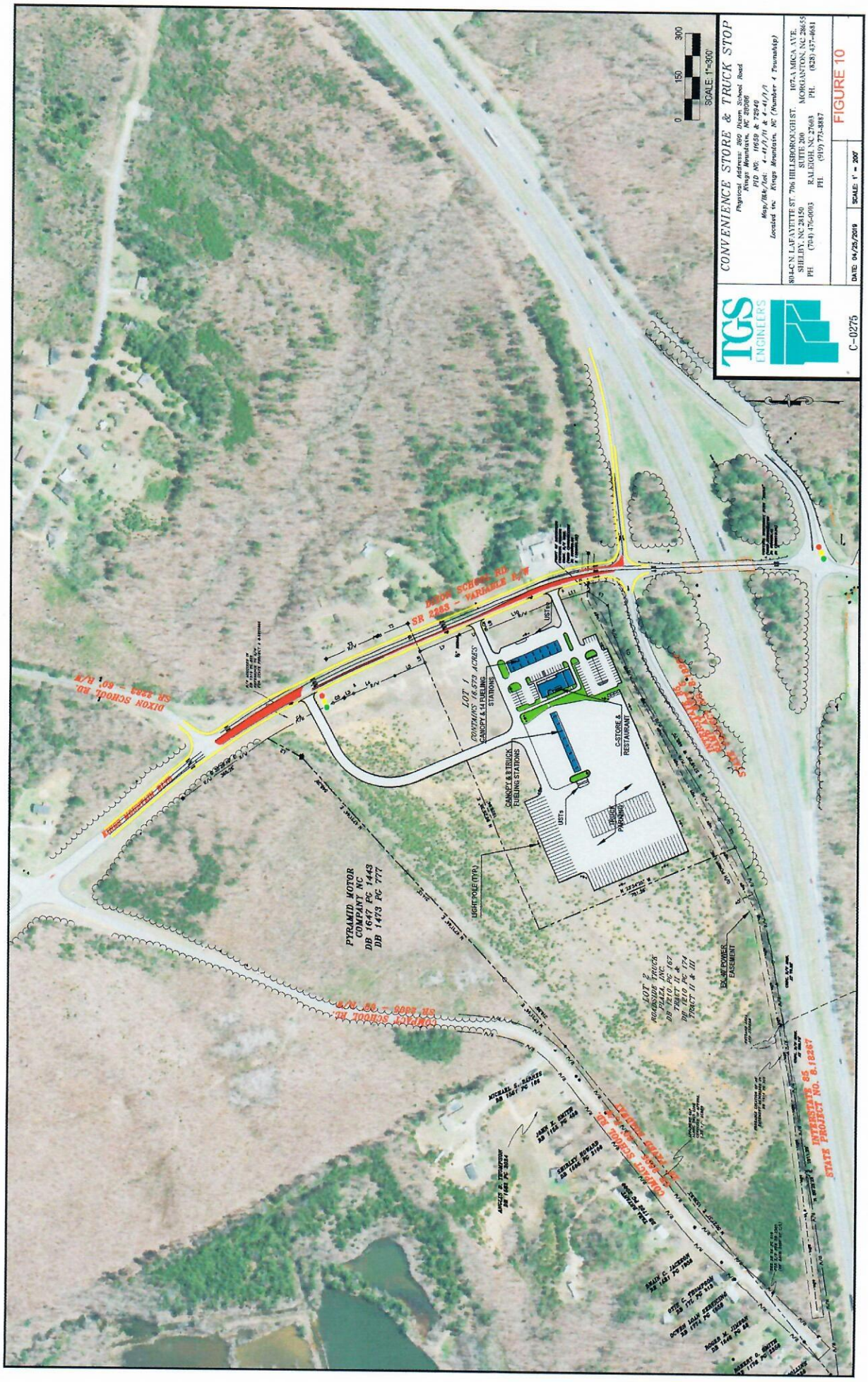


FIGURE 8
Site Access


PYRAMID MOTOR COMPANY NC
DB 1647 PG 1443
DB 1473 PG 777
TRUST TRACT
(LOT 1 APPROX. 16.173 AC)
PROPOSED STORMWATER COLLECTION SYSTEM TO CONVEY TO NON-TRUST TRACT
WET DETENTION BASIN
APPROX. SURFACE AREA = 20,600 SF
LOT 2
ROADSIDE TRUCK PLAZA, INC.
DB 1210 PG 167
TRACT II &
DB 1210 PG 174
TRACT II & III
NON-TRUST TRACT
(LOT 2 APPROX. 31.372 AC)
EX. 48' POWER EASEMENT
EX. 42" PIPE FOR OFFSITE DISCHARGE
INTERSTATE 85
RAMP A
RAMP B
RAMP C
RAMP D
REMOVE EXISTING GAGE RD. ENTRANCE
RELOCATED GAGE RD. ENTRANCE
DIXON SCHOOL RD.
SR 2053
CONCRETE SCHOOL RD.
SR 2053 - 60' R/W
0
150
300
SCALE: 1"=300'
TGS ENGINEERS
C-0275
ENTERTAINMENT CENTER
Physical Address: 200 Dixon School Road
Kings Mountain, NC 28086
PID NO: 14659 & 72940
Map/Blk/Lot: 4-41/1/11 & 4-41/1/1
Located in: Kings Mountain, NC (Number 4 Township)
804-C N. LAFAYETTE ST. SHELBY, NC 28150 PH. (704) 476-0003
706 HILLSBOROUGH ST. SUITE 200 RALEIGH, NC 27603 PH. (919) 773-8887
107-A MICA AVE. MORGANTON, NC 28655 PH. (828) 437-4681
DATE: 06/10/2019
SCALE: 1" = 300'
FIGURE 9


CONVENIENCE STORE & TRUCK STOP
Physical Address: 200 Dixon School Road
Kings Mountain, NC 28086
PID NO. 11659 & 23940
Map/Blk/Lot: 4-41/1/11 & 4-41/1/7
Located in: Kings Mountain, NC (Number 1 Township)
804-C N. LAFAYETTE ST. 7the HILLSBOROUGH ST.
SHELBY, NC 28150
PH: (704)-476-0003
SUITE 200
RALEIGH, NC 27603
PH: (919) 773-3887
107-A MICA AVE.
MORGANTON, NC 28655
PH: (828)-437-4681
TGS ENGINEERS
C-0275
DATE: 04/25/2019
SCALE: 1" = 200'
FIGURE 10
SCALE: 1"=300'
0
150
300
DIXON SCHOOL RD.
SR 2283 - VARIABLE R/W
DIXON SCHOOL RD.
SR 2283 - 80' R/W
KINGS MOUNTAIN BLVD.
SR 2283 - VARIABLE R/W
LOT 1
CONTAINS 16.573 AC±/-
CANOPY & 14 FUELING STATIONS
USTs
C-STORE & RESTAURANT
CANOPY & 8 TRUCK FUELING STATIONS
USTs
TRUCK PARKING
LIGHT POLE (TYP.)
PYRAMID MOTOR COMPANY, INC.
DB 1647 PG 1443
DB 1473 PG 777
LOT 2
roadside trucks
DB 1810 PG 167
DB 1810 PG 174
TRACT II & III
DUKE POWER EASEMENT
DIXON SCHOOL RD.
SR 2283 - 80' R/W
CHEROKEE TRAIL
SR 2282 - 80' R/W
INTERSTATE 85
STATE PROJECT NO. 8.182867

TGS ENGINEERS

County: CLEVELAND
TGS Proj. No.: 2018007.20
Date: 3/7/2019

2005 AERIAL
SCHOOLHOUSE DEVELOPMENT
260 DIXON SCHOOL ROAD
KINGS MOUNTAIN, NC
CLEVELAND COUNTY

FIGURE
11

TGS ENGINEERS

County: CLEVELAND
TGS Proj. No.: 2018007.20
Date: 3/7/2019

2010 AERIAL
SCHOOLHOUSE DEVELOPMENT
260 DIXON SCHOOL ROAD
KINGS MOUNTAIN, NC
CLEVELAND COUNTY

FIGURE
12

TGS ENGINEERS

County: CLEVELAND
TGS Proj. No.: 2018007.20
Date: 3/7/2019

2015 AERIAL
SCHOOLHOUSE DEVELOPMENT
260 DIXON SCHOOL ROAD
KINGS MOUNTAIN, NC
CLEVELAND COUNTY

FIGURE
13

TGS ENGINEERS

County: CLEVELAND
TGS Proj. No.: 2018007.20
Date: 3/7/2019

2018 AERIAL
SCHOOLHOUSE DEVELOPMENT
260 DIXON SCHOOL ROAD
KINGS MOUNTAIN, NC
CLEVELAND COUNTY

FIGURE
14

Exhibit D

Good afternoon Chet,

Thank you for your hard work and attention to our concerns listed briefly below:

We have concerns with the NEPA and Section 106 review and documentation for the King's Mountain Land-to-Trust Project. While CEQ regulations (40 CFR 1502.25) encourage agencies to prepare Draft EISs concurrently with other relevant Federal statutory and regulatory requirements, NEPA and NHPA reviews are separate processes with different requirements. Specifically, 36 CFR 800 Section 101(d)(6)(B) "requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking." Furthermore, the act goes on to state that, "It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues..."

Our concern is that nowhere in the public NEPA documentation is there mention of consultation including Tribal Nations with Traditional Territory or ceded lands at the project location (e.g. The EA draft appendix H). All three federally recognized Cherokee Nations (EBCI, UKB and Cherokee Nation) include Cleveland County, NC as part of their traditional territory, and the area is ceded land per Treaty of July 20, 1777 (Royce 1884 http://hdl.loc.gov/loc.gmd/g3861e.np000155). This is concerning, because the EBCI submitted a letter with questions about the draft EA in January but has not received a response to date. Additionally, there has not been consultation for the 106 review.

The only documents available at this point are Public documents that state the area was used as a location for borrow by DOT in 2005, and that no review (NEPA or NHPA) was conducted at the time in 2005. Additionally, it states that the "Service Website within 1.0 mile of the project limits was conducted January 28, 2019, to identify the types, locations and chronologies of known cultural resources within the project area." There appears to be no documentation supporting this, and according to our records there actually is an archaeological site recorded within the project location listed in the NC State Archaeological Site Inventory. Additionally, there is no evidence of an archaeological survey at this location in those records, and that should have triggered an archaeological survey be conducted to determine the nature and extent of the recorded archaeological site. While reportedly the site has been mechanically disturbed according to NCDOT, to what extent the disturbance occurred over the site and to what depths cannot be ascertained from the documentation.

The geotechnical part of the EA reports appendices (GEOCHECK® - PHYSICAL SETTING SOURCE SUMMARY) that the soils are deep with deep residuum --so any buried cultural features or features that were excavated into the subsoil historically have a potential to be intact if they are deeper in the subsurface matrix than the impacts caused by NCDOT in 2005. Particularly if there are buried human remains at the site, then they are potentially intact below the zone of impact from the 2005 work. The 106-review process is meant to address these types of concerns prior to ground disturbance at a project location and can be a real issue of public concern and public relations when human remains are disturbed "incidentally." We appreciate

that this information might not appear in the public facing reports since it is potentially covered by ARPA regulations, but that is precisely covered in the Section 106 process and 36 CFR 800.2 includes the unique and sensitive nature of consultation with Tribal Nations, etc. Until we receive the data about the site, we cannot determine whether Cherokee religious or cultural sites exist at the site.

The government-to-government consultation between tribes and the United States is quite distinct from addressing and consulting with the US public. Also, certain information is protected from publication through ARPA and other regulations that protect Indigenous Intellectual Property. It is also concerning that the EBCI's letter sent in January 2020 is, according to you, to be addressed as part of the public comments section of the Final EA and FONSI on Monday and therefore risks exposing confidential information. What it does is signal that there was not a distinction drawn between consulting with the public and consultation with Indian Nations? Additionally, in the EA there are other studies that have the potential to impact the EBCI and other Tribal Nations and there is no documentation to indicate consultation on the merit of those studies either. Why is the BIA trying to cut corners and hurry this process along?

In conclusion, the BIA has not made a reasonable or good faith effort to consult with the EBCI or other nations with traditional territory in Cleveland County as set forth by NHPA (Article 52 and 36 CFR 800). Additionally, the Section 106 review was not adequately addressed in the supporting documentation. Consultation with the Eastern Band and other Tribal Nations with an interest in the area should "commence early in the planning process, in order to identify and discuss relevant preservation issues" (800.2) and this did not occur.

We submit these concerns in the hope that measures may be taken to rectify this situation.

Thank you sincerely,

Russell Townsend

EBCI THPO

Exhibit E

AGREEMENT IN PRINCIPLE

1. Parties. This Agreement in Principle is made by and between the following parties:

1.1 The Catawba Indian Tribe of South Carolina, represented by Gilbert Blue, Chief; E. Fred Sanders, Assistant Chief; Carson Blue, Secretary-Treasurer; and Tribal Executive Committee Members - Buck George, Claude Ayers, Foxx Ayers, Dewey Adams and Wilford Harris; and by Don B. Miller, Native American Rights Fund, and Robert M. Jones, Jay Bender, Richard Steele, Cheryl Perkins and Ross Swimmer, attorneys for the Catawbas.

1.2 The State of South Carolina, represented by Governor Carroll A. Campbell, Jr., and by A. Crawford Clarkson, Jr., Chairman of the Governor's Advisory Committee on the Catawba Indian Claim; by Senator Robert W. Hayes, Jr., representing the Legislative Delegations of York, Lancaster, and Chester Counties, South Carolina; by Representative John M. Spratt, Jr., representing the South Carolina Congressional Delegation.

2. Definitions. When used in this Agreement, the following words, terms or abbreviations shall have the meanings given below:

2.1 "Agreement" shall mean this written document, entitled "Agreement in Principle."

2.2 "Catawba Indian Tribe," "Catawbas," or "Tribe" shall mean the Catawba Indian Tribe of South Carolina as constituted in aboriginal times, which was party to the Treaty of Pine Tree Hill in 1760 as confirmed by the Treaty of Augusta in 1763, which was party also to the Treaty of Nation Ford in 1840, and which was the subject of the Catawba Indian Tribe of South Carolina Division of Assets Act, enacted September 29, 1959, codified at 25 U.S.C. Sections 931-938, and all predecessors and successors in interest, including the Catawba Indian Tribe of South Carolina, Inc.

2.3 "State Government" or "State" shall mean the State of South Carolina.

2.4 "Executive Committee" shall mean the body of the Catawba Indian Tribe of South Carolina composed of the Tribe's executive officers as selected by the Tribe in accordance with its constitution.

2.5 "General Council" shall mean the membership of the Tribe convened as the Tribe's governing body for the purpose of conducting tribal business pursuant to the Tribe's constitution.

2.6 "Member" or "tribal member" shall mean individuals as determined in accordance with Section 7.

2.7 "Secretary of the Interior" or "Secretary" shall mean the Secretary of the Department of the Interior or his designee, and "Department" or "Department of the Interior" shall refer to the United States Department of the Interior.

2.8 "Federal Government" shall mean the Government of the United States of America.

2.9 "Catawba Claim Area" shall mean that area of

approximately 144,000 acres in York, Lancaster, and Chester Counties, South Carolina claimed by the Catawba Tribe under the Treaty of Pine Tree Hill in 1760 and the Treaty of Augusta in 1763, and surveyed by Samuel Wylie in 1764, and ceded by the Catawba Indian Tribe to the State of South Carolina by the Treaty of Nation Ford in 1840.

2.10 "Suit" or "Suits" shall mean the Catawba Indian Tribe of South Carolina v. State of South Carolina, et al., docketed as Civil Action No. 80-2050 and filed in United States District Court for the District of South Carolina and the Catawba Indian Tribe of South Carolina v. United States of America, docketed as Civil Action No. 90-553L and filed with the United States Court of Claims.

2.11 "Claim" or "Claims" shall mean any claim which was asserted by the plaintiffs in either Suit, and any other claim which could have been asserted by the Catawba Indian Tribe or any Catawba Indian of a right, title, or interest in property, to trespass or property damages, or of a hunting, fishing or other right to natural resources, if such claim is based upon aboriginal title, recognized title, or title by grant, patent, or treaty, including the Treaty of Pine Tree Hill of 1760, the Treaty of Augusta of 1763, or the Treaty of Nation Ford of 1840.

2.12 "Termination Act" shall mean the "Catawba Indian Tribe Division of Assets Act," enacted September 21, 1959, 73 Stat. 592, 25 U.S.C. Section 931-938.

2.13 "Reservation" shall mean the tract of land now held in trust for the Tribe by the State of South Carolina, as described in Exhibit A, sometimes referred to herein as the "existing reservation," and lands added to the existing reservation in accordance with Section 14, sometimes referred to herein as the "expanded reservation," which are to be held in trust for the Tribe by the United States of America, acting through the Secretary of Interior, in accordance with this Agreement.

2.14 "Tribal Trust Funds" shall mean those funds set aside in trusts established for the benefit of the Tribe, as provided in Section 13.

2.15 "Implementing legislation" shall mean all appropriate federal, state and county laws and ordinances and tribal action necessary to enact and effect the terms, provisions, and conditions of settlement, as specified in Section 3.1 of this Agreement.

2.16 "Transfer" includes, but is not limited to, any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources.

2.17 "Internal Matters" or "Internal Tribal Matters" are matters which include, but are not limited to the following examples: the relationship between the Tribe and one or more of

its members, the conduct of Tribal government over members of the Tribe, or the Tribe's exercise of the power to exclude individuals from its Reservation.

3. Purpose; Duration of Certain Provisions Relating to Hunting and Fishing Licenses and Tax Treatment.

3.1 Purpose. The purpose of this Agreement is to record the understanding of the parties with respect to settlement of the claims and suits pending in the United States District Court for the District of South Carolina entitled Catawba Indian Tribe of South Carolina Inc. v. State of South Carolina, et al., docketed as Civil Action No. 80-2050, and in the United States Claims Court entitled The Catawba Indian Tribe of South Carolina v. United States of America, docketed as Civil No. 90-553L, and any other suit or claim, which is filed now or which may be filed in the future, all, as further defined in Sections 2.10 and 2.11. By signing this document, each party signifies its good faith commitment to fulfill the terms of settlement set forth in this Agreement. All parties recognize, however, that this Agreement is an agreement in principle; that to complete this Agreement, terms of settlement and implementing legislation in more explicit detail will have to be defined and drafted; and that to consummate this Agreement, formal ratification will be required by the Catawba Indian Tribe and legislation will be required to be enacted by the governing bodies of York and Lancaster Counties, by the General Assembly of South Carolina, and by the Congress of the United States. The parties agree that they will use their best efforts to ensure passage of federal, state and local legislation and tribal action implementing the provisions of this Agreement without any material change and will attempt throughout the legislative process to fulfill the intent of this Agreement. Legislation adopted by the State shall not become effective until federal legislation is enacted and reviewed by the Governor to ensure it is consistent with the provisions of this Agreement.

3.2 Licenses and Tax Treatment. The Tribe and its members shall be eligible to receive the hunting and fishing licenses described in Section 17.5 and the tax treatment described in Sections 18.4.2, 18.5.1, 18.5.2, 18.6.1, 18.9.1, 18.9.3 and 18.10 of this Agreement for a period of 99 years from the effective date of the State implementing legislation required to effectuate the settlement described herein.

4. Restoration of the Federal Trust Relationship.

4.1 Establishment of Trust Relationship. Upon final enactment of all local, state and federal legislation implementing this settlement, the trust relationship between the Tribe and the United States shall be restored. On the same date as the Tribe is restored, the Tribe and the members of the Tribe shall be eligible for all benefits and services furnished to federally recognized Indian Tribes and their members. The federal legislation implementing this settlement will,

prospectively, repeal the Termination Act. Such repeal shall not divest or disturb title to any land conveyed to any person or firm as a result of the Termination Act and the partition and liquidation of Tribal land. The jurisdiction and governmental powers of the Tribe shall be exclusively those that are specifically enumerated in this Agreement. Except for claims extinguished under this Agreement, the enactment of the implementing legislation shall not affect any property right or obligation or any contractual right or obligation in existence before its effective date or any obligation for taxes levied before such date.

4.2 Entitlement of Tribe and Members. The Catawba Indian Tribe of South Carolina will be entered on the list of federally recognized bands and tribes maintained by the Department of the Interior; and its members will be entitled to special services, educational benefits, medical care, and welfare assistance provided by the United States to Indians because of their status as Indians, and the Tribe will be entitled to the special services performed by the United States for tribes because of their status as Indian tribes. In addition to any other provision of health care that might be authorized or provided to the Tribe or its members now or in the future by state or federal authority, the Indian Health Service shall be authorized and directed to issue "health cards" for use by any member of the Tribe in a health care facility of their choosing approved by Indian Health Service as to quality of care. Such "health card" shall entitle the tribal member to the same level of care as is available at any Indian health care facility or available through contract health care.

4.3 Extent of Jurisdiction. Federal recognition shall not be construed to empower the Catawbas with special jurisdiction, or to derogate from the jurisdiction of the State of South Carolina or its political subdivisions other than municipalities over the Catawba Indian Tribe and its members, except as expressly provided in this Agreement. The Catawba Tribe, its members, and the lands and natural resources owned by the Tribe and its members (including land and natural resources held by the United States in trust for the Tribe) shall be subject to the civil, criminal, and regulatory jurisdiction of the State, its agencies and political subdivisions other than municipalities, and the civil and criminal jurisdiction of the courts of the State to the same extent as any other person, citizen, or land in the State, except as otherwise expressly provided in this Agreement.

4.4 Impact Aid. Any school district in York County or Lancaster County affected by the loss of property tax revenues caused by the establishment of the Catawba Indian Reservation shall be eligible for "Impact Aid," at the time the legislation is adopted, as provided by 20 U.S.C. 236, et seq.

5. Monetary Contributions Toward Settlement.

5.1 Federal Contribution. Upon formal ratification of this Agreement by the tribe and final enactment of all local, state and federal legislation consummating this settlement, the Federal Government shall contribute Thirty-two million and no/100 ($32,000,000) Dollars to the trust funds established in accordance with the provisions of Section 13 less any funds to be paid pursuant to Section 6.4 of this Agreement, in annual installments as specified on the schedule set forth in Exhibit A-1, and shall begin providing the services and benefits accorded recognized tribes and their members, as provided in this Agreement.

5.2 State, Local, and Private Contributions. Upon formal ratification of this Agreement by the Tribe and final enactment of all local, state, and federal legislation consummating this settlement, the State, local governments and private sources shall contribute Eighteen million and no/100 ($18,000,000) Dollars, to the Department of the Interior, and the Secretary shall deposit such contributions, less any funds to be paid pursuant to Section 6.4 of this Agreement, in the trust funds established pursuant to Section 13, in annual installments as specified in the schedule set forth in Exhibit A-2. Any private payments made under this Agreement shall be treated as either a payment in settlement of litigation or a charitable contribution for federal and state income tax purposes.

6. Extinguishment of Claims, Dismissal of Suits, Ratification of Prior Transfers.

6.1 In consideration of the payments set forth in Section 5 and other benefits accruing to the Tribe and its members under this Agreement, the federal legislation implementing this settlement shall extinguish all claims and all right, title, and interest that the Tribe, its members, or any one or more of its members, or any person or group of persons purporting to be Catawba Indians, may have to aboriginal title, recognized title, or title by grant, patent, or treaty, to the lands located anywhere in the United States; except, however, that this quitclaim and release shall not apply to the 630-acre reservation described in Exhibit A, now held in trust by the State of South Carolina; nor shall it divest or disturb any member of the Tribe of any fee simple, leasehold, or remainder estate, or any equitable or beneficial interest, he or she may own and hold individually, and not as members of the Tribe, in any parcels of land anywhere in the United States.

6.2 In further consideration of the payments set forth in Section 5 and other benefits accruing to the Tribe and its members under this Agreement, the federal legislation implementing this settlement shall also extinguish any hunting, fishing, or water rights or rights to any other natural resources claimed by the Tribe based on aboriginal or treaty recognized title, and all trespass damages and other damages associated with use, occupancy or possession, or entry upon such lands, including

without limitation all profits and rents derived from such lands, and any timber, soil, minerals, crops, or other natural resources taken from such lands; provided, however, that extinguishment of the claim shall in no way diminish or derogate from the fee simple estate in the existing reservation now held by the State as trustee for the benefit of the Catawbas.

6.3 The Tribe shall accept the payments set forth in Section 5 and the benefits provided under this Agreement as just and full compensation for, and the federal implementing legislation shall ratify and approve, all prior transfers of lands by the Tribe, its members or any one or more of its members within the United States, including the cession of title purportedly effected by the Treaty of Nation Ford in 1840, and to the extent that such cession may have included aboriginal title, such legislation shall extinguish aboriginal title as of the effective date of transfer; provided, however that nothing in this section shall be construed to affect, diminish, or eliminate the personal claim of any individual Indian which is pursued under any law of general applicability that protects non-Indians as well as Indians. By virtue of such approval and ratification, together with the extinguishment of aboriginal title, all claims based on aboriginal, recognized title, or title by grant, patent or treaty against the United States, or against any state or subdivision of any state, or any person or entity, by the Catawba Indian Tribe, or by any member or members of the Tribe, or by any person or group of persons purporting to be Catawba Indians, including but not limited to possessory claims and claims for ejectment, claims for trespass damages, and claims for use, occupancy, hunting, fishing, or extraction and removal of natural resources, and any accounting therefor, arising from the beginning of time to the date of such legislation shall be canceled, released, and forever extinguished. Adoption of the federal and state legislation implementing this Agreement shall constitute a general discharge of all obligations of the United States, the State and all of their political subdivisions, agencies and departments, including claims asserted in the Suits defined in Section 2.10 arising out of any treaty or agreement, including the Treaty of Nation Ford, the Treaty of Augusta and the Treaty of Pine Tree Hill, with the Tribe, its members or any one or more of its members.

6.4 Upon final enactment of all implementing legislation, the Tribe shall duly consent to the dismissal with prejudice of the suits, and shall execute and deliver to the State and the United States full and final releases of all their claims against the State and the United States and all other defendants and landowners in the Claim Area, including defendants not yet named or sued. The parties to the suits shall bear their own costs and attorney fees and the federal implementing legislation shall authorize and direct the Secretary of the Interior to approve and pay to the Tribes' attorneys reasonable attorney fees and expenses not to exceed ten and no/100 (10%) percent of the funds paid pursuant to Section 5 of this

Agreement.

6.5 The federal legislation implementing this settlement shall bar the United States from asserting by or on behalf of the Tribe, any one or more of its members, or anyone purporting to be a Tribal member, any claim arising before the date of such legislation from the transfer of any land or natural resources of the Tribe by deed or other grant, or by treaty, compact, or act of law, on the grounds that such transfer was not made in accordance with the laws of the State or the United States. The federal legislation implementing this settlement shall also provide that any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Tribe, or any of its members, or anyone purporting to be a Tribal member, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (Chapter 33, Section 4, 1 Statutes 137, 138), and all amendments thereto and subsequent reenactments and versions thereof; and Congress will ratify and approve any such transfer as of its effective date; provided, however, that nothing in this section shall be construed to affect, diminish, or eliminate the personal claim of any individual Indian (except for any federal common law fraud claim or other action to recover for a Claim as defined in Section 2.11 which is pursued under any law of general applicability that protects non-Indians as well as Indians.

6.6 The provisions of this section shall take effect immediately upon adoption of federal and state legislation implementing the provisions of this settlement. The federal legislation shall provide that in the event the state contribution, or any part of it, is not appropriated as scheduled, the United States shall advance the Tribe the amount which the state has failed to appropriate as scheduled. The United States shall have a cause of action to recover from the state by an action in the United States District Court for the District of South Carolina any amount so advanced to the Tribe.

7. Tribal Membership.

7.1 Membership Criteria. For purposes of approving or ratifying this Agreement or any other agreement for settlement of the Tribe's claims, a person shall be considered a member of the Tribe and his or her name shall be carried on the membership roll if the person is living at the time of the enactment of federal legislation pursuant to this Agreement and:

7.1.1 His or her name was listed on the membership roll published by the Secretary of Interior in the Federal Register on February 25, 1961, (26 Federal Register 1680-1688, "Notice of Final Membership Roll") and he or she is not excluded under the provisions of Section 7.2; or

7.1.2 The Executive Committee determines, based on the criteria used to compile the above-referenced roll, that his or her name should have been included on the membership roll

at that time, but was not; or

7.1.3 He or she is a lineal descendant of a member of the Tribe whose name appeared or should have appeared on the membership roll published on February 25, 1961.

7.2 Revision of Membership Roll. The Tribe will revise and update its membership roll, including lineal descendants and others omitted from the roll published in the Federal Register on February 25, 1961, and excluding any persons found to have been erroneously listed. As soon as practicable after enactment of federal legislation implementing this settlement, the Secretary will publish in the Federal Register a notice that the rolls of the Catawba Indian Tribe of South Carolina are open, the requirements for membership, the final membership roll as of September 29, 1959, and the updated membership role as prepared by the Executive Committee and approved by the General Council; that the updated roll will be open for a period of ninety (90) days, and the name and address of the tribal or federal official to whom inquiries should be made.

7.3 Finalizing Membership Roll. Within one hundred twenty (120) days after publication of such notice, the Secretary, after consultation with the Tribe, will prepare and publish in the Federal Register a proposed final roll of the Tribe's membership. Within sixty (60) days from the date of publication of the proposed final roll, an appeal may be filed with the Executive Committee under rules made by the Executive Committee in consultation with the Secretary. Such an appeal may be filed by a member of the Tribe with respect to the inclusion of any name on the proposed membership roll and by any person with respect to the exclusion of his or her name from the membership roll. The Executive Committee will review such appeals and render a decision, subject to the Secretary's approval. If the Executive Committee and the Secretary disagree, the Secretary's decision will be final. All such appeals will be resolved within ninety (90) days following publication of the proposed roll. The final membership roll of the Tribe will then be published in the Federal Register and will be final for purposes of this settlement.

7.4 Future Membership in the Tribe. The Tribe shall have the right to determine future membership in the Tribe; however, in no event may an individual be added to the final membership roll which is compiled in accordance with Section 7.3 unless an individual is a lineal descendant of a person on such final membership roll.

8. Transitional and Provisional Government.

8.1 Executive Committee. If the Tribe completes revision and adoption of a new constitution prior to consummation of this Agreement, the Executive Committee instituted under the new constitution will represent the Tribe and its members in the implementation of this Agreement.

8.2 Executive Committee as Transitional Body. Until the Tribe has completed the revision and adoption of a new

constitution, the existing Executive Committee of the Catawba Indian Tribe of South Carolina will be recognized as the provisional and transitional governing body of the Tribe. The Executive Committee shall represent the Tribe and its members in the implementation of this Agreement. The Executive Committee shall have full authority to enter into contracts, grant agreements and other arrangements with any federal department or agency, and shall have full authority to administer or operate any program under such contracts or agreements. Until the initial election of tribal officers under a new constitution and by-laws, the Executive Committee will determine tribal membership in accordance with the provisions of Section 7; and the Executive Committee will oversee and implement the revision and proposal to the Tribe of a new constitution, and conduct such tribal meetings and elections as may be required.

9. Tribal Constitution and Governance.

9.1 Indian Reorganization Act. If the Tribe so elects, it may organize under the Indian Reorganization Act, 25 U.S.C. Sections 461-479, (IRA) and may adopt and apply to the Tribe any of the following provisions to the extent they are consistent with this Agreement: Sections 461, 466, 469, 470, 470a, 471, 472, 472a, 473, 475a, 476, 477, 478, 478a, and 478b.

9.2 Revision of Tribe's Constitution. The Executive Committee will oversee the drafting of a proposed constitution and by-laws for the Tribe, and upon completion, provide for distribution of copies to members of the Tribe. The Executive Committee will set a date, time, manner for ratification by secret ballot after distribution of the proposed constitution and by-laws, and include a notice of the election with the distribution of the documents to be approved. Unless otherwise provided in the Tribe's constitution, two-thirds of those actually voting shall be necessary to ratify and adopt the tribal constitution and by-laws.

9.3 Elections. Within one hundred twenty (120) days after the Tribe ratifies and adopts a constitution and by-laws, the Executive Committee shall conduct an election by secret ballot for the officers and governing body of the Tribe as specified in the constitution and by-laws. Subsequent elections will be held in accordance with the Tribe's constitution and by-laws.

9.4 Extension of Time. Any time periods prescribed in Section 9.3 may be altered by written agreement between the Executive Committee and the Secretary.

10. Jurisdiction and Governance of the Reservation.

10.1 Governance. Except as otherwise provided in this Agreement, the Tribe shall exercise full authority over internal tribal matters.

10.2 Powers of Tribe. The sections of the IRA cited in Paragraph 9.1 shall apply to the Tribe if the Tribe so elects. Regardless of whether the Tribe elects to organize under the IRA,

in any constitution adopted by the Tribe, the Tribe may be authorized to the extent which is consistent with this Agreement (i) to regulate the use and disposition of tribal property; (ii) to define laws, petty crimes and rules of conduct applicable to members of the Tribe while on the reservation, supplementing but not supplanting criminal laws of the State of South Carolina; (iii) to regulate the conduct of businesses located on the reservation and individuals residing on the reservation; (iv) to levy taxes on members of the Tribe and levy other taxes as provided in Section 18; and (v) to grant exemptions, abatements or waivers from any tribal laws, tribal regulations, or tribal taxes, except the Tribal Sales and Use Taxes, otherwise applicable on the reservation, including waivers of the jurisdiction of any tribal court; (vi) to adopt its own form of government; (vii) to determine membership as provided in Section 7; (viii) to exclude non-members from its membership rolls and from the reservation, except for (a) any public roads traversing the reservation; (b) passage on and use of the Catawba River; (c) public or private easements encumbering the reservation properly used by those with authority to use such easements; (d) federal, state, and local governmental officials and employees duly performing official governmental functions on the reservation; and (e) any other access to the reservation allowed by federal law; and (ix) to charter tribally-owned economic development corporations and enterprises provided the corporations or enterprises register with the Secretary of State for South Carolina as a domestic or foreign corporation when doing business off the reservation.

10.3 Indian Civil Rights Act. The Tribe shall be subject to the Indian Civil Rights Act, 25 U.S.C. Sections 1301-1303, 1311, 1312, 1321-1326, 1331, 1341, and any amendments thereto, which shall apply to the reservation and any tribal court and to anyone subject to its jurisdiction.

11. Criminal Jurisdiction.

11.1 Felonies. Except as provided in Section 11.2 below, the State of South Carolina shall exercise exclusive jurisdiction over all crimes under the statutory or common law of the State of South Carolina.

11.2 Jurisdiction of Tribal Court. Any constitution adopted by the Tribe may provide for a tribal court with criminal jurisdiction. The territorial jurisdiction of the court shall be limited to the reservation; the jurisdiction of the court over persons shall be limited to members of the Tribe; and the subject matter jurisdiction of the court shall be limited to crimes within the jurisdiction of the state's magistrate's courts and to misdemeanors and petty offenses specified in the ordinances or laws adopted by the Tribe, provided that the fines and penalties for such offenses shall not exceed the maximum fines and penalties that a state magistrate's court may impose. In all cases in which the tribal court has jurisdiction over state law, its jurisdiction shall be concurrent with the jurisdiction of the

magistrates courts of the state; and defendants shall have the right to remove such cases to the magistrate's court or appeal their convictions in tribal court cases to the General Sessions Court, in the same manner that magistrates' court decisions may be appealed, or in accordance with such procedures as the state legislature may provide.

11.3 For purpose of enforcing the Tribe's powers under Sections 10.2, 11, and 17 of this Agreement, the Tribe may employ peace officers. If the Tribe elects to employ peace officers, all tribal peace officers shall undergo and pass the same course of training required of sheriff's deputies by the State of South Carolina and the Counties of York and Lancaster and shall be cross-deputized by the sheriffs of York and Lancaster Counties. The State, the Counties of York and Lancaster, and the Tribe shall enter into a cross-deputization agreement whereby tribal law enforcement officers are authorized to enforce state law within the reservation against members and non-members of the Tribe and state and county law enforcement officers are authorized to enforce state, county and tribal law within the reservation against members and non-members of the Tribe.

12. Civil Jurisdiction; Jurisdiction of Tribal Court.

12.1 The Tribe may provide in its constitution for a Tribal Court having civil jurisdiction which may extend up to, but not exceed, the extent provided in this Agreement. The Tribe may have a court of original jurisdiction, as well as an appellate court.

12.1.1. With respect to actions on contracts, the Tribal Court may be vested with jurisdiction over:

12.1.1.1 An action on a contract to which the Tribe or a member of the Tribe is a party, which expressly provides in writing that the Tribal Court has concurrent or exclusive jurisdiction.

12.1.1.2 An action on a contract between the Tribe or a member of the Tribe and other parties or agents thereof who are physically present on the reservation when the contract is made, which is to be performed in part on the reservation, provided that such contract does not expressly exclude jurisdiction of the Tribal Court. For purposes of this section, the mere delivery of goods or the solicitation of business on the reservation shall not constitute part performance sufficient to confer jurisdiction.

12.1.1.3 An action on a contract to which the Tribe or a member of the Tribe is a party where more than fifty percent of the services to be rendered are performed on the reservation, which does not expressly exclude jurisdiction of the Tribal court.

12.1.2 With respect to actions in tort, the Tribal Court may be vested with jurisdiction over:

12.1.2.1 An action arising out of an intentional tort, as defined by South Carolina law, committed on the reservation in which recovery is sought for bodily injuries

and/or damages to tangible property located on the reservation.

12.1.2.2 An action arising out of negligent tortious conduct occurring on the reservation or conduct occurring on the reservation for which strict liability may be imposed, excluding, however, accidents occurring within the right-of-way limits of any highway, road, or other public easement owned or maintained by the State or any of its subdivisions, or by the United States, which abuts or crosses the reservation; provided, however, that any such action in tort involving a non-member of the Tribe as defendant may be removed to a state or federal court of appropriate jurisdiction if the amount in controversy exceeds the jurisdictional limits then applicable to Magistrate's Courts in the State of South Carolina.

12.1.3 The Tribal Court may be vested with exclusive jurisdiction over internal matters of the Tribe.

12.1.4 The Tribal Court may also be vested with jurisdiction over domestic relations where both spouses to the marriage are members of the Tribe and both reside on the reservation, or last resided together on the reservation before the separation leading to their divorce.

12.1.5 The Tribal Court may also be vested with jurisdiction to enforce against any business located on the reservation, and any members or non-members residing on the reservation, any tribal civil regulation regulating conduct on the reservation enacted pursuant to Section 10.2 or 17 of this Agreement. Such persons or entities are charged with notice of the Tribe's regulations governing conduct on the reservation and are subject to the enforcement of such regulations in the tribal court unless the tribe has specifically exempted the entity or person from any or all regulation and enforcement in tribal court.

12.1.6 The original jurisdiction of the Tribal Court over the matters set forth in Sections 12.1.1.2, 12.1.1.3 and 12.1.2 and 12.1.4 shall be concurrent with the jurisdiction of the Court of Common Pleas of South Carolina, the Family Court and the U. S. District Court for South Carolina. The original jurisdiction of the Tribal Court over the matters set forth in Section 12.1.1.1 shall be concurrent or exclusive depending upon the agreement of the parties. The original jurisdiction of the Tribal Court over matters set forth in Section 12.1.3 shall be exclusive. The original jurisdiction of the Tribal Court over matters set forth in Section 12.1.5 shall be exclusive unless the Tribe has waived such exclusive jurisdiction as to any person or entity. As to all sections referred to herein jurisdiction over appeals, if any, is governed by Section 12.1.8.

12.1.7 The Tribe may waive Tribal Court jurisdiction or the application of tribal laws with respect to any person or firm residing, doing business, or otherwise entering upon the reservation or contracting with the Tribe. Any member of the Tribe may also waive Tribal Court jurisdiction or specify in the contract the law of any appropriate jurisdiction to govern any commercial transaction or the interpretation of a

contract to which the member is a party.

12.1.8 All final judgments entered in actions tried in Tribal Court shall be subject to an appeal to the Family Court, the Court of Common Pleas, or the United States District Court, (depending upon whether that court would have had jurisdiction over the appealed matter had it been commenced in that court) if: (i) a party to the suit is not a member of the Tribe; (ii) the amount in controversy or the cost of complying with any equitable order or decree exceeds the jurisdictional limits then applicable in the Magistrate's Courts of South Carolina; and (iii) provided that the subject matter of the suit does not fall within the provisions of Sections 12.1.1.1 if jurisdiction is exclusive, or 12.1.3 or 12.1.5. The Tribe may enlarge the right of appeal to include other subject matters and members of the Tribe, subject to such rules and procedures as the applicable court and relevant state and federal laws may provide.

12.1.9 In any such appeal, the court may, as appropriate (i) enter judgment affirming the Tribal Court, (ii) dismiss the case for lack of jurisdiction of the Tribal Court, but only in those cases where the Tribal Court has first addressed the issue of its jurisdiction; (iii) reverse or remand the case for retrial or reconsideration in Tribal Court or (iv) grant a trial de novo in its court.

12.1.10. In any appeal, trial, or trial de novo, the reviewing court shall apply any regulation enacted pursuant to Tribal authority.

12.1.11 In cases subject to the provisions of 12.1.2, 12.1.8 and 12.1.9, all final judgments of the Tribal Court shall be given full faith and credit in the state or federal court with appropriate jurisdiction, and the Tribal Court shall reciprocate.

12.1.12 If a member of the Tribe seeks to enforce against a non-member in state or federal court a final judgement of the Tribal Court in a case which is not subject to the provisions of 12.1.2, 12.1.8 and 12.1.9, the judgment shall be reviewed by the state court in the manner provided in the Uniform Arbitration Act, S.C. Code 15-48-10 et. seq. and by the federal court in the manner provided in the United States Arbitration Act, 9 U.S.C. 1 et. seq.

12.2 Sovereign Immunity.

12.2.1 The Tribe may sue, or be sued, in any court of competent jurisdiction; except, however, that the Tribe shall enjoy sovereign immunity, including damage limits and except as provided in 12.2.7, immunity from seizure, execution, or encumbrance of properties, to the same extent as the political subdivisions of the State as provided in the South Carolina Tort Claims Act, Section 15-78-10, et seq., S.C. Code Annotated, 1976 as amended, and amendments of general applicability thereto adopted hereafter. With respect to liability based on contract, however, the Tribe may, in a written contract, provide that it is immune from suit on that contract as if there had been no waiver of sovereign immunity. Notwithstanding the provisions of this

section, the Tribe will be subject to suit as provided in Section 17.2.

12.2.2 The Tribe shall procure and maintain liability insurance with the same coverage and limits as required of political subdivisions of the State by Section 15-78-140(b), and amendments thereto hereafter adopted.

12.2.3 Any action alleging tortious conduct by an employee of the Tribe acting within the scope of his duties which seeks money damages against the Tribe shall name only the Tribe as a party defendant.

12.2.4 A settlement or judgment in an action or a settlement of a claim filed with the Tribe shall constitute a complete bar to any further action by the claimant against the Tribe by reason of the same occurrence.

12.2.5 A claimant may file a verified claim for damages with the Tribe prior to filing suit, but shall not be required to file such a claim as a prerequisite to filing suit. Such claim shall set forth the circumstances which brought about the loss, the extent of the loss, the time and the place the loss occurred, the names of all persons if known, and the amount of the loss sustained. The Tribe shall designate an employee or office to accept the filing of claims. Filing may be accomplished by receipt by the Tribe's designee of certified mailing of the claims or by compliance with the provisions of law relating to service of process. If filed, the claim must be received within one year after the loss was or should have been discovered. The Tribe shall have 180 days from the date of the filing of the claim in which to determine whether the claim should be allowed or disallowed. Failure to notify the claimant of action upon the claim within 180 days after the filing of the claim is considered a disallowance of the claim. While the filing of such a claim shall not be required as a prerequisite to suit, if a claimant files a claim, he may not institute an action until after the occurrence of the earliest of one of the following three events: (1) the passage of 180 days from the filing of the claim with the Tribe, (2) the Tribe's disallowance of the claim, or (3) the Tribe's rejection of a settlement offer.

12.2.6 The provisions of the following sections of the South Carolina Tort Claims Act shall apply to the Tribe to the same extent as they apply to the State and its political subdivisions: Sec. 15-78-100(c) (joint tortfeasors); 15-78-110 (statute of limitations); 15-78-170 (survival actions); 15-78-190 (applicability of uninsured or underinsured defendant insurance).

12.2.7 In the event that the Tribe's insurance coverage is inadequate or unavailable to satisfy a judgment within the limits of the Tort Claims Act, neither the judgment nor any other process may be levied upon the corpus or principal of the Tribal Trust Funds or upon any property held in trust for the Tribe by the United States; however, the Tribe or the Secretary of Interior shall honor valid orders of a federal or state court which enters money judgments for causes of action

against the Tribe arising after the consummation of this settlement, by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment or payments of income from the Tribal Trust Funds.

12.3 Indian Child Welfare Act. The Indian Child Welfare Act, 25 U.S.C. 1901, et. seq., (ICWA) shall apply to Catawba Indian Children except as provided in this section. Before the Tribe may assume jurisdiction over Indian child custody proceedings under the ICWA, the Tribe shall present to the Secretary for approval a petition to assume such jurisdiction, and the Secretary shall approve the petition in the manner prescribed in ICWA. Any petition to assume jurisdiction over Indian child custody proceedings by the Tribe shall be considered and determined by the Secretary in accordance with the relevant provisions of ICWA. Assumption of jurisdiction under ICWA shall not affect any action or proceeding over which a court has already assumed jurisdiction. Until the Tribe has assumed jurisdiction over Indian child custody proceedings, the State shall retain exclusive jurisdiction over Indian custody proceedings; however, the State Court shall apply the Indian Child Welfare Act. ICWA shall not apply to private adoptions of Indian children under the jurisdiction of the Catawba Tribe under the ICWA where both parents consent to the adoption or in the case of an unwed mother, the mother consents to the adoption when the father's consent is not necessary for the adoption under South Carolina Law Section 20-7-1690 and any amendments thereto, and the parents or mother help choose adoptive parents, regardless of whether or not the adoptive parents are outside the preferences of the ICWA. However, the court may consider any benefits, material and cultural, the child may lose in determining whether the proposed adoption is in the best interests of the child; provided, however, that failure of the courts to make this consideration shall not be subsequently held to invalidate the adoption. In all cases of adoption, regardless of whether the ICWA applies, Section 25 U.S.C. 1917 shall apply.

12.4 Jurisdiction of State Courts. If no Tribal Court is established by the Tribe, the State shall exercise jurisdiction over all civil and criminal causes arising out of acts and transactions occurring on the reservation or involving members of the Tribe. If the Tribe does establish a tribal court, then the provisions of Section 12.1.6 shall govern the question of whether such jurisdiction is exclusive or concurrent.

13. Tribal Trust Funds: Purposes. All funds paid pursuant to Section 5 of this Agreement shall be deposited with the Secretary in trust for the benefit of the Tribe. Separate trust funds ("Trust Funds") shall be established for the following purposes: Economic Development, Land Acquisition, Education, Social Services and Elderly Assistance, and Per-Capita Payments. Except as provided in this section, the Tribe, in consultation with the Secretary, shall determine the share of settlement payments to be deposited in each Trust Fund, and define,

consistently with the provisions of this section, the purposes of each Trust Fund and provisions for administering each, specifically including provisions for periodic distribution of current and accumulated income, and for invasion and restoration of principal.

13.1 Tribal Trust Funds; Outside Management Option. The Tribe, in consultation with the Secretary, shall be authorized to place any of the Trust Funds under professional management, outside the Department of the Interior. If the Tribe elects to place any of the Trust Fund under professional management outside and the Department of the Interior, it may engage a consulting or advisory firm to assist in the selection of an independent professional investment management firm , and it shall engage, with the approval of the Secretary, an independent investment management firm of proven competence and experience established in the business of counseling large endowments, trusts, or pension funds. The Secretary shall have forty-five (45) days to approve or reject the independent investment management firm selected by the Tribe. If the Secretary fails to approve or reject the firm selected by the Tribe within forty-five (45) days, the investment management firm selected by the Tribe shall be deemed to have been approved by the Secretary. Secretarial approval of an investment management firm shall not be unreasonably withheld and any Secretarial disapproval of an investment management firm shall be accompanied by a detailed explanation setting forth the Secretary's reasons for such disapproval. For funds placed under professional management, the Tribe, in consultation with the Secretary and its investment manager, shall develop (i) current operating and long-term capital budgets, and (ii) a plan for managing, investing, and distributing income and principal from the Trust Funds to match the requirements of the Tribe's operating and capital budgets. For each Trust Fund which the Tribe elects to place under outside professional management, the investment plan will provide for investment of Trust Fund assets so as to serve the purposes described in this section and in the Trust Fund provisions which the Tribe shall establish in consultation with the Secretary and the independent investment management firm. Distributions from each Trust Fund shall not exceed the limits on the use of principal and income imposed by the applicable provisions of this Agreement for that particular Trust Fund. The Tribe's investment management plan shall not become effective until approved by the Secretary. Upon submission of the plan by the Tribe to the Secretary for approval, the Secretary shall have 45 days to approve or reject the plan. If the Secretary fails to approve or disapprove the plan within 45 days, the plan shall be deemed to have been approved by the Secretary and shall become effective immediately. Secretarial approval of the plan shall not be unreasonably withheld and any secretarial rejection of the plan shall be accompanied by a detailed explanation setting forth the Secretary's reasons for rejecting the plan.

Until the selection of an established investment management firm of proven competence and experience, the Tribe will rely on the management, investment, and administration of the Trust Funds by the Secretary pursuant to the provisions of this section.

13.2 Transfer of Trust Funds; Exculpation of Secretary. Upon the Secretary's approval of the Tribe's investment management firm and an investment management plan, all funds previously deposited in trust funds held by the Secretary and all funds subsequently paid pursuant to Section 5 and deposited with the Secretary in trust, which are chosen for outside management, shall be transferred to the accounts established by an investment management firm in accordance with the approved investment management plan. Prior to any such transfer of funds, the Secretary shall be exculpated by the Tribe from liability for any loss of principal or interest resulting from investment decisions made by the investment advisory firm. Any Trust Fund transferred to an investment management firm shall be returned to the Secretary upon written request of the Tribe and the Secretary shall manage such funds for the benefit of the Tribe.

13.3 Land Acquisition Trust. The Secretary shall establish and maintain a "Catawba Land Acquisition Trust Fund," and until the Tribe engages an outside firm for investment management of this trust fund, the Secretary shall manage, invest, and administer this trust fund. The original principal amount of the Land Acquisition Trust Fund shall be determined by the Tribe in consultation with the Secretary. The principal and income of this trust may be used for the purchase of reservation and non-reservation land in York and Lancaster Counties pursuant to this Agreement, costs related to land acquisition, and costs of construction of infrastructure and development of the reservation. Upon acquisition of the maximum amount of land allowed for expansion of the reservation, or upon request of the Tribal Council and approval of the Secretary pursuant to the Secretarial approval provisions set forth in Section 13.1 of this section, all or part of the balance of this trust fund may be merged into one or more of the Economic Development Trust Fund, the Education Trust Fund, or the Elderly Assistance Trust Fund. Alternatively, at the Tribe's election, the Fund may remain in existence after all the reservation land is purchased in order to pay for the purchase of non-reservation land.

The Tribe may pledge or hypothecate the income and principal of the Land Acquisition Trust to secure loans for the purchase of reservation and non-reservation lands. Following enactment of the implementing legislation and before the final annual payment is made as provided in Section 5, the Tribe may pledge or hypothecate up to 50% of the unpaid annual installments required by Section 5, to secure loans to finance the acquisition of reservation or non-reservation land or infrastructure improvements on such lands.

13.4 Economic Development Trust. The Secretary shall establish and maintain a "Catawba Economic Development Trust Fund", and until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer this Trust Fund. The original principal amount of the Economic Development Trust Fund shall be determined by the Tribe in consultation with the Secretary. The principal and income of this Trust Fund may be used to support tribal economic development activities, including but not limited to infrastructure improvements and tribal business ventures and commercial investments benefitting the Tribe. The Tribe, in consultation with the Secretary, may pledge or hypothecate future income and up to fifty percent (50%) of the principal of this Trust Fund to secure loans for economic development. However, in defining the provisions for administration of this Trust Fund, and before pledging or hypothecating future income or principal, the Tribe and the Secretary shall agree upon rules and standards for the invasion of principal and for repayment or restoration of principal, which shall encourage preservation of principal, and provide that, if feasible, a portion of all profits derived from activities funded by principal be applied to repayment of the Trust Fund. Following enactment of the implementing legislation and before the final annual payment is made as provided in Section 5, the Tribe may pledge or hypothecate up to fifty percent (50%) of the unpaid annual installments required by Section 5 to secure loans to finance economic development activities of the Tribe, including, but not limited to, infrastructure improvements on reservation and non-reservation lands. If the Tribe develops sound lending guidelines approved by the Secretary, a portion of the income from this Trust Fund may also be used to fund a revolving credit account for loans to support tribal businesses or business enterprises of tribal members. Availability of funds from this trust shall not be considered in determining the eligibility of the Tribe or its members for funds available from State or federal sources; and distributions from these trust funds may be used as matching funds, where appropriate for other State or federal grants or loans.

13.5 Education Trust. The Secretary shall establish and maintain a Catawba Education Trust Fund, and until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer this Trust Fund. The original principal amount of this Trust Fund will be determined by the Tribe in consultation with the Secretary; provided, however, that at least one-third of all state, local, and private contributions to this settlement shall be paid into the Education Trust Fund. Income from this Trust Fund shall be distributed to the Executive Committee periodically to fund vocational, adult, special and higher educational assistance programs administered by the Executive Committee for members of the Tribe. The principal of this Trust Fund shall not be invaded or transferred to any other Trust Fund, nor shall it

be pledged or encumbered as security. Availability of funds from this Trust Fund shall not be considered in determining the eligibility of members of the Tribe to any other funds available from State or federal sources.

13.6 Social Services and Elderly Assistance Trust. The Secretary shall establish and maintain a Catawba Social Services and Elderly Assistance Trust Fund, and until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer the Social Services and Elderly Assistance Trust Fund. The original principal amount of this Trust Fund shall be determined by the Tribe in consultation with the Secretary. The income of this Trust Fund shall be periodically distributed to the Tribe to support social services programs, including without limitation housing, care of elderly and physically and mentally disabled members of the Tribe, child care, supplemental health care, education, cultural preservation, burial and cemetery maintenance, and operation of tribal government, all in accordance with entitlement criteria and procedures which shall be established by the Tribe.

13.7 Per Capita Payment Trust Fund. The Secretary shall establish and maintain a Catawba Per Capita Payment Trust Fund in an amount equal to 15% of the settlement funds paid pursuant to Section 5 of this Agreement. Until the Tribe engages an outside firm for investment management of this Trust Fund, the Secretary shall manage, invest, and administer the Per Capita Payment Trust Fund. The principal and income of this Trust Fund shall be used (i) to fund a one-time per capita settlement payment to members of the Tribe over the age of 21 in an amount to be determined by calculating the pro rata share of each member of the Tribe following completion of the tribal roll pursuant to Section 7 of this Agreement, and (ii) to purchase a group annuity or make an annuity investment, so as to pay the same sum to members of the Tribe under the age of 21, upon attainment of such age. Each person whose name appears on the final roll of the Tribe published in the Federal Register pursuant to Section 7.3 of this Agreement will receive a one-time, non-recurring payment from this Trust Fund. Each enrolled member who has reached the age of 21 years at the time the final roll is published will receive the payment as soon as practicable after that date. Payments due to each member who is on the final roll of the Tribe but who dies prior to distribution shall be paid to the beneficiaries designated under his will or to the heirs of his personal estate under the law of his domicile if he leaves no will. Members who are 21 years of age or older as of the distribution date will receive the per capita payment on the date of distribution. Any member whose name appears on the final roll who has not attained the age of 21 on the distribution date will receive the per capita payment as soon as practicable after he or she has reached the age of 21. An annuity policy or investment shall be maintained for twenty-one years after the date of ratification. After payments have been made to all members of

the tribe entitled to receive payments, this Trust Fund will terminate, and any balance remaining in this Fund will be merged into the Economic Development Trust Fund, the Education Trust Fund, or the Elderly Assistance Trust Fund, as the Tribe may determine.

13.8 Duration of Trust Funds. Subject to the provisions of Section 13.7 below, and with the exception of the Per Capita Payment Trust Fund, the Trust Funds established in accordance with this section shall continue in existence so long as the Tribe exists and is recognized by the Federal Government. The principal of these Trust Funds shall not be invaded or distributed except as expressly authorized in this Agreement.

13.9 Transfer of Money Among Trust Funds. The Tribe, in consultation with the Secretary, shall have the authority to transfer principal and accumulated income between the Economic Development and Land Acquisition Trust and the Social Services and Elderly Assistance Trust, and from either such Trust Fund into the Education Trust Fund; however, the mandatory share of state, local, and private sector funds invested in the original corpus of the Education Trust Fund shall not be transferred to any other Trust Fund. Any Trust Fund, except for the Education Trust Fund, may be dissolved by a vote of two-thirds (2/3) of those members of the Tribe eligible to vote, and the assets in such Trust Fund shall be transferred to the remaining Trust Funds; except, however, that no assets shall be transferred from any of the Trust Funds into the Per Capita Payment Trust Fund; and no funds from the corpus of the Education Trust Fund may be transferred or used for any non-educational purposes. The dissolution of any trust fund shall require the approval of the Secretary pursuant to the Secretarial approval provisions set forth in Section 13.1 of this section.

13.10 Trust Fund Accounting by Secretary. The Secretary shall account to the Tribe periodically, and at least annually, for all Catawba Trust Funds being managed and administered by the Secretary. The accounting shall identify the assets in which the Trust Funds have been invested during the relevant period; report income earned during the period, distinguishing current income and capital gains; indicate dates and amounts of distributions to the Tribe, separately distinguishing current income, accumulated income, and distributions of principal. The accounting shall identify any invasions or repayments of principal during the relevant period and record provisions the Tribe has made for repayment or restoration of principal.

13.11 Trust Fund Accounting by Investment Management Firm. Any outside investment management firm engaged by the Tribe shall account to the Tribe and separately to the Secretary at periodic intervals, and at least quarterly. Its accounting shall identify the assets in which the Trust Funds have been invested during the relevant period; report income earned during the period, separating current income and capital gains; indicate dates and amounts of distributions to the Tribe, distinguishing

current income, accumulated income, and distributions of principal. Prior to distributing principal from any Trust Fund, the investment management firm shall notify the Secretary of the proposed distribution and the Tribe's proposed use of such funds, following procedures to be agreed upon by the investment management firm, the Secretary, and the Tribe. The Secretary shall have fifteen (15) days within which to object in writing to any such invasion of principal; and failure to object will be deemed approval of the distribution. The investment management firm's accounting shall identify any invasions or repayments of principal during the relevant period and record provisions the Tribe has made for repayment or restoration of principal. All Trust Funds held and managed by any investment management firm shall be audited annually by a certified public accounting firm approved by the Secretary; and a copy of the annual audit shall be submitted to the Tribe and to the Secretary within four (4) months following the close of the Trust Fund's fiscal year.

13.12 Replacement of Investment Management Firm and Modification of Investment Management Plan. The Tribe shall not replace the investment management firm approved by the Secretary without prior written notification to the Secretary and approval by the Secretary of any investment management firm chosen by the Tribe as a replacement. Such Secretarial approval shall be given or denied in accordance with the Secretarial approval provisions contained in Section 13.1 of this Agreement. The Tribe and its investment management firm shall also notify the Secretary in writing of any revisions in the investment management plan which materially increase investment risk or significantly change the investment agreement made in consultation with the Secretary.

14. Establishment of Expanded Reservation.

14.1 Existing Reservation. The State currently holds in trust approximately 630 acres of land which is referred to in this Agreement as the "existing reservation." Upon final enactment of all implementing legislation, the State shall convey the existing reservation to the United States of America as trustee for the Tribe, and the obligation of the State as trustee for the Tribe with respect to this land shall cease.

14.2 Expanded Reservation.

14.2.1 Upon final enactment of all implementing legislation, the Secretary, after consulting with the Tribe, will engage a registered land surveyor to ascertain the boundaries and area of the existing reservation. In addition, the Secretary, after consulting with the Tribe, will engage a professional land planning firm ("planning firm") to assist the Tribe in developing land-acquisition and land-use plans for an expanded reservation. The Secretary will bear the cost of all services rendered by the surveyor and the planning firm pursuant to this Agreement, and neither the Tribe nor state or local government will be assessed for any part of such costs.

14.2.2 With the assistance of the Secretary or the planning firm, the Tribe may canvass land owners in the Primary

Expansion Zone to identify additional tracts that the Tribe may be able to acquire. The Tribe, with the assistance of the Secretary or the planning firm, will determine the scope of its canvass, based on those tracts it wants to acquire and those landowners it considers likely to sell.

14.2.3 Upon final enactment of all implementing legislation, the Secretary, in consultation with the Tribe, may purchase and place in reservation status tracts of lands that are bounded by the existing reservation, or bounded by a tract that has been acquired as part of the expanded reservation and placed in reservation status. Prior to final approval of its Non-Contiguous Development Plan application as described below, the Secretary may obtain options upon and purchase non-contiguous (or "outlying") tracts of lands not bounded by the existing or expanded reservation, but no such non-contiguous tract shall be placed in reservation status until the Tribe's application for a Non-Contiguous Development Plan has been approved. In assembling tracts, contiguity will not be deemed broken by state or federal roads or by public rights of way; and lands on the eastern bank of the Catawba River opposite the reservation shall be considered contiguous to the reservation if the western boundary of any such tract joins the eastern boundary of the reservation when the boundaries of both are extended to the middle of the river. Tracts acquired for the expanded reservation shall not deny access to lands owned by non-members of the Tribe.

14.2.4 When the Secretary has identified a parcel that can be purchased and has negotiated the price, he will present a description of the property and its price, together with other pertinent information and the terms of purchase, to the Tribe. If the Tribe approves the purchase, the Secretary will proceed with closing after completion of a title examination, a preliminary subsurface soil investigation, and a level one environmental audit. The Secretary will bear the cost of all such examinations and will report the results to the Tribe. Payment of any option fee and the purchase price will be drawn from the Tribe's Land Acquisition Trust Fund.

14.2.5 The total area of the expanded reservation will be limited to 3,000 acres, including the existing reservation, but the Tribe may exclude from this limit up to 600 acres of additional land if such land is (i) within rights-of-way for public roads or public utilities rendered unusable for development by the easement or right-of-way; (ii) within the 100-year flood plain of the Catawba River as defined by the Federal Emergency Management Agency, or its successor; (iii) non-developable wetland defined or restricted by law or regulation such that buildings, structures, and other improvements are prohibited; and (iv) park and recreational land accessible to the public and dedicated permanently to public use. After completion of a comprehensive development plan, the Tribe may seek to have the permissible area of the expanded reservation enlarged to a maximum of 3,600 acres, plus up to 600 acres of land as described in (i) through (iv) above. Any such expansion shall be first

approved, however, by the Secretary, and then by ordinance of the county council governing any area where the additional lands are to be acquired, and by a law or joint resolution enacted by the General Assembly and signed by the Governor of South Carolina. All additional lands acquired by the Secretary for the expanded reservation will be held in trust together with the existing reservation which the State is to convey to the United States.

14.2.6 The Secretary, acting on behalf of the Tribe, will make every reasonable effort to expand the existing reservation by assembling a composite tract of contiguous parcels that border and surround the existing reservation. Before placing any non-contiguous tract in reservation status, the Tribe, in consultation with the Secretary, shall submit to the county council in any county where it proposes to purchase non-contiguous tracts for reservation status a Non-Contiguous Development Plan Application ("Application"), which shall include the following:

(a) A statement of the Tribe's needs, objectives, and priorities for its reservation, including planning goals for (1) single and multi-family residential units; (2) recreational amenities; (3) historical sites to be preserved; (3) business and industrial parks; (4) common areas, parks, and open space; (5) roads, streets, utilities, and tribal government and community facilities.

(b) An acquisition and land-use plan, based on the Tribe's planning goals and objectives, showing tracts, both contiguous to the reservation and not contiguous, which the Tribe has acquired or optioned, and identifying where reasonably possible those areas that the Tribe seeks to acquire tracts to place in reservation status, in either the Primary or Secondary Expansion Zones. The acquisition and land-use plan need not be location-specific as to all uses, but should show the expanded reservation as then configured and should designate existing uses, roads, and topographical features including flood plain. Prior to submitting the acquisition and land-use plan to the county council in the county where the Tribe seeks to acquire non-contiguous tracts for reservation status, the Tribe will review the plan with county planning authorities. To avoid speculation in land prices, examination of the Tribe's future land use plans may be restricted by the Tribe to appropriate state and local officials, and these officials as well as the Secretary will be bound to protect confidential aspects of the plans. The acquisition and land-use plan should endeavor to meet the following guidelines: (i) the plan should attempt to cluster the non-contiguous parcels within the Primary Expansion Zone so that each is located as close as possible to the expanded reservation; (ii) the plan should endeavor to locate all non-contiguous parcels within the Primary Expansion Zone, and confine the number of outlying parcels in all Expansion Zones to three with no more than two in any one Zone; (iii) the plan should seek to assemble only non-contiguous parcels of significant size, using 250 acres as the criterion for a minimum desirable area;

(iv) the plan should undertake to show that the outlying parcels will be used for purposes which are compatible with desired existing uses of the surrounding property; (v) the plan should follow generally accepted standards of good land-use planning, providing for the mitigation of environmental impacts and incompatible land uses, and providing traffic and utility planning, building setbacks and density; (vi) the plan for acquiring non-contiguous tracts should avoid the selection of sites or configurations that could leave fragments of unusable land or create hardship for owners of adjoining parcels.

(c) A report of the Secretary's efforts, acting in behalf of the Tribe, to acquire contiguous tracts at fair market value, showing why it is not possible, practical, or advisable to assemble contiguous parcels into a composite tract, as provided in Section 14.2.4, and including the Secretary's certificate to this effect. The Secretary's report will include relevant data on tracts that the Tribe has sought but failed to purchase because of price, terms, or the seller's refusal.

(d) Criteria controlling the Secretary's selection of outlying tracts that the Tribe will seek to purchase, provided its Application is finally approved. Such criteria shall include (i) the minimum area of tracts to be acquired, (ii) the location of outlying tracts in relation to the expanded reservation and the maximum distance between outlying tracts and the nearest boundary of the expanded reservation, (iii) the number of outlying tracts the Tribe intends to acquire in each Zone, (iv) an identification of outlying tracts already owned or under option or targeted for acquisition if the Application is finally approved, (v) provisions for assuring that proposed uses of tracts to be acquired are compatible with existing uses of surrounding property and will not interfere with essential public services, and (vi) a means of assuring that non-contiguous tracts can be marked and readily identified as reservation property.

14.2.7 The Tribe shall present its Application to the county council of each county in which the Secretary proposes to purchase non-contiguous tracts to be placed in reservation status. The county council shall make findings on the extent to which the Application has met the criteria set forth in Section 14.2.6, and recommend to the Governor whether or not the Application should be approved. After receiving the county council's recommendation, the Tribe either may modify its Application and re-submit it to the county council, or present it to the Governor for approval. The Governor shall review the Application and decide whether to approve or disapprove it on the basis of the criteria set forth above. Neither the county council's approval nor the Governor's approval shall unreasonably be withheld, and the Governor's final action shall be subject to review under the Administrative Procedure Act.

14.2.8 Upon approval by the Governor of the Tribe's Non-Contiguous Development Plan Application, the Secretary, in consultation with the Tribe, may proceed to place

non-contiguous tracts in reservation status, in accordance with the Plan and the provisions of this Agreement.

14.3 Primary Expansion Zone. The Secretary and the Tribe shall endeavor at the outset to acquire contiguous tracts for the expanded reservation in the area referred to in this Agreement as the "Primary Expansion Zone." The Primary Expansion Zone shall lie within the area bounded by S.C. Highway No. 5 on the south running northwesterly to its intersection with Springdale Road on the west and thence northeasterly to the Catawba River along Sturgis Road; thence east along the Catawba River to its confluence with Sugar Creek; north along Sugar Creek to its intersection with S. C. Highway No. S-29-41 (Doby Bridge Road); thence with S. C. Highway S-29-41 to its intersection with U. S. Highway No. 521; thence with U.S. Highway No. 521 in a southerly direction to its intersection with S. C. Highway No. S-29-55 (Van Wyck Road) on the east; and thence with S. C. Highway No. S-29-55 to its intersection with Twelve Mile Creek on the south; and thence with Twelve Mile Creek to S. C. Highway No. 5 on the south. This entire area will be known as the "Catawba Reservation Primary Expansion Zone."

14.4 Secondary Expansion Zone. The Secretary, in consultation with the Tribe, may elect to purchase contiguous tracts in an alternative area described in this Agreement as the Secondary Expansion Zone, under the conditions provided in Paragraph 14.2.6 above. The Secondary Expansion Zone shall consist of the area bounded by Sugar Creek on the west; the Catawba River on the south extending to the Norfolk Southern Railway trestle on the west; thence northerly with the railroad right-of-way to its intersection with S. C. S-46-329 (Brickyard Road); thence east to S. C. S-46-41 (Doby Bridge Road); thence easterly along S. C. S-46-41 to its intersection with Sugar Creek. This area shall be known as the "Catawba Reservation Secondary Expansion Zone."

14.5 Other Expansion Zone. The Primary and Secondary Expansion Zones are the preferred and only approved zones for expansion of the reservation. However, after completing a comprehensive plan of development, the Tribe may propose different or additional expansion zones; but any such zone first must be approved by the Secretary, and then by ordinance of the county council where the zone is located, and by law or joint resolution enacted by the General Assembly of South Carolina and signed by the Governor. The combined area of all land acquisitions, including land in any specially approved zones, shall not exceed the limits imposed by Paragraph 14.2.5.

14.6 Future Highways. Prior to the Tribes' planning process, the South Carolina Department of Highways and Public Transportation will consult with the Tribe about planned and proposed major highways within the Primary and Secondary Expansion Zones, including the proposed extension of Dave Lyle Boulevard (South Carolina Highway No. 122) from the City of Rock Hill across the Catawba River into Lancaster County. In accordance with the letter to the Tribe from the City of Rock

Hill, dated August 28, 1992, the City of Rock Hill and the South Carolina Department of Highways and Public Transportation will consult the Tribe about access to Dave Lyle Boulevard Extension, and in cooperation with the Tribe, will plan and provide for an interchange assuring access to Dave Lyle Boulevard Extension over a public road in reasonable proximity to the expanded reservation.

14.7 Future Sewage Treatment Facilities. Prior to the Tribe's planning process, the South Carolina Department of Health and Environmental Control (DHEC) will consult with the Tribe about the location of future sewage treatment facilities that may serve the Primary and Secondary Expansion Zones. Such treatment facilities include, but are not limited to, the treatment plant proposed by the Charlotte-Mecklenburg Utilities Department near the confluence of the Catawba River and Twelve Mile Creek in Lancaster County and all pump stations and transmission lines, gravity and pressure. If this or a similar regional treatment plant is constructed here or in the vicinity of this site, DHEC will endeavor to ensure that the commitments of the City of Rock Hill, set forth in its letter to the Tribe dated August 28, 1992, are carried out (i) by locating the City's sewage transmission line to the regional treatment plant in reasonable proximity to the reservation and (ii) by allowing the Tribe the right of access to such transmission line for a tap fee and on other terms similar to those for municipalities using this treatment facility. The Tribe will be responsible for the design, construction, operation, and maintenance of its own sewage collection system and for the cost of constructing any extension line and tap to the transmission line. The Tribe will also be subject to fees for use of the treatment system and transmission line, and subject to all regulations imposed on users of the system, but DHEC will endeavor to ensure that such fees, charges, and rules are the same as applied to municipal users of the system. If the Tribe is required to construct an extension line to connect with a transmission line the Tribe may charge non-reservation users along such extension line reasonable tap and user fees.

14.8 Voluntary Land Purchases. The power of eminent domain shall not be used by the Secretary or any governmental authority in acquiring parcels of land for the benefit of the Tribe, whether or not the parcels are to be part of the reservation. However, all such purchases shall be made only from willing sellers by voluntary conveyances. Conveyances by private land owners to the Secretary for the expanded reservation will be deemed, however, to be involuntary conversions within the meaning of Section 1033 of the Internal Revenue Code of 1986, as amended. Filing and recording fees and all documentary tax stamps and any other fees incident to the conveyance of real estate will be payable in connection with such purchases regardless of whether the property is purchased by the Tribe or by the United States in trust for the Tribe. Real property taxes levied for the year of closing will be pro-rated and paid at closing, or if the amount

of property taxes to be due cannot then be calculated, property taxes will be estimated and escrowed at closing. Notwithstanding the provisions of Section 257 and 258a of Title 40, the Secretary may acquire reservation land for the benefit of the Tribe from the ostensible owner of the land if the Secretary and the ostensible owner have agreed upon the identity of the land to be sold and upon the purchase price and other terms of sale. If the ostensible owner agrees to the sale, the Secretary may use condemnation proceedings to perfect or clear title and to acquire any interests of putative co-tenants whose address is unknown or the interests of unknown or unborn heirs or persons subject to mental disability.

14.9 Rollback Taxes. The purchase of any land specially assessed as farmland or timberland by York or Lancaster County will not result in a rollback of property taxes provided the property is placed by the Tribe in reservation status within one year of the date of purchase. If any specially assessed land is acquired and not made part of the reservation within one year, deferred or rollback taxes will be due and payable without interest to the county treasurer.

14.10 Terms and Conditions of Acquisition. All properties acquired by the Secretary for the Tribe shall be acquired in fee simple. The Secretary, in consultation with the Tribe, will be authorized to ascertain the market value of lands to be purchased; to enter into options and contracts for reservation and non-reservation lands upon such conditions as he deems appropriate; to acquire, when necessary, the reversionary fee in leases and the remainder fee in life estates; to acquire lands subject to leases and timber interests and subject to easements, covenants, and restrictions that will not impair usefulness of the lands for the Tribe's purposes. The Secretary, acting in behalf of the Tribe and with its consent, is also authorized to execute and deliver purchase-money notes, mortgages, and other debt and security instruments, to acquire both reservation and non-reservation lands. When property is acquired for the Tribe through purchase-money financing, and encumbered by a purchase-money mortgage, the mortgagee shall have the right to foreclose under South Carolina law in the event of default as defined in the note and mortgage.

14.11 Easements Over Reservation. The acquisition of lands for the expanded reservation shall not extinguish any easements or rights-of-way then encumbering such lands unless the Secretary or the Tribe enters into a written agreement with the owners terminating such easements or rights-of-way. The Secretary, with the approval of the Tribe, shall have the power to grant or convey easements and rights-of-way for public roads, public utilities, and other public purposes over the reservation. Unless the Tribe and the State agree upon a valuation formula for pricing easements over the reservation, the Secretary shall be subject to proceedings for condemnation and eminent domain to acquire easements and rights of way for public purposes through the reservation under the laws of the State of South Carolina in

circumstances where no other reasonable access is available. With the approval of the Tribe, the Secretary may also grant easements or rights-of-way over the reservation for private purposes; and implied easements of necessity shall apply to all lands acquired by the Tribe, unless expressly excluded by the parties.

14.12 Jurisdictional Status. Only land made part of the reservation shall be governed by the special jurisdictional provisions set forth in this Agreement.

14.13 Sale and Transfer of Reservation Lands. At the request of the Tribe, and with approval of the Secretary, the Secretary may sell, exchange, or lease lands within the reservation, or sell timber or other natural resources on the reservation. The proceeds from these transactions may be used to re-invest in other land contiguous to the reservation or in improvements for the common use of the Tribe on the reservation; or if the Tribe deems it appropriate, the proceeds may be placed in the Education Trust Fund, the Elderly Assistance Trust Fund, the Land Acquisition Trust Fund, or the Economic Development Trust Fund. At the request of the Tribe and with the approval of the Secretary, the Secretary may exchange like-kind parcels of land on the reservation for contiguous parcels of land not currently part of the reservation. Notwithstanding the provisions of this paragraph, the area of the reservation shall not exceed the limits imposed by Section 14.2.5.

14.14 Time Limit on Acquisitions. All acquisitions of contiguous land to expand the reservation or of non-contiguous lands to be placed in reservation status shall be completed or under contract of purchase within ten years from the date the last payment is made into the Land Acquisition Trust; except, however, that the Tribe may continue to acquire parcels which are contiguous to either of two designated reservation areas for a period of twenty years after the date the last payment is made into the Land Acquisition Trust.

14.15 Leases of Reservation Lands. The provisions of 25 U.S.C. §415 shall not apply to the Tribe and its reservation. The Tribe shall be authorized to lease its reservation lands for terms up to but not exceeding ninety-nine (99) years.

14.16 Non-Applicability of BIA Land Acquisition Regulations. The general land acquisition regulations of the Bureau of Indian Affairs, currently contained in 25 C.F.R. Part 151, shall not apply to the acquisition of lands authorized by Section 14 of this Agreement.

15. Non-Reservation Properties.

15.1 Acquisition of Non-Reservation Properties. The Tribe may draw upon the corpus or accumulated income of the Land Acquisition Trust or the Economic Development Trust to acquire parcels of real estate outside the reservation, including properties ancestral or historic to the Tribe and properties to be held by the Tribe for investment or development. Such properties may be held in fee simple by the Tribe as a corporate

entity or held in trust by the United States as trustee for the Tribe, but in either case, these parcels will not be part of the reservation, or governed by the special jurisdictional provisions set forth in this Agreement, or subject to any other special attributes on account of their ownership by the Tribe as a corporate entity or by the Secretary as trustee for the Tribe, except as provided in paragraph 15.2. If the ownership of any such properties by the Secretary or the Tribe, or any sub-entity of the Tribe, removes the property from ad valorem taxation, then payments shall be made in lieu of taxation that are equivalent to the taxes that would otherwise be paid if the property were subject to levy. Notwithstanding any other provisions of law, the Tribe may lease, sell, mortgage, restrict, encumber, or otherwise dispose of such non-reservation lands in the same manner as other persons and entities under State law; and the Tribe as land owner shall be subject to the same obligations and responsibilities as other persons and entities under State, federal, and local law, including local zoning and land use laws and regulations. Ownership and transfer of non-reservation parcels shall not be subject to federal law restricting on alienation, including, but not limited to, the restrictions imposed by Federal common law and the provisions of the Trade and Intercourse Act of 1790, Act of July 22, 1790, and all amendments thereto.

15.2 Jurisdiction on Non-Reservation Properties. All non-reservation properties, and all activities conducted on such properties, shall be subject to the laws, ordinances, taxes, and regulations of the State and its political subdivisions, except as provided in Section 16: and this general jurisdictional principle shall extend both to non-reservation properties held by the Tribe as a corporate entity and to any properties held in trust by the United States designated as non-reservation property when acquired. The laws, ordinances, taxes, and regulations of the State and its subdivisions shall apply to such non-reservation properties in the same manner as such laws, ordinances, taxes, and regulations would apply to any other properties held by non-Indians located in the same jurisdiction. However, non-reservation land may be eligible for federal grants and other federal services for the benefit of Indians.

16. Games of Chance.

16.1 Inapplicability of Indian Gaming Regulatory Act. The Indian Gaming Regulatory Act, 25 U.S.C. Section 2701, et. seq., shall not apply to the Tribe. This Agreement, and the implementing legislation passed pursuant to this Agreement, and all laws, ordinances, and regulations of the State of South Carolina, and its political subdivisions, shall govern the regulation of gambling devices and the conduct of gambling or wagering by the Tribe on and off the reservation, except as specifically provided in this section.

16.2 Conduct of Bingo Games by Tribe. The State shall govern the conduct of bingo under Title 12, Chapter 21, Article 23 (the "Bingo Act"), South Carolina Code of Laws, 1976, as

amended, and any amendments thereto hereafter adopted, including any regulations or rulings issued in relation to Title 12, Chapter 21, Article 23, except as provided by the special bingo license to which the Tribe shall be entitled in accordance with this section if it elects to sponsor bingo games under the special license. For purposes of conducting the game of bingo, the Tribe shall be deemed a non-profit organization under the Bingo Act. The Tribe may be licensed by the South Carolina Tax Commission to conduct games of bingo either under a regular license allowed non-profit organizations or under the special license provided in this section, but not both, and either on the reservation or off the reservation, but not both.

16.3 Special Bingo License. The Tribe may apply to the South Carolina Tax Commission for a special bingo license in lieu of any of the licenses authorized by Title 12, Chapter 21, Article 23 of the South Carolina Code of Laws, 1976, as amended. The special license will be granted if the Tribe complies with licensing requirements and procedures. The special license shall be identical in all respects to the class of license permitting the highest level of prizes allowed by law, and shall carry the same privileges and duties as the class of license permitting the highest level of prizes provided by law, and that:

16.3.1 The frequency of sessions shall be determined by the Executive Committee, but shall be no more frequent than six sessions per week, with sessions on Sundays prohibited unless State law otherwise expressly allows Sunday sessions.

16.3.2 The amount of prizes offered per session shall be determined by the Tribe, but shall not be greater than $100,000.00 for any game.

16.3.3 The Catawba Indian Tribe shall pay, in lieu of any admission or head tax, any license tax, or any other bingo tax, a special bingo tax equal to 10% of the gross proceeds received during each session. All revenues derived from the special bingo tax shall be collected by the South Carolina Tax Commission and deposited with the State Treasurer for the benefit of the General Fund of South Carolina.

16.3.4 State law shall govern the percentage of the gross proceeds taken in by the Tribe during a calendar quarter that must be returned to the players in the form of prizes. For purposes of this section, "gross proceeds" does not include the 10% special bingo tax.

16.3.5 The Tribe shall be entitled to one bingo license, and that license may be used to operate at one location only, and shall not be assignable to any other entity or individual.

16.3.6 The net proceeds derived by the Tribe from the conduct of bingo may be used for any purpose authorized by the Tribe.

16.4 Special License Sites. The Tribe may operate under the special bingo license either off the reservation or on the reservation at its election, but not both. If the Tribe

chooses to operate under the special bingo license off the reservation, it shall locate in an area which is within the 144,000 acre Catawba claim area and zoned compatibly for such commercial activities. The Tribe shall consult with the city or county where the facility is to be located before the site is selected.

16.5 Sponsor, Promoter and Oversight. The sponsor and promoter of the bingo games shall be the Catawba Indian Tribe; and all profits gained from the enterprise shall accrue to the Tribe. The South Carolina Tax Commission, or any successor regulatory body or agency, shall have the power to administer, oversee, and regulate all bingo games sponsored and conducted by the Tribe, and to audit and enforce the operation of such games and assess and collect taxes, interest, and penalties in accordance with the laws and regulations of the State as they apply to the Tribe. The South Carolina Tax Commission or its regulatory successor shall have the right to suspend or revoke the Tribe's Bingo license or Special Bingo license if the Tribe violates the law with regard to conducting the game; however, the Tax Commission or its regulatory successor shall first be required to notify the Tribe of any violations and provide the Tribe with an opportunity to correct any violations before its license may be revoked. Failure to pay bingo taxes, interest or penalties may be grounds for license revocation.

16.6. Any license of the Tribe to conduct Bingo shall be revoked if the game of Bingo is no longer licensed by the State. If the State resumes licensing the game of Bingo, the Tribe's license or special license shall be reinstated provided the Tribe complies with all licensing requirements and procedures.

16.7. Should the Tribe obtain a license as provided herein and operate a facility, the Tribe may install for play in the same building video poker or similar electronic play devices as allowed under the law of the State.

17. Governance and Regulation of Reservation.

17.1 Building Code. The Tribe shall incorporate by reference and adopt the York County Building Code, and any amendments thereto hereafter adopted, and may contract with York County, South Carolina for the services necessary to enforce, inspect, and regulate compliance with its Building Code. Such services shall be provided at no charge by York County as an in-kind contribution toward settlement. In addition, those local jurisdictions which exact any fee, permit, or inspection services shall waive the fees otherwise charged for building permit or inspection services on the reservation. The Tribe shall be empowered, but not required, to adopt building code provisions to be applied on the reservation in addition to, but not in derogation of, the York County Building Code, as amended from time to time.

17.2 Environmental Laws. All federal, state, and local environmental laws and regulations shall apply to the Tribe and to the reservation, and shall be fully enforceable by all relevant federal, state, and local agencies and authorities. Similarly, all requirements that a license, permit, or certificate be obtained from any federal, state, or local agency shall also apply to the Tribe and to the reservation. This provision shall include all such laws and regulations now in effect and all amendments adopted hereafter, including without limitation those laws listed in Exhibit C. This provision shall extend without limitation to all environmental laws and regulations adopted in the future. The Tribe, the Executive Committee, and all members of the Tribe shall have the same status under all such laws as other citizens or groups of citizens to contest, object to, or intervene in any proceeding or action in which environmental regulations are being made, adjudicated, or enforced, or in which licenses, permits, or certificates of convenience and necessity are being issued by any agency of federal, state, or local government. Notwithstanding any other provisions of law now or hereafter adopted, the Tribe shall not have special or preferential status in any such action or proceeding, or rights, privileges, or standing any greater than the rights, privileges, and standing allowed other citizens or citizen organizations. The Tribe shall have the authority to impose regulations applying higher environmental standards to the reservation than those imposed by federal or state law or by local governing bodies; but such tribal regulations shall apply only to the reservation, and not to property surrounding the reservation or non-reservation property, or to the use of the Catawba River. Such tribal regulations shall also not apply to activities or uses off the reservation, even if those activities affect air quality on the reservation. The Tribe shall not be authorized to invoke sovereign immunity against any suit, proceeding, or environmental enforcement action involving any federal, state, or local environmental laws or regulations, and shall be subject to all enforcement orders, restraining orders, fees, fines, injunctions, judgments and other corrective or remedial measures imposed by such laws. Provided, however, it is not the intent of the parties that the Tribe, or the Secretary when acting on behalf of the Tribe, be required to comply with duplicative federal laws and regulations that would not apply to Tribal or Secretarial actions if these actions were taken instead by a private corporation; and, recognizing that this provision may be insufficient to insure fulfillment of this intention, it is also the intent of the parties to seek, if necessary, in the implementing legislation a provision sufficient to fulfill the parties' intention in this regard.

17.3 Planning and Zoning. With respect to any land use regulation within the reservation, the Tribe shall have the power to adopt and enforce a land use plan after consultation with York County and Lancaster County, for those parts of the reservation located in those respective jurisdictions. The Tribe

and the affected governing bodies shall follow the consultative procedures created for settlement of the claim of the Puyallup Tribe in the State of Washington, as set out in House Report 101-57, pages 161-64. In determining whether to permit the construction of any buildings or improvements on the reservation, the Tribe shall consider (1) the protection of established or planned residential areas from any use or development that would adversely affect residential living off the reservation; (2) protection of the health, safety, and welfare of the surrounding community; and (3) preservation of open spaces, rivers, and streams, and provision of public facilities to support development.

17.4 Health Codes. All public health codes of the State of South Carolina and any county in which the reservation is located shall be applicable on the reservation.

17.5 Hunting and Fishing. Hunting and fishing, on or off the reservation, shall be conducted in compliance with the laws and regulations of the State of South Carolina. Members of the Tribe shall be subject to all state and local regulations governing hunting and fishing both on and off the reservation, except, however, during the period established by Section 3.2 of this Agreement members of the Tribe shall be entitled to personal state hunting and fishing licenses without payment of fees. However, the Tribe and its members shall be subject to the same fees and requirements as all other citizens of the State in applying for and obtaining commercial hunting and fishing licenses. The Tribe shall have the authority to impose hunting, fishing, and wildlife rules and regulations on the reservation that are stricter than those adopted by the State.

17.6 Riparian Rights. The littoral and riparian rights of the Catawba Indian Tribe in the Catawba River, or in any other streams or waters crossing their lands, shall not differ in any respect from the rights of other owners whose land abuts non-tidal bodies of water or non-tidal water courses in South Carolina. The rights and obligations covered by this provision shall include but not be limited to: (i) the title to the river bed; (ii) the right to flood, pond, dam, and divert waters of the river or its tributaries; (iii) the right to build docks and piers in the river; (iv) the right to fish in the river or its tributaries; and (v) the right to discharge waste or withdraw water from the river or its tributaries. The reservation is located on the Catawba River between two hydroelectric reservoirs licensed by the Federal Energy Regulatory Commission ("FERC"). The Tribe shall have the same rights and standing as all other riparian owners and users of the Catawba River to intervene in any proceeding or otherwise to contest or object to proposed actions or determinations of FERC or of any other governmental agency, commission, or court, whether federal, state, or local, with respect to the use of the Catawba River and its basin, including without limitation, withdrawal of water from the river; navigability on the river; and water power and hydroelectric usage of the river.

Notwithstanding any other provisions of law effective now or hereafter adopted, the Tribe will have no special right or preferential standing greater than other riparian owners and users of the Catawba River to intervene in or contest any such agency action, determination, or proceeding, including specifically any actions or determinations by FERC regarding the licensing, use, or operation of the waters impounded by the existing reservoirs above and below the reservation. These qualifications shall apply to the existing reservation, to lands acquired for the expanded reservation, to any other lands acquired by or for the benefit of the Tribe, and to non-reservation lands.

17.7 Alcoholic Beverages. Alcohol shall be prohibited on the reservation unless the Tribe adopts laws permitting the sale, possession, or consumption of alcohol on the reservation. In such case, the Tribe shall adopt laws or ordinances that incorporate all state standards and regulations regarding hours, sales to minors, employment, consumption, possession, and standards for licensing; except, however, that the Tribe may impose stricter standards and regulations than those prescribed by state law. If beer, wine, and liquor are sold on the reservation, licenses must be issued by the State in accordance with South Carolina law; and all beer, wine, and liquor taxes will be paid to the State in accordance with South Carolina law.

18. Taxation.

18.1 Indian Tribal Government Tax Status Act. The Indian Tribal Government Tax Status Act, 26 U.S.C Section 7871, shall apply to the Tribe and its reservation. In no event, however, may the Tribe pledge or hypothecate the income or principal of the Education or Social Services and Elderly Trust Funds or otherwise use them as security or a source of payment for bonds the Tribe may issue.

18.2 General Tax Liability. The Tribe, its members, the Tribal Trust Funds, and any other persons or entities affiliated with or owned by the Tribe, members of the Tribe, or the Tribal Trust Funds, whether resident, located, or doing business on the reservation or off the reservation, shall be subject to all federal, state, and local income taxes, sales taxes, real and personal property taxes, excise taxes, estate taxes, and all other taxes, licenses, levies, and fees, except as expressly provided in this Agreement. Any other person or business entity which locates, operates, or does business on the reservation shall be subject without exception to all federal, state, and local taxes, licenses, and fees, unless otherwise expressly provided in this Agreement. To the extent that the Tribe may be subject to any taxes under this section, the Tribe shall be taxed as if it were a business corporation incorporated under the laws of South Carolina unless otherwise expressly provided.

18.3 Bingo Taxes. If the Tribe elects to sponsor and conduct games of bingo under the provisions of Section 16 of this

Agreement, the gross revenues generated by such bingo games will be subject to the 10% tax levy specified in Section 16 exclusively, and no other federal, state or local taxes shall apply to revenues generated by the bingo games which are received by the Tribe. If the Tribe elects to sponsor and conduct games of bingo under a regular license allowed non-profit organizations under the Bingo Act, the Tribe will be taxed as a non-profit corporation under the Bingo Act with respect to all revenues generated from the bingo games.

18.4 Income Taxes.

18.4.1 The Tribe and Tribal Trust Funds. Income of the Tribe, subdivisions and agencies of the Tribe, including entities owned by the Tribe or the Federal Government and the Tribal Trust Funds, and tax revenues collected by the Tribe by levy or assessment, shall be non-taxable for federal income tax purposes to the extent provided by federal law for recognized or restored Indian Tribes. Any tribal income and tax revenues which are non-taxable for federal income tax purposes because of the Tribe's status as a recognized or restored Indian Tribe shall also be non-taxable for purposes of any state and local taxes on income.

18.4.2 Members of Tribe. Members of the Tribe shall be liable for payment of federal, state and local income taxes to the same extent as any other person in the state, except that income earned by members of the Tribe for work performing governmental functions solely on the reservation shall be exempt from state taxes during the period established by Section 3.2 of this Agreement, and income earned by members of the Tribe from the sale of Catawba Indian pottery and artifacts, whether on or off the reservation, which are made by members of the Tribe, shall be exempt from state, federal, and local income taxes. For purposes of federal income taxes, the income of members earned on the reservation shall be taxable to the extent provided by federal law for members of recognized or restored Indian tribes. No funds distributed per capita pursuant to Section 13.5 shall be subject at the time of distribution to federal, state or local income taxes; however, income subsequently earned on shares distributed to members of the Tribe shall be subject to the same federal, state, and local income taxes as other persons in the state would pay. Compensation paid to Executive Committee members shall be subject to federal payroll taxes to the extent provided by Federal law for members of tribal councils of recognized or restored Indian tribes.

18.4.3 Taxation of Others on the Reservation. Any person or other entity which is not exempt from income taxes under Sections 18.4.1 or 18.4.2 shall be liable for all federal, state, and local income taxes otherwise due regardless of whether or not they are doing business on the Reservation.

18.5 Real Property Taxes.

18.5.1 Exemption of Tribal Real Property. All lands held in trust by the United States for the Tribe as part of the reservation shall be exempt from all property taxes levied by

the State or by any county and school district or special purpose district. All buildings, fixtures, and real property improvements owned by the Tribe or held in trust by the United States for the Tribe on the reservation shall be exempt from all property taxes levied by the State or by any county and school district or special purpose district during the period established in Section 3.2 of this Agreement. If the Tribe owns a partial interest in property or a business, the property tax exemption provided in this section is applicable to the extent of the Tribe's interest during the period established in Section 3.2.

18.5.2 Exemption of Members' Real Property. Single and multi-family residences, including mobile homes, that are situated on the reservation shall be exempt from all property taxes levied by the State or by any county or special purpose district, provided that (i) they are owned by the Tribe, members of the Tribe or Tribal Trust Funds during the period established by Section 3.2 of this Agreement, and (ii) occupied by members of the Tribe or the surviving spouse of a deceased member of the Tribe. For purposes of this section, residential property shall be deemed owned by a member of the Tribe if the member or the surviving spouse of a member owns at least a one-half undivided interest in the property; and property shall be deemed occupied by members of the Tribe if at least one member or the surviving spouse of a member is living in the single-family residence or in each unit of any multi-family residence.

18.5.3 Taxation of Other Real Property. All buildings, fixtures, and real property improvements located on the reservation which are not exempt from real property taxes under sections 18.5.1 or 18.5.2 shall be subject to all property taxes levied by the State, county, and any school district or special purpose to the same extent that similar buildings, fixtures, or improvements are assessed and taxed elsewhere in the same jurisdiction. However, the underlying land or leasehold in the land will not be subject to real property taxes. All buildings, fixtures, and improvements subject to real property taxes shall be eligible for any tax abatement or temporary exemption allowed new business investments to the same extent as similar properties qualify for exemption or abatement in the same county.

18.5.4 Tribal Property Taxes. The Tribe shall be authorized to levy taxes on buildings, fixtures, improvements, and personal property located on the reservation, even though such properties may be exempt from property taxation by the state or its subdivisions, and may use such tax revenues for appropriate tribal purposes. The Tribe may also exempt or abate any such taxes. York and Lancaster Counties and the South Carolina Tax Commission will provide the necessary assistance to the Tribe if the Tribe chooses to assess tribal real property taxes as if they were property taxes imposed by a political subdivision.

18.5.5 Taxation of Non-Reservation Properties. Real property and improvements owned by the Tribe or by members

of the Tribe or by both, and not located on the reservation shall be subject to all property taxes levied by the State and the county and by the school district and any special purpose districts or other political subdivisions where such property is located.

18.5.6 Fee in Lieu of Taxes on Non-reservation Property Held in Trust. All non-reservation real property held in trust by the Secretary shall be subject to the payment of a fee or fees in an amount equivalent to the real property tax that would have been paid to the applicable taxing authority had the property not been held in trust.

18.6 Personal Property Taxes.

18.6.1 Personal Property Owned by Tribe. All personal property owned by the Tribe during the period established by Section 3.2 of this Agreement and used solely on the reservation shall be exempt from personal property taxes. Except, however, motor vehicles owned by the Tribe during the period shall be exempt from personal property taxes even if used off the reservation.

18.6.2 Personal Property Owned by Tribal Members. All personal property owned by members of the Tribe shall be subject to personal property taxes levied by the State and by the county, school district, special purpose district, and other subdivision of the State, where the property is deemed to be located.

18.6.3 Taxation of Other Personal Property. All personal property located on the reservation which is not exempt from personal property taxes under Section 18.6.1 shall be subject to personal property taxes levied by the State, county and any school or special purpose district encompassing the reservation to the same extent that similar personal property is assessed and taxed elsewhere in the jurisdiction.

18.6.4 For purposes of Sections 18.5.1 through 18.6.3, the person or entity who is liable under South Carolina property tax law for payment of property taxes is considered the owner of the property.

18.7 Levy against property for failure to pay Property Taxes. If any taxpayer subject to property taxes under paragraph 18.5.1 through 18.6.3 fails to pay the taxes, the county shall have the power to levy against any personal property subject to personal property taxes owned by the taxpayer within the county whether on or off the reservation in order to satisfy the taxes due. If this levy against the personal property is not sufficient to satisfy the tax lien, the county may contact the State and the State will levy against other taxable property of the taxpayer in the State and remit any proceeds to the county which is owed the tax. If the county cannot satisfy its lien, the county may require the Tribe to cease allowing the taxpayer to do business on the Reservation. However, if the taxpayer is in bankruptcy, the bankruptcy statutes shall apply to this provision. In no event may the county seize real property located on the reservation.

18.8 Vehicle License Fees. The Tribe and its members shall be subject to all license and registration fees and requirements, all periodic inspection fees and requirements, and all fuel taxes imposed by federal, state, and local governments on motor vehicles, boats, and airplanes, and other means of conveyance.

18.9 Sales and Use Taxes. The Tribe, its members, and the Tribal Trust Funds shall be liable for the payment of all state and local sales and use taxes to the same extent as any other person or entity in the state, except as specifically provided below.

18.9.1 Tribal Purchases Exemption. Purchases made by the Tribe for tribal government functions during the period established by Section 3.2 of this Agreement shall be exempt from state and local sales and use taxes.

18.9.2 Catawba Pottery Exemption. Catawba pottery and artifacts made by members of the Tribe and sold on or off the reservation by the Tribe or members of the Tribe shall be exempt from state and local sales and use tax.

18.9.3 Tribal Sales Tax. During the period established by Section 3.2 of this Agreement, the sale on the reservation of all other items, whether made on or off the reservation, shall be exempt from state and local sales and use taxes, but shall be subject to a special tribal sales tax levied by the Tribal Council equal to the state and any local sales tax that would be levied in the jurisdiction encompassing the reservation but for this exemption. The South Carolina sales and use tax laws, regulations, and rulings shall apply to the special tribal sales tax, and the special tribal sales tax will be administered and collected by the South Carolina Tax Commission. The South Carolina Tax Commission will separately account for the special tribal sale tax, and the State Treasurer will remit the special tribal sales tax revenues periodically to the Tribe at no cost to the Tribe. The tribal sales tax shall not apply to retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are $100 or less. In such case, the State sale tax shall apply. The Tribe may impose a tribal use tax on the storage, use or other consumption on the reservation of tangible personal property purchased at retail outside the State when the vendor does not collect the tax. However, any use taxes which are collected by a vendor which is not located in the state will be subject to state use taxes and the use tax will be remitted to the state and not the Tribe. Any use taxes not collected by the vendor and remitted to the state will be subject to the Tribal use tax and must be collected directly by the Tribe.

18.10 Payments in Lieu of Taxes. The Tribe, during the period established for State benefits in Section 3.2, shall pay a fee in lieu of school taxes. That fee shall be determined by the county in the same manner and shall be the same amount that is paid by students from outside the county entering schools in the county. The fee payable by the Tribe shall be reduced by

any funds received by the government for Impact Aid under Sections 20 U.S.C. 236 et. seq. or any other federal funds designed to compensate school districts for loss of revenue due to the non-taxability of Indian property. Any fee paid on behalf of a child under this section will be excluded from federal and state income of the child or his family for federal and state income tax purposes.

18.11 Estate Taxes. Members of the Tribe shall be liable for payment for all estate and inheritance taxes, except, however, that the undistributed share of any member in the trust fund established pursuant to Section 13.7 shall be exempt from federal and state estate and inheritance taxes.

18.12 Eligibility for Consideration to Become an Enterprise Zone or General Purpose Foreign Trade Zones. The Tribe shall be eligible for consideration to become an enterprise zone or Foreign Trade Zone within the meaning of the Foreign Trade Zones Act of 1934 to the same extent as other federally recognized Indian tribes.

19. General Provisions.

19.1 General Applicability of State Law. Except as expressly otherwise provided in the implementing legislation, the Tribe and its members, any lands or natural resources owned by the Tribe, and any land or natural resources held in trust by the United States or by any other person or entity for the Tribe, shall be subject to the laws of the State and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land in the State.

19.2 Nonadmissibility. This Agreement represents the compromise settlement of the Tribe's claim, and no term, condition, part, or provision of this Agreement shall be deemed an admission of liability on the part of any of the parties to this Agreement or the holder of property in the claim area in any pending or future suit in connection with the Tribe's claim.

19.3 Impact of Subsequently Enacted Laws. The provisions of any Federal law enacted after the date of enactment of the Federal law implementing this Agreement shall not apply in the State if such provision would materially affect or preempt the application of the laws of the State, including application of the laws of State to lands owned by or held in trust for Indians, or Indian Nations, tribes or bands of Indians. However, such federal law shall apply within the State if the State grants its approval by a law or joint resolution enacted by the General Assembly of South Carolina and signed by the Governor.

19.4 Severability. The implementing legislation shall provide that if the provisions of Sections 4 or 6 of this Agreement, once incorporated into the implementing legislation, are held invalid, then all of the implementing legislation is invalid. Should any other section of this Agreement be held invalid once incorporated into the implementing legislation, the remaining sections of the implementing legislation shall remain in full force and effect.

Exhibit F

PASSED

Cherokee Council House
Cherokee, North Carolina
OCT 22 2013
Date

Resolution No. 10 (2013)

WHEREAS, Eastern Band Cherokee leaders recently became aware of the Catawba Indian Nation's application to the Bureau of Indian Affairs to have 16 acres of land in Cleveland County, North Carolina, taken into trust;

WHEREAS, the land the Catawba Indian Nation seeks to acquire and convert into trust status is located within the aboriginal territory of the Cherokee, as defined by the Cherokee Treaty of July 20, 1777, the 1884 Royce Map of Cherokee Land Sessions, and a well-established historical record of the Cherokees defending the Cleveland County area against Catawba encroachment;

WHEREAS, a well-established historical record also demonstrates that the Catawba Indian Nation does not have aboriginal ties to Cleveland County, North Carolina;

WHEREAS, the Eastern Band Cherokee Tribal Historical Preservation Office (THPO) is charged with protecting Cherokee archaeological and cultural resources, ensuring historic preservation of significant Cherokee sites, and protecting Cherokee burials from disturbance and excavation;

WHEREAS, the Eastern Band THPO has acted to protect Cherokee cultural resources in Cleveland County, North Carolina;

WHEREAS, the sole reason the Catawba Indian Nation, which is based in South Carolina, has indicated that it wants to acquire this land in North Carolina is to find a more accommodating legal environment to build a casino;

WHEREAS, encroachment of one Indian tribe into the aboriginal territory of another tribe causes unnecessary conflict between tribes;

WHEREAS, the federal laws that the Catawba Indian Nation relies upon to support its efforts to acquire land and build a casino in North Carolina simply do not allow the Tribe to cross state lines into North Carolina, acquire lands into federal trust, and build a casino. Statements to the contrary are legally incorrect and should not be relied upon by federal, state, or local government officials;

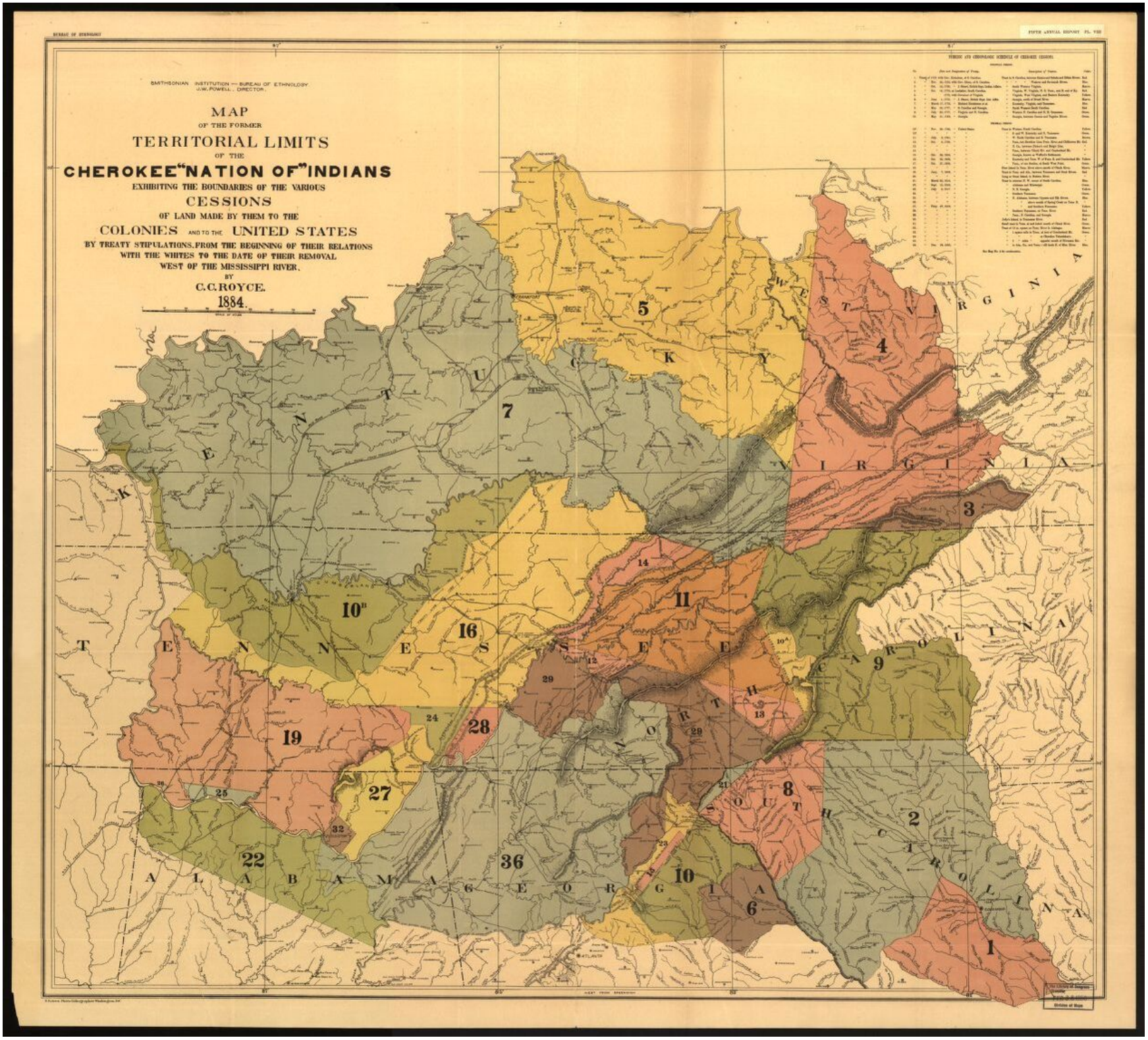
WHEREAS, the United South and Eastern Tribes (USET) has passed a resolution opposing tribes crossing state lines to acquire land in another tribe's territory, which the Catawba Indian Nation supported, and the Catawba Indian Nation should adhere to that inter-tribal policy statement.

THEREFORE, BE IT RESOLVED, THAT the Eastern Band of Cherokee Indians opposes any effort by the Catawba Indian Nation or another Indian tribe to encroach on the aboriginal territory of the Eastern Band and establish a new reservation in Cherokee territory.

BE IT FINALLY RESOLVED that this resolution become effective upon ratification of the Principal Chief.

Submitted by: Tribal Council

Exhibit G



CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS	DEFENDANTS
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ (EXCEPT IN U.S. PLAINTIFF CASES)	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION
(PLACE AN x IN ONE BOX ONLY)

- O 1 U.S. Government Plaintiff
- O 2 U.S. Government Defendant
- O 3 Federal Question (U.S. Government Not a Party)
- O 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	O 1	O 1	Incorporated or Principal Place of Business in This State	O 4	O 4
Citizen of Another State	O 2	O 2	Incorporated and Principal Place of Business in Another State	O 5	O 5
Citizen or Subject of a Foreign Country	O 3	O 3	Foreign Nation	O 6	O 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

O A. *Antitrust*

410 Antitrust

O B. *Personal Injury/ Malpractice*

310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Medical Malpractice
365 Product Liability
367 Health Care/Pharmaceutical Personal Injury Product Liability
368 Asbestos Product Liability

O C. *Administrative Agency Review*

151 Medicare Act

Social Security
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))

Other Statutes
891 Agricultural Acts
893 Environmental Matters
890 Other Statutory Actions (If Administrative Agency is Involved)

O D. *Temporary Restraining Order/Preliminary Injunction*

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

O E. *General Civil (Other)* **OR** **O F. *Pro Se General Civil***

Real Property
210 Land Condemnation
220 Foreclosure
230 Rent, Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property

Personal Property
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability

Bankruptcy
422 Appeal 27 USC 158
423 Withdrawal 28 USC 157

Prisoner Petitions
535 Death Penalty
540 Mandamus & Other
550 Civil Rights
555 Prison Conditions
560 Civil Detainee – Conditions of Confinement

Property Rights
820 Copyrights
830 Patent
835 Patent – Abbreviated New Drug Application
840 Trademark

Federal Tax Suits
870 Taxes (US plaintiff or defendant)
871 IRS-Third Party 26 USC 7609

Forfeiture/Penalty
625 Drug Related Seizure of Property 21 USC 881
690 Other

Other Statutes
375 False Claims Act
376 Qui Tam (31 USC 3729(a))
400 State Reapportionment
430 Banks & Banking
450 Commerce/ICC Rates/etc.
460 Deportation
462 Naturalization Application
465 Other Immigration Actions
470 Racketeer Influenced & Corrupt Organization
480 Consumer Credit
490 Cable/Satellite TV
850 Securities/Commodities/ Exchange
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes
890 Other Statutory Actions (if not administrative agency review or Privacy Act)

O **G.** ***Habeas Corpus/ 2255*** **530 Habeas Corpus – General** **510 Motion/Vacate Sentence** **463 Habeas Corpus – Alien Detainee**	O **H.** ***Employment Discrimination*** **442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)** ***(If pro se, select this deck)***	O **I.** ***FOIA/Privacy Act*** **895 Freedom of Information Act** **890 Other Statutory Actions (if Privacy Act)** ***(If pro se, select this deck)***	O **J.** ***Student Loan*** **152 Recovery of Defaulted Student Loan (excluding veterans)**
O **K.** ***Labor/ERISA (non-employment)*** **710 Fair Labor Standards Act** **720 Labor/Mgmt. Relations** **740 Labor Railway Act** **751 Family and Medical Leave Act** **790 Other Labor Litigation** **791 Empl. Ret. Inc. Security Act**	O **L.** ***Other Civil Rights (non-employment)*** **441 Voting (if not Voting Rights Act)** **443 Housing/Accommodations** **440 Other Civil Rights** **445 Americans w/Disabilities – Employment** **446 Americans w/Disabilities – Other** **448 Education**	O **M.** ***Contract*** **110 Insurance** **120 Marine** **130 Miller Act** **140 Negotiable Instrument** **150 Recovery of Overpayment & Enforcement of Judgment** **153 Recovery of Overpayment of Veteran's Benefits** **160 Stockholder's Suits** **190 Other Contracts** **195 Contract Product Liability** **196 Franchise**	O **N.** ***Three-Judge Court*** **441 Civil Rights – Voting (if Voting Rights Act)**

V. ORIGIN

O **1 Original Proceeding** O **2 Removed from State Court** O **3 Remanded from Appellate Court** O **4 Reinstated or Reopened** O **5 Transferred from another district (specify)** O **6 Multi-district Litigation** O **7 Appeal to District Judge from Mag. Judge** O **8 Multi-district Litigation – Direct File**

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23	**DEMAND $** **JURY DEMAND:**	Check YES only if demanded in complaint **YES** **NO**
VIII. RELATED CASE(S) IF ANY	(See instruction)	**YES** **NO**	If yes, please complete related case form

DATE: _____ **SIGNATURE OF ATTORNEY OF RECORD** _____

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____
Plaintiff(s)

v.

_____
Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____
Plaintiff(s)

v.

_____
Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

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❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____
Plaintiff(s)

v.

Civil Action No.

_____
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

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❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____
Plaintiff(s)

v.

_____
Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

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❒ Other *(specify):*

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I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____
Plaintiff(s)

v.

Civil Action No.

_____
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

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❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

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I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____
Plaintiff(s)

v.

_____
Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____
Plaintiff(s)

v.

Civil Action No.

_____
Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

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Signature of Clerk or Deputy Clerk

Civil Action No.

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❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: