



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

AUG 13 2024

The Honorable Bruce Westerman
Chairman, Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Westerman:

Thank you for your letters dated June 11, and July 3, 2024, to Secretary Haaland seeking information on how the Department of the Interior (Department) processes fee-to-trust applications for gaming purposes. Secretary Haaland has asked me to respond on her behalf and I am pleased to do so.

As the Committee is aware, the Department is bound by the laws passed by Congress authorizing the Secretary of the Interior (Secretary) to acquire land in trust for Tribes: the Indian Reorganization Act of 1934 (IRA) and certain Tribe-specific laws. As codified at 25 USC § 2719, the Indian Gaming Regulatory Act (IGRA) generally prohibits gaming on lands acquired in trust after October 17, 1988, with exceptions only as specified in that provision. The IGRA's general prohibition is the primary barrier for Tribes seeking to have land taken into trust for gaming. Each application the Department reviews has its own unique facts and circumstances, which vary significantly, and the Department thoroughly reviews each application for compliance with the laws that govern the fee-to-trust process and IGRA.

The Department is also bound by the processing requirements of the National Environmental Policy Act (NEPA), which require the Department to carefully evaluate the impacts of a proposed action before taking any final agency action. Congress recently amended NEPA, and the Council on Environmental Quality issued its Phase 2 regulations implementing NEPA on May 1, 2024.¹ The Department is working diligently to ensure it complies with both the letter and spirit of NEPA, including the timelines Congress recently provided. We carefully review requests to extend comment periods and make individualized determinations based on the relevant facts of the extension request and the underlying application. The Department's compliance with NEPA analyzes a proposed gaming project's impacts on existing development, including other Tribally owned gaming facilities.

The IGRA does not provide Tribes with any expectation or guarantee that their gaming operations will exist in an environment free of competition.² Also, the Department's trust

¹ National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 FR 35442, published on May 1, 2024 with an effective date of July 1, 2024.

² The IGRA does not guarantee existing Tribal operations gaming free from economic competition or protection from other Tribes conducting gaming in the same economic market area, which is not a new interpretation or implementation. *See* Dept. of the Interior, Menominee Tribe Two-Part Secretarial Determination Letter, (August 23,

obligation to Tribes does not require the Department to protect existing Tribal gaming operations from the introduction of competition by another Tribe.³ The Department's trust obligation requires the Department to provide fair and equitable application of the law in furtherance of Congress' principal Federal Indian policy goal "to promote tribal economic development, tribal self-sufficiency, and strong tribal governments" for all Federally recognized Tribes.⁴

Congress provided a group of three exceptions in 25 USC § 2719(b)(1)(B) to the general prohibition against gaming on land taken into trust after October 17, 1988; these exceptions are the settlement of a land claim exception, the initial reservation exception, and the restored lands exception. These exceptions ensure that Tribes lacking reservations when IGRA was passed are not disadvantaged relative to more established ones.⁵ The restored lands exception is intended to compensate restored Tribes not only for what they lost by federal termination, but also for the

2013); *see also* Dept. of the Interior, Spokane Tribe Two-Part Secretarial Determination Letter (June 15, 2015). The court has consistently reinforced the Department's determinations regarding lack of protection from economic competition from other Tribes. *See, e.g., Kalispel Tribe of Indians v. United States DOI*, 999 F.3d 683 (9th Cir. 2021) (upholding the Spokane Determination even when the competing Tribal casino was located two miles away.) The Department's position is also reflected in the long-held prohibition on provisions in Tribal-State compacts that would expressly limit third party Tribes' rights. *See, e.g.,* Letter from Gale Norton, Secretary of the Interior, to Cyrus Schindler, Nation President, Seneca Nation of Indians dated November 12, 2002, discussing the limits placed on Tonawanda Band and the Tuscarora Nation in the Seneca Nation's exclusivity provisions, and describing such provisions as "anathema to the basic notion of fairness in competition and . . . inconsistent with the goals of IGRA"; Letter from Aurene Martin, Assistant Secretary—Indian Affairs (acting), to Harold "Gus" Frank, Chairman, Forest County Potawatomi Community, dated April 25, 2003, addressing the parties removal of section XXXI.B which created a 50-mile 'no fly zone' around the Tribe's Menominee Valley facility and explained "we find a provision excluding other Indian gaming anathema to basic notions of fairness in competition and inconsistent with the goals of IGRA"; Letter from Aurene Martin, Assistant Secretary—Indian Affairs (acting), to Troy Swallow, President, Ho-Chunk Nation, dated August 15, 2003, addressing section XXVII(b), limiting the Governor's ability to concur in a two-part Secretarial Determination under section 20(b)(1)(A) of IGRA for another Tribe as "repugnant to the spirit of IGRA"; Letter from Kevin Washburn, Assistant Secretary—Indian Affairs, to Harold Frank, Chairman, Forest County Potawatomi Community dated January 9, 2013, disapproving an amendment which would have made the Menominee Tribe guarantee Potawatomi's Menominee Valley facility profits as a condition of the Governor's concurrence for Menominee's Kenosha two-part Secretarial Determination, *affirmed by Forest Cty. Potawatomi Cmty. v. United States*, 330 F. Supp. 3d 269 (D.D.C. 2018) (holding the Secretary's disapproval of an amendment to a Tribal-state compact was not arbitrary or capricious, neither was the conclusion that the compact was contrary to IGRA because it called for mitigation payments that guaranteed the plaintiff Tribe's profits by another Tribe). *See also* Letter from Bryan Newland, Assistant Secretary—Indian Affairs to Claudia Gonzales, Chairwoman, Picayune Rancheria of Chukchansi Indian of California, dated November 5, 2021, at 13. The Department Final Part 293 Rule includes the prohibition of provisions which expressly limit third party Tribes' rights to conduct gaming activities under IGRA. 25 C.F.R. 293.23(c)(1).

³ *See, e.g., Kalispel Tribe of Indians v. United States DOI*, 999 F.3d 683 (9th Cir. 2021) holding the Department's prior two-step determination in favor of the Spokane Tribe opening a new casino two miles away from Kalispel's Northern Quest casino was neither arbitrary nor capricious given the Department's trust relationship extends to all Tribes and to "not favor one tribe over another." *See also, Stand Up for California v. U.S. Dep't of the Interior*, 919 F.Supp.2d 51, 76 (D.D.C. 2013) finding where a proposed gaming facility would create competition, but the competition would not jeopardize the competing casino's viability, the Secretary's determination that "such competition would not be significantly detrimental" was rational.

⁴ 25 USC § 2701(4).

⁵ *See, e.g., Scotts Valley Band of Pomo Indians v. United States DOI*, 633 F. Supp. 3d 132, 136 (D.D.C. 2022), citing to *Butte County v. Chaudhuri*, 887 F.3d 501, 503, (D.C. Cir. 2018), quoting *City of Roseville v. Norton*, 348 F.3d 1020, 1030, (D.C. Cir. 2003).

opportunities the Tribes lost in the interim while terminated.⁶ As intended by Congress, these exceptions have provided many Tribes a vital avenue for establishing not only a land base over which the Tribe can exercise its sovereignty, but also economic self-sufficiency.⁷

The Department is committed to faithfully executing both the letter and the spirit of IGRA, its implementing regulations, and current case law to ensure restored Tribes are able to utilize this avenue for economic self-sufficiency. When we promulgated the final regulations codified in 25 CFR Part 292, we explained the Department's understanding of Congress' restorative intent behind the restored lands exception in IGRA.⁸ The Department's regulations at 25 CFR § 292.10 were promulgated to be consistent with case law and they recognize the three key pathways for a Tribe to be restored to federal recognition:

- (a) Congressional restoration through legislation;
- (b) Administrative restoration through the 25 CFR Part 83 Federal Acknowledgement Process; and
- (c) Judicial restoration through a Federal court order in which the U.S. is a party, or court-approved settlement agreement entered into by the U.S.

Section 292.11 sets forth the separate pathways for land to qualify as restored lands dependent upon the method utilized for the Tribe's restoration. Section 292.11(a) addresses legislative restoration and recognizes some Tribal restoration acts include specific Secretarial authorization for acquisition of land within a geographic area. In those situations, land within the congressionally specified geographic area will be considered restored lands for the purpose of IGRA. See 292.11(a)(1). If Congress did not specify a geographic area, the Tribe must meet the requirements of section 292.12, including providing evidence of a "significant historical connection." During its rule making the Department received a number of comments seeking a more restrictive standard than "significant historical connection" but ultimately rejected more restrictive standards and explained such restrictions did not have a basis in IGRA. Some of the more restrictive standards included: "exclusive use and occupancy," "uninterrupted connection," a Tribe's "ancestral [or aboriginal] homelands," as well as requirements to "acquire their former reservation land if it is available" or "analyze sites that are close to [ancestral or] aboriginal homelands." The Department specifically rejected ancestral or aboriginal homelands because "newly acquired lands with significant historical connections may or may not include those that are close to aboriginal homelands."⁹ Again, the IGRA did not discuss shared territories or aboriginal homelands.

Further, nothing in IGRA or its implementing regulations requires the Department to take into consideration the operation of another Indian Tribe's existing casino when processing a Tribe's restored lands application. The Department carefully applies both the Part 151 and Part 292 regulations, as well as any other relevant laws, when processing a Tribe's restored lands

⁶See, e.g., *Scotts Valley* at 147, citing to *Koi Nation of N. Cal. v. United States DOI*, 361 F. Supp. 3d 14, 47 (D.D.C. 2019), which quoted *City of Roseville* at 1029.

⁷ Enclosure II contains a list of the Department's favorable restored lands decisions and has been used more frequently than either the Initial Reservation or the Settlement of a Land Claim exceptions.

⁸ Notice of rulemaking 25 CFR Part 292, Gaming on Trust Lands Acquired After October 17, 1988; 73 Fed. Reg. 29354 (May 20, 2008).

⁹ *Id.*

application. The Department reviews the application according to its unique facts and circumstances and strictly adheres to the relevant laws governing the process and any application-specific court orders. As discussed above, impacts to other Tribes' existing gaming operations are considered as part of the Department's compliance with NEPA but are not a factor in either the Department's Part 151 regulations governing the fee-to-trust process or the Department's Part 292 regulations governing the application of the restored lands exception.

The Department has not reevaluated its 2008 Part 292 regulations, however, we have been directed by the courts on our permissible interpretation and implementation of those regulations. The courts have found the Department's processing of applications for restored lands for a restored Tribe as rational, when consistent with Congress' restorative intent. The courts have also remanded cases to the Department for further consideration when the Department narrowly interpreted Congress' restorative intent. As noted above, the courts have read the restored lands exception broadly within a framework of restitution to remedy decades of improper treatment of terminated Tribes and as compensation for not only what a Tribe lost by the act of termination but also for lost opportunities in the interim.

I have provided a list of pending gaming applications as an enclosure to this letter. I will note this list has changed some from a list I provided during testimony earlier this year. I have also provided as a second enclosure a list of favorable decisions restoring lands for restored Tribes. Finally, the Department has not seen an increase in fee-to-trust applications for gaming projects since the final fee-to-trust regulations at 25 CFR Part 151 went into effect on January 11, 2024.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs

Enclosures:

List of Pending Gaming Applications dated July 9, 2024

List of Approved Restored Lands Applications dated July 9, 2024

PENDING GAMING APPLICATIONS
Office of Indian Gaming
U.S. Department of the Interior
July 9, 2024

REGION/TRIBE	ACRES & LOCATION	IGRA EXCEPTION
Alaska Region		
Native Village of Ninilchik ¹	29 acres - Ninilchik, AK	Two-Part 25 USC 2719(b)(1)(A)
EASTERN REGION		
Cayuga Nation	13.99 acres - Seneca County, NY	On-Reservation 25 USC 2719(a)(1)
Osage Nation	28 acres – Lack Ozark, MO	Two-Part 25 USC 2719(b)(1)(A)
EASTERN OKLAHOMA REGION		
Cherokee Nation	14.99 acres - Bartlesville, OK	On-Reservation 25 USC 2719(a)(1)
United Keetoowah Band of Cherokee Indians in Oklahoma	2.63 acres - Tahequah, Cherokee County, OK	On-Reservation 25 USC 2719(a)(1)
GREAT PLAINS REGION		
Lower Brule Sioux Tribe of the Lower Brule Reservation	92 acres - Oacoma, SD (Land already in trust)	Two-Part 25 USC 2719(b)(1)(A)
Oglala Sioux Tribe	20.15 acres - Bennett County, SD	On-Reservation 25 USC 2719(a)(1)
MIDWEST REGION		
Menominee Indian Tribe of Wisconsin	59 acres - Kenosha, WI	Two-Part 25 USC 2719(b)(1)(A)
Prairie Island Indian Community in the State of Minnesota	419.83 acres - Pine Island, MS	Two-Part 25 USC 2719(b)(1)(A)
NAVAJO REGION		
Navajo Nation	13.79 acres - Flagstaff, AZ	Settlement of a Land Claim 25 USC 2719(b)(1)(B)(i)
NORTHWEST REGION		
Confederated Tribes of Siletz Indians of Oregon	20 acres - Salem, OR (Land already in trust)	Two-Part 25 USC 2719(b)(1)(A)
Confederated Tribes of the Chehalis Reservation	Tumwater, Washington (land in trust)	Two-Part 25 USC 2719(b)(1)(A)
Confederated Tribes of the Colville Reservation	160 acres - Pasco, WA	Two-Part 25 USC 2719(b)(1)(A)
Coquille Indian Tribe	2 acres - Medford, OR	Restored Lands 25 USC 2719(b)(1)(B)(iii)
Muckleshoot Indian Tribe	184.39 acres - Emerald Downs, Auburn, WA	Two-Part 25 USC 2719(b)(1)(A)
Nisqually Indian Tribe	74 acres - Lacey, WA	Two-Part 25 USC 2719(b)(1)(A)
Samish Indian Nation	11.41 acres - Anacortes, Skagit County, WA	Initial Reservation 25 USC 2719(b)(1)(B)(ii)
Shoshone-Bannock Tribes of the Fort Hall Reservation	157 acres - Elmore County, ID	Two-Part 25 USC 2719(b)(1)(A)
Skokomish Indian Tribe	43.5 acres - Kitsap County, WA	Two-Part 25 USC 2719(b)(1)(A)

¹ This application was returned to the Tribe for additional information and is pending resubmission.

PENDING GAMING APPLICATIONS
Office of Indian Gaming
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July 9, 2024

REGION/TRIBE	ACRES & LOCATION	IGRA EXCEPTION
PACIFIC REGION		
Guidiville Rancheria of California	Site to be determined ²	Restored Lands
Koi Nation of Northern California	68.6 acres - Sonoma County CA	Restored Lands 25 USC 2719(b)(1)(B)(iii)
Los Coyotes Band of Cahuilla & Cupeno Indians of California	20 acres - Barstow, CA	Two-Part 25 USC 2719(b)(1)(A)
Scotts Valley Band of Pomo Indians of California	128 acres - Vallejo, CA	Restored Lands 25 USC 2719(b)(1)(B)(iii)
SOUTHWEST REGION		
Fort Sill Apache Tribe of Oklahoma	40 acres - Luna County, NM	Two-Part (Land already in trust)

² Tribe requested an equitable tolling of 25 C.F.R. § 292.12(c)(2) determination based on Departmental delays in issuing a prior Indian Lands Decision and subsequent litigation which totaled an approximately 13-year delay. The Tribe has not yet identified a new restored lands site or submitted new information to support reconsideration of the Department's prior unfavorable determination.

**Applications Approved Pursuant to the Restored Lands Exception in
Section 2719(b)(1)(B)(iii) of the Indian Gaming Regulatory Act
Following Its Enactment on October 17, 1988**

Office of Indian Gaming
U.S. Department of the Interior
July 9, 2024

	Tribe	City, County & State	Date Approved
25 U.S.C. 2719 (b)(1)(B)(iii): Restored lands for a tribe that is restored to federal recognition			
1	Confederated Tribes of the Grand Ronde Community	Grand Ronde, Polk County, Oregon	03/05/1990
2	Coquille Indian Tribe	North Bend, Coos County Oregon	06/22/1994
3	Confederated Tribes of Siletz Indians	Lincoln City, Lincoln County, Oregon	12/13/1994
4	Coquille Indian Tribe	Coos Bay, Coos County, Oregon	02/01/1995
5	Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians	“Hatch Tract,” Lane County, Oregon	01/28/1998
6	Little River Band of Ottawa Indians	Manistee, Manistee County, Michigan	09/24/1998
7	Little Traverse Bay Bands of Odawa Indians	Petoskey, Emmett County, Michigan	08/27/1999
8	Paskenta Band of Nomlaki Indians	Corning, Tehema County, California	11/30/2000
9	Lytton Rancheria	San Pablo, Contra Costa County, California	01/18/2001
10	Pokagon Band of Potawatomi Indians	New Buffalo, Berrien County, Michigan	01/19/2001
11	United Auburn Indian Community	Placer County, California	02/05/2002
12	Ponca Tribe of Indians	Crofton, Knox County, Nebraska	12/20/2002
13	Little Traverse Bay Bands of Odawa Indians	Petoskey, Emmett County, Michigan	07/18/2003
14	Elk Valley Rancheria	Del Norte County, California	01/04/2008
15	Mechoopda Indian Tribe of Chico Rancheria	Butte County, California	03/14/2008 Remand: 01/24/2014
16	Federated Indians of Graton Rancheria	Rohnert Park, Sonoma County, California	04/18/2008
17	Habematolel Pomo of Upper Lake	Upper Lake, Lake County, California	09/08/2008
18	Ione Band of Miwok Indians	Amador County, California	05/24/2012
19	Cloverdale Rancheria of Pomo Indians of California	Sonoma County, California	04/29/2016
20	Pokagon Band of Potawatomi Indians, Michigan and Indiana	South Bend, St. Joseph County, Indiana	11/17/2016
21	Wilton Rancheria	Sacramento County, California	01/19/2017
22	Catawba Indian Nation	Cleveland County, North Carolina	03/12/2020
23	Redding Rancheria	Shasta County, California	07/01/2024

Note this list does not include any Restored Lands opinions issued by the National Indian Gaming Commission’s Office of General Council.