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Resources, Community, and
Economic Development Division

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October 1, 1999

The Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate

Subject: Indian Gaming Regulatory Act: Land Acquired for Gaming After the Act's Passage

Dear Mr. Chairman:

The Indian Gaming Regulatory Act (the act) provides the statutory basis for the operation and regulation of certain gaming activities on Indian lands.¹ The act generally prohibits gaming activities on Indian trust lands acquired by the Secretary of the Interior after October 17, 1988, the date the act was signed into law. Trust lands are those whose legal title is held by the federal government in trust for Indian tribes or individuals. The act does, however, provide several exceptions that allow gaming on lands acquired in trust after its enactment. You asked that we determine whether the Office of Indian Gaming within the Department of the Interior's Bureau of Indian Affairs (BIA) has a complete list of parcels acquired in trust for Indian gaming after the act was enacted. To do this, we reviewed a list of parcels acquired for gaming provided by the Office and interviewed BIA officials.

Results in Brief

A complete list of lands acquired for gaming after the act's passage is not readily available. BIA's Office of Indian Gaming identified 18 parcels of land, totaling about 1,800 acres, that were acquired after the act's passage and received the Office's approval for gaming purposes. These approvals were granted between March 1990 and August 1999 for 17 different tribes in 10 states. This list does not, however, represent a complete list of parcels acquired after the act's passage on which gaming is occurring. According to BIA regional officials, at least one parcel was acquired after the act was signed into law on October 17, 1988, and before the Office was created on an interim basis in 1990.² In addition, some tribes have acquired land for nongaming purposes and have later decided to use that land for gaming. If the land converted to gaming uses is "off-reservation," the conversion has to be approved by the Secretary of the Interior.³ According to Office officials, only acquisitions that have been approved by the Office or the Secretary are on its list.

¹25 U.S.C. 2701 *et seq.* (1994).

²According to one of its officials, the Office was created on an interim basis in 1990. It became permanent in 1992, when the Secretary created an executive position to oversee its operations.

³Throughout this report, the term "off-reservation" will refer to lands that are not (1) within or contiguous to a tribe's reservation; (2) for a tribe that had no reservation on October 17, 1988, within the tribe's former or last recognized reservation or contiguous to trust or restricted lands in Oklahoma; or (3) part of the settlement of a land claim, part of an initial reservation of an acknowledged tribe, or part of the restoration of lands for a tribe restored to federal recognition.

Background

Under the act, tribes can have gaming facilities on Indian lands acquired before the act was signed into law on October 17, 1988. Indian lands, as defined in the act, include (1) all lands within a reservation, (2) lands held in trust for Indian tribes or individuals, and (3) lands, held by Indian tribes or individuals, upon which the federal government has placed restrictions against alienation of ownership and over which the tribe exercises governmental authority.⁴ Trust lands are subject to tribal governance and jurisdiction in most matters and can be used by the tribes to further their economic development and welfare. As of December 1997, the federal government held about 56 million acres of land in trust for Indians—about 46 million acres for tribes and about 10 million acres for individuals. When Indian tribes or individuals acquire lands, they can request that these lands be placed in trust by presenting the federal government with a request identifying the land and the parties involved. Information that the Secretary reviews in making the decision to acquire the land in trust includes the purpose of and need for the acquisition, an environmental assessment, and an assessment of any hazardous substances on the property.⁵

Tribes can conduct gaming activities on trust land acquired after October 17, 1988, if the land falls under one of four exceptions identified in the act:

- (1) the land is located within or contiguous to a tribe's reservation boundaries as of October 17, 1988;
- (2) for a tribe that had no reservation on October 17, 1988, the land is located within the tribe's former or last reservation or is contiguous to other land in Oklahoma held in trust or restricted status for the tribe;
- (3) the Secretary of the Interior, in consultation with other nearby tribes and state and local officials, determines that using the land for gaming is in the best interest of the tribe and is not detrimental to the surrounding community, and the governor of the state in which the land is located concurs; or
- (4) the land is acquired as part of a settlement of a land claim, the initial reservation of an Indian tribe acknowledged by the Secretary of the Interior, or the restoration of lands for an Indian tribe restored to federal recognition.^{6,7}

In general, according to BIA officials, tribes seek approval to game on land acquired after the act's passage at the same time as they request the federal government to accept the land into trust on their behalf. In some cases, a tribe can convert trust lands acquired for nongaming purposes to gaming uses without prior approval from the Office of Indian Gaming if the lands fit under the terms of the first, second, or fourth exception. However, if the land does not fit under the first, second, or fourth exception, the tribe must seek approval for gaming under

⁴25 U.S.C. 2703(4) (1994). Alienation refers to the disposal of land through sale, lease, grant, right-of-way, and any other alienation of ownership interest.

⁵BIA's regulations for land acquisitions are contained in 25 C.F.R. part 151.

⁶25 U.S.C. 2719 (a) and (b)(1) (1994).

⁷The Department of the Interior must recognize a tribe before it can receive federal funding and services. A tribe whose recognition was previously terminated may have its recognition restored by an act of Congress.

the third exception, commonly called the Secretary's two-part determination. Enclosure I provides the full text of the exceptions for acquiring gaming lands under the act.⁸

The approval process for gaming acquisitions differs from that for nongaming acquisitions. The Office of Indian Gaming, as part of its function, manages land acquisitions initially identified for gaming and coordinates the Secretary's two-part determination for off-reservation gaming; BIA's regional offices manage and approve land acquisitions for nongaming purposes. For all land acquisitions, the regional offices are responsible for accepting and reviewing the tribes' applications. For gaming acquisitions, the cognizant BIA regional office will consider the application initially and make a recommendation to approve or disapprove the acquisition. The Office then reviews the regional office's recommendation and makes its own recommendation to the Assistant Secretary for Indian Affairs, who approves or disapproves the acquisition. As part of the process of approving a land acquisition, BIA's regional offices and the Office of Indian Gaming work with the Department's Office of the Solicitor to determine whether any of the act's exceptions can be applied to allow gaming on the parcel to be taken into trust. If the land is off-reservation land, before gaming can legally occur, the Secretary must make the two-part determination specified in the act and, if the determination is positive, seek the concurrence of the state's governor.

A Complete List of Gaming Land Acquired After the Act's Passage Is Not Readily Available

The Office of Indian Gaming identified a list of the lands that have been acquired and have attained or may attain approval for gaming since 1990, when the interim Office came into existence. This list, however, does not include all lands acquired after the act's passage that are being used for gaming. BIA's regional offices approved land acquisitions for gaming during the period between the act's passage and the creation of the interim Office, and they continue to approve acquisitions for other purposes that can later be used for gaming if the acquisitions fall under one of the exceptions in the act. Tribes converting nongaming lands acquired after the act's passage to gaming uses are not required to seek the approval of the Office of Indian Gaming if these lands are within or contiguous to their reservations or if the lands fall under one of the other exceptions in the act. Consequently, such lands would not be included in the Office's list. However, tribes wishing to convert off-reservation trust lands to gaming uses are generally required to obtain approval through the Secretary and must comply with the act's provisions to legally begin gaming. While the number of parcels not included on the list is uncertain, BIA officials said that the number is relatively small and almost exclusively involves lands within or contiguous to reservations.

⁸The Solicitor's Office provided a list of six legal opinions and memorandums that it has written to interpret the exceptions in the act. Five of these opinions concern the restoration of lands for restored tribes, and one concerns the settlement of a land claim.

List of Gaming Approvals by
BIA's Office of Indian Gaming

The Office of Indian Gaming identified 18 parcels of land acquired since the act's passage that it had approved for gaming through August 1999. In addition, the Office identified seven acquisitions that were not approved for gaming—two were denied by the Secretary, two did not receive concurrence from their state's governor, two were returned to the tribes for additional information, and one was withdrawn. Finally, the Office of Indian Gaming identified one pending land acquisition and two pending gaming approvals involving the conversion of off-reservation trust lands to gaming uses. Table 1 provides information on the 18 approved and 3 pending actions by the Office. The actions are grouped by exception, and each action is identified by the tribe involved.

Table 1: Land Acquisitions or Gaming Approvals by the Office of Indian Gaming

Action, by exception and tribe	State	Acres	Date approved
Lands within or contiguous to a reservation			
Tunica-Biloxi Indian Tribe of Louisiana	LA	21.1	11/15/93
Coushatta Tribe of Louisiana	LA	531.0	9/30/94
White Earth Band of Chippewa, Minnesota Chippewa Tribe, Minnesota	MN	61.7	8/14/95
Wyandotte Tribe of Oklahoma	KS	0.5	6/6/96
Saginaw Chippewa Tribe of Michigan, Isabella Reservation	MI	480.3	4/14/97
Lands within a former or last recognized reservation			
Cherokee Nation of Oklahoma	OK	15.7	9/24/93
Cherokee Nation of Oklahoma	OK	7.8	2/18/94
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota	ND	143.1	9/30/94
Fort Sill Apache Tribe of Oklahoma	OK	0.5	3/11/99
Secretary's determination with governor's concurrence (off-reservation lands)			
Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin	WI	15.7	7/10/90
Kalispel Indian Community of the Kalispel Reservation, Washington ^a	WA	40.1	6/26/98
Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan ^b	MI	20.0	Pending
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan ^b	MI	29.0	Pending
Miami Tribe of Oklahoma	IN	5.4	Pending
Restoration of lands or lands for initial reservation			
Confederated Tribes of the Grand Ronde Community of Oregon	OR	5.6	3/5/90
Confederated Tribes of the Siletz Reservation, Oregon	OR	11.0	12/5/94
Coquille Tribe of Oregon	OR	20.0	2/1/95
Mohegan Indian Tribe of Connecticut	CT	240.0	9/28/95
Klamath Indian Tribe of Oregon	OR	42.3	5/14/97
Little River Band of Ottawa Indians of Michigan	MI	152.8	9/24/98
Little Traverse Bay Bands of Odawa Indians of Michigan	MI	5.0	8/27/99

^aThis tribe sought approval from the Secretary to convert off-reservation trust lands from nongaming to gaming uses.

^bThese two tribes have already acquired land and begun gaming on it. Enforcement actions are pending to bring the tribes into compliance with the act. Keweenaw Bay Indian Community v. United States, et al., No. 2:94-CV-262; and Grand Traverse Band v. United States Attorney, No. 1:96-CV-466. According to an Interior Department official, in response to the enforcement actions, the tribes are now seeking approval from the Secretary.

Source: GAO's analysis of data from BIA's Office of Indian Gaming.

The 18 parcels acquired for gaming involve 17 different tribes in 10 states.⁹ Half of the acquisitions have been in three states—Michigan, Oklahoma, and Oregon—and two of the three pending actions are in Michigan. Lands were also acquired in Connecticut, Louisiana, North Dakota, Washington, and Wisconsin. A total of about 1,795 acres was acquired, with individual parcels ranging in size from half an acre to over 500 acres. Lands involved in the three pending actions total about 54 acres.

The exceptions in the act that allowed gaming on the acquired parcels varied. Nine of the acquisitions were of land either within or contiguous to an existing or former reservation, and seven were of newly formed or restored reservation lands.¹⁰ Two approvals involved off-reservation lands; however, the two pending gaming approvals and the one pending acquisition involve off-reservation lands and will require the Secretary's two-part determination and the concurrence of the appropriate state's governor.

Gaming Is Occurring on Other Parcels Acquired After the Act's Passage

The Office maintains a list of acquisitions approved for gaming since 1990, the year the interim Office began managing land acquisitions for gaming. The act was passed on October 17, 1988, and in the intervening period, BIA's regional offices managed and approved land acquisitions for gaming. The regional offices, not the Office of Indian Gaming, keep the files for these acquisitions, and as a result, any acquisitions approved by the regional offices are not on the list kept by the Office. We called the regional offices to ask if they had approved any acquisitions after October 17, 1988, and before the interim Office was created in 1990. One regional official we contacted identified a parcel that was acquired a week after the act was passed. While other regional officials were not aware of any such acquisitions, without a thorough review of each region's files, the possibility that other parcels were acquired after the act was passed and before the Office was created cannot be eliminated.

We also found that several tribes acquired trust land for nongaming purposes after October 17, 1988, and later decided to use that land for gaming. For example, at least three tribes in California acquired land to build housing for tribal members, but then decided to use the lands for gaming facilities. According to BIA and Solicitor's Office officials, tribes can begin gaming on such lands if the lands are located within or contiguous to the tribe's reservation boundaries or fall under one of the other exceptions in the act. However, according to BIA officials, two tribes in Michigan began gaming on off-reservation parcels acquired after 1988 without first obtaining the required Secretarial determination and gubernatorial concurrence. Enforcement actions are pending to bring these tribes into compliance with the act, and the tribes recently applied to the Office for the required approvals.

Scope and Methodology

To determine the number of parcels that have been acquired for gaming, we reviewed the Office of Indian Gaming's recommendation letters for all approved land acquisitions. We interviewed officials in the Office of Indian Gaming to understand the approval process for land acquisitions and to discuss the 18 approved acquisitions. We reviewed legal opinions on land acquired for gaming to determine how the Office is implementing the act, and we

⁹The Cherokee Nation acquired two parcels, while the other 16 tribes each acquired one parcel.

¹⁰Of the 17 tribes acquiring land, 4 were newly recognized or their recognition was restored since the passage of the act. An additional 14 tribes have also been newly recognized or their recognition has been restored since the passage of the act and may be eligible to begin gaming on lands acquired after October 17, 1988, under the exceptions in the act, unless otherwise prohibited from doing so.

interviewed the Associate Solicitor for Indian Affairs to understand the role of the Solicitor's Office in approving gaming acquisitions.

To verify the acquisitions by tribes that were recognized or whose recognition was restored after the act was signed into law, we compared a list of newly recognized or restored tribes with a list of gaming tribes developed by the National Indian Gaming Commission. We identified two newly recognized or restored tribes that are gaming. The Office had already identified one of the tribes on its list of approved acquisitions and agreed that the other should be included on its list.

To identify lands acquired before the Office was created and lands that were converted to gaming uses, we interviewed the gaming contact or the realty staff at each of BIA's 12 regional offices. We did not conduct a complete review of each regional office's acquisition files, nor did we conduct a complete review of all lands with Indian gaming facilities. Such a review would be needed to identify all lands that have been acquired for gaming since the act was passed. We conducted our review in September 1999 in accordance with generally accepted government auditing standards.

Agency Comments and Our Evaluation

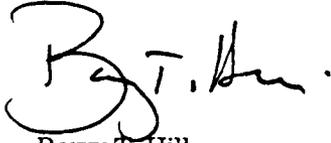
We provided copies of a draft of this report to BIA and the Department of the Interior for review and comment. We met with the Director of BIA's Office of Indian Gaming, the Associate Solicitor for Indian Affairs from Interior's Office of the Solicitor, and the Deputy Director of the Office of Audit and Evaluation, Department of the Interior, who generally agreed with the factual information presented in the report. These officials commented, however, that the draft report did not acknowledge the different approval requirements for tribes wishing to use off-reservation lands acquired after the act's passage for gaming, and they provided several points of clarification. In addition, the Director of BIA's Office of Indian Gaming clarified the status of two parcels of land whose acquisition was shown as pending in the draft report. According to the Director, one of the requests had not been officially submitted to the Office and another was returned to a BIA regional office for further clarification and review at the regional level. We added language to the report to clarify the requirements for approving off-reservation trust lands for gaming uses and removed the two parcels of land from the list of pending actions before the Office of Indian Gaming. The BIA and Department officials also provided several technical comments, which we incorporated into the report as appropriate.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the Honorable Bruce Babbitt, Secretary of the Interior; the Honorable Kevin Gover, Assistant Secretary for Indian Affairs; George Skibine, Director, Office of Indian Gaming; Derril Jordan, Associate Solicitor, Department of the Interior's Office of the Solicitor; Earl E. Devaney, Inspector General, Department of the Interior; and the Honorable Jacob J. Lew, Director, Office of Management and Budget. We will make copies available to others upon request.

B-283635

If you or your staff have any questions about this report, please call either Chet Janik or me at (202) 512-3841. Key contributors to this report were Susan Iott, Dick Kasdan, and Jeff Malcolm.

Sincerely yours,

A handwritten signature in black ink, appearing to read "B. T. Hill". The signature is written in a cursive style with a large initial "B" and a trailing flourish.

Barry T. Hill

Associate Director, Energy,
Resources, and Science Issues

Enclosure

Exceptions for Acquiring Gaming Parcels After the Passage of the 1988 Indian Gaming Regulatory Act

The following text presents the exceptions for gaming on lands acquired after the passage of the act on October 17, 1988. The text is found at 25 U.S.C. 2719(a) and (b)(1).

Section 2719. Gaming on lands acquired after October 17, 1988.

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless—

- (1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or
- (2) the Indian tribe has no reservation on October 17, 1988, and—
 - (A) such lands are located in Oklahoma and—
 - (i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or
 - (ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or
 - (B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

- (1) Subsection (a) of this section will not apply when—
 - (A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or
 - (B) lands are taken into trust as part of—
 - (i) a settlement of a land claim,
 - (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgement process, or
 - (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

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