



# United States Department of the Interior

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## MEMORANDUM

To: James E. Cason  
Associate Deputy Secretary

From: Carl J. Artman  
Associate Solicitor, Division of Indian Affairs

Subject: Ione Band Indian Lands Determination

SEP 19 2006

The Ione Band of Miwok Indians of California has a fee-to-trust application pending before the Department for certain lands near and partially within the boundaries of Plymouth, California (Plymouth parcel). On September 20, 2004, the Band submitted a request to the National Indian Gaming Commission for an opinion on whether this parcel would qualify as "Indian lands" within the meaning of the Indian Gaming Regulatory Act (IGRA) on which the Band could conduct gaming if the lands were acquired in trust by the Department of the Interior.

Pursuant to the Memorandum of Agreement between the Deputy Solicitor for the Department and the Acting General Counsel of NIGC executed at end of May 2006, we have reviewed the Band's request. For the reason stated below, we believe that the lands that are the subject of the fee-to-trust application would qualify as "Indian lands" within the meaning of the Indian Gaming Regulatory Act (IGRA) on which the Band could conduct gaming if the lands were acquired in trust by the Department of the Interior.

IGRA prohibits gaming on lands acquired after October 1988 unless:

- (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 acknowledgment process, or
  - (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

25 U.S.C. § 2719(b)(1).

The Band has not suggested that it acquired the Plymouth parcel in settlement of a land claim, nor is there any basis for such a claim. Thus, the Band must establish that it is a newly acknowledged tribe under the Secretary's acknowledgment process and the lands will be part of its initial reservation or that it is a restored tribe and that the Plymouth parcel is restored lands.

When the Department adopted its acknowledgment regulations at the end of 1978, the Band was treated as having submitted a letter of intent to petition. Notwithstanding the Department's insistence that the Band had to follow the acknowledgment regulations, the Band continued to insist that it was already recognized and did not need to go through the process. The Band did not complete the petitioning process before former Assistant Secretary Ada Deer clarified the Band's status in 1994. Accordingly, the Band cannot establish that it is a newly acknowledged tribe under the Secretary's acknowledgment process. Thus, the only way that the Band can conduct gaming on the lands it seeks to acquire in trust without a two part determination is if it can that the lands are restored lands for a restored tribe.

To be a restored tribe, the Band must establish that it was once recognized by the Federal government, that Federal government subsequently did not recognize it and that, ultimately, the Federal government restored its recognition of the Band.

We believe that the history of the Band's relationship with the United States is unique and complex but we need not describe it in detail. The evidence shows that the Department intended in 1916 to acquire land for the Indians at Ione. The actions of the Department in furtherance of its efforts to acquire land for the Indians at Ione are not conclusive as to the Band's recognized tribal status. Throughout California in the early part of the Twentieth Century, the Department attempted to purchase land wherever it could for landless California Indians without regard to the possible tribal affiliation of the members of the group.

In October 1972, however, former Commissioner of Indian Affairs Louis Bruce sent the Band a letter responding to a request from the Band that the United States accept a forty acre tract in trust for the Band. The Commissioner concluded that:

Federal recognition was evidently extended to the Ione Band of Indians at the time that the Ione land purchase was contemplated . . . I am directing the Sacramento Area Office to assist in the preparation of a document containing a

membership roll and governing papers which conform to the Indian Reorganization [sic].

As the Commissioner of Indian Affairs, I therefore, hereby agree to accept by relinquishment or title or gift the following described parcel of land to be held in trust for the Ione Band of Miwok Indians . . .

Commissioner Bruce's letter is substantially similar to the September 7, 1972, memorandum from the Deputy Commissioner to the Minneapolis Area Director concerning the acquisition of land for the Sault Ste. Marie Band of Chippewa Indians, which was the basis for the Department's determination that that Chippewa band was a recognized tribe. When the Department sought to take land in trust for the Sault Ste. Marie Band of Chippewas based on Deputy Commissioner's memorandum, the City of Sault Ste. Marie, Michigan, challenged the action. The court upheld the Department's action noting:

[A]lthough the question of whether some groups qualified as Indian tribes for purposes of IRA benefits might have been unclear in 1934, that fact does not preclude the Secretary from subsequently determining that a given tribe deserved recognition in 1934. The 1972 Memorandum constitutes just such subsequent recognition. To hold otherwise would be to bind the government by its earlier errors or omissions.

*Sault Ste. Marie v. Andrus*, 532 F. Supp. 157, 161 (D. D.C. 1980).

Commissioner Bruce's letter is a clear, unambiguous statement that he is dealing with the Band as a recognized tribe. Under the Indian Reorganization Act, the Commissioner has authority to acquire land in trust only for groups that are tribes. His statement that he "hereby agree[s] to accept . . . the following described parcel of land to be held in trust for the Ione Band of Miwok Indians" is a clear act of recognition. Thus, following Commissioner Bruce's letter, the Ione Band must be deemed to have been a recognized tribe within the meaning of the IGRA.

For reasons that are not entirely clear, the Department did not follow through on the Commissioner's directions. With the development and implementation of the Department's acknowledgment regulations, the Department took the position that the Band was not yet recognized and had to proceed through the newly established acknowledgment process and unilaterally put the Band on the list of petitioners.

The Band sued the Department contending that it was already recognized and did not have to go through the acknowledgment process. The Department defended the litigation and prevailed. See *Ione Band of Miwok Indians v. Burris*, No. CIV. S-90-993 LKK (E. D. Calif.

April 22, 1992). The Interior Board of Indian Appeal (IBIA) subsequently rejected similar claims by the group in an administrative appeal. See *Ione Band of Miwok Indians v. Scaramento Area Director*, 22 IBIA 194 (August 4, 1992). By taking a position in Federal court and before the IBIA contrary to the position taken by Commissioner Bruce in 1972, the Department terminated the relationship Commissioner Bruce had recognized.

In late 1993, Assistant Secretary Ada Deer met representatives of the Band and agreed to clarify the relationship between the United States and the Band. Following her review of the matter, Assistant Secretary Deer specifically reaffirmed the conclusions of Commissioner Bruce's 1972 letter and agreed to accept in trust the specific parcel of land described in the Commissioner's letter. In her March 22, 1994, letter to the Band representatives, the Assistant Secretary states she was directing the Bureau to deal with the Band as a tribe and to add the Band to the list of tribal entities published in the Federal Register.

Commissioner Bruce's 1972 letter amounts to recognition of the Band in accordance with the practices of the Department at the time. The positions taken by the Department in Federal court and before IBIA against the Band are wholly inconsistent with that position and as such manifest a termination of the recognized relationship. Assistant Secretary Deer's review of the matter and reaffirmation of Commissioner Bruce's position amounts to a restoration of the Band's status as a recognized Band. Under the unique history of its relationship with the United States, the Band should be considered a restored tribe within the meaning of IGRA.

In order to conduct gaming on the land not only must the Band be considered a restored tribe within the meaning of IGRA but the land being acquired must also be considered restored lands. IGRA does not define what constitutes restored lands. The courts have interpreted the term and given it a broad definition consistent with the common meanings of "restored" and the congressional purposes in enacting IGRA to include promotion of tribal economic self-sufficiency. *City of Roseville v. Norton*, 348 F.3d 1020 (D.C. Cir. 2003).

The Department is still in the process of developing regulations to govern the conduct of gaming on lands acquired after October 17, 1988. Those regulations will refine what lands will be considered restored lands for purposes of IGRA. The general principles are already established by the Department's practices. The tribe must have a modern and historical connection to the land and there must be a reasonable temporal connection between the date the land is acquired and the date the tribe was restored.

In this case the evidence is that the land being acquired is in an area that is historically significant to the Band. It is within a few miles of several historic tribal burial grounds and the site where some of the Band's ancestors signed a treaty. Many of the Band's members live in

the surrounding area and the Band has used facilities in the City of Plymouth to hold governmental meetings in recent years establishing a modern connection to the area.

The proposed acquisition of the land is reasonably temporal to the date the Band was restored. Assistant Secretary Deer issued her letter reaffirming and restoring the relationship with the band in March 1994. After her decision, the members of the Band divided into several different factions, which delayed the reorganization of a modern tribal government. The current proposed acquisition coming only twelve years after restoration is reasonably temporal under the circumstances.

In summary, the tribe has established a modern and an historical connection to the land. In addition, the Band's proposed acquisition represents a reasonably prompt effort under the circumstances by a restored tribe to acquire land that could be the basis for its economic self-sufficiency. The proposed acquisition constitutes restored lands for a restored tribe within the meaning of IGRA so once the land is in trust, the Band may conduct gaming on it without obtaining a two-part determination.

cc: Matthew Franklin, Chairman  
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