United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

MAR 16 1998

Memorandum

To: Acting Director, Indian Gaming Management Staff

Through: Deputy Commissioner for Indian Affairs

From: Derril B. Jordan
Associate Solicitor, Division of Indian Affairs

Subject: Gaming on Proposed Trust Acquisition in Manistee County, Michigan, for the Little River Band of Ottawa Indians

This is in response to your memorandum dated January 6, 1998, requesting a legal opinion on whether gaming by the Little River Band of Ottawa Indians (hereafter "Little River Band" or "Tribe") on a parcel of land totaling approximately 152.8 acres and known as the "Manistee Orchard-A" property, is exempt from the prohibition against gaming on trust lands acquired after October 17, 1988 in Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719, and the requirements of 25 CFR Part 151.

The Tribe has submitted an application for a fee to trust acquisition to the Bureau of Indian Affairs which includes the Manistee Orchard-A parcel . The property is not currently owned in fee by the Tribe, but the Tribe has entered into an Option/Purchase Agreement with the current owner, Manistee Orchards, Inc., to purchase the property for $325,000.00. We understand that this land acquisition is made pursuant to a Congressional directive and is intended to establish a land base for the Tribe.

Congress reaffirmed Federal recognition of the Little River Band at the same time (September 21, 1994) and in the same statute that reaffirmed the recognition of the Little Traverse Bay Bands of Odawa Indians. *See* Pub. L. No. 103-324, 108 Stat. 2156, 25 U.S.C. § 1300k-1 to 1300k-7. The restoration legislation (known as the "Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act," hereafter "Little River Band Act") demonstrates that the two tribes share a nearly identical history in terms of participation in early treaties and their subsequent treatment by the Federal Government. Therefore, for the reasons set forth in our November 12, 1997, memorandum regarding gaming on land to be acquired in trust in Emmet County, Michigan, for the Little Traverse Bay Bands of Odawa Indians, we conclude that the Little River Band is a restored tribe with lands restored to the Tribe within the meaning of Section 20 of IGRA. See 25 U.S.C. § 2719(b)(1)(B)(iii). Section 20 of IGRA prohibits gaming on lands acquired by the Secretary of the Interior in trust for the benefit of an Indian tribe after October 17, 1988. However, Section 20 exempts from the prohibition lands restored for an

Indian tribe that is restored to federal recognition.

We must determine whether the Manistee Orchard-A property qualifies as "restored" land for purposes of 25 U.S.C. § 2719(b)(1)(B)(iii). In the Little River Band Act, Congress found that members of the Little River Band "continue to reside close to their ancestral homeland as recognized in the Manistee Reservation in the 1836 Treaty of Washington and reservation in the 1855 Treaty of Detroit, which area is now known as Manistee and Mason Counties, Michigan." 25 U.S.C. § 1300k(4). Congress directed the Secretary to acquire real property in Manistee and Mason Counties for the benefit of the Little River Band, and provided that the Secretary "shall also accept any real property located in those counties for the benefit of the Little River Band if conveyed or otherwise transferred to the Secretary, if at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages or taxes owed." 25 U.S.C. § 1300k-4(b). Finally, the Little River Band Act provides that land acquired by or transferred to the Secretary under 25 U.S.C. § 1300-k-4 shall be taken in the name of the United States in trust for the Little River Band and shall be a part of the tribe's reservation. *See* 25 U.S.C. § 1300k-4(d).

The Manistee Orchard-A property is located near the City of Manistee, in Manistee County, Michigan. The property qualifies as "restored" land for purposes of 25 U.S.C. § 2719(b)(1)(B)(iii) because it is located within one of the two counties where Congress required the Secretary to acquire land for the Little River Band.

For the reasons set forth in our November 12, 1997, memorandum with respect to the applicability of 25 CFR Part 151 to the proposed trust acquisition of land in Emmet County, Michigan, for the Little Traverse Bay Bands of Odawa Indians, we conclude that the proposed trust acquisition of the Manistee Orchard-A property for the Little River Band is exempt from the provisions of 25 CFR 151.3 and 151.10. However, under the Little River Band Act, the acquisition of the Manistee Orchard-A property can only occur if there are no adverse legal claims existing on the property, which we believe includes potential environmental claims. Therefore, the Bureau of Indian Affairs must comply with the requirements of 602 DM 2, *Land Acquisitions: Hazardous Substance Determinations*, to determine whether any such potential environmental claims may exist. It is our understanding from the documentation submitted by your office that the Area Director has complied with the requirements of 602 DM 2, and that there also has been compliance with the requirements of the National Environmental Policy Act (NEPA), even though the Field Solicitor, Twin Cities, has stated that compliance with NEPA was not necessary in this instance. For the reasons stated in our November 12, 1997, memorandum, we concur with the Field Solicitor's determination that NEPA compliance is not necessary in this instance.

Conclusion

For the foregoing reasons, we conclude that the Little River Band is a restored tribe pursuant to 25 U.S.C. § 2719(b)(1)(B)(iii) of IGRA, and that the Manistee Orchard-A property proposed to be taken into trust by the Secretary of the Interior pursuant to the Little River Band Act will qualify as "restored" land under this provision of IGRA when taken into trust. Therefore, the

Little River Band may legally conduct Class II gaming on such land, but may not engage in Class III gaming absent compliance with the compacting provisions of IGRA. The BIA is not required to comply with the requirements of 25 CFR §§ 151.3 and 151.10, including NEPA compliance, except for compliance with 602 DM 2 to ascertain potential environmental liability.

If you have any further questions, please contact George T. Skibine of my office at (202) 208-4388.

CC: Twin Cities Field Solicitor
Minneapolis Area Director, BIA
SOL DIA RF
Gskibine RF
Twoodward RF

File:H:\MAIL\LILRIVER.TMW
This version printed: March 12, 1998