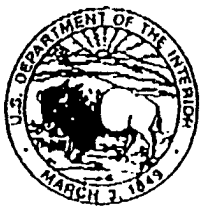

United States Department of the Interior

OFFICE OF THE SOLICITOR

In reply, please address to:
Main Interior, Room 6456

Michael J. Cox, General Counsel
National Indian Gaming Commission
1850 M Street, N.W., Suite 250
Washington, D.C. 20036

MAR 2 1995

Dear Mr. Cox:

You have requested our views on whether a restricted townsite held by a member of the Native Village of Akiak (Akiak) can be "Indian lands" as defined by the Indian Gaming Regulatory Act (IGRA) and upon which Akiak may conduct Class II gaming.

IGRA defines Indian lands as including "any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." 25 U.S.C. § 2703(4)(b). The NIGC regulations have further clarified the definition by providing that:

> Indian lands means
> (a) Land within the limits of an Indian reservation; or
> (b) Land over which an Indian tribe exercises governmental power and that is either--
> (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
> (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

25 C.F.R. § 502.12 (Emphasis added).

The land in question is an individual Native townsite lot held in restricted fee status. Deeds to individual townsite lots were and still are being issued to Natives subject to statutory restrictions on alienation, pursuant to the former 43 U.S.C. § 733.[1] Thus, as required by IGRA, the land is held by an individual and subject to restriction by the United States against alienation.

Whether Akiak meets the remaining IGRA requirement, that Akiak

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[1] 43 U.S.C. § 733 was repealed in 1976 by FLPMA § 703(a), Pub. L. No. 94-579, 90 Stat. 2743, 2790. Only applicants who can establish entitlement based on occupancy commenced prior to the enactment of FLPMA are eligible for a deed.

exercise governmental power over the land, is unclear. An assertion of tribal jurisdiction over individual restricted lots would be doubtful, however, if there were no clear tribal nexus to the individual restricted lands. The village has the burden of establishing the proof that it satisfies the statutory requirements, including the fact that it exercises governmental authority over the lot. The exercise of governmental authority can not be inferred merely from the fact that the lot is within the village.

Based on the information before us, it is unclear that a tribal nexus between Akiak and the lands in question exists. In our review of this issue, we contacted the Regional Solicitor's Office in Alaska, which in turn contacted the Bureau of Indian Affairs. Neither office could provide further information showing that Akiak exercises governmental power over the land in question.

We conclude that while the land in question is held by an individual and subject to restriction by the United States against alienation, we cannot conclude, based on the information before us, that Akiak exercises governmental power over the land. Therefore, we can not conclude that the land in question is "Indian land" as defined by IGRA.

If Akiak were to provide some additional information regarding a tribal nexus and the exercise of Akiak's governmental power over the land in question, we would reconsider our opinion.

Sincerely,

David C. Etheridge

David Etheridge
Acting Associate Solicitor
Division of Indian Affairs