MEMORANDUM

To: Chairman
From: Acting General Counsel

Subject: Whether gaming may take place on lands taken into trust after October 17, 1988, by the Mechoopda Indian Tribe of the Chico Rancheria

Date: March 14, 2003

The Mechoopda Indian Tribe of the Chico Rancheria (Tribe or Mechoopda) has a management contract pending before the National Indian Gaming Commission (NIGC). The Tribe also has a fee-to-trust application pending before the Department of Interior, Bureau of Indian Affairs (BIA) for land acquired by the Tribe after October 17, 1988. The Tribe proposes to conduct gaming on this land. The Indian Gaming Regulatory Act (IGRA) precludes gaming on trust land acquired after October 17, 1988, unless the land meets one of several statutory exemptions. 25 U.S.C. § 2719 (Section 2719). The Department of the Interior, Office of the Solicitor requested that the NIGC assume primary responsibility for an opinion as to whether the land in question, if taken into trust, would meet one of the statutory exemptions. The Tribe submitted documentation to support its claim that the land meets the "restored lands" exception. The Tribe's submission satisfies us that the land in question, should it be taken into trust, would fall within the "restored lands" exception to Section 2719's prohibition against gaming on trust land acquired after October 17, 1988.

Background

At issue is an approximately 645-acre parcel of land[1] (Chico parcel) located outside the Chico city limits in Butte County, California. The Tribe acquired the parcel in December 2001. The Tribe has a fee-to-trust application for this parcel pending before the BIA. The Chico parcel is approximately 10 miles from the Tribe's original Rancheria, which was located in what is now the center of the city of Chico, California.

1 The legal description of the land is as follows: All that certain real property situated in the County of Butte, State of California, described as follows: that part of the east half of the northeast quarter which lies northeasterly of Highway 99 and the Oroville Chico Road, in section 1, township 20 north, range 2 east, M.D.B. & M; and all that portion lying north and east of the northerly line of the Chico Oroville Road in section 6, township 20 north, range 3 east, M.D.B. & M; and the north half of the northwest quarter; and the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter in section 5, township north, range 3 east, M.D.B. & M.

The Tribe submitted the following in support of its claim that the parcel in question was restored: Request for Indian Lands Determination, Dated March 26, 2002; Historical Use and Occupancy Report, Brian Biddy, Ethnographer/Historian, Dated May 9, 2002; Archeological Inventory of 640 Acres Located Near the Intersection of Highways 99 and 149, in Butte County, California, Jelmer W. Eerkens, Dated June 2002; Second Historical Use and Occupancy Report, Brian Biddy, Ethnographer/Historian, Dated July 26, 2002; Letter from Christina Kahze, Esq., Monteau and Peebles, to Maria Getoff, Esq., NIGC, Re: Supplemental Information Regarding Request for Mechoopda Indian Lands Determination, Dated November 8, 2002; and Letter from Christina Kahze, Esq., Monteau and Peebles, to Maria Getoff, Esq., NIGC, Re: Mechoopda Indian Tribe of the Chico Rancheria's Request for an Indian land Determination, Dated November 20, 2002.

Applicable Provisions of IGRA

An Indian tribe may engage in gaming under IGRA only on "Indian lands" that are "within such tribe's jurisdiction." 25 U.S.C. § 2710(b).

IGRA defines "Indian lands" as:

> (A) all lands within the limits of any Indian reservation; and
> (B) *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* [emphasis added].

25 U.S.C. § 2703(4).

NIGC regulations further clarify the Indian lands definition:

> 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. Lands that do not qualify as Indian lands under IGRA generally are subject to state gambling laws. *See National Indian Gaming Commission: Definitions Under the Indian Gaming Regulatory Act*, 57 Fed. Reg. 12382, 12388 (1992).

The question whether a tribe "has jurisdiction" and "exercises governmental power" over land on which the tribe proposes to conduct gaming can arise under a variety of circumstances. *See, e.g., Rhode Island v. Narragansett Indian Tribe,* 19 F.3d 685, 701-703 (1st Cir. 1994), *cert. denied,* 513 U.S. 919 (1994), superseded by statute as stated in *Narragansett Indian Tribe v. National*

Indian Gaming Commission, 158 F.3d 1335 (D.C.Cir.1998); *Miami Tribe of Oklahoma v. United States*, 5 F. Supp.2d 1213, 1217-18 (D.Kan. 1998) (*Miami II*) (a tribe must have jurisdiction to exercise governmental power); *State ex rel. Graves v. United States*, 86 F. Supp.2d 1094, 1099 (D.Kan. 2000), *aff'd and remanded*, *Kansas v. United States*, 249 F.3d 1213 (10th Cir. 2001); *Miami Tribe of Oklahoma v. United States*, 927 F. Supp. 1419, 1423 (D.Kan. 1996) (*Miami I*).

In this case, to determine whether the parcel at issue is Indian land, the NIGC must determine: (1) that the tribe has jurisdiction, and (2) if the proposed lands are trust or restricted lands outside the limits of an Indian reservation, that the tribe exercises governmental power over the proposed gaming lands. We consider the Tribe's proposed gaming site within this analytical framework.

Fee-To-Trust Land Application

The Tribe proposes to conduct class III gaming on the parcel. The Tribe has a fee-to-trust application pending before the BIA. This opinion assumes that the BIA will take the land into trust for the benefit of the Tribe. This opinion cannot be relied upon if the land is not taken into trust.

Jurisdiction

Because the land at issue is off-reservation, the Tribe has the additional burden of establishing that it exercises "governmental power" over the parcel it intends to use for gaming purposes. *See* 25 C.F.R. § 502.12(b). "Tribal jurisdiction" is a threshold requirement to the exercise of governmental power. *See, e.g., Rhode Island v. Narragansett Indian Tribe,* 19 F.3d 685, 701-703 (1st Cir. 1994), *cert. denied*, 513 U.S. 919 (1994), superseded by statute as stated in *Narragansett Indian Tribe v. National Indian Gaming Commission*, 158 F.3d 1335 (D.C.Cir.1998) (In addition to having jurisdiction a tribe must exercise governmental power in order to trigger [IGRA]); *Miami Tribe of Oklahoma v. United States,* 5 F. Supp.2d 1213, 1217-18 (D.Kan.1998) (*Miami II*) (A tribe must have jurisdiction in order to be able to exercise governmental power); *Miami Tribe of Oklahoma v. United States*, 927 F. Supp. 1419, 1423 (D.Kan.1996) (*Miami I*) (the NIGC implicitly decided that in order to exercise governmental power for purposes of 25 U.S.C. § 2703(4), a tribe must first have jurisdiction over the land.); *State ex. rel. Graves v. United States*, 86 F. Supp 2d 1094 (D.Kan. 2000), *aff'd and remanded*, *Kansas v. United States*, 249 F.3d 1213 (10th Cir. 2001). This interpretation is consistent with IGRA's language limiting the applicability of its key provisions to "[a]ny Indian tribe having jurisdiction over Indian lands," or to "Indian lands within such tribe's jurisdiction." 25 U.S.C. §§ 2710(d)(3)(A), 2710(b)(1)); *see also Rhode Island v. Narragansett Indian Tribe,* 19 F.3d 685, 701-703 (1st Cir. 1994), *cert. denied* 513 U.S. 919 (1994). As a threshold matter, we must analyze whether the Tribe possesses jurisdiction over the parcel.

As a general matter, tribes are presumed to possess tribal jurisdiction within "Indian country." *See South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998). The Supreme Court has stated that Indian tribes are "invested with the right of self-government and jurisdiction over the persons and property within the limits of the territory they occupy, except so far as that jurisdiction has been restrained and abridged by treaty or act of Congress." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 140 (1982).

Historically, the term "Indian country" has been used to identify land that is subject to the "primary jurisdiction . . . [of] the Federal Government and the Indian tribe inhabiting it." *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 527 n.1 (1998). The U.S. Code defines "Indian country" as:

> (a) all land within the limits of any Indian reservation...,
> (b) all dependent Indian communities..., and
> (c) all Indian allotments, the Indian titles to which have not been extinguished....

18 U.S.C. § 1151. The *Venetie* court observed that Section 1151 reflects the two criteria the Supreme Court "previously . . . had held necessary for a finding of 'Indian country' ... first, [the lands] must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence." *Venetie*, 522 U.S. at 527. Prior to the enactment of section 1151 in 1948, the Court had already found that reservation lands and allotments satisfied those requirements. *See, e.g., United States v. Pelican*, 232 U.S. 442, 449 (1914) (Indian country includes individual Indian allotments held in trust by the United States because they "remain Indian lands set apart for Indians under governmental care"); *Donnelly v. United States*, 228 U.S. 243, 269 (1913) (Indian country includes lands within formal reservations). The *Venetie* court also observed that Congress used the term "dependent Indian communities" in Section 1151(b) to codify the Court's understanding, as expressed in *United States v. McGowan*, 302 U.S. 535 (1938), and *United States v. Sandoval*, 231 U.S. 28 (1913), that other lands, although not formally designated as a reservation, may also possess the attributes of "federal set-aside" and "federal superintendence" characteristic of Indian country. *Venetie*, 522 U.S. at 530; *see, e.g., McGowan*, 302 U.S. at 538-539 (Reno Indian Colony land held in trust by the United States is Indian country); *Sandoval*, 231 U.S. at 45-49 (Pueblo Indian lands).

Several Supreme Court decisions hold that tribal trust lands are Indian country although they are not part of a formal reservation. In *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, the Supreme Court concluded that lands held in trust by the United States for the Tribe were "validly set apart for the use of the Indians as such, under the superintendence of the Government," and therefore were Indian country, with the consequence that the State did not have the authority to tax sales of goods to tribal members that occurred on those lands. 498 U.S. 505, 511 (1991). The *Potawatomi* Court specifically rejected the contention that tribal trust land was not Indian country because it was not a reservation, noting that no "precedent of this Court has ever drawn the distinction between tribal trust land and reservations that Oklahoma urges." *Id*; s*ee also Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 452-453 and n.2 (1995) (treating tribal trust lands as Indian country); *Oklahoma Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 123-125 (1993) (same); *United States v. John*, 437 U.S. 634, 649 (1978) (observing that "[t]here is no apparent reason why these lands, which had been purchased [by the United States] in previous years for the aid of those Indians, did not become a 'reservation,' at least for purposes of federal criminal jurisdiction"); *United States v. McGowan*, 302 U.S. 535, 539 (1938).

Here, consistent with these decisions, once the land is taken into trust for the benefit of the Tribe, the land will be "Indian country," within the meaning of section 1151. The land has been "validly set-aside for the tribe under the superintendence of the federal government." *United States v. McGowan*, 302 U.S. at 539, quoted in *Venetie*, 522 U.S. at 529.

It is unnecessary to decide whether the Tribe's land is more properly categorized as an informal reservation under section 1151(a) or as a dependent Indian community under section 1151(b) because, regardless of category, the property in this case, held by the United States in trust for the Tribe, would be Indian country. The Tribe's land comes within at least one of the three statutory categories, because the trust lands possess the two characteristics of Indian country reflected in section 1151. *See Venetie*, 522 U.S. at 527. Therefore, when the land is acquired into trust, it is Indian country, and we can conclude that the Tribe has jurisdiction over it.

Exercise of Governmental Authority

The Tribe must also have a present day exercise of governmental authority over the land. See 25 U.S.C. § 2703(4)(B); see also, *Narragansett Indian Tribe*, 19 F.3d at 703; *Cheyenne River Sioux Tribe v. State of South Dakota*, 830 F. Supp. 523 (D.S.D. 1993), *aff'd* 3 f.3d 273 (8th Cir. 1993). Present day exercise of governmental authority cannot be established before the land is acquired into trust. The Tribe has submitted information indicating that, once the land is in trust, it will exercise governmental authority over the parcel through various environmental, zoning, trespass, law enforcement and other ordinances and programs. We can reasonably rely on the Tribe's representations and assume for the purposes of this opinion that the Tribe will exercise those authorities when the land is acquired into trust.

Lands Acquired in Trust by the Secretary After October 17, 1988

Even though a parcel may meet the definition of "Indian lands" under 25 U.S.C. § 2703(4), we must still determine whether the general gaming prohibition under IGRA would bar the Tribe from gaming on the trust land. Under Section 2719(a) of IGRA, gaming is prohibited on lands acquired by the Secretary of the Interior into trust for the benefit of an Indian tribe after October 17, 1988, unless the land falls within certain exceptions in 25 U.S.C. § 2719(b). Accordingly, we must review the exceptions to determine whether a tribe can conduct gaming on after-acquired trust lands.

The Tribe contends that the proposed site meets the requirements of the exception set forth at 25 U.S.C. § 2719(b)(1)(B)(iii)—"restoration of lands for an Indian tribe that is restored to Federal recognition"—and thus is outside the proscriptions on after-acquired land. To determine whether the Tribe meets the restoration exception we must determine, first, whether the Tribe is a "restored" tribe and, second, whether the land was taken into trust as part of a "restoration" of lands to the Tribe.

"Restored" Tribe

The key terms, "restored" and "restoration" are not defined in the text of IGRA. Nor are they defined in the various federal regulations issued by the NIGC and the Department of the Interior to implement IGRA.

The U.S. District Court for the Western District of Michigan recently addressed the definition of "restored" and "restoration" in *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney*, 198 F. Supp. 2d 920 (W.D. Mich. 2002). At issue was whether the Grand Traverse Band was a restored tribe and whether the parcel on which gaming was conducted was restored lands. The *Grand Traverse* court held that both "restore" and "restoration" should be given their ordinary meaning ("In no sense has a proprietary use of 'restore' or 'restoration' been shown to have occurred." *Id.* at 931). Applying the ordinary meaning of the words, the court concluded that the Band's history showed that the Band was in fact restored:

> In sum, the undisputed history of the Band's treaties with the United States and its prior relationship to the Secretary and the BIA demonstrates that the Band was recognized and treatied with by the United States.... Only in 1872 was that relationship administratively terminated by the BIA. This history—of recognition by Congress through treaties (and historical administration by the Secretary), subsequent withdrawal of recognition, and yet later re-acknowledgment by the Secretary—fits squarely within the dictionary definitions of "restore" and is reasonably construed as a process of restoration of tribal recognition. The plain language of subsection (b)(1)(B)(iii) therefore suggests that this Band is restored.

Grand Traverse Band at 933.

An examination of the pattern of Mechoopda's history shows that it is similar to the pattern in the case of Grand Traverse Band. The Mechoopda Indian village was originally established in what is now Butte County, California and the present-day city of Chico by General and Mrs. John Bidwell for their Indian employees. In 1849, General Bidwell purchased from William Dickey a Mexican land grant of more than 22,000 acres, known as the Rancho del Arroyo Chico. The Mechoopda Tribe occupied this land base. In 1851, the United States entered into a treaty with the Mechoopda, in which the Tribe was promised land approximately 20 miles long and 6 miles wide in exchange for relinquishing all claim to their former territory. This treaty, which was never ratified, was found in 1905 by Senate clerks. (Request for Indian Lands Determination, March 26, 2002, page 6)

Between 1909 and 1918, Mrs. Bidwell gave 26 acres, where the Mechoopda Indians were living, to the Board of Home Missions in trust for the Mechoopda Indians. In 1939, this land was conveyed to the United States in trust for the Mechoopda Indians under the authority of the appropriation for Homeless California Indians of 1925, reappropriated in 1939, 50 Stat.564, 573. *Id.*

On August 15, 1958, Congress enacted the California Rancheria Act, authorizing the termination of the trust status of the lands and the Indian status of 41 California rancherias, including the Mechoopda. The Tribe was terminated by proclamation published on June 2, 1967. Pub. L. No. 85-671, 72 Stat. 619, amended by Act of August 11, 1964, Pub. L. No. 88-419, 78 Stat. 390.

In 1986, the Mechoopda Tribe, along with three other Indian Rancherias and several individuals, filed suit in federal court challenging the federal government's termination. *Scotts Valley v. United* States, No. C-86-3660-VRW (N.D. Cal. Filed 1986). On January 6, 1992, the Mechoopda Tribe and the United States entered into a Stipulation for Entry of Judgment to settle the Tribe's claims. In the Stipulation, the United States agreed that the Tribe was not lawfully terminated and further agreed that the Tribe and its members were eligible for all the rights and benefits extended to other federally-recognized Indian tribes. (Stipulation for Entry of Judgment, Monteau Submission, March 26, 2002, at Exhibit A). On May 4, 1992, the Assistant Secretary for Indian Affairs published a notice in the Federal Register that the Tribe and its members were reinstated to their status that existed prior to termination. 57 Fed. Reg. 19, 133 (May 4, 1992). The Mechoopda Tribe is now on the list of federally-recognized Indian tribes. 65 Fed. Reg. 13,298, 13, 300 (2000).

The qualified voters of Mechoopda adopted their constitution on February 1, 1998 at a Secretarial election. The BIA Sacramento Area Director approved the constitution on February 13, 1998, pursuant to delegated authority under the Act of June 18, 1934.

In short, like the Grand Traverse Band, the Tribe has been recognized by the federal government, terminated, and again recognized. Accordingly, we find that the Tribe qualifies as "an Indian tribe that is restored to Federal recognition" under 25 U.S.C. § 2719(b)(1)(B)(iii).

Restoration of Lands

Having concluded that the Tribe is a restored tribe under IGRA, the question remains whether the land at issue was "taken into trust as a part of . . . the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii).

Federal courts, the Department of the Interior, and NIGC have recently grappled with the concept of restoration of land. In so doing, they established several guideposts for a restoration-of-land analysis. First, "restored" and "restoration" must be given their plain, primary meanings. *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan ("Grand Traverse Band II"),* Supra,. *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt ("Coos"),* 116 F. Supp.2d 155, 161 (D.D.C. 2000). In addition, to be "restored," lands need not have been restored pursuant to Congressional action or as part of a tribe's restoration to federal recognition. *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan ("Grand Traverse Band I"),* 46 F. Supp.2d 689, 699 (W.D. Mich. 1999); *Coos* at 164. The language of section 2719(b)(1)(B)(iii)—"restoration of lands for an Indian tribe that is restored to Federal recognition"—"implies a process rather than a specific transaction, and most assuredly does not limit restoration to a single event." *Grand Traverse Band II* at 936; *Grand Traverse Band I* at 701.

Nonetheless, there are limits to what constitutes restored lands. As NIGC stated in the Grand Traverse Opinion, "[W]e believe the phrase 'restoration of lands' is a difficult hurdle and may not necessarily be extended, for example, to any lands that the tribe conceivably once occupied

throughout its history." NIGC Grand Traverse Opinion at p. 15; *see also* Office of the Solicitor's Memorandum Re: *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt* (Office of the Solicitor's Coos Opinion) ("It also seems clear that restored land does not mean any aboriginal land that the restored tribe ever occupied," p. 8).

The courts in *Coos* and *Grand Traverse Band I* and *II* noted that some limitations might be required on the term "restoration" to avoid a result that "any and all property acquired by restored tribes would be eligible for gaming." *Coos* at 164; *Grand Traverse Band I* at 700; *see also Grand Traverse Band II* at *934-935 ("Given the plain meaning of the language, the term 'restoration' may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion"). All three courts proposed that land acquired after restoration be limited by "the factual circumstances of the acquisition, the location of the acquisition, or the temporal relationship of the acquisition to the tribal restoration. *Id.* In this case, these factors lead us to conclude that the Tribe's land acquisition is a "restoration."

1. Factual Circumstances of the Acquisition

The Tribe acquired the approximately 645-acre parcel in December 2001. Also in December 2001, the Tribe submitted a fee-to-trust land application to the BIA. The Tribe's acquisition arose in the following context:

The original 26-acre Rancheria was conveyed to the United States in trust for the Mechoopda Tribe in 1939. When the Tribe was terminated in 1967, there were somewhere between 50 and 70 Mechoopda tribal members living on the Rancheria. However, this entire land base was lost through unscrupulous land sales. Upon restoration in 1992, the Tribe was landless. The Tribe's former Rancheria was now located in the center of the city of Chico. Approximately one-half of the old Chico Rancheria is now owned by the State of California and is part of the campus of California State University, Chico. The other one-half contains 50 separate parcels and lots and are now devoted to mixed residential and commercial uses. By its terms, the Stipulation and Order restoring the Mechoopda Tribe prevents it from reestablishing its former Rancheria boundaries. Mechoopda, therefore, had no choice but to look for land outside the City of Chico.

Following restoration, the Tribe began to slowly reorganize, with a tribal office initially located in the home of the Tribe's first Chairperson. In 1994, the tribal office was moved to Chico, California. The Tribe focused on establishing a base roll, constitution, and ordinances and policies. Mechoopda administered its first HUD program at the end of 1996 and purchased land to address the immediate housing needs of tribal members. Unfortunately, this land was an almond orchard located in a flood plain and unsuitable for a housing project. HUD allowed the Tribe to keep the orchard as an economic development project, and it continues in operation today. (Request for Indian Lands Determination, March 26, 2002, page 2.)

In 1996, the Mechoopda prepared a restoration plan in collaboration with the BIA wherein it identified a parcel of land that it desired to acquire and transfer to the United States as trustee for the Tribe. One of the planned uses for the proposed property was to be a tribally-operated gaming facility. In August 1998, the Solicitor's Office of the Department of the Interior

informed Mechoopda that it disagreed with the Tribe's contention that the proposed land constituted restored lands under the IGRA. The Department based its disagreement on its interpretation that the restored lands exception only applied to tribes restored by Congress. [2] Id. at 3. Thereafter, in 1999 and 2000, two federal courts held in other cases that this interpretation of the IGRA's restored lands exception was too restrictive. *Grand Traverse, Supra; Coos, Supra.*

In December 2001, the Tribe purchased the approximately 645-acre parcel at issue. It is located about 10 miles from the Tribe's former Rancheria.

"Restoration" denotes a taking back or being put in a former position. *Coos* at 162. It might mean "reacquired." *Id.* ("The 'restoration of lands' could be construed to mean just that; the tribe would be placed back in its former position by reacquiring lands.") In any event, "restoration" does not mean "acquired." We therefore must look further for indicia that the land acquisition in some way restores to the Tribe what it previously had.

2. Location

The parcel at issue on which the Tribe proposes to game is located outside the boundaries of the Rancheria as it existed immediately prior to termination under the California Rancheria Act. Specifically, the proposed gaming site is approximately ten (10) miles from the boundaries of the former Rancheria. (Request for Indian Lands Determination, March 26, 2002, page 3). (Because the Stipulation and Order restoring the Tribe prevented the Tribe from reestablishing its former Rancheria boundaries, the Tribe had no choice but to purchase land outside those boundaries.)

While restored lands may include off-reservation parcels, there must be indicia that the land has in some respect been recognized as having a significant relation to the Tribe. *Grand Traverse Band I* at 702. In *Grand Traverse Band II,* the court held that the lands at issue were restored because they lay within counties that had previously been ceded by the tribe to the United States. *Grand Traverse Band II* at 936. This ruling was consistent with its opinion in *Grand Traverse I,* in which the court stated that the land's location "within a prior reservation...is significant evidence that the land may be considered in some sense restored." *Id.* In its Grand Traverse Opinion, NIGC further found that restoration was shown by the Band's "substantial evidence tending to establish that the...site has been important to the tribe throughout its history and remained so immediately on resumption of federal recognition." Grand Traverse Opinion at 15. The tribe's history included the ceding of that very ground to the United States by the ancestors of the present tribe in a 1836 treaty. *Id.* at 9-10, 16. As a result, NIGC concluded that the Band had a "historical nexus" to the land. *Id.* at 17.

Brian Biddy, the Tribe's ethnographer and an expert on California Indian Communities, states that it is difficult to establish, with certainty, the exact boundaries of the Tribe's traditional territory. This is due to the lack of documentary materials detailing the traditional ethno-

---

2 The Tribe had an option to purchase this land. The Tribe let the option expire when it received the adverse opinion from the Department of Interior.

geography of the region. He further states that, "[t]he rapidity in which traditional native life changed, and the subsequent abandonment of villages, resulted in a significant loss of geographic information by the time anthropologists and ethnographers began to interview elderly native people of the region during the first two decades of the twentieth century." (Mechoopda Indian Tribe's Territory, Second Historical Use and Occupancy Report, July 26, 2002, page 1, Exhibit 5).

Despite the lack of information as to specific boundaries of territory, Biddy indicates that C. Hart Merriam's Field Notes are the most informative concerning the names and locations of former villages in the Chico area. Merriam was an ethnologist and botanist who interviewed residents of the Chico Rancheria on at least three occasions: June 8, 1903; November 20 and 21, 1919; and May 1923. Based on these interviews, Merriam was able to approximate the boundaries that contained the Mechoopda villages, of which there were 23.[3] Biddy plotted those boundaries on a map submitted by the Tribe as Exhibit 3 to the Second Historical Use and Occupancy Report. The map shows that the land the Tribe purchased falls squarely within those boundaries.

In addition, the land at issue is part of an area occupied by the Northwestern Valley Maidu, of whom the Mechoopda are the sole surviving group. "With the demise of other Sacramento Valley villages, residents of those Northwestern Valley Maidu villages, including Udahwek, Eskini and so forth, congregated at the Mechoopda village; by 1900, Mechoopda was the only remaining village of the Northwestern Valley Maidu. (Declaration of Craig D. Bates, para. 9, Exhibit H to Monteau Submission, March 26, 2002.)

Furthermore, the land is within a land base promised to the Mechoopda in the unratified treaty of 1851. (Treaty of August 1, 1851 Between United States and the Chiefs, Captains and Headmen of the Mi-chop-sa, Es-Kuin, etc., Tribes of Indians, Exhibit J to Request for Indian Lands Determination, March 26, 2002.) The treaty promised approximately 227 square miles of land, reaching roughly from Chico to Nimshew to Oroville. (Map of Land Boundary Granted by the U.S. Treaty of 1851, Exhibit J to Monteau Submission, March 26, 2002.) Biddy's map shows that the parcels at issue are within the unratified treaty area. (Second Historical Use and Occupancy Report, Exhibit 3).

According to Merriam, there were 23 villages which made up the Mechoopda Tribe. Merriam, C. Hart, Mitchopda (Mechoopda) Territory and Villages, Unpublished Manuscript, Bancroft Library, University of California Berkeley, undated. Several of these villages are located in close proximity to the parcels at issue, and include Eskeni-5 ½ miles; Hololopai-9 miles; Taimkoyo-7 miles; Mechoopda-8 miles; and Boga-16 ½ miles. Eskeni, Hololopai and Mechoopda were signers of the 1851 unratified treaty. (Request for Indian Lands Determination, March 26, 2002, pages 5-10.)

The proposed site has cultural and historical significance to the Tribe. Three buttes with cultural significance to the Mechoopda are located one mile north of the proposed site. These buttes figure prominently in the myth of Onkoitopeh, a cultural hero of the Mechoopda. (Historical

---

3 The boundaries are as follows: "[t]erritory from just south of Nord, southerly to a little beyond Durham, and from Sacramento River easterly to the foothills." Merriam, C. Hart, Mitchopda Territory and Villages, Unpublished manuscript, Bancroft Library, University of California Berkeley, undated.

Use and Occupancy Report, May 9, 2002, page 3.) In addition, an historic trail, linking the villages of Ushtupedah and Weleuduh to other Maidu villages crosses the parcels. In historic times, the trail would have linked the Mechoopda at Chico with other villages in the Oroville region. In addition, the lands encompassed by the parcels include areas likely used in the late 19th century and before by the Mechoopda for hunting and gathering. (Bates Declaration at para. 10, Exhibit H to Request for Indian Lands Determination, March 26, 2002).

Based on the above, the Tribe has proven a historical and cultural nexus to the land sufficient to show that the parcel was not merely an acquisition but a restoration of previously used lands.

3. Temporal Relationship of Acquisition to the Tribal Restoration

The Tribe was restored through the *Scotts Valley* Stipulated Judgment in 1992. The Tribe acquired the parcel at issue in December 2001, nine years after the Tribe was restored. This nine-year gap is the same as that in the case of the Grand Traverse Band's off-reservation acquisition, which was taken into trust nine years after Grand Traverse Band's acknowledgement through the federal administrative acknowledgement procedures. Also similar to Grand Traverse Band, the acquisition is the first and only land acquisition (aside from the almond orchard) after the Tribe's restoration.

At the heart of this inquiry is the question of whether the timing of the acquisition supports a conclusion that the land is restored. In its Office of the Solicitor's Coos Opinion, the Department of the Interior found that a 14-year lapse between a tribe's restoration and the acquisition of land into trust did not foreclose a finding that the land was restored. Associate Solicitor Phil Hogen observed:

> Congress allowed 14 years to elapse before restoring the Peterson Tract to the Tribe. Thus, in this particular instance, without some relevant attenuation, the mere passage of time should not be determinative. Also, it is not improper of the Department to take account of the practical effect of the passage of the restored lands exception. For instance, it will often be the case that newly restored tribes will, out of practical necessity, take some time to acquire land [footnote omitted]. The Department recognizes, as Congress surely did, that newly restored tribes do not have readily available funds for land acquisition, that land is not always available, and the process of land acquisition is time consuming....Thus, the Tribes quickly acquired the land as soon as it was available and within a reasonable amount of time after being restored.

Office of the Solicitor's Coos Opinion, pp. 13-14.

Furthermore, as part of the Stipulation in *Scotts Valley*, the Tribe agreed not to seek to reestablish the former boundaries of the Chico Rancheria. The Stipulation provides for the acquisition of land outside the former Rancheria boundaries as part of the Tribe's restoration. (*Scotts Valley v. United States*, No. C-86-3660-VRW (N.D. Cal. Filed 1986)).

Although the Chico parcel was purchased nine years after the Tribe's restoration, the belated purchase is not fatal to a finding of restoration for the land. The Tribe's initial reorganization and search for appropriate land bases took several years and experienced significant obstacles. However, building a gaming facility was part of its economic development and land use plans from the beginning. Once the Tribe was in a position to acquire a sufficient amount of usable land to accomplish these goals, the Tribe moved quickly to complete its economic development plans. Based on these facts, we can find that the Chico parcel falls within the Tribe's process of restoration.

We conclude that the facts surrounding the timing of the acquisition support a determination of "restored land." A nine-year gap between the Tribe's restoration and the land's acquisition is a sufficient "temporal relationship" to establish lands as "restored." More importantly, the acquisition of the parcel was the first (with the exception of the unusable almond orchard) for this restored tribe.

In light of federal cases interpreting the restored lands exception, and the factual circumstances, location, and timing of the acquisition, we conclude that the Tribe's land may be considered "restored" for purposes of the pending fee-to-trust acquisition for gaming. The Tribe has shown that the land has been acquired to address the issue of landlessness and that there is a historical and cultural nexus between the Tribe and the land.

Conclusion

IGRA permits tribes to conduct gaming on Indian lands only if they have jurisdiction over those lands, and only if they assert jurisdiction by exercising governmental power which will enable the tribe, through appropriate ordinances, to satisfy the statute's substantial and detailed requirements for the regulation of gaming. After careful review and consideration, we conclude that the Tribe's land, should it be taken into trust, qualifies as Indian lands as defined by IGRA and NIGC regulations. A close examination of the documentation submitted shows that the Tribe had a historical and cultural connection to the land and that the land is therefore restored. The proposed gaming site therefore falls within the restored land exception to Section 2719. The Tribe may therefore lawfully conduct gaming on its proposed site pursuant to IGRA when it is acquired by the United States in trust for the Tribe, provided the Tribe complies with all other applicable requirements of IGRA.

The Department of the Interior, Office of the Solicitor concurs with our conclusion.

If you have any questions, Maria Getoff, Staff Attorney, is assigned to this matter.

Signed: Penny Coleman
Penny J. Coleman, Acting General Counsel