United States Department of the Interior

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Washington, D.C. 20240

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Philip N. Hogen
Chairman
National Indian Gaming Commission
1441 L Street, N.W.
Suite 9100
Washington, D.C. 20005

Dear Chairman Hogen:

On July 1, 2004, the Sault Ste. Marie Tribe of Chippewa Indians (Tribe), through its attorneys Green Meyer & McElroy, requested that the National Indian Gaming Commission (NIGC) issue an Indian lands determination pursuant to the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719. Although the Tribe asserted that the land in question met two of the exceptions to the IGRA's general prohibition against gaming on land acquired after October 17, 1988, the Tribe agreed, in order to expedite the opinion, that the NIGC would initially consider only the argument that the land is contiguous to the boundaries of the Tribe's reservation as that reservation existed on October 17, 1988. This letter is in response to the request of your General Counsel for our views.

For the reasons detailed below, we conclude that the Tribe's 1983 parcel of trust land does not constitute a reservation for the purposes of the IGRA and gaming on the parcel acquired in 2000, therefore, is not permitted by virtue of being on land contiguous to a reservation pursuant to 25 U.S.C. § 2719(a)(1).

I. Background

The Tribe desires to construct a new casino on trust lands in St. Ignace, Michigan, on two abutting parcels of land. The first parcel was taken into trust by the United States for the benefit of the Tribe in 1983 (hereinafter 1983 parcel). The 1983 parcel is described as follows:

> That portion of Section 19, Town 41 North, Range 3 West described as: All of the NW ¼ of the SW ¼ and all of the S ½ of the SW ¼ Northerly of a line described as beginning 650 feet Northerly along the centerline of Highway "Mackinac Trail" from the intersection of said centerline with the South section line of Section 19, Town 41 North, Range 3 West; thence Northeasterly to the Southeast corner of the NW ¼ of the SW ¼ of said section. Except the highway right-of-way and easements of record. Containing 65 acres more or less.

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The Tribe acquired the 1983 parcel through a Department of Housing and Urban Development Community Development Block Grant. It was taken into trust by the United States pursuant to the Indian Reorganization Act, 25 U.S.C. § 465. It is undisputed that the 1983 parcel has not been proclaimed a reservation by the Secretary although the Tribe submitted documents indicating that it has twice requested the Department of the Interior, Bureau of Indian Affairs, to proclaim it a reservation.

The second parcel of approximately 77 acres was placed into trust by the United States for the benefit of the Tribe in 2000 (hereinafter 2000 parcel). The 2000 parcel is described as follows:

> Lot 2, Section 19, Town 41 North, Range 3 West, and the South ½ of the Southwest ¼ of said Section 19, Town 41 North, Range 3 West, lying Southerly of a line described as beginning at a point 650 feet Northerly along the centerline of Mackinac Trail and South line of Section 19; thence Northeasterly to the Southeast corner of the Northwest ¼ of the Southwest ¼ of Section 19, Town 41 North, Range 3 West, Michigan Meridian. Michigan.

This parcel has not been proclaimed a reservation. The Department, however, has proclaimed other lands as reservations for the Tribe. On February 20, 1975, the Secretary of the Interior (Secretary) proclaimed a 40 acre tract of trust land on Sugar Island as a reservation for the Sault Ste. Marie Tribe under the Indian Reorganization Act. 40 *Fed. Reg.* 8367-68 (Feb. 27, 1975). On January 6, 1984, the Secretary proclaimed approximately 84.8 additional acres to be reservation. 49 *Fed. Reg.* 940 (Jan. 6, 1984).

The Tribe's application to have the 2000 parcel taken into trust referenced its reservation of 120 acres and that its entire trust land base constituted nearly 700 acres in various parcels, "nearly all developed as housing (255 units) or for public buildings and businesses." Attachment to Affidavit dated March 21, 2005, of Aaron Payment, Chairman, Sault Ste. Marie Tribe (Affidavit).

The Tribe operates six casinos, one of which is on the 1983 parcel. Affidavit at ¶ 12.

II. Applicable Provisions of IGRA and NIGC Regulations

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)(1), 2710(d).

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.

25 U.S.C. § 2703(4). Thus, if the proposed lands are trust or restricted lands not within the limits of an Indian reservation, the tribe may conduct gaming only if it also exercises "governmental power" over those lands. 25 U.S.C. § 2703(4)(B); 25 C.F.R. § 502.12(b).

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).

Further, section 2719(a) of the IGRA provides that gaming shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless certain exceptions are met. For the purposes of this analysis, only the exception laid out in 25 U.S.C. § 2719(a)(1) is at issue: a tribe may lawfully conduct gaming under the IGRA if "such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988."

III. Legal Analysis

Section 20 of the IGRA, 25 U.S.C. § 2719, generally prohibits gaming on lands acquired in trust after the enactment of IGRA on October 17, 1988, unless one of several exceptions applies. In order to conduct gaming on the parcel taken into trust in 2000, the Tribe seeks a determination that the 1983 parcel is a "reservation" within the meaning of the IGRA. If the 1983 parcel is a reservation, then the Tribe seeks to conduct gaming on the contiguous 2000 parcel upon a showing that the 2000 parcel qualifies as Indian lands over which the Tribe exercises jurisdiction and governmental power. 25 U.S.C. §§ 2719(a)(1), 2703(4)(B). The question, thus, is whether the 1983 parcel is a reservation within the meaning of IGRA. We conclude that it is not a reservation within the meaning of 25 U.S.C. § 2703(4)(A), and therefore, the 2000 parcel is not contiguous to a reservation and cannot be used for gaming under the exception in § 2719(a)(1).

A. Reservation and Trust Land are Distinguished under the IGRA

The IGRA does not define the term reservation. The IGRA, however, plainly distinguishes between reservation and trust land. The definition of "Indian lands" makes this clear by requiring that gaming be either on "land within the limits of any Indian

reservation," or on land "held in trust . . . and over which an Indian tribe exercises governmental power." 25 U.S.C. § 2703(4). NIGC regulations contain the same distinction. 25 C.F.R. § 502.12.

Further, for real property taken into trust after October 17, 1988, the IGRA expressly differentiates trust land and reservation. A tribe may not game on such after-acquired trust land unless it is within or contiguous to the tribe's reservation boundaries as of October 17, 1988, or the tribe had no reservation as of that date. 25 U.S.C. § 2719(a)(1-2). Also, the IGRA allows gaming on after-acquired trust land if the land is "the initial reservation of an Indian tribe acknowledged by the Secretary [of the Interior] under the Federal acknowledgment process." 25 U.S.C. § 2719(b)(1)(B)(ii). These provisions clarify that trust land is not synonymous with reservation in the IGRA.

i. The Differentiation of Trust Land and Reservation in the IGRA Is Consistent With Other Federal Law

As reservation is not defined in the IGRA, we begin with the premise that, when interpreting a term within a statute, "[we] must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of the term." *Olmstead v. L. C. by Zimring*, 527 U.S. 581, 622 n.1 (quoting *NLRB v. Town & Country Elec., Inc.*, 516 U.S. 85, 94 (1995)).

There is not a single established uniform definition of reservation elsewhere in federal statutes. Although several federal statutes define the term, the definitions vary greatly based upon the intent of the program and are generally not helpful for the present analysis.[1] Some of these definitions define reservation in terms of trust land. Such definitions are not controlling, however, because of the differentiation in the IGRA between trust land and reservation. This differentiation suggests that something more than a mere set aside of land into trust by the Federal government is required for a reservation under the Act and necessitates a definition of reservation that is specific to the needs and requirements of the IGRA.

Some federal statutes do differentiate between reservation and trust land, as does the IGRA, and thus are more helpful to our analysis. For instance, the statutory definition of "Indian country" distinguishes between reservation and trust lands. As provided in 18 U.S.C. § 1151, Indian country includes:

> (a) all land within the limits of any Indian reservation . . . notwithstanding the issuance of any patent . . . ,
> (b) all dependent Indian communities . . . , and

[1] See, e.g., 25 U.S.C. § 1903(10) (1978) (Indian Child Welfare Act) ("'Reservation' means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation"); 25 U.S.C. § 1452 (d) (1974) (Financing Economic Development of Indians) ("'Reservation' includes Indian reservations, public-domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act"; 7 U.S.C. § 2012 (1994) (Food Stamps) ("the geographically defined area or areas over which a tribal organization . . . exercises governmental jurisdiction").

(c) all Indian allotments, the Indian titles to which have not been extinguished . . . .

Thus, the Indian country definition distinguishes reservation, which may contain trust and fee land, from dependent Indian communities and Indian allotments that are in trust.

The Indian Reorganization Act (IRA), 25 U.S.C. § 461 *et seq.*, also differentiates between reservation and trust lands. The Act provides in § 465 that the Secretary may acquire property in trust "within or without reservations" and provides in § 467 that the Secretary may "proclaim new reservations on lands acquired" under the IRA. The IRA thus establishes that not all land acquired in trust under the Act is a reservation.

ii. The Meaning of Reservation in the IGRA Incorporates Reservations Established by Recognized Methods

We interpret the IGRA definition of reservation as encompassing land within the existing boundaries of a reservation set aside by treaty, Executive Order, or statute; land Congress expressly legislates to be reservation, and land proclaimed by the Secretary pursuant to 25 U.S.C. § 467 as reservation under the IRA. *See, Felix Cohen's Handbook of Federal Indian Law* 475-480 (1982 ed.). The IGRA definition also would include land granted reservation status through court order when the United States is a party[2] and, as discussed further below, land considered reservation within the meaning of 18 U.S.C. § 1151(a). None of the above methods is applicable in this case; the Tribe admits that the 1983 parcel does not have formal reservation status through any of the above methods.

iii. Use of Trust Land for Housing is not Determinative of Reservation Status

The Tribe nevertheless asserts that since the 1983 parcel was taken into trust for tribal housing, it constitutes a reservation within the meaning of the IGRA, noting that the 1983 site has been and is currently being used as housing for tribal members. The Tribe's argument relies on *Sac and Fox Nation of Missouri v. Norton,* 240 F.3d 1250 (10th Cir. 2001) (partially overturned by Congress pursuant to Department of the Interior and Related Agencies Appropriations Act, 115 Stat. 414 (Nov. 5, 2001), which clarified that the Secretary of the Interior has authority to determine if specific land is reservation under the IGRA). The Tribe focuses on the Court's reference in *Sac and Fox* to "Indian residence" as supporting its position that land taken in trust for Indian housing is a reservation within the IGRA. We do not interpret *Sac and Fox* in this manner.

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[2] For example, the United States, the Picayune Rancheria of Chukchansi Indians, and Madera County, California stipulated and the court ordered that the Picayune Rancheria "shall be treated by the County of Madera and the United States of America, as any other federally recognized Indian Reservation" pursuant to a suit challenging the Rancheria's termination. *Tillie Hardwick, et al. v. United States*, No. C-79-1710 SW (N.D. Cal. 1979), 1983 Stipulation and Order, Paragraph 2.D. at 4. *See* Letter from Derril B. Jordan, Associate Solicitor, Division of Indian Affairs, Department of the Interior, to Kevin K. Washburn, General Counsel, NIGC, dated Mar. 2, 2000, re: whether fee land in California purchased by the Picayune Tribe in 1996, which is within the boundaries of the Picayune Rancheria, falls within the definition of "Indian lands" under the IGRA.

The Tribe presented evidence to indicate that the 1983 parcel was taken into trust for community housing purposes. The Tribe informed the BIA in its land-into-trust application that the 1983 parcel would be utilized by the tribal housing authority to provide homes for tribal members. The application originally requested another parcel in St. Ignace as part of a request for five parcels "for [Housing and Urban Development (HUD)] funded Indian housing operated by the Tribal Housing Authority and related community facilities." Sault Ste. Marie Tribe of Chippewa Indians Trust Land Acquisition Plan, Dec. 15, 1981, at 1, Attachment to Affidavit. The original St. Ignace site was to be used for thirty-five housing units. *Id.* at 2.

The application was amended to replace the formerly proposed St. Ignace parcel with the current site due to an inability to obtain a sewer permit from the state. Letter from Joseph K. Lumsden, Tribal Chairman, to Alvin Picotte, Superintendent, Michigan Agency, Bureau of Indian Affairs (BIA), dated Sept. 16, 1982. The letter states that the Tribe will use the substituted parcel principally for a HUD housing project, with a secondary use of economic development. *Id.* The Tribe conveyed the land to the BIA in trust for the Tribe on March 15, 1983. The Tribe subsequently constructed HUD housing on the parcel, which now contains 59 homes that are administered by the Tribal Housing authority. Affidavit at ¶ 20.

The Tenth Circuit Court of Appeals in *Sac and Fox,* relied upon by the Tribe, considered what constitutes a reservation under the IGRA. The Court specifically rejected the Secretary's argument that the term reservation in IGRA should be interpreted "to include land set aside under federal protection . . . for the use of tribal Indians, regardless of [its] origin." 240 F.3d at 1264. The Court found such a definition "for the use" of Indians to be too broad and to "muddy" the distinction in the IGRA between trust land and reservation. *Id.* at 1267.[3]

Nor did the Court accept the "original" or "traditional" definition of reservation, which is land reserved from cession. *Id.* at 1264-1265. The Court quoted the definition of reservation given by a recognized authority on Indian Law, *Felix Cohen's Handbook of Federal Indian Law* 34-35 (1982 ed.):

> The term 'Indian reservation' originally had meant any land reserved from an Indian cession to the federal government regardless of the form of tenure. During the 1850's, the modern meaning of Indian reservation emerged, referring to land set aside under federal protection for the residence of tribal Indians, regardless of origin. By 1885 this meaning was firmly established in law . . .

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[3] In rejecting the Department's position, the Court stated at 1267:

> IGRA specifically distinguishes between the "reservation" of an Indian tribe and lands held in trust for the tribe by the federal government. E.g., 25 U.S.C. § 2719(a)(1-2), (b)(1)(B). Under the Secretary's proposed interpretation of the term "reservation," the line between the two would arguably be muddied. In other words, if the term "reservation" were to encompass all land held in trust by the government for Indian use (but not necessarily Indian residence), then presumably most, if not all, trust lands would qualify as reservations.

(Footnotes omitted).[4] The Court then held that land reserved in a treaty for the purposes of an Indian cemetery was not a reservation for purposes of the IGRA because it was not for the "residence of tribal Indians." The Court thus required that the purpose of reserving the land from cession be considered before finding that land reserved from cession was a reservation within the meaning of the IGRA.

The Court in holding that the cemetery was not a reservation within the meaning of the IGRA, compared the Tribe's reservation in Oklahoma, "set aside" for "Indian residence" for the Tribe as referenced by Felix Cohen, with the land reserved to preserve the cemetery. The Court concluded that since the cemetery was reserved for the limited purposes of the burial ground, it was not a reservation.

We do not interpret the Court's holding that land reserved from cession must at least be for "Indian residence" as support for the proposition that all land taken into trust for residential uses of tribal members qualifies as reservation. Rather, we interpret the Court's reference to Indian residence as a reference to a tribe's homeland, land set apart for the permanent settlement of the tribe.

We draw this conclusion because the Court noted that the Tribe settled in Oklahoma, a far distance from the cemetery, and because it specifically concurred in the plaintiffs' argument that reservation meant land "set aside by the federal government for the occupation of tribal members." *Id.* at 1254, 1266, 1267. In this context, the Court cited the *Handbook*'s discussion that occurs in the context of the Major Crimes Act and Indian reservation within the meaning of the Indian country statute, 18 U.S.C. 1151(a). It thus appears that the Court considered the location of the tribe's seat of government to be a factor.[5] Also, the Court's dicta that a tribe may have only one reservation would suggest that it would not support a *per se* rule that all land taken in trust for housing purposes is *per se* a reservation under the IGRA.[6] Finally, since the facts in that case concerned land that was reserved, the Court did not address land taken into trust under the IRA for purposes of Indian housing and other uses and not declared to be reservation. Although *Sac & Fox* requires residence in order to be a reservation, it does not state the reverse proposition that all land used for tribal housing is a reservation. Therefore, we do not conclude that *Sac & Fox* decides the issue presented here.

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[4] Similarly, as quoted in *Sac & Fox,* Black's Law Dictionary defines "reservation," in part, as "[a] tract of land (under control of the Bureau of Indian Affairs) to which an American Indian tribe retains its original title to ownership or which has been set aside for its use out of the public domain." 1307 (6th Ed 1990).

[5] The *Handbook's* more extensive discussion of reservations also references them as the permanent home for the tribe and land set aside for the establishment of villages, hunting and establishing cornfields, and "use and occupancy," *id.* at 475–476, again implying more than a parcel used for a housing project, which is more likely a dependent Indian community than a reservation for purposes of Indian country.

[6] The Court at 1264 noted that IGRA's use of the phrase "the reservation of the Indian tribe" in 25 U.S.C. § 2719(a)(1), suggests that Congress envisioned that each tribe would have only one reservation for gaming purposes. We disagree, as the Secretary may proclaim at different times non-contiguous parcels as reservation for a tribe, as done for the Sault Ste. Marie Tribe.

We reviewed the other Federal statutes that differentiate between reservation and trust land and find that they do not make this distinction based on "residence" or "housing." For instance, under the Indian country definition, residence of tribal members is common under both reservation and dependent Indian community. As provided in *Felix Cohen's Handbook of Federal Indian Law* 39 (1982 ed.), "Read together, 18 U.S.C. §§ 1151(a) and (b) employ a functional definition focusing on the federal purpose in recognizing or establishing a reasonably distinct location for the residence of tribal Indians under federal protection."[7] Thus, under the definition of Indian country, not all land on which tribal Indians reside is reservation - residential use does not distinguish between reservation and dependent Indian community. The Indian country statute, thus does not support an argument that residential use is a determinative factor in defining reservation.

Similarly, the IRA does not make residential use the distinction between reservation and trust land. Rather, the IRA relies on a proclamation by the Secretary, which provides notice to the public and indicates a Federal intent to assume jurisdiction over the property. *Cf. City of Sherrill v. Oneida Indian Nation,* 125 S. Ct. 1478, 1493 (2005)(finding the unilateral creation of a checkerboard of alternating state and tribal jurisdiction by the Tribe to seriously burden the administration of state and local governments).

The IGRA specifically distinguished between "reservation" and "trust lands within the tribe's jurisdiction over which it asserts governmental power." Allotments and trust land cannot be treated as equivalent to reservation under the IGRA and still be consistent with the distinction Congress made in the Act. Because Congress did not use the term "Indian country" when it defined Indian lands, we decline to interpret "Indian lands" and "Indian country" synonymously. Nor did Congress in the IGRA use the term dependent Indian communities, another common term. We conclude, therefore, that neither residential use by tribal Indians on trust land, nor the exercise of tribal jurisdiction, is the determinative factor in defining reservation under the IGRA.[8]

Based on the above analysis, reservation under the IGRA includes within it land encompassed within 18 U.S.C. § 1151(a), a declared or proclaimed reservation, including trust and fee patented land within those limits. *See*, Indian Lands Opinion dated March14, 2005, Office of General Counsel, NIGC, re: Tribal jurisdiction over gaming on fee land at White Earth Reservation. In contrast, we do not interpret reservation under the IGRA to automatically include land within 18 U.S.C. § 1151(b) and (c).

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[7] Of course, individual trust parcels also serve for residences, but the *Handbook* appears to be distinguishing between the permanent residence or location of the tribe, rather than residential use by a family or individual.

[8] In further support, we note that the issue of jurisdiction under 18 U.S.C. § 1151 was litigated concerning another parcel of property taken into trust for the Sault Ste. Marie Tribe for housing purposes in the same time period as the 1983 parcel at issue here. In that litigation, the United States did not argue that the land was reservation within the meaning of 18 U.S.C. § 1151(a), but instead argued that the land would be a dependent Indian community for purposes of jurisdiction. The court found that since the property was undeveloped that it was not a dependent Indian community. The fact that the United States did not argue that the similarly situated land was reservation is some indication that the Department did not consider this 1983 parcel to be one. *Sault St. Marie v. Andrus,* 532 F. Supp. 157, 164-165 (D.D.C. 1980).

We do not conclude that a tribe must have a proclaimed reservation in order to game or have a reservation reserved from cession. For example, rancherias, pueblos, colonies, and dependent Indian communities within the meaning of 18 U.S.C. § 1151(b) might be considered a reservation for purposes of IGRA, most likely when there is no formal reservation established by treaty, statute or Executive Order, but that situation is not presented here. *See, e.g., Duncan v. United States*, 229 Ct. Cl. 120, 667 F.2d 36, 38 (Ct.Cl. 1981), providing that "rancherias are numerous small Indian reservations or communities in California, the lands for which were purchased by the Government (with Congressional authorization) for Indian use . . ."; *United States v. Sandoval*, 231 U.S. 28, 37-40 (1913) concerning pueblos, land set aside for the use and occupancy of Indians, and *United States v. McGowan*, 302 U.S. 535, 537-38 (1938), concerning an Indian colony created to provide permanent settlement lands for needy Indians. Rather, we conclude that when a tribe has a reservation, trust land outside those boundaries is not reservation within the meaning of the IGRA merely because it is used for housing.

B. Is the 1983 Parcel Reservation Under the IGRA?

The 1983 parcel is outside the boundaries of an existing proclaimed reservation. As the IGRA maintains a distinction between reservation and trust land, we find that the plain meaning of reservation in § 2703(4) of the IGRA, as commonly understood by Congress when it drafted the statute, is land set aside by the federal government as the Tribe's permanent home, for its occupation and communal residency, for its seat of government, and land included within the meaning of Indian country 1151(a). The 1983 parcel does not fall within these parameters.

We interpret reservation under the IGRA consistent with the distinction made under the IRA, maintaining the distinction made in the IRA between acquiring land in trust outside a tribe's reservation and the optional second step of proclaiming it a reservation. A reservation under the IGRA does not include all trust land acquired under the IRA, nor does it include all land acquired for housing. Taking property in trust under the IRA primarily for a housing development does not make that property a reservation under the IGRA without a proclamation.

In this circumstance, we interpret the IRA and the IGRA consistently. We interpret reservation under the IGRA to require more than trust land acquired for purposes of HUD housing when the Tribe already has a proclaimed reservation intended to be its land base or homeland. In contrast, reservations proclaimed under the IRA are reservations for purposes of the IGRA. The notice of the acquisition of land for HUD housing does not entail the same scope as a proclamation of a reservation. *Cf. Sault Ste. Marie v. Andrus,* 532 F. Supp. 162-164. We conclude that land taken in trust under the IRA is not *per se* reservation under the IGRA. Further, we find that the use of the trust land for Indian residential uses is not alone sufficient to make land, taken into trust under the IRA outside the boundaries of an existing reservation, a reservation under the IGRA. Absent additional evidence that indicates a federal intent that the 1983 parcel was to serve as the Tribe's permanent settlement, it is not reservation within the meaning of the IGRA.

When the Tribe has a formal or declared reservation, we do not find that a housing development on trust land outside the boundaries of that reservation is a reservation for purposes of the IGRA.

C. Nonapplicability of Section 2719(a) to the 2000 Parcel

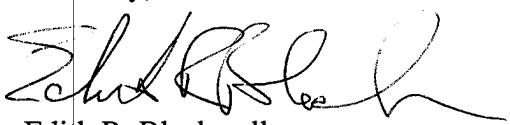
Tribes are generally prohibited by the IGRA from gaming on trust land acquired after October 17, 1988. 25 U.S.C. § 2719(a). The 2000 parcel was clearly acquired into trust after this date, so must meet an exception to the general rule for gaming to occur.

In this instance, section 2719(a)(1) allows gaming on trust lands "located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988." Since the 1983 parcel is not a reservation and the 2000 parcel is not otherwise within or contiguous to a reservation, the exception under 2719(a)(1) is not applicable.

IV. Conclusion

The IGRA allows lawful gaming on Indian lands acquired after October 17, 1988, if an exception to the general prohibition of gaming on after-acquired lands has been met. We have reviewed the potential applicability of 25 U.S.C. § 2719(a)(1), which authorizes gaming on Indian lands located within or contiguous to the reservation boundaries of the Indian tribe on October 17, 1988. The 2000 parcel does not fall within this exception. The 1983 parcel, taken into trust under the IRA, is not located within a formal or proclaimed reservation, nor was it proclaimed a reservation under the IRA. The 1983 parcel does not qualify as a reservation for the purposes of the IGRA, and thus the 2000 parcel is not contiguous to a reservation. The Tribe may not game on the 2000 parcel under this exception.

Sincerely,



Edith R. Blackwell
Acting Associate Solicitor
Division of Indian Affairs

cc: George T. Skibine
Acting Deputy Assistant Secretary-Policy and Economic Development