



November 2021

Helpful Hints: Requesting an Indian Lands Opinion

The Indian Gaming Regulatory Act (IGRA) only permits and applies to gaming activity taking place on “Indian lands” as defined in the IGRA. In addition, IGRA prohibits gaming on lands acquired into trust after, October 17, 1988, unless a statutorily specified exception applies.¹ Given this, tribes may seek an Opinion from the OGC as to whether a particular parcel is Indian lands or meets one of the exceptions to the general prohibition against gaming on after-acquired lands.²

What is an Indian Lands Opinion?

An Indian Lands Opinion is a legal opinion issued by the OGC, in letter form, opining whether certain land is eligible for gaming pursuant to IGRA.

Why are Indian Lands Opinions issued?

An Indian Lands Opinion offers guidance to tribes regarding whether the land they seek to game on is eligible for gaming under IGRA. Issuance of an opinion promotes compliance with IGRA and potentially helps tribes avoid NIGC enforcement actions for gaming on ineligible Indian lands.

Who may request an Indian Lands Opinion?

OGC will accept requests for Indian Lands Opinions from tribes, tribal gaming commissions, or tribal gaming operations.

How do you request an Indian Lands Opinion?

There are two ways to request an Indian Lands Opinion:

- (1) mail your request to the NIGC Headquarters in Washington, DC, or;
- (2) submit your request by electronic mail at: legal_opinions@nigc.gov.

¹ 25 U.S.C. § 2719.

² 25 C.F.R. § 292.3.

What should a request for an Indian Lands Opinion include?

Your request for an Indian Lands Opinion should include, but is not limited to: a legal land description, any name modifiers to the land (tract no., BIA #, plot # - anything identifying the area of land under review), the acreage, a description how the land will be used (casino, parking lot(s), retail space, resort, hotel, etc.), maps/pictures/graphs/diagrams of the land, tract history report, title status report (TSR), tribal resolution/ordinance, information regarding the current use of the land, deed(s), court documents/decisions related to the land, treaties, documents detailing the land held as trust land, and any other information that would be helpful in explaining why you think the land is eligible for gaming. If there are any questions, which there often are, our staff will reach out to the requestor to seek clarification.

The submission should also specify the date by which parties hope to receive the legal opinion. Please note that the submission of additional documents or changes to any previously submitted documents will delay the review and thus the issuance of an opinion.

What is the review process?

The initial review will be conducted by an OGC staff attorney. Upon receiving the request, the attorney assigned to the review will reach out to the submitter to discuss the request. Submitters should feel free to contact OGC throughout the process. During the review stage, OGC attorneys may contact the parties to request additional information or inform the parties that a legal opinion cannot be issued. The parties may also withdraw a request for a legal opinion at any time prior to an opinion being issued. The review process is not a negotiation between the parties and the OGC, as the OGC is simply providing a legal opinion. Following review, OGC staff attorneys will make a recommendation to the Associate General Counsels. Once the Associate General Counsels complete their review, the recommendation and supporting documents will be submitted to the General Counsel. The General Counsel will make the final decision whether to issue a legal opinion.

How long does it take to review a request for an Indian Lands Opinion?

There is no deadline or statutory requirement by which an opinion must be issued. The amount of time it takes to complete a review depends on several factors – completeness of the submission, the complexity of the documents, the responsiveness of the parties, the availability of OGC staff, and competing priorities set by the Commission. OGC is not required to produce Indian Lands Opinions, therefore statutory mandates and matters with regulatory deadlines take priority over Indian Lands Opinions. We will do our best to meet reasonable time frames for providing an opinion, but submitters should expect the review to take weeks, not days.

Often there is extensive communication between the OGC and the submitter to address any questions regarding the information submitted. Your cooperation is appreciated throughout the review process.

Other Considerations:

As a general matter, legal opinions are issued by the OGC as a courtesy, neither IGRA nor NIGC regulations require the OGC to issue legal opinions. Further, the legal opinion of the General Counsel is not final agency action and the issuance of a legal opinion is a voluntary process, both for the party making the request and the OGC.

Indian Lands Opinions will be posted to the NIGC's website and may be the subject of Freedom of Information Act (FOIA) requests. To that end, submitters are encouraged to mark the specific financial and confidential terms in accordance with FOIA Exemption Four. FOIA further imposes a "segregability requirement" that requires the NIGC to release all reasonably segregable nonexempt material. As such, OGC strongly recommends submitters do not request NIGC withhold or entirely redact documents, but identify only the specific material that comes within the scope of the exemption. Failure to identify exempt information and designations that appear obviously frivolous may, pursuant to NIGC regulation, be subject to disclosure without future opportunities to object. Legal opinions will serve as a submitter notice. To the extent the submission contains exempted information, parties must submit their proposed redactions within 30 days.