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United States Department of the Interior

OFFICE OF THE SOLICITOR

APR 6 1995

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

Dear Mr. Cox:

You have requested our views as to whether certain lands within the former Tetlin Reserve constitute "Indian lands" as defined by IGRA for purposes of your review of the Tetlin gaming ordinance. We conclude that the lands at issue do not constitute "Indian lands" for purposes of IGRA. Therefore, gaming may not be conducted on the lands at this time.

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). It is clear that Tetlin is an Indian tribe. See 60 Fed. Reg. 9250 (1995)(list of tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes). However, it is not necessary to reach the issue of whether the land in question is subject to the governmental power of the Tribe, since the land in question is not held in trust and is not subject to restriction against alienation.

The reserve for the Natives of Tetlin was created on June 10, 1930, by Executive Order No. 5365. Title to the Tetlin Reserve was held in trust by the United States "to promote the interests of the Natives" until December 18, 1971, when it was revoked by § 19(a) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1618(a). Pursuant to ANCSA § 19(b), the Tetlin Native Corporation elected to receive title to the surface and subsurface of the former reserve. Once the reserve status was revoked, title to the property was neither held in trust nor subject to restriction by the United States against voluntary alienation. Pursuant to 43 U.S.C. 1636(d), undeveloped fee lands held by Alaska Native Corporations are subject to certain restrictions against involuntary alienation. However, developed lands, such as lands upon which a Tribe would establish a gaming facility, are not subject to this restriction.

So far as we are aware, and in contrast to the situation with

respect to the former Venetie reserve, there has been no attempt by the Tetlin Native Corporation to transfer former reserve lands to any Indian Reorganization Act (IRA) Council, traditional village council or any other tribal governmental entity. Thus, there does not appear to be any legal basis for concluding that any developed land held in fee status by the Tetlin Native Corporation is subject to restriction against alienation.

Because the lands of the former Tetlin Reserve are not held in trust, and any developed lands, such as lands upon which the Tribe would establish a gaming facility, are not subject to restrictions on alienation, we do not believe that such lands can be "Indian lands" as defined by IGRA.

If you have any further questions regarding this matter, please contact me or Kevin Meisner of this Office.

Sincerely,

Robert T. Anderson
Acting Associate Solicitor
Division of Indian Affairs

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