



September 19, 2008

Ernest Mirabal, Governor
Pueblo of Nambe
Route 1 Box 117 – BB
Santa Fe, NM 87506
Fax: (505) 455-2038

Re: Pueblo of Nambé gaming ordinance amendment

Dear Governor Mirabal,

This letter responds to your request that the National Indian Gaming Commission (NIGC) Chairman review and approve the Pueblo of Nambé (Tribe) Third Amended Gaming Ordinance (Ordinance), enacted by the Pueblo of Nambé Tribal Council in Resolution # NP-2008-21 on June 18, 2008. The Ordinance is consistent with the requirements of the Indian Gaming Regulatory Act (IGRA) and the NIGC's regulations. Accordingly, the Ordinance is hereby approved.

The Ordinance's definition of *Lands* was amended to include a specific site identified as Tract 1.¹ The legal land description of Tract 1 is as follows:

All that part of the Cuyamungue Grant, projected Section 28, T. 19 N., R. 9 E., N.M.P.M., Santa Fe County, New Mexico, which said part may be more particularly described as follows:

Beginning at a Brass Cap marking the Southwest corner of the Nambe Pueblo Grant, thence S. 50° 34' 12" W., 227.01 feet; thence, N. 26° 41' 45" W., 193.88 feet; thence, N. 23° 44' 43" W., 24.76 feet; thence S. 58° 47' 12" W., 375.86 feet; thence, N. 19° 19' 05" W., 285.97 feet; thence, N. 70° 52' 46" E., 162.97 feet; thence, N. 18° 54' 09" W., 300.75 feet;

¹ The Pueblo of Nambé Third Amended Gaming Ordinance defines "Lands" as "all lands within the exterior boundaries of the Pueblo of Nambé including rights-of way, lands owned by or for the benefit of the Pueblo, allotted lands, tribally purchased lands, and lands that may be leased by the Pueblo of Nambé, and Nambe Pueblo Reservation lands that qualify for gaming under the IGRA, including in particular, all or any portion of those certain Nambé Pueblo Reservation lands identified as Tract 1 on Exhibit A hereto, which lands were taken into trust on August 20, 1997, were declared reservation lands by proclamation of September 3, 1999, Vol 64 *Fed. Reg.* 49819 (September 14, 1999), and which are adjacent to Nambé Pueblo Grant lands over which the Pueblo and the United States having continuously exercised "Indian Country" jurisdiction since 1913, which Tract 1 lands qualify for gaming under the IGRA per 25 U.S.C. § 2719(a)(1)." Pueblo of Nambé Third Amended Gaming Ordinance, as amended by the Nambé Tribal Resolution #NP-2008-21, Chapter 1, Section 1.04(M).

thence, N. 54° 26' 16" W., 232.13 feet; thence, N. 63° 23' 49" W., 330.82 feet; thence, N. 19° 18' 16" W., 136.88 feet; thence, N. 76° 23' 41" E., 5.56 feet; thence, N. 52° 18' 37" W., 4.58 feet; thence, N. 50° 36' 13" W., 269.58 feet; thence, N. 73° 06' 30" W., 137.86 feet; thence, N. 19° 07' 33" W., 551.44 feet; thence, N. 70° 52' 26" E., 30.00 feet; thence, N. 19° 07' 33" W., 200.00 feet; thence, S. 70° 52' 26" W., 30 feet; thence, N. 19° 07' 33" W., 484.80 feet; thence, N. 84° 40' 48" E., 331.86 feet; thence, S. 30° 42' 08" E., 232.84 feet; thence, S. 35° 15' 06" E., 437.54 feet; thence, S. 71° 49' 06" E., 243.61 feet; thence, S. 89° 54' 06" E., 90.32 feet; thence, N. 86° 12' 19" E., 221.26 feet; thence, S. 00° 01' 55" E., 107.03 feet; thence, S. 89° 41' 25" E., 660.00 feet; thence, S. 00° 03' 00" W., 903.88 feet; thence, S. 00° 08' 40" E., 657.55 feet to the point and place of beginning. Being and intended to be "Tract 1" as shown on plat of survey entitled, "Lot Line Adjustment Plat Prepared for Pueblo of Pojoaque Showing Lands within the Cuyamungue Grant, Projected Section 28, T19N, R9E, N.M.P.M. Santa Fe County, New Mexico," prepared by Edward M. Trujillo, N.M.P.L.S. # 12352, dated 15 February 1996, as File # 2843/DIV2, and recorded as Document No. 935,672 in Plat Book 327, Page 033, records of Santa Fe County, New Mexico.

Because the definition references Tract 1, which was acquired into trust on August 26, 1997, the proposed definition requires me to determine the applicability of IGRA's general prohibition against gaming on lands acquired into trust after October 17, 1988. 25 U.S.C. § 2719. If the prohibition applies, the Ordinance would purport to authorize gaming where IGRA prohibits it, and I would have to disapprove the Ordinance. Based on my review, however, I conclude that the prohibition does not apply because Tract 1 is contiguous to the Pueblo's reservation and, therefore, eligible for Indian gaming.

Applicable Law

IGRA permits gaming only on Indian lands. 25 U.S.C. §§ 2710(b)(1), (2); 2710(d)(1), (2). Indian lands is defined 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 State against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4). The NIGC's implementing regulations clarify:

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.

On September 3, 1999, the Secretary of the Department of the Interior proclaimed Tract 1 to be a reservation. 64 Fed.Reg. 49819 (Sept. 14, 1999). As such, the land meets the definition of Indian lands.

Application of 25 U.S.C. § 2719

A determination of whether Tract 1 qualifies as Indian lands is not the end of the inquiry. IGRA generally prohibits gaming on lands acquired in trust after October 17, 1998, unless one of the statute's exceptions apply. 25 U.S.C. § 2719. Accordingly, for lands taken into trust after October 17, 1988, it is necessary to review the prohibition and its exceptions to determine whether a tribe can conduct gaming on such lands.

Section 2719 states:

...gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless –

- (1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988.

25 U.S.C. § 2719(a) and (a)(1). It is my opinion that the prohibition does not apply, however, because the land is located contiguous to the boundaries of the Tribe's reservation as it existed on October 17, 1988. 25 U.S.C. § 2719(a)(1).

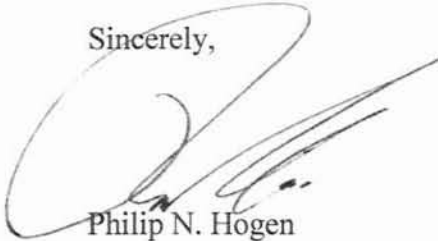
Contiguous is defined as: "In close proximity; neighboring; near in succession; in actual close contact; touching at a point or along a boundary; bounded or traversed by." Black's Law Dictionary 320 (6th ed. 1990). The Department of the Interior has also adopted a similar definition for purposes of acquiring land into trust. The Department's recently published regulations pertaining to § 2719 define *contiguous* as, "two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way and includes parcels that touch at a point." 25 C.F.R. § 292.2. Tract 1 shares a common boundary with the Tribe's reservation. Consequently, Tract 1 is contiguous to the Tribe's reservation and the § 2719 prohibition does not apply. The Department of the Interior concurs with this opinion.

Conclusion

Based on our review of the submitted ordinance and the tribal land information, Tract 1 is Indian land within the meaning of IGRA. Because Tract 1 is contiguous to the Tribe's original reservation, the general prohibition against gaming on land acquired after October 17, 1988, does not apply. As the Ordinance otherwise is consistent with the requirements of IGRA and NIGC regulations, it is approved.

Thank you for submitting the Pueblo of Nambé Third Amended Gaming Ordinance for my review and approval. The NIGC staff and I look forward to working with you and the Tribe on future gaming matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Philip N. Hogen', written over a large, light-colored oval shape.

Philip N. Hogen
Chairman

cc: Peter Chestnut, Attorney for the Pueblo of Nambé