



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE NATIONAL INDIAN GAMING COMMISSION  
AND  
THE DEPARTMENT OF THE INTERIOR

WHEREAS, both parties agree that they are in need, from time to time, for legal advice on whether lands may be Indian lands on which a tribe may conduct gaming and that such advice must be provided in a timely fashion;

NOW, THEREFORE, the National Indian Gaming Commission ("NIGC") and Department of the Interior ("DOI") agree to the terms of this MEMORANDUM OF AGREEMENT ("MOA") as follows:

1. The NIGC agrees that whether a tribe meets one of the exceptions in 25 U.S.C. §2719 (i.e. settlement of a land claim, restored lands for a restored tribe, or an initial reservation of a tribe acknowledged through the Part 83 process) is a decision made by the Secretary when he or she decides to take land into trust for gaming.
2. The DOI agrees that deciding whether gaming is being conducted on Indian lands is a basic and essential jurisdictional requirement for the NIGC under the Indian Gaming Regulatory Act ("IGRA").
3. To the extent the Secretary or the Chairman seek legal advice for certain actions requiring action under IGRA dependant upon the determination of Indian lands, the NIGC Office of General Counsel ("OGC") and the DOI Office of the Solicitor ("Solicitor") agree on the following division of responsibilities:
  - If the Secretary is considering a fee-to-trust acquisition, then the DOI's Division of Indian Affairs ("DIA") will draft the legal opinion to the Bureau of Indian Affairs ("BIA") whether it must complete a two-part determination as part of the fee-to-trust acquisition;
  - If a tribe and a state submit a Class III Tribal-State Compact for gaming on existing Indian lands, then the DIA will draft the legal opinion whether the tribe has Indian lands;

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- If a tribe requests that the NIGC approve a management contract or ordinance for gaming on existing trust lands, then the OGC will draft the legal opinion to the Chairman on whether the tribe has Indian lands; and
  - The OGC will draft the legal opinion to the Chairman whether existing or proposed tribal gaming operations will be on Indian land when the land is already held in trust by the United States.
4. Regardless of whether the DIA or the OGC are drafting the legal opinion, prior to a draft opinion being released to entities other than the DOI and the NIGC, and before any legal opinion is issued, the parties will make every attempt to reach concurrence on all written opinions that provide legal advice that interprets the definition of Indian lands, the exceptions in 25 U.S.C. §2719, a tribe's jurisdiction over proposed Indian lands or the boundaries of a tribe's reservation.
  5. A request for concurrence of an Indian lands opinion will include a draft of the opinion and copies of all supporting documents. Within 30 working days of receiving the request, the receiving party will notify the requesting party of his or her intent to either concur or not concur.
  6. Notwithstanding the 30 working day requirement in paragraph 5, either party may inform the other of exigent circumstances that require an expedited process. Upon agreement of the parties of the need for expedition, either the Solicitor or the OGC will notify the other party within 5 working days of its intent to concur or not concur.
  7. If notified of the intent to not concur, then the parties will meet within 15 working days to discuss ways to resolve the issues of non-concurrence. The notice of the intent not to concur shall include in writing all factual and legal reasons for the non-concurrence.
  8. If a legal opinion is re-submitted that addresses the issues of non-concurrence, either the Solicitor or the OGC will notify the parties of its intent to concur or not concur within 10 working days.
  9. If the parties are still not able to resolve the issues of non-concurrence, the parties will meet to discuss the next step. The next step may include, with the mutual agreement of both parties, submission of the draft opinion and a summary of the issues of non-concurrence to the Office of Legal Counsel, Department of Justice for resolution.
  10. Each party to the MOA will advise the other party within 15 working days of receiving a request to provide Indian lands determinations. The party receiving the request will inform the other party of the individual specifically assigned to work on the legal opinion. In addition, the parties shall periodically coordinate and update pending opinion requests and the OGC shall record and track all Indian lands opinions and decisions in the NIGC Indian lands database and provide periodic updated reports to DIA.

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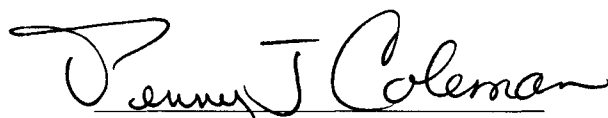
11. If either party has a need for additional information or assistance from the other party in order to render a legal opinion, then the party requiring the information will request such information or assistance in writing to the other party. To the extent either party is able to comply with such a request, it will fully and promptly cooperate with the request. If unable to comply with such request, notice shall be promptly given to the requesting party.
12. The party responsible for the initial draft of the legal opinion shall provide the other party with reasonable time to review the draft and make written comments. The party making the comments will designate the individual responsible and notify the other party. All comments will be provided to the requesting party within 30 working days.
13. The DIA and the OGC will work cooperatively and with collegiality and make every attempt to reach agreement on all Indian lands opinions before submitting a draft legal opinion for concurrence.
14. The Solicitor may request in writing that the OGC draft an Indian lands opinion on pending trust acquisitions that address whether a tribe is a restored tribe and whether the lands are restored lands under IGRA. The OGC, at its discretion, will provide the Solicitor with a draft opinion or decline in writing.
15. It is the position of the Secretary not to approve compacts for gaming on lands that have not been acquired into trust.
16. It is the position of the Chairman not to approve tribal ordinances or management contracts that are site specific when they call for gaming on Indian lands that have not been acquired into trust. The Chairman may continue to approve or disapprove ordinances and management contracts that are otherwise site specific.
17. To meet the demands caused by the need for Indian lands opinions, the NIGC will fund an attorney position (one FTE) within the DIA for 2 years with additional years, if any, in the sole discretion of the NIGC. This attorney position and funding will remain in effect and unaltered by the termination provisions of paragraph 19.
18. This MEMORANDUM OF AGREEMENT supersedes the MEMORANDUM OF UNDERSTANDING previously entered into between the OGC and the Associate Solicitor of the DOI regarding Indian lands opinions.

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19. This MEMORANDUM OF AGREEMENT shall be effective upon signatures by both parties and will terminate six (6) months after the date of execution, unless extended by mutual agreement.

Dated this 26 day of Feb., 2007

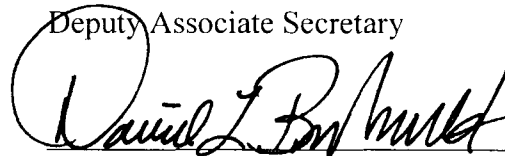
For the National Indian Gaming  
Commission:  
Chairman



Penny J. Coleman  
Acting General Counsel

Dated this 18 day of January, 2007

For the United States Department  
of the Interior:  
Deputy Associate Secretary



David L. Bernhardt  
Solicitor