



July 22, 2025

**VIA E-MAIL**

Sandra Witherspoon, Chairwoman  
Grand Traverse Band of Ottawa and Chippewa Indians  
2605 N. West Bay Shore Drive  
Peshawbestown, MI 49682

**Re: Grand Traverse Band of Ottawa and Chippewa Indians Indian Lands Opinion  
(Benzie Parcel)**

Dear Chairwoman Witherspoon:

This letter responds to your letter of July 24, 2024, ("Benzie Letter") on behalf of the Grand Traverse Band of Ottawa and Chippewa Indians ("Band"), to the Assistant Secretary - Indian Affairs at the Department of the Interior ("DOI")<sup>1</sup> and the General Counsel of the National Indian Gaming Commission ("NIGC") relating to land in Benzie County, Michigan held in trust for the Band and known as the ("Benzie Parcel").<sup>2</sup> In the Benzie Letter, the Band indicated its intention to commence gaming on the Benzie Parcel and that the letter was submitted pursuant to NIGC's Facility License Notice Requirements.<sup>3</sup> The Benzie Letter also provided a summary of relevant background information, including a discussion of the Band's history of termination and restoration, and litigation relating to its status as a restored tribe. The Benzie Letter recognizes that the Benzie Parcel does not meet the regulatory requirements in Part 292 for restored lands as the Band is already gaming on other lands.<sup>4</sup> However, the Benzie Letter asserts that this requirement should not apply to the Benzie Parcel and if it does, then the Secretary of the Interior should grant a waiver of the requirement.<sup>5</sup> This letter only addresses the question of whether the lands are eligible for gaming under the Indian Gaming Regulation Act ("IGRA") and applicable regulations.

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<sup>1</sup> In the Benzie Letter, the Band also requested that if the regulations in Part 292 for restored lands apply to the Benzie Parcel that the Assistant Secretary of Indian Affairs waive 25 C.F.R. § 292.12(c)(2). We understand that the Band has not yet received a response from DOI.

<sup>2</sup> Email from Heather Sibbison, Attorney, Dentons to Bryan Newland, Assistant Secretary Indian Affairs, Bureau of Indian Affairs and Rea Cisneros, General Counsel (Acting), NIGC, *re: Grand Traverse Band of Ottawa and Chippewa Indians -- Restored Lands Request* (July 24, 2024).

<sup>3</sup> Letter from Sandra Witherspoon, Chairwoman, Grand Traverse Band of Ottawa and Chippewa Indians to Bryan Newland, Assistant Secretary Indian Affairs, Bureau of Indian Affairs and Rea Cisneros, General Counsel, NIGC *Re: Gaming Eligibility of the Grand Traverse Band's Benzie Parcel*, page 1 (July 24, 2024).

<sup>4</sup> Benzie Letter, page 15.

<sup>5</sup> Benzie Letter, page 1, 26.

We note that the Band first approached the NIGC Office of General Counsel regarding the Benzie Parcel in 2023. On June 8, 2023, the NIGC received a request for an Indian lands opinion for two parcels located in Benzie and Charlevoix County from the Band.<sup>6</sup> The request asked whether the parcels met IGRA’s restored land exception.<sup>7</sup> The Band stated that the two parcels arguably may qualify for the “grandfather” provision of 25 C.F.R. § 292.26 (a) and (b) and that it would like to submit a memorandum and other materials to support its position.<sup>8</sup> On September 11, 2023, the NIGC Office of General Counsel met with the Band’s attorneys to discuss issues related to the requested Indian lands opinion. However, because it appeared that the lands were not eligible for gaming, the Office of General Counsel cautioned that if the Band commenced gaming on Indian land that was ineligible for gaming under IGRA and the regulations thereunder, the Chair may exercise his enforcement authority to issue a Notice of Violation and a potential Closure Order. While NIGC Office of General Counsel requested the Band to submit its written analysis on several occasions, the Band did not provide any additional information until July 24, 2024, as described above.<sup>9</sup>

On September 3, 2024, NIGC sent a letter to the Band acknowledging receipt of the Benzie Letter which included written analysis related to the Benzie Parcel and stated that the NIGC Office of General Counsel was working on an Indian lands opinion to determine whether the Benzie Parcel is eligible for gaming under the restored lands exception to IGRA’s general prohibition to gaming on lands acquired into trust after October 17, 1988.<sup>10</sup> On December 19, 2024, NIGC received a facility license for the Crystal Shoes Casino on the Benzie Parcel.<sup>11</sup> On January 2, 2025, I sent a letter to you cautioning against opening a facility until the Indian lands question has been resolved.<sup>12</sup>

This letter serves as an Indian lands opinion for the Benzie Parcel. For the reasons stated below, it is my opinion that the Benzie Parcel is not eligible for gaming under IGRA.

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<sup>6</sup> Letter from John Petoskey, General Counsel, Grand Traverse Band of Ottawa and Chippewa Indians to Sequoyah Simermeyer, Chairman, National Indian Gaming Commission *Re: Request for an Indian Lands Opinion* (May 31, 2023).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> The Benzie Letter, dated July 25, 2024, did not reference the Charlevoix parcel. NIGC has not received any notification from the Band that it is planning to game on the Charlevoix parcel pursuant to IGRA.

<sup>10</sup> Letter from Josh Proper, Staff Attorney, NIGC to Sandra Witherspoon, Chairwoman, Grand Traverse Band of Ottawa and Chippewa Indians, *Re: Facility License Notification* (Sept. 3, 2024).

<sup>11</sup> The license and attestation were issued on Nov. 21, 2024. *See* email from Kelly Kiogima, Chief Gaming Regulator, Grand Traverse Band Gaming Commission to NIGC facility license submission email address (Dec. 19, 2024).

<sup>12</sup> Letter from Rea Cisneros, Acting General Counsel, NIGC to Sandra Witherspoon, Chairwoman, Grand Traverse Band of Ottawa and Chippewa Indians, *Re: Issuance of Facility License - Crystal Shores Casino* (Jan. 2, 2025).

## Background

### I. The Benzie Parcel

The Band acquired the Benzie Parcel on September 13, 1994. It is located on the following premises situated in the township of Benzonia, County of Benzie, in the State of Michigan:

[T]he east half (E1/2) of the southwest corner (SW1/4) except the north one (1) rod of Section 2, Township 25 North (T25N), Range 15 West (R15W), being a total of approximately 79.5 acres more or less, including assignment of an oil and gas lease recorded on September 30, 1985 in Liber 209, Page 656 of Benzie County Register of Deeds[.]<sup>13</sup>

The Department of the Interior (“Interior”) accepted the Benzie Parcel into trust for the Band on April 21, 1999.<sup>14</sup>

### Applicable Law

IGRA permits an Indian tribe to “engage in, or license and regulate, gaming on Indian lands within such [t]ribe’s jurisdiction.”<sup>15</sup> 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.<sup>16</sup>

NIGC regulations further define “Indian lands” as:

- (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.<sup>17</sup>

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<sup>13</sup> See Benzie Letter, Ex. C.

<sup>14</sup> *Id.*

<sup>15</sup> 25 U.S.C. §§ 2710(b)(1), 2710(d)(1)(A)(i), 2710(d)(3)(A).

<sup>16</sup> 25 U.S.C. § 2703(4).

<sup>17</sup> 25 C.F.R. § 502.12

IGRA generally prohibits gaming on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988.<sup>18</sup> However, the general prohibition does not apply to lands taken into trust as part of “the restoration of lands for an Indian tribe that is restored to Federal recognition.”<sup>19</sup> In 2008, the DOI promulgated regulations implementing IGRA’s exceptions to gaming on after acquired trust lands in 25 C.F.R. Part 292, including the restored lands exception.<sup>20</sup> The exception, including the implementation regulations at Part 292, are discussed below.

## **Analysis**

To determine whether the Benzie Parcel is eligible for gaming under IGRA, we must first determine if it qualifies as “Indian lands” under IGRA, 25 U.S.C § 2703(4). Then, because the Benzie Parcel was acquired into trust by the United States after October 17, 1988, we must determine whether the parcel satisfies an exception to IGRA’s after acquired prohibition.

### **I. Indian Lands Analysis**

IGRA’s definition of Indian lands includes lands within the limits of the Band’s reservation and “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.”<sup>21</sup>

The Bureau of Indian Affairs has confirmed that the Benzie Parcel is not located with the Band’s reservation.<sup>22</sup> However, the Benzie Parcel is held in trust by United States for the benefit of the Band.<sup>23</sup> For a tribe to conduct gaming under IGRA on trust lands located outside the boundaries of its reservation, the tribe must exercise governmental power over the land.<sup>24</sup>

#### **A. Governmental Powers**

For a tribe to conduct gaming under IGRA on trust lands located outside the exterior boundaries of its reservation, those trust lands must be lands over which the tribe exercises

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<sup>18</sup> 25 U.S.C. § 2719(a).

<sup>19</sup> 25 U.S.C. § 2719(b)(1)(B)(iii). There are additional exceptions to IGRA’s general prohibition on gaming on trust lands acquired after October 17, 1988, but only the restored lands exception is applicable in this instance.

<sup>20</sup> The regulations for the restored land exception can be found at 25 C.F.R. §§ 292.7 - 292.12.

<sup>21</sup> 25 U.S.C. § 2703(4).

<sup>22</sup> See email from Thomas Wilkins, Realty Specialist, Midwest Region Bureau of Indian Affairs to Joshua Proper, Staff Attorney, NIGC RE: *Benzie Reservation Status Inquiry* (Aug. 21. 2024).

<sup>23</sup> See *supra* note 14.

<sup>24</sup> 25 U.S.C. § 2703(4)(b).

governmental power. For a tribe to exercise governmental power over its trust lands, it must first possess jurisdiction over those lands.<sup>25</sup>

It is well established that a tribe retains jurisdiction over the land it inhabits if the land qualifies as “Indian country.”<sup>26</sup> It is also well established that trust land, such as the Benzie Parcel at issue here, is Indian country.<sup>27</sup> Because neither IGRA nor the NIGC regulations explicitly address what constitutes a tribe’s jurisdiction over its lands, the NIGC uses the “Indian country” statutory test, codified at 18 U.S.C. § 1151, as guidance when evaluating whether a tribe has jurisdiction over its Indian lands under IGRA.<sup>28</sup>

Accordingly, because the Benzie Parcel is trust land, the Band possesses jurisdiction over it and, therefore, has jurisdiction to exercise governmental power over the Parcel, as required by IGRA’s Indian lands definition.

Having determined the Band has jurisdiction over the Benzie Parcel, we now look to find if it exercises governmental power over the land.<sup>29</sup> A tribe might exercise governmental power over its land in a variety of methods. For this reason, the NIGC has not formulated a uniform definition of “exercise of governmental power,” but instead decides whether it is present in each case, based upon the totality of circumstances.<sup>30</sup>

Governmental power may involve “the presence of concrete manifestations of . . . authority.”<sup>31</sup> Examples of governmental power include the establishment of a housing authority, administration of health care programs, job training, public safety, conservation, and other governmental programs.<sup>32</sup> While a tribe may exercise governmental power over its lands in many different ways, no one particular fact, or set of facts is determinative.

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<sup>25</sup> *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d at 701-703 (IGRA requires a threshold showing by tribe that it possesses jurisdiction over the lands to satisfy the Act’s “having jurisdiction” prong); *Miami Tribe of Oklahoma v. United States*, 5 F. Supp. 2d 1213, 1217-18 (D. Kan. 1998) (a tribe must have jurisdiction in order to exercise governmental power); *Miami Tribe of Oklahoma v. United States*, 927 F. Supp. 1419, 1423 (D. Kan. 1996) (a tribe must first have jurisdiction in order to exercise governmental power for purposes of 25 U.S.C. § 2703(4)).

<sup>26</sup> “Indian country” is defined in 18 U.S.C. § 1151 as: “(a) all land within the limits of any Indian reservation . . . ; (b) all dependent Indian communities . . . ; and (c) all Indian allotments, the Indian titles to which have not been extinguished.”

<sup>27</sup> See *United States v. Roberts*, 185 F.3d 1125, 1131 (10<sup>th</sup> Cir. 1999) (“‘[r]eservation’ status is not dispositive and lands owned by the federal government in trust for Indian tribes are Indian Country pursuant to 18 U.S.C. § 1151”); see also Cohen’s Handbook of Federal Indian Law, § 3.04[2][c], 192-93 (Nell Jessup Newton ed., 2012) (noting that the Supreme Court has held “that tribal trust land is the equivalent of a reservation and thus Indian Country”).

<sup>28</sup> See, e.g., NIGC’s *Pinoleville Band of Pomo Indians Opinion* (Sept. 24, 2015) at 11-12; NIGC’s *Quapaw Tribe of Indians of Oklahoma Opinion* (Nov. 21, 2014) at 6; NIGC’s *Table Mountain Rancheria Opinion* (Sept. 6, 2006) at 4-5. All of these opinions are available at: <https://www.nigc.gov/general-counsel/indian-lands-opinions>.

<sup>29</sup> See, 25 U.S.C. § 2703(4)(B); 25 C.F.R. § 502.12(b)(1); see also, *Narragansett Indian Tribe*, 19 F.3d at 703.

<sup>30</sup> *National Indian Gaming Commission: Definitions under the Indian Gaming Regulatory Act*, 57 Fed. Reg. 12382, 12388 (1992).

<sup>31</sup> *Narragansett Indian Tribe*, 19 F.3d at 701, 703 (First Circuit guidance on finding an exercise of governmental power).

<sup>32</sup> *Id.*

For purposes of this analysis, the Band has provided several examples of its exercise of governmental powers over the Benzie Parcel. For example, the Band operates the Benzie Tribal Center on the Parcel.<sup>33</sup> Constructed in 1995, the Tribal Center hosts cultural events and community meetings, connects members to medical care and other federally provided services available to tribal members, and serves as a tribal polling place.<sup>34</sup> In addition, at least forty-eight Grand Traverse members currently live on the Benzie Parcel, which includes twenty rental units operated by the Band and eleven homes owned by Band members.<sup>35</sup>

## **II. Restored Lands Analysis**

As the Benzie Parcel was acquired in trust for the Band after October 17, 1988,<sup>36</sup> the Band asserts the parcel qualifies as Indian Lands under the restored land exception to the general prohibition to gaming after IGRA’s enactment on October 17, 1988.<sup>37</sup> To meet the restored lands exception, under Interior’s regulations, the Band must meet two requirements. First, the Band must show that it is a “restored tribe,” and second, the newly acquired lands must meet the criteria of “restored lands” in 25 C.F.R. § 292.11.<sup>38</sup>

### **A. The Band qualifies as a “Restored Tribe”**

The first analysis under Interior’s restored land regulations requires the Band to show that:

- (a) The tribe at one time was federally recognized, as evidenced by its meeting the criteria in § 292.8;
- (b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9; [and]
- (c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition by one of the means specified in § 292.10[.]

The Band meets the first requirement of the “restored tribe” exception under Interior’s regulations as shown in the Band’s prior litigation over gaming on its Turtle Creek parcel.<sup>39</sup>

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<sup>33</sup> See Benzie Letter, Ex. D.

<sup>34</sup> See Benzie Letter, Ex. Ex. A ¶ 13; Ex. E ¶ 5; Ex. F.

<sup>35</sup> See Benzie Letter, Ex. E ¶ 6.

<sup>36</sup> See *supra* note 14.

<sup>37</sup> See Benzie Letter, page 1.

<sup>38</sup> 25 C.F.R. § 292.7. See also 25 C.F.R. § 292.26.

<sup>39</sup> *Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Att’y for W. Dist. of Mich.*, 198 F. Supp. 2d 920 (W.D. Mich. 2002), *aff’d*, 369 F.3d 960 (6th Cir. 2004).

**B. The Benzie Parcel does not meet the criteria of “restored lands” in § 292.11.**

Because the Band was restored through the federal acknowledgment process,<sup>40</sup> the Interior regulations require, the Band to meet the following requirements for the Benzie Parcel to be eligible for gaming under the restored lands exception in IGRA:

- (1) Meets the requirements of § 292.12; and
- (2) Does not already have an initial reservation proclaimed after October 17, 1988.<sup>41</sup>

This analysis will focus on the first prong as the Band’s initial reservation was proclaimed in 1984.<sup>42</sup>

The first prong–25 C.F.R. § 292.12–requires the Band to establish a connection to the “newly acquired” lands through three prongs including (1) a modern connection, (2) a significant historical connection and (3) a temporal connection. However, because the Benzie Parcel does not meet the temporal connection requirement, we will not analyze the first and second prongs.

The third prong–the temporal connection–requires the tribe to show that either:

- (1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or
- (2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.<sup>43</sup>

To qualify under Section 292.12(c)(1), the parcel must have been included in the Band’s first request for newly acquired lands since the Band was restored to Federal recognition. The regulations define the term “newly acquired lands” to mean, “land that has been taken, or will be taken, in trust for the benefit of an Indian tribe by the United States after October 17, 1988.”<sup>44</sup> The Benzie Parcel does not qualify under Section 292.12(c)(1), because the Band’s Turtle Creek parcel was accepted into trust five years before<sup>45</sup> the Benzie Parcel was acquired by the Band.<sup>46</sup>

To meet the alternative standard under 25 C.F.R. § 292.12(c)(2), the Band must demonstrate that it submitted the land into trust application within 25 years after the Band was restored to Federal recognition and that the Band is not gaming on other lands. Here, the Band’s existing gaming facilities precludes a finding under Section 292.12(c)(2).

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<sup>40</sup> *Id.* at 924.

<sup>41</sup> 25 C.F.R. § 292.11.

<sup>42</sup> 49 Fed. Reg. 2025-01 (Jan. 17, 1984).

<sup>43</sup> 25 C.F.R. §§ 292.12(c)(1) & (2).

<sup>44</sup> 25 C.F.R. § 292.2.

<sup>45</sup> *Grand Traverse*, 198 F. Supp. 2d at 925.

<sup>46</sup> *See Benzie Letter*, Ex. C.

## Conclusion

Because the Band cannot meet the standards under Section 292, the Benzie Parcel is not eligible for gaming under the restored lands exception. The Band has not claimed that the Benzie Parcel is eligible for any other exception to IGRA's general prohibition against gaming on lands acquired after October 17, 1988. Therefore, it is my opinion that the Benzie Parcel is not currently eligible for gaming. The Department of the Interior, Office of the Solicitor, concurs with this opinion.<sup>47</sup>

Please be advised that this legal opinion is advisory in nature only and that it may be superseded, reversed, revised, or reconsidered by a subsequent General Counsel. Moreover, this advisory legal opinion is not binding upon the NIGC Chair, who may opt to exercise his or her prosecutorial discretion, or the full National Indian Gaming Commission, which is free to disagree with this opinion in any action that comes before it. In sum, this advisory legal opinion does not constitute agency action or final agency action for purposes of review in federal district court.

I have referred this issue to NIGC's Compliance Division. We regret that our decision could not be more favorable at this time. If you have any questions regarding this legal opinion, please contact Staff Attorney, Josh Proper at [joshua.proper@nigc.gov](mailto:joshua.proper@nigc.gov).

Sincerely,



Rea Cisneros  
Acting General Counsel

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<sup>47</sup> Letter from Eric Shepard, Associate Solicitor – Indian Affairs, Department of Interior to Rea Cisneros, Acting General Counsel, NIGC (July 8, 2025).