



October 30, 2017

Chairman Michael Hunter
Coyote Valley Band of Pomo Indians of California
7601 N. State Street
P.O. Box 39
Redwood Valley, CA 95470

Re: Coyote Valley Band of Pomo Indians – Indian Lands Opinion, Pine Crest Parcel

Dear Chairman Hunter:

This letter is in response to your request for an Indian lands opinion from the Office of General Counsel of the National Indian Gaming Commission ("NIGC"), regarding whether the Coyote Valley Band of Pomo Indians of California ("Tribe") can legally conduct gaming pursuant to the Indian Gaming Regulatory Act ("IGRA") on land taken into trust by the United States for the Tribe on April 14, 2014.¹ More specifically, the Tribe asks the NIGC to find that the 2014 trust land, known as the Pine Crest Parcel ("Parcel"), is eligible for gaming under IGRA despite IGRA's general prohibition of gaming on trust lands acquired after October 17, 1988.² The Parcel is located in Redwood Valley, California.

According to the Tribe, the Parcel is contiguous to the northern exterior boundary of the Coyote Valley Reservation ("Reservation") and, therefore, qualifies for an exemption to IGRA's general prohibition against gaming on after-acquired lands.³

To assist with our analysis, the Tribe has provided us with extensive maps, documentation and other written materials. The submissions include: (1) maps of the Coyote Valley Reservation; (2) maps of the Parcel; (3) a letter, dated September 2, 1998, from the Department of the Interior ("Department"), Office of the Solicitor, confirming proclamation of the Tribe's Reservation by the Secretary of the Interior ("Secretary") on June 23, 1989; (4) a Notice of Decision ("2013 BIA NOD") by the Bureau of Indian Affairs ("BIA") Pacific Regional Office to have the United States accept the Parcel in trust for the Tribe, dated October 31, 2013; (5) a Grant Deed for the Parcel ("2014 Grant Deed"), recorded by the Mendocino County Clerk-Recorder on May 29, 2014, and including official acceptance of conveyance of the Parcel in trust

¹ See Letter from Michael Hunter, Chairman, Coyote Valley Band of Pomo Indians, to Eric Shepard, Acting General Counsel, NIGC (Dec. 1, 2014) ("Coyote Valley Letter (Dec. 1, 2014)") (on file with NIGC).

² See 25 U.S.C. § 2719(a)(1).

³ See Coyote Valley Letter (Dec. 1, 2014) at 3, 5-6.

by the United States through the BIA Regional Director, Pacific Regional Office; (6) a Notice of Finding of No Significant Impact by the BIA, dated July 12, 2012; and (7) the Coyote Valley Pine Crest Fee-to-Trust Environmental Assessment, including maps.

After carefully reviewing the Tribe's submissions, it is my opinion that the Parcel is contiguous to the Tribe's Reservation as it existed on October 17, 1988, and, therefore, is eligible for gaming under the contiguous lands exception to IGRA's general prohibition of gaming on trust lands acquired after October 17, 1988, as interpreted and implemented by the Department's regulations.⁴

The Department of Interior Office of Solicitor has reviewed the legal opinion and concurs.⁵

Background

The Coyote Valley Band of Pomo Indians of California is a federally recognized Indian tribe.⁶ The Tribe's primary land base is a reservation consisting of approximately 72 acres, known as the Coyote Valley Reservation, located in Mendocino County, California.

Beginning in 1906, Congress appropriated funds for the acquisition of lands "for the use of the Indians in California now residing on reservations which do not contain land suitable for cultivation and for Indians who are not now upon reservations . . ."⁷ Parcels purchased with these funds came to be known as rancherias.⁸

In 1909, the United States purchased 100 acres of land in Coyote Valley under the authority of the Acts of June 21, 1906 ("1906 Act"),⁹ and April 30, 1908 ("1908 Act").¹⁰ This land became the Coyote Valley Rancheria.¹¹

⁴ See 25 U.S.C. § 2719(a)(1); 25 C.F.R. § 502.12; *see also* 25 C.F.R. § 292.4.

⁵ See letter from Eric Shepard, Associate Solicitor Indian Affairs, Department of Interior Office of the Solicitor to Michael Hoening, General Counsel, NIGC (September 22, 2017).

⁶ See "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs," 82 Fed. Reg. 4915, 4919 (Jan. 17, 2017). In 1979, the Tribe appeared on the first published list of federally acknowledged tribes; *see* "Indian Tribal Entities That Have a Government-to-Government Relationship with the United States," 44 Fed. Reg. 7235 (Feb. 6, 1979).

⁷ Act of June, 1906, 34 Stat. 325, 333 ("1906 Act").

⁸ *Duncan v. Andrus*, 517 F. Supp. 1, 2 (N.D. Cal. 1977); *see also* BIA Pacific Regional Office, Who We Are, <http://bia.gov/WhoWeAre/RegionalOffices/Pacific/WhoWeAre/index.htm> (last visited January 5, 2017).

⁹ 34 Stat. 325, 333.

¹⁰ 35 Stat. 70, 76.

¹¹ The Grant Deed to the United States is dated May 14, 1909, for 100 acres. *See also* Title Data records compiled by the BIA Pacific Regional Office, Central California Agency, and the Sacramento Area Office, Central California Agency, for the Coyote Valley Rancheria, and attached to an e-mail from Kim Yearyean, BIA Realty Officer, Central California Agency, to Kathy Zebell (March 13, 2015, 01:42 EST) (on file with the NIGC).

In 1957, pursuant to federal legislation, the United States Army Corps of Engineers acquired the lands of the Rancheria for construction of a dam ("Coyote Valley Dam"), which, when built, flooded all of the Rancheria land to create Lake Mendocino.¹² Despite the loss of its homeland, the Tribe's Rancheria community was not terminated.¹³

The Tribe was landless until 1979, when it acquired nearly 58 acres of land near its homeland that was lost for the Coyote Valley Dam. On July 26, 1979, the Secretary acquired this land in trust for the benefit of the Tribe through a Grant Deed ("1979 Grant Deed"),¹⁴ pursuant to Section 5 of the Indian Reorganization Act of 1934 ("IRA").¹⁵ According to BIA Title Data records, the 58-acre parcel was purchased by the Tribe with a HUD block grant.¹⁶

In 1980, shortly after the Tribe's 58-acre parcel had been accepted in trust, the Tribe drafted a Constitution.¹⁷ At the time, it was intended to be the governing document of the Tribe in accordance with the tribal self-governance goals of the IRA.¹⁸ In the Constitution, the Tribe specified that its territorial jurisdiction extends to all lands within the exterior boundaries of "what now comprises the Coyote Valley Indian Reservation"¹⁹ and to all future lands acquired

¹² P.L. 85-91, 71 Stat. 283 (1957) ("An Act to authorize the transfer of the Coyote Valley Indian Rancheria to the Secretary of the Army, and for other purposes").

¹³ See *Knight v. Kleppe*, No. C-74-0005 WTS (N.D. Cal. Jan 23, 1976) (Findings of Fact and Conclusions of Law, ¶ 21, p. 9) (finding that the 1957 Act, which transferred the Coyote Valley Band's lands to the U.S. Army for a dam, did not terminate the Band, noting that "the BIA takes the position that the Indians of the Coyote Valley Rancheria were never terminated for purposes of eligibility of services and benefits provided by the United States to Indians because of their status as such.").

¹⁴ See Grant Deed, dated July 26, 1979, duly recorded by the Mendocino County on October 3, 1979, and subsequently re-recorded on April 3, 1980, to reflect the acceptance of the conveyance in trust by the United States; see also BIA Title Data record, compiled by the BIA Pacific Regional Office, Central California Agency, for the Coyote Valley Rancheria ("[t]he deed to the United States in trust for the Coyote Valley Band of Pomo Indians dated July 26, 1979 was accepted on behalf of the Secretary on October 3, 1979 pursuant to Section 5 of the Indian Reorganization Act of 1934 (25 U.S.C. § 465)"), attached to e-mail from Kim Yearyean, BIA Realty Officer, Central California Agency, to Kathy Zebell (March 13, 2015, 01:42 EST) (on file with the NIGC).

¹⁵ See 25 U.S.C. § 5108 (formerly 25 U.S.C. § 465) (authorizing the United States to acquire lands for Indians, and, once acquired, requiring that the lands be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired).

¹⁶ See BIA Title Data records, from the Pacific Regional Office, Central California Agency, and the Sacramento Area Office, Central California Agency, reflecting that the Tribe purchased the approximately 58 acres with a HUD block grant, attached to an e-mail from Kim Yearyean, BIA Realty Officer, Central California Agency, to Kathy Zebell (March 13, 2015, 01:42 EST) (on file with the NIGC).

¹⁷ See The Document Embodying the Laws, Customs and Traditions of the Coyote Valley Band of Pomo Indians, Enacted by Coyote Valley General Council (Oct. 4, 1980) ("Tribe's Constitution") (on file with the NIGC), as amended on Oct. 30, 2012, available at http://coyotevalleytribe.org/wp-content/uploads/2015/01/CV-Amended-Constitution_07_21_13-copy.pdf.

¹⁸ See 25 U.S.C. § 5123 (formerly 25 U.S.C. § 476). See also *Coyote Valley Band of Pomo Indians v. United States*, 639 F. Supp. 165, 166 (E.D. Cal. 1986).

¹⁹ In 1980, when the Tribe's Constitution was enacted, the Tribe's only land was the 58-acre parcel, taken into trust in 1979, and referred to in the Constitution as the "Coyote Valley Indian Reservation."

by the Tribe, whether within or outside of the exterior boundaries of the Reservation.²⁰ The relevant section reads as follows:

The jurisdiction of the Band, its General Council, its Tribal Council and its tribal courts shall extend to the following . . . All lands, water and other resources within the exterior boundaries of what now comprises the Coyote Valley Indian Reservation, as described in the [1979 Grant Deed] . . . [and] All other lands, water and resources as may be hereafter acquired by the Band, whether within or without said boundary lines, under any grant, transfer, purchase, adjudication, treaty, Executive Order, Act of Congress or other acquisition.²¹

The Tribe's Constitution, as amended,²² is still used by the Tribe today,²³ and the above-quoted text from the original Constitution remains the same.²⁴

On June 23, 1989, nearly 10 years after taking the Tribe's 58-acre parcel into trust, the Secretary proclaimed the Rancheria to be an Indian reservation, pursuant to the IRA.²⁵ Notice of the proclamation was published in the Federal Register on July 25, 1989.²⁶ The land that was officially proclaimed to be the Tribe's reservation by the Secretary in 1989 was the same land, with the same legal description, that was taken into trust by the United States for the Tribe in 1979.²⁷

The Tribe currently operates the Coyote Valley Casino, a class III gaming facility, on the Reservation, pursuant to a Tribal gaming ordinance and a Tribal-State compact. The original Coyote Valley Tribal gaming ordinance for class II and III gaming was approved by the NIGC in 1995.²⁸ Amendments to the gaming ordinance were adopted by the Tribe and approved by the NIGC in 2001²⁹ and, most recently, in 2016.³⁰ The Tribe's 2016 amended ordinance is in effect

²⁰ See Tribe's Constitution, Article II, Sec. 1(a)-(b).

²¹ *Id.*

²² See Tribe's 2015 Amended Constitution, available at: http://coyotevalleytribe.org/wp-content/uploads/2015/01/CV-Amended-Constitution_07_21_13-copy.pdf.

²³ See Coyote Valley Letter (Dec. 1, 2014) at 3.

²⁴ See Tribe's Constitution, as amended, Article II, Sec. 1(a)-(b).

²⁵ 54 Fed. Reg. 30953 (July 25, 1989); *cf.* Letter from Derril B. Jordan, Asst. Solicitor, Div. of Indian Affairs, to Barry Brandon, General Counsel, NIGC (Sept. 2, 1998) (published at http://www.nigc.gov/images/uploads/indianlands/10_cyotevaleybndofpomoindns.pdf).

²⁶ 54 Fed. Reg. 30953 (July 25, 1989).

²⁷ See legal description of Tribe's trust lands in 1979 Grant Deed and legal description of Tribe's Reservation in Reservation Proclamation, published at 54 Fed. Reg. 30953 (July 25, 1989).

²⁸ See Letter from NIGC Chairman Harold Monteau to Doris Renick, Chairperson, Coyote Valley Band of Pomo Indians (Feb. 15, 1995) (available at <http://www.nigc.gov/images/uploads/gamingordinances/cytevalybndpomoindns-ordappr021595.pdf>).

²⁹ See Letter from NIGC Chairman Montie Deer to Priscilla Hunter, Chairwoman, Coyote Valley Band of Pomo Indians (Nov. 26, 2001) (available at <http://www.nigc.gov/images/uploads/gamingordinances/cytevalybndpomoindns-amendappr112601.pdf>).

today. A class III gaming compact between the Tribe and the State of California (“State”) was approved by the Secretary of the Interior in 2004,³¹ was amended in 2012,³² and will expire in 2032.³³

The Pine Crest Parcel

The Pine Crest Parcel, which is the focus of this opinion, is trust land that was acquired after October 17, 1988. It is not located within the exterior boundaries of the Reservation, but is situated adjacent to the Reservation’s northern boundary and consists of six acres of trust land.³⁴

The Tribe began the fee-to-trust process for the Parcel in May of 2012.³⁵ On October 31, 2013, the Pacific Regional Office of the BIA issued a decision to acquire the Parcel in trust.³⁶ As part of its decision, the BIA determined that the Parcel was adjacent to the Tribe’s Reservation and, therefore, was eligible to be taken into trust pursuant to 25 C.F.R. § 151.3(a)(1).³⁷

Accordingly, on May 29, 2014, the Parcel was accepted into trust by the United States for the benefit of the Tribe through a Grant Deed.³⁸ On June 23, 2014, the Grant Deed was recorded by the Mendocino County Clerk-Recorder with the following property descriptions:

Tract One:

Parcels 1, 2, 3, 4, and designated remainder as numbered and designated upon the Parcel Map of Minor Subdivision No. 52-90, filed April 15, 1992 in Map Case 2, Drawer 55, Page 63, Mendocino County Records.

APN: 165-050-11, 12, 13, 14 & 15

Tract Two:

³⁰ See Letter from NIGC Chairman Jonodev O. Chaudhuri to Michael Hunter, Chairman, Coyote Valley Band of Pomo Indians (June 15, 2016) (available at http://www.nigc.gov/images/uploads/gamingordinances/Amendment_Approval_06.15.2016.pdf).

³¹ 69 Fed. Reg. 76004 (Dec. 20, 2004).

³² 77 Fed. Reg. 76514 (Dec. 28, 2012).

³³ *Id.* (extending term of Compact from 2025 to 2032).

³⁴ See Solicitor’s Office Preliminary Title Opinion, dated April 23, 2013, from Regional Solicitor, Pacific Southwest Regional Office, to Pacific Regional Director, BIA Pacific Region, p. 2, citing Memorandum, with attached map, dated Jan. 16, 2013, from Jamie Shubert, GIS Cartographer, to Arvada Wolfin, BIA Supervisory Realty Specialist, re: Land Description Review—Coyote Valley Rancheria—6 acres; see also Letter from Kevin Bearquiver, Acting Regional Director, BIA Pacific Regional Office, to Michael Hunter, Chairman, Coyote Valley Band of Pomo Indians (Oct. 31, 2014) (on file with NIGC); see also Coyote Valley Letter (Dec. 1, 2014).

³⁵ *Id.*

³⁶ See Notice of Decision, from BIA Pacific Regional Office to Coyote Valley Band of Pomo Indians’ Tribal Council (Oct. 31, 2013) (“2013 BIA NOD”).

³⁷ *Id.* at 2.

³⁸ See Grant Deed, dated May 29, 2014, and duly recorded by Mendocino County on June 23, 2014.

An easement and right of way to travel over, along, upon and across the following described land:

Beginning at the Southwesterly corner of Parcel 1, as numbered and designated upon the Parcel Map of Minor Subdivision No. 56-82, filed October 27, 1982 in Map Case 2, Drawer 39, Page 70, Mendocino County Records: thence South 87° 48' 00" East, 183.91 feet: thence South 20° 55'00" West 42.23 feet: thence North 87° 48' 00" West, 132.04 feet to a point in the northeasterly line of U.S. Highway 101 as described in the deed recorded April 13, 1946 in Book 198 Official Records, Page 146, Mendocino County Records: thence Northwesterly along the Northeasterly line of said Highway to the point of beginning.

The Parcel Map of Minor Subdivision No. 52-90 is included with the Grant Deed.³⁹

The BIA Pacific Region Land Titles and Records Office recorded the property descriptions of the trust land and assigned a tract number.⁴⁰

Applicable Law

In order for land to be eligible for gaming under IGRA, that land must qualify as "Indian lands" as defined in IGRA.⁴¹

IGRA defines "Indian lands" as follows:

- (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.⁴²

NIGC regulations further clarify the definition of "Indian lands," providing that:

- (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

³⁹ *Id.*

⁴⁰ The assigned tract number is 638 T5527.

⁴¹ 25 U.S.C. §§ 2703(4), 2710.

⁴² 25 U.S.C. § 2703(4).

- (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.⁴³

If the land at issue is trust land that was acquired after October 17, 1988 (commonly referred to as “after-acquired trust lands”), then IGRA’s general prohibition of gaming on after-acquired trust lands is triggered. There are, however, exceptions to this general prohibition,⁴⁴ including an exception for trust lands “located within or contiguous to the boundaries of the reservation of the Indian tribe” as it existed on October 17, 1988.⁴⁵

The Department’s regulations implementing IGRA’s exceptions to gaming on after-acquired trust lands,⁴⁶ set out in 25 C.F.R. part 292, define both “contiguous” and “reservation.” “Contiguous” is defined 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.”⁴⁷ “Reservation” is defined to include “[l]and of Indian colonies and rancherias . . . set aside by the United States for the permanent settlement of the Indians as its homeland.”⁴⁸

IGRA also requires that a tribe possess jurisdiction over the lands upon which it intends to conduct gaming before it authorizes such gaming.⁴⁹

Analysis

The Parcel is not within the boundaries of the Tribe’s Reservation. Thus, in order to determine whether the Tribe can conduct gaming on the Parcel, the Tribe must first demonstrate, under subsection (B) of IGRA’s definition of “Indian lands,” that the Parcel qualifies as land “title to which is . . . held in trust by the United States for the benefit of any Indian tribe . . . over which an Indian tribe exercises governmental power.”⁵⁰ Accordingly, to determine whether the Parcel qualifies as “Indian lands,” I must evaluate: (1) whether title to the Parcel is held in

⁴³ 25 C.F.R. §§ 501.2, 502.12.

⁴⁴ See 25 U.S.C. § 2719(a)-(b).

⁴⁵ 25 U.S.C. § 2719(a)(1).

⁴⁶ 25 U.S.C. § 2719(a)-(b).

⁴⁷ 25 C.F.R. § 292.2.

⁴⁸ 25 C.F.R. § 292.2, ¶ (2).

⁴⁹ 25 U.S.C. § 2710(b)(1) (“An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe’s jurisdiction, if”); *id.* § 2710(d)(1)(A)(i) (“Class III gaming activities shall be lawful on Indian lands only if such activities are—(A) authorized by an ordinance or resolution that—(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands [and meets other specified criteria]”); *id.* § 2710(d)(3)(A) (“Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities”). See also *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 701-03 (1st Cir. 1994) (citing Sections 2710(d)(3)(A) and 2710(b)(1) of IGRA as creating IGRA’s jurisdictional requirement), *cert. denied*, 513 U.S. 919 (1994), *superseded by statute*, Pub. L. No. 104-208, § 330, 110 Stat. 3009-227 (1996), *as recognized in Commonwealth v. Wampanoag Tribe of Gay Head (AQUINNAH)*, 144 F.Supp. 152 (1st Cir. 2015).

⁵⁰ 25 U.S.C. § 2703(4).

trust by the United States for the benefit of the Tribe; and (2) whether the Tribe exercises governmental power over the Parcel.

If the Parcel qualifies as “Indian lands” under subsection (B) of IGRA, the Tribe then must demonstrate that the Parcel satisfies one of the exceptions to IGRA’s general prohibition of gaming on lands acquired after 1988. The Tribe maintains that the Parcel is contiguous to the exterior boundaries of the Tribe’s Reservation, as it existed on October 17, 1988, and, therefore, satisfies the contiguous lands exception.⁵¹ Accordingly, I must also evaluate: (1) whether the Tribe had a reservation on October 17, 1988; and (2) if it did, whether the Parcel is contiguous to the exterior boundaries of that Reservation.

I. The Parcel qualifies as “Indian lands” under IGRA

I first examine whether the Parcel is land title to which is held in trust by the United States for the benefit of the Tribe, and, if so, whether the Tribe exercises governmental power over the Parcel.⁵²

A. The Parcel is trust land

As set forth above, the Parcel was taken into trust by the United States on May 29, 2014, and remains in trust for the benefit of the Tribe today.⁵³ Thus, the Parcel satisfies the first prong of 25 U.S.C. § 2703(4)(B).

B. The Tribe exercises governmental power over the Parcel

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 governmental power. For a tribe to exercise governmental power over its trust lands, it must first possess jurisdiction over those lands.⁵⁴

i. The Tribe has jurisdiction over the Parcel

Tribes are presumed to have jurisdiction over their members and lands. The United States Supreme Court, in *Merrion v. Jicarilla Apache Tribe*, held that Indian tribes are “invested with the right of self-government and jurisdiction over the persons and property within the limits of

⁵¹ 25 U.S.C. § 2719(a)(1).

⁵² 25 U.S.C. § 2703(4)(B); 25 C.F.R. § 502.12.

⁵³ See *infra*, pp. 4-5.

⁵⁴ *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)).

the territory they occupy, except so far as that jurisdiction has been restrained and abridged by treaty or act of Congress.”⁵⁵ There are no treaties or statutes applicable here that would limit the Tribe’s jurisdiction.

Moreover, it is well established that a tribe retains jurisdiction over the land it inhabits if the land qualifies as “Indian country,”⁵⁶ and trust land, such as the Parcel at issue here, is Indian country.⁵⁷ Because neither IGRA nor the NIGC regulations spell out 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.⁵⁸

Accordingly, because the land is trust land, the Tribe possesses jurisdiction over the Parcel and, therefore, has jurisdiction to exercise governmental power over the Parcel, as required by IGRA’s Indian lands’ definition. This conclusion is consistent with the BIA’s findings in support of its 2013 decision to have the United States accept the Parcel in trust for the Tribe.⁵⁹

ii. The Tribe exercises governmental power over the Parcel

There are many possible ways and circumstances in which a tribe might exercise governmental power over its land. 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 all of the circumstances.⁶⁰

In evaluating other cases, the NIGC has looked at: (1) tribal development of the land, including signage, fencing, roads, utilities, housing, offices, and retail; (2) tribal supervision of the land, including law enforcement, monitoring for trespassers, maintenance, environmental and

⁵⁵ 455 U.S. 130, 140 (1982); *see also California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987); *United States v. Wheeler*, 435 U.S. 313, 323 (1978).

⁵⁶ “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.”

⁵⁷ *See United States v. Roberts*, 185 F.3d 1125, 1131 (10th 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”).

⁵⁸ *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>.

⁵⁹ *See* 2013 BIA NOD at 3 (“Acquisition of the 6-acre property by the federal government will enhance Tribal self-determination and self-governance by allowing the Tribe to exercise jurisdiction and Tribal sovereign authority over land owned by the Tribal Government . . . Acceptance of the property into federal trust status for the benefit of the Tribe will remove the property from State and local jurisdiction.”).

⁶⁰ *National Indian Gaming Commission: Definitions under the Indian Gaming Regulatory Act*, 57 Fed. Reg. 12382, 12388 (1992).

historic preservation; (3) governmental agreements pertaining to the land, including MOUs with local governments, utility agreements, and HUD-funded housing services; (4) tribal constitutions and ordinances extending jurisdiction to the lands and controlling the use of the land, including hunting, fishing, and gaming; and (5) tribal provision of governmental services or programs, including healthcare, residential, cultural, and educational, from locations on the land.⁶¹ While there are many possible ways to show that a tribe exercises governmental power over its lands, no one particular fact or set of facts is determinative.

The Tribe has provided us with several examples of its exercise of governmental power over the Parcel.⁶² Since 2002, when the Tribe purchased the land, Tribal police have regularly patrolled and monitored the Parcel.⁶³ Tribal police have authority under the Tribe's Law and Order Code to issue citations to persons who violate Tribal law on the Parcel and currently exercise this authority.⁶⁴ Tribal police regularly monitor a school bus stop on the Parcel.⁶⁵

Moreover, the Tribe reports that it has taken steps to develop the Parcel commercially and, in the course of doing so, has exercised its governmental power over the Parcel. For example, in connection with the planning and construction of a recently built convenience store and gas station on a portion of the Parcel, the Tribal government applied a construction tax pursuant to its Construction Tax Ordinance. It applied its master development map, which is akin to a zoning code, to the Parcel's use, designating roughly two-thirds of the Parcel for commercial use and one-third for residential use.⁶⁶ The Tribal government has worked with officials from Mendocino County and other local officials to coordinate road and infrastructure improvements to provide access to the Parcel.⁶⁷ It has hired consultants and other professionals to conduct and/or prepare environmental assessments, traffic impact studies, engineering assessments, topographic surveys and geotechnical reports in connection with the Parcel.⁶⁸ Once the convenience store/gas station was operational, the Tribal government began imposing a sales tax on retail, fuel and tobacco sales pursuant to its tax code.⁶⁹

Finally, the Tribe's Environmental Protection Agency, which is authorized and funded by the Tribal Council, has conducted its own extensive testing and inspection of the Parcel, and regularly conducts well tests and checks water lines.⁷⁰ It also works with a local utility to

⁶¹ The courts also provide useful guidance as to what constitutes the tribal exercise of governmental power. *See Narragansett Indian Tribe*, 19 F.3d at 701-703.

⁶² *See* Letter from Michael Hunter, Chairman, Coyote Valley Band of Pomo Indians, to NIGC (Feb. 4, 2015) (on file with NIGC).

⁶³ *Id.* at 1.

⁶⁴ *Id.* at 1.

⁶⁵ *Id.* at 1.

⁶⁶ *Id.* at 1-2.

⁶⁷ *Id.* at 2.

⁶⁸ *Id.* at 2.

⁶⁹ *Id.* at 2.

⁷⁰ *Id.* at 2.

maintain poles and power lines, and removes trees and brush seasonally to help prevent forest fires on the Parcel.⁷¹

It is my opinion that, based on the above examples of the Tribe manifesting its governmental authority on the Parcel, the Tribe exercises governmental power over the Parcel. Accordingly, the 2014 trust land, comprising the Parcel, qualifies as Indian lands within the meaning of 25 U.S.C. § 2703(4)(B).

II. The Parcel qualifies for the on-reservation or contiguous lands' exception to IGRA's general prohibition of gaming on after-acquired trust lands

As set forth above, the Parcel is comprised of trust land that was acquired after October 17, 1988, and, therefore, may be eligible for gaming under IGRA -- but only if the Parcel qualifies for one of the exceptions to IGRA's general prohibition of gaming on after-acquired trust lands. The Tribe maintains that the Parcel is contiguous to the Tribe's Reservation as it existed on October 17, 1988, and, therefore, meets the statutory exception provided at 25 U.S.C. § 2719(a)(1). Accordingly, I must determine: (1) whether the Tribe had a "reservation" on October 17, 1988; and (2) if it did, whether the Parcel is contiguous to the exterior boundaries of that reservation.

A. On October 17, 1988, the Tribe had lands that qualified as a "reservation"

Although the term "reservation" is not defined in IGRA, it is defined in the Department regulations interpreting Section 2719 of IGRA. The regulations set out four definitions of "reservation,"⁷² one of which defines reservation to include the land of Indian rancherias that was "set aside by the United States for the permanent settlement of the Indians as its homeland."⁷³

To determine whether the Tribe had a reservation on October 17, 1988, I examine whether, on that date, the Tribe was a rancheria with land that was "set aside by the United States for the permanent settlement of the [Tribe] as its homeland." If it was, then I must consider whether the 1979 trust land was that "land set aside" for the Tribe. Finally, if the 1979 trust land is such land, and it existed on October 17, 1988, then the 1979 land qualifies as a reservation under the second definition of "reservation" in 25 C.F.R. § 292.2, set forth above.

i. On October 17, 1988, the Tribe was a rancheria with land set aside by the United States for the permanent settlement of the Tribe as its homeland

⁷¹ *Id.* at 1-2.

⁷² 25 C.F.R. § 292.2.

⁷³ 25 C.F.R. § 292.2 (the second of four definitions).

To best understand the history of the Tribe's primary land holdings from 1909 to today, and its relevance to this analysis, it is important to note that the term "rancheria," as used generally, is not only synonymous with the term "reservation," i.e. a tribe's homeland, but is also synonymous with the term "tribe," which encompasses tribal communities and the tribal members who make up those communities.⁷⁴ An example of the interchangeability of the terms "rancheria" and "reservation," with respect to the designation of the Coyote Valley Tribe's land, is reflected in internal BIA Title Data records, which refer to the Tribe's homeland as both the Coyote Valley Rancheria and the Coyote Valley Reservation.⁷⁵

The history of the Tribe's primary landholdings in the modern era supports the conclusion that the Tribe's 1979 trust land was set aside by the United States for the permanent settlement of the Tribe as its homeland. It begins with the original Rancheria land, purchased and taken into trust by the United States in 1909;⁷⁶ the transference of that land from the Tribe to the Army Corps of Engineers in 1957;⁷⁷ and the purchase of new land for the Tribe in 1979.⁷⁸ In 1909, the Rancheria was purchased by the United States with federal funds and set aside for the use and occupancy of the Tribe by the 1906 and 1908 Acts. In 1979, land again was purchased with federal funds and set aside for Tribe.⁷⁹ The purposes of the 1909 trust acquisition and the 1979 trust acquisition were the same: the permanent settlement of the Tribe as its homeland. Moreover, the Tribe that existed in 1979 was the same Tribe that existed in 1909.⁸⁰ The Tribe's need for a homeland was no less acute or significant in 1979 than that of the landless Indians in 1909, and the trust land acquisitions in 1909 and in 1979 both addressed that need for a homeland.

⁷⁴ *Duncan v. United States*, 229 Ct. Cl. 120, 123 (1981); 667 F.2d 36, 38 (1981), *cert. denied*, 463 U.S. 1228 (1983) ("Rancherias are numerous small Indian reservations or communities in California"); *see also Big Lagoon Rancheria v. California*, 789 F.3d 947, 951, n.2 (2015); *Williams v. Gover*, 490 F.3d 785, 787 (9th Cir. 2007).

⁷⁵ *See* BIA Title Data records (undated), compiled by the BIA Pacific Regional Office, Central California Agency, for the Coyote Valley Rancheria (for land acquisitions from 1909-1989), and the BIA Sacramento Area Office, Central California Agency, for the Coyote Valley Reservation (for land acquisitions from 1909-2001), and attached to an e-mail from Kim Yearyean, BIA Realty Officer, Central California Agency, to Kathy Zebell (March 13, 2015, 01:42 EST) (on file with the NIGC).

⁷⁶ Both the 1906 and 1908 Acts, which began the multi-year federal purchases and set asides for the California rancherias, used the term "reservation" in connection with planning those purchases. Lands purchased and set aside for the use and occupancy of homeless California Indians, pursuant to the Congressional Appropriations Acts of 1906-1929, were, for all intents and purposes, Indian reservations. The original Coyote Valley Reservation was purchased in 1909 with funds appropriated by the Acts of 1906 and 1908, *infra*.

⁷⁷ P.L. 85-91, 71 Stat. 283 (1957) ("An Act to authorize the transfer of the Coyote Valley Indian Rancheria to the Secretary of the Army, and for other purposes").

⁷⁸ *See* pages 2-3, *infra*.

⁷⁹ The Tribe had no proclaimed reservation, no land base, and no homeland in 1979, when the land that was purchased with funds from a HUD block grant was taken into trust. *Cf. Sault Ste. Marie Band of Chippewa Indians v. United States*, *infra*, where lands acquired with funds from a HUD grant, and subsequently taken into trust, were found to be a de facto reservation, even though the Sault Ste. Marie Band already had a proclaimed reservation.

⁸⁰ Even though the Tribe's lands were transferred to the Army Corps of Engineers in 1957, the Tribe's government-to-government relationship with the United States continued, and the Tribe and its members continued to be eligible for federal programs and services available to tribes and tribal members. *See Knight v. Kleppe*, *supra* note 13.

BIA records demonstrate that the purpose of the 1979 trust land acquisition was to re-establish a land base for the permanent settlement of the Tribe as its homeland. While this purpose was articulated best by the Tribe, it appears to have been shared by each of the key parties involved in the trust acquisition: the Tribe, the Department (including the BIA) and the State of California. BIA documents and records relevant to this analysis include: the Tribe's application for a HUD Community Development Block Grant; those records generated before the trust acquisition in July of 1979; and those records generated after the 1979 trust acquisition.

a. The HUD Block Grant Application

One of the most informative of the BIA records regarding the purpose of the 1979 trust land acquisition is the Coyote Valley Tribal Council's full application in 1978 for a HUD Community Development Block Grant ("HUD Application" or "Application"). With its HUD application, the Tribe sought financial assistance for a trust land acquisition to re-establish its land base.⁸¹ The BIA acknowledged this purpose in the Application packet it prepared. On the packet's cover is a label that reads: "Land Transactions, Coyote Valley Reservation, Application Land Acquisition."⁸² The BIA's "Title and Description of the Project," also part of the packet, reads: "COYOTE VALLEY LAND ACQUISITION, Acquire land suitable for housing for no less than 71 families/households 210+ population."⁸³

In the Application's Community Development Plan Summary (Statement of Needs), the first need listed by the Tribe is: "Re-acquire a land base [for] Coyote Valley Band of Pomo Indians."⁸⁴ The Tribe then explains how its Rancheria lands were lost in 1957 and the impact of this loss on the Tribe:

. . . Although retaining its status as a federally recognized tribe, the organization has retained no land. Due to the actual and symbolic importance of land to the cultural, religious and social identity of the tribe, the continued existence of the Coyote Valley Band was placed in jeopardy. The overriding concern and felt need of virtually all of the present 210 members of the tribe is the re-establishment of a land base for cultural survival.⁸⁵

The source of this information is listed as BIA records and several community meetings.⁸⁶

⁸¹ See Community Development Block Grant Full Application from Coyote Valley Tribal Council, CV-HUD-78-0, ("HUD Application" or "Application") (May 31, 1979) (on file with NIGC).

⁸² *Id.* at 1.

⁸³ *Id.* at 5.

⁸⁴ *Id.* at 7.

⁸⁵ *Id.* at 7.

⁸⁶ *Id.* at 7.

The second need listed by the Tribe in its HUD Application is “Procurement of decent, safe and sanitary housing,” with the following explanation of the need:

Nearly all members of the Coyote Valley Band desire to live on a newly established Rancheria (federal trust land) if the opportunity were available. Further, 87% of the members surveyed presently live in substandard or overcrowded housing. 68% of the members of the Band subsist on incomes below the poverty level. These figures attest to the priority need of housing and of the desire of the membership to re-establish traditional values and traditional culture through establishment of adequate, available housing on a Rancheria setting.⁸⁷

The source of this information is listed as “Housing Needs Survey of 75 households of Rancheria descendants.”⁸⁸ The remaining needs listed are a “Tribal Community Center” (#3), to serve the recreational and cultural needs of Tribal members and act as a focal point for enhancement of Tribal unity and cultural preservation,⁸⁹ as well as “Economic Development” (#4), to address high unemployment levels among tribal members by providing jobs, training and business development on or near the rancheria.⁹⁰

As part of the HUD Application, the Tribe was also required to list its “Long Term Objectives” for each of the needs identified in the first part of the Application.⁹¹ The long-term objective for the #1 need, “Land Acquisition,” was described by the Tribe as follows:

Although possibly difficult to quantify, the need for a land base for the survival of an Indian tribe is most essential. Indian culture and beliefs are based upon and nurtured by the land. The destruction of the Coyote Valley Rancheria in 1957 has had severe detrimental effects on the structure and existence of the Coyote Valley Band of Pomo Indians. Descendants have been subsequently separated by distance, economic necessities, and reduction of contact with one another. Some cultural activities and beliefs have been severely hampered and are in danger of being permanently destroyed. In spite of more than 22 years without a land base, tribal members have been able to maintain some contact with one another, and, most important, their status as a federally recognized tribe. However, unless land is reacquired, the tribe as it is known today, may soon vanish as an entity.⁹²

⁸⁷ *Id.* at 7.

⁸⁸ *Id.* at 7.

⁸⁹ *Id.* at 7; sources are listed as “Public meetings; Tribal Council Meetings.”

⁹⁰ *Id.* at 8.

⁹¹ *Id.* at 10.

⁹² *Id.* at 10.

The Tribe's other long-term objectives identified in the Application included obtaining decent, safe and sanitary housing for tribal members, 65% with income below the poverty level.⁹³ The Tribe's primary short-term objective was to "Acquire Land in Federal Trust Status,"⁹⁴ an objective for which the Tribe said the BIA agreed to provide assistance.⁹⁵ The sources identified by the Tribe are the BIA and several community meetings.⁹⁶

b. BIA Records – Before 1979 Trust Acquisition

BIA records also show that, during the late 1970s, there were efforts by the Department, the BIA and the State of California's Indian Assistance Program ("State IAP") to help the Tribe reacquire a homeland. In 1977, in a letter to the Tribe, a BIA official confirmed that the Tribe had not been terminated for purposes of eligibility for BIA services in 1957, when it lost its land, but acknowledged how the absence of a land base limited the types of services available to the Tribe.⁹⁷ Also in 1977, in a letter to a Tribal Council leader, a Department official mentioned the possibility of obtaining an appropriation from Congress to purchase land for the Coyote Valley Rancheria descendants, suggesting that the matter should first be explored with the BIA Area Director.⁹⁸ BIA records show that the Department was aware of the Tribe's HUD grant application and its ongoing status.⁹⁹ There was also communication from the State IAP to the BIA that the Tribe had received funding "for acquisition of land in Mendocino County to replace their now submerged Rancheria," and that the State was providing technical assistance and a predevelopment loan to the Tribe to facilitate the acquisition.¹⁰⁰ Additionally, on May 14, 1979, shortly before the trust land acquisition was finalized, a Notice of Finding of No Significant Effect on the Environment was published in the Ukiah Daily Journal for the Coyote Valley Land Acquisition Project "to reestablish a land base for the Indian Tribe."¹⁰¹

⁹³ *Id.* at 10.

⁹⁴ *Id.* at 11.

⁹⁵ *Id.*; see also Letter from William Finale, Director, BIA Sacramento Area Office, to Doris Jackson, Tribal Administrator & Vice Chairman, Coyote Valley Tribal Council (March 15, 1978).

⁹⁶ HUD Application at 11.

⁹⁷ Letter from Acting Deputy Comm'r of Indian Affairs to Ira Campbell, Chairman, Coyote Valley Tribal Council (Aug. 18, 1977) (on file with NIGC).

⁹⁸ Letter from James Joseph, DOI Under Secretary, to Doris Jackson, Vice Chairman, Coyote Valley Tribal Council (Oct. 31, 1977) (on file with NIGC).

⁹⁹ See Letter from William E. Finale, Area Director, BIA Sacramento Office, to Doris Jackson, Tribal Administrator & Vice Chairman, Coyote Valley Tribal Council (March 15, 1978); see also Memorandum from William E. Finale, Area Director, BIA Sacramento Office, to Superintendent, BIA Central California Agency (March 29, 1979).

¹⁰⁰ Letter from William Evans, Acting Coordinator, California IAP, to William Finale, Director, BIA Sacramento Region (May 15, 1979) (on file with NIGC).

¹⁰¹ "Notice of Finding of No Significant Effect on the Environment," Ukiah Daily Journal at 10 (May 14, 1979) (on file with NIGC).

In 1979, the Tribe succeeded in getting the HUD block grant and then purchased land with the grant that same year. Shortly thereafter, the United States acquired the land in trust for the Tribe.¹⁰²

c. BIA Records – After 1979 Trust Acquisition

After the trust land acquisition was finalized in 1979, BIA records demonstrate that the BIA, along with BIA contractors, viewed the new trust land as a Rancheria or a Reservation, i.e., the Tribe's homeland. On April 17, 1980, the Coyote Valley Tribal Council authorized submission of a request to the BIA "to survey the exterior boundaries of the newly acquired Coyote Valley Rancheria."¹⁰³ In a May 23, 1980 letter from a BIA Realty Officer to a Santa Rosa engineering firm, the Realty Officer discussed "telephone bids on surveys for the Coyote Valley Rancheria" and other rancherias.¹⁰⁴ In a July 10, 1980 letter from an engineering firm to the BIA Superintendent of the Central California Agency, payment requirements for "surveying and mapping the Coyote Valley Reservation" were addressed.¹⁰⁵ A week later, the same engineering firm followed up with a second letter to the BIA Superintendent, requesting partial payment "to begin the surveying and mapping of the Coyote Valley Reservation."¹⁰⁶ In a June 23, 1980 letter to the Coyote Valley Tribal Council, an environmental analysis and planning group wrote: "It is critical to the successful completion of a Housing Plan for the Coyote Valley Rancheria that we have a detailed topographic map of the property as well as a boundary survey, as quickly as possible."¹⁰⁷ In a July 7, 1980 Memorandum from a BIA Realty Officer to a BIA Superintendent, Central California Agency, the topics were "Property Management Coyote Valley Rancheria" and "Budget Activity Interior Surveys," with a listed item of "Coyote Valley Rancheria Budget," along with an amount.¹⁰⁸ On February 1, 1983, the Coyote Valley Tribal Council wrote to the BIA Superintendent, Central California Agency, about the purchase of land next to the Coyote Valley Reservation, advising "that the property adjacent to the Coyote Valley Reservation has been purchased" by a third party and a dispute has arisen about a right-of-way that was reserved in the deed for "the land which presently comprises the Coyote Valley Reservation to the United States of America in trust for the Coyote Valley Band of Pomo Indians July 26, 1979."¹⁰⁹ And, on April 18, 1983, in a BIA Order issued by the BIA Central California

¹⁰² See Grant Deed, dated July 26, 1979, duly recorded by the Mendocino County on October 3, 1979, and subsequently re-recorded on April 3, 1980, to reflect the acceptance of the conveyance in trust by the United States.

¹⁰³ See Coyote Valley Tribal Council Resolution (April 17, 1980).

¹⁰⁴ Letter from BIA Realty Officer O. Katie Cox to Dimensions 4 Engineering Inc. (May 23, 1980) (on file with NIGC).

¹⁰⁵ Letter from Dimensions 4 Engineering Inc. to BIA Superintendent, Central California Agency (July 10, 1980) (on file with NIGC).

¹⁰⁶ Letter from Dimensions 4 Engineering Inc. to BIA Superintendent, Central California Agency (July 18, 1980) (on file with NIGC).

¹⁰⁷ Letter from Elgar Hill, Environmental Analysis & Planning, to Priscilla Hunter, Coyote Valley Tribal Council (June 23, 1980) (on file with NIGC).

¹⁰⁸ Memorandum from BIA Realty Officer to BIA Superintendent, Central California Agency (July 7, 1980) (on file with NIGC).

¹⁰⁹ Letter from Doris Renick, Chairperson, Coyote Valley Tribal Council, to Ronald Jaeger, Superintendent, BIA Central California Agency (Feb. 1, 1983) (on file with NIGC).

Agency to a contractor, the service ordered was: "Perform field survey to establish 40-foot wide road right-of-way on the Coyote Valley Reservation."¹¹⁰

The above excerpts from BIA records demonstrate that, after 1979, the BIA, the Tribe, and third-party contractors considered the 1979 trust land to be the Coyote Valley Reservation and/or the Coyote Valley Rancheria, and treated the land as such. Records show that an official survey and map of the trust land by BIA contractors was needed because the land was a reservation and its boundaries needed to be determined.¹¹¹ Additionally, records show that a detailed topographic map and a boundary survey were also necessary because housing was being planned in connection with the permanent settlement of Rancheria members on the new Rancheria land.¹¹²

d. The Tribe's 1979 trust lands were replacement rancheria lands set aside for the permanent settlement of the Tribe as its homeland

For the above reasons, and the record before me, it is my opinion that on October 17, 1988, the Tribe had replacement rancheria land that had been set aside for the permanent settlement of the Tribe as its homeland, thereby satisfying the definition of "reservation" for purposes of 25 U.S.C. § 2719(a)(1).

My opinion that the 1979 trust land constitutes rancheria land does not change because the land was not specifically given the designation "rancheria" in the 1979 Grant Deed, or in the subsequent Acceptance of Conveyance of the land to the United States, or in any other related documents.¹¹³ The original California rancherias, including the Coyote Valley Rancheria, were parcels of land that were purchased under the 1906 and 1908 Acts for landless California Indians.¹¹⁴ They were called "rancherias," although there is no mention of the term in the 1906 or

¹¹⁰ Order No. 3J51-0100179, issued by BIA Central California Agency, to Scherf & Rau, Inc. (April 18, 1983) (on file with NIGC).

¹¹¹ See Letter from BIA Realty Officer to Dimensions 4 Engineering Inc. (May 23, 1980); Memorandum from BIA Realty Officer, Central California, to BIA Superintendent, Central California Agency, regarding budget for Department survey of the Coyote Valley Rancheria (July 7, 1980); Letter from Dimensions 4 Engineering Firm Inc. to Superintendent, BIA Central California Agency (July 10, 1980); Letter from Dimensions Four Engineering Inc. to Superintendent, BIA Central California Agency (July 18, 1980); see also Coyote Valley Tribal Council Resolution (April 17, 1980).

¹¹² Letter from Elgar Hill, Environmental Analysis & Planning, to Priscilla Hunter, Coyote Valley Tribal Council, (June 23, 1980) (on file with NIGC).

¹¹³ See *United States v. McGowan*, 302 U.S. 535, 538-39 (1938) (it is not necessary that Congress use the word "reservation" to create Indian reservation lands); *United States v. Pelican*, 232 U.S. 442, 449 (1914) ("In the present case, the original reservation was Indian country simply because *it had been validly set apart for the use of the Indians as such, under the superintendence of the Government.*" [Italics added.]); see also Fletcher, Federal Indian Law, § 7.3, 308 (2016) (discussing Secretarial trust acquisitions, observes: "Though the land is owned by the United States, Indian nations have the beneficial interest in the land[,] and trust land, as this type of land is usually called, is the equivalent to reservation land and is 'Indian country.'").

¹¹⁴ *Duncan v. Andrus*, 517 F. Supp. at 2-3.

1908 Acts, or subsequent acts, or in the Grant Deed for the Tribe's 1909 Rancheria.¹¹⁵ However, in both the 1906 and 1908 Acts, which began the multi-year federal purchases and set asides for the California rancherias, the term "reservation" is used in connection with the planning of those purchases.

Nor does the 1989 reservation proclamation change my opinion that the 1979 trust land constitutes a rancheria. Even without the official reservation proclamation, the rancheria land constituted a reservation under 25 C.F.R. § 292.2 because it was land set aside by the United States as the Tribe's rancheria, prior to the proclamation. It is well established that rancherias are, "for all practical purposes," reservations.¹¹⁶ Numerous federal courts have concluded that California rancherias are the equivalent of reservations.¹¹⁷ In *Duncan v. United States*, the U.S. Court of Claims described rancherias as "numerous small Indian reservations or communities in California, the lands for which were purchased by the Government (with Congressional authorization) for Indian use," and held that "Congress clearly contemplated that this land have the same general status as reservation lands."¹¹⁸ The lands at issue in *Duncan* were the Robinson Rancheria lands, which, like the original Coyote Valley Rancheria lands, were purchased in 1909, pursuant to the Indian appropriations' Acts of 1906 and 1908, and were subsequently taken into trust by the United States for the Robinson Rancheria.¹¹⁹

Accordingly, the fact that the 1979 trust land was officially proclaimed to be a reservation in 1989, a year after IGRA was enacted and 10 years after the land was taken into trust for the Tribe, does not change the underlying status of the land – that it is replacement rancheria land that was set aside by the United States for the permanent settlement of the Tribe as its homeland.¹²⁰ Moreover, the 1979 trust land was widely acknowledged to be both a reservation and a rancheria, as set forth above, in the years prior to the reservation proclamation. During this time, the Tribe built homes on this land, lived on this land and governed on this land.

B. The Parcel is contiguous to the exterior boundaries of the Tribe's reservation as it existed on October 17, 1988

The final step is to determine whether the Parcel is contiguous to the exterior boundaries of the Tribe's Rancheria as it existed on October 17, 1988, thereby satisfying the second prong of the contiguous lands exception in 25 U.S.C. § 2719.

¹¹⁵ *Id.*; see *supra* notes 9, 10, 11.

¹¹⁶ See Solic. Op. M-28958 (Apr. 26, 1939), *pub'd in* 1 *Op. Solic. on Indian Affairs* 891 (U.S.D.I. 1979).

¹¹⁷ See *Big Lagoon Rancheria v. California*, 789 F.3d 947, 951, n.2 (2015) ("Rancherias are numerous small Indian reservations or communities in California"); *Williams v. Gover*, 490 F.3d 785, 787 (9th Cir. 2007) ("Rancherias are numerous small Indian reservations or communities in California . . ."); *Artichoke Joe's Cal. Grand Casino v. Norton*, 278 F. Supp. 2d 1174, 1176 n.1 (E.D. Cal. 2003) ("Rancherias are small Indian reservations . . ."); and *Santa Rosa Band of Indians v. Kings County*, 522 F.2d 665, 667 (9th Cir. 1975).

¹¹⁸ *Duncan v. United States*, 229 Ct. Cl. at 128-129; see also *Governing Council of Pinoleville Indian Community v. Mendocino County*, 684 F. Supp. 1042, 1043 n.1 (N.D. Cal. 1988) (citing *Duncan v. United States*, *supra*).

¹¹⁹ *Duncan v. United States*, 229 Ct. Cl. at 123.

¹²⁰ See generally *Sault Ste. Marie Tribe v. United States*, 576 F. Supp. 2d 838 (2008).

Documents, maps and other information have been provided by the Tribe and other sources that show the Parcel is adjacent to the northern boundary of the Tribe's Reservation. Much of this evidence comes directly from the BIA. For example, in the BIA's 2013 NOD, informing the Tribe of its decision to accept the Parcel into trust, the BIA specifically found that the land was contiguous to the northern boundaries of the Tribe's Reservation.¹²¹ The BIA based its finding on a legal opinion from the Department's Solicitor's Office that concluded "the subject parcels are contiguous to the Coyote Valley Reservation."¹²² The legal opinion, in turn, is based on a 2013 memorandum to the BIA from a GIS cartographer, who found that the Parcel was "adjacent to the current reservation," and concluded that "the land description is sufficient to accept the land into trust."¹²³

In the 2013 NOD, the BIA noted that, for land to be taken into trust under its regulations, the land acquisition must have been authorized by an Act of Congress and it must be located within the exterior boundaries of the Tribe's Reservation or adjacent to its exterior boundaries.¹²⁴ Because the Tribe's 6-acre Parcel was found to be adjacent to the Tribe's Reservation,¹²⁵ and the Tribe's acquisition of the Parcel was authorized by Acts of Congress,¹²⁶ the BIA concluded that taking the lands in trust "falls within the land acquisition policy as set forth by the Secretary of the Interior" in its regulations, specifically finding:

The proposed land acquisition of 6 acres is adjacent to the northern boundary of the Tribe's reservation. This acquisition, therefor, falls within the land acquisition policy as set forth by the Secretary of the Interior.¹²⁷

In so concluding, the BIA applied 25 C.F.R. § 151.10, which authorizes on-reservation acquisitions of land in trust status by the United States for a tribe when the land is contiguous to an Indian reservation.¹²⁸

The Tribe has also submitted its own documents and maps to demonstrate that the southern edge of the Parcel is adjacent to the northern boundary of the Tribe's Rancheria lands.¹²⁹ A 2011 Environmental Assessment ("EA"), which was done in connection with the

¹²¹ See 2013 BIA NOD, approving a trust acquisition for the Tribe pursuant to the IRA, 25 U.S.C. § 465. I note that use of the term "reservation" in the NOD reflects the 1989 Reservation Proclamation by the Secretary of the Interior.

¹²² See 2013 BIA NOD at 2, citing Solicitor's Office Preliminary Title Opinion from Acting Regional Solicitor, Pacific Southwest Regional Office, to Pacific Regional Director, BIA Pacific Region (April 23, 2013).

¹²³ See Solicitor's Office Preliminary Title Opinion at 2 (April 23, 2013), *id.*, citing Memorandum, with attached map, from GIS Cartographer to BIA Supervisory Realty Specialist (Jan. 16, 2013).

¹²⁴ See 2013 BIA NOD; *see also* 25 C.F.R. part 151.

¹²⁵ *Id.* at 2 ("The proposed land acquisition of 6 acres is adjacent to the northern boundary of the Tribe's reservation").

¹²⁶ *Id.* at 2 ("In this particular instance, the authorizing Acts of Congress are the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 465) and the Indian Land Consolidation Act of 1983 (25 U.S.C. §2202).").

¹²⁷ *Id.* at 2.

¹²⁸ 2013 BIA NOD at 2-3; *see also* 25 C.F.R. § 151.3, which authorizes land that is adjacent to a tribe's reservation to be acquired in trust by the United States for a tribe upon approval by the Secretary.

¹²⁹ See Coyote Valley Letter, with Exhibits A-E (Dec. 1, 2014) (on file with NIGC).

Tribe's fee-to-trust application for the Parcel, describes the Parcel as six acres of land adjacent to the northern boundary of the existing Coyote Valley Reservation.¹³⁰ Three maps, attached to the EA, support the finding that the Parcel is contiguous to the Reservation because it either directly abuts the Reservation's northern boundary or is separated from the Reservation only by a public road, Coyote Valley Boulevard.¹³¹

Department regulations interpreting 25 U.S.C. § 2719(a)(1) list the criteria that must be met by a tribe for its newly acquired trust lands to satisfy the contiguous lands exception to IGRA's general prohibition of gaming on after-acquired lands. If the tribe had a reservation on October 17, 1988, the land must be located within or contiguous to the boundaries of the reservation.¹³² "Contiguous" is defined in 25 C.F.R. § 292.2 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.

Based on the record before me, it is my opinion that the Parcel is contiguous to the exterior boundaries of the Tribe's 1979 trust land in existence on October 17, 1988.¹³³ I have already concluded that the 1979 trust land satisfies the definition of "reservation" in 25 C.F.R. § 292.2, paragraph (2). Therefore, it is my opinion that the Parcel qualifies for the contiguous lands exception to IGRA's prohibition of gaming on trust lands acquired after 1988, the date IGRA was enacted.

III. The parcel is within the Tribe's jurisdiction as required by 25 U.S.C. § 2710

In addition to the requirement that the land be "Indian lands" as defined in IGRA, IGRA also requires that those Indian lands be "within such tribe's jurisdiction" in order for the Tribe to engage in and regulate gaming on the Parcel.¹³⁴ As demonstrated earlier in this opinion, the Tribe has jurisdiction over the Parcel because it is trust land and thus meets this requirement.

Conclusion

Based upon the foregoing analysis, the statutory language of IGRA, the NIGC regulations and the Department's regulations, as well as a review of the Tribe's submissions and relevant BIA records, it is my opinion that the Tribe's 1979 trust land qualifies as a reservation because it

¹³⁰ See EA, Coyote Valley Band of Pomo Indians Pine Crest Fee-to-Trust Application (Nov. 2011), which includes maps showing the Parcel's location adjacent to the Tribe's Reservation in Figure 1-2, Figure 1-3 and Figure 1-4 (on file with NIGC).

¹³¹ *Id.*

¹³² 25 C.F.R. § 292.4(a).

¹³³ The 1979 trust lands, in existence on October 17, 1988, were slightly smaller than the Tribe's current Reservation; however, the northern boundary of the Tribe's trust lands in 1988, and the northern boundary of the Tribe's Reservation in 2015, which are the exterior boundaries relevant to this opinion, are the same.

¹³⁴ 25 U.S.C. §§ 2710(b)(1)(B), 2710(d)(1)(A)(i).

is rancheria land that was set aside by the United States for the Tribe's homeland. I further opine that the Parcel is contiguous to the exterior boundaries of the Tribe's Reservation, as it existed on October 17, 1988, and is land that is within the Tribe's jurisdiction. Consequently, gaming on the 2014 Parcel is permitted, in accordance with 25 U.S.C. § 2719(a)(1).

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 or Acting General Counsel at a later date. Moreover, this advisory legal opinion is not binding upon the NIGC Chairman, who may opt to exercise his prosecutorial discretion to disregard the opinion, or the NIGC Commission, which is free to disagree with the 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.

If you have any questions regarding this legal opinion, please contact Attorney Katherine Zebell at (202) 632-7003.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Hoenig
General Counsel

Cc: Little Fawn Boland, Legal Counsel to Tribe
(via email only: littlefawn@ceibalegal.com)