National Indian Gaming Commission

In re: Gaming Ordinance of the Ponca Tribe of Nebraska	)	**April 30, 2019**

Revised Amendment to Final Decision and Order

On March 26, 2019, the U.S. District Court for the Southern District of Iowa remanded the National Indian Gaming Commission's[1] decision amendment that confirmed its approval of the Ponca Tribe of Nebraska's[2] site-specific gaming ordinance. The court directed NIGC to "reconsider[ ] its restored lands analysis," instructing: "[t]he Commission shall evaluate the 2002 Agreement and the Corrected Notice as factual circumstances of the trust acquisition in accordance with this Order."[3] Specifically, "the NIGC must consider the facts and circumstances surrounding the agreement as part of its restored lands analysis,"[4] including the import of these facts and circumstances as well as their weight against the other factual, temporal, and geographic factors.[5]

I. Restored Lands Legal Standard

Congress enacted the Indian Gaming Regulatory Act[6] to regulate Indian gaming and to promote tribal economic development, self-sufficiency, and strong tribal governments.[7] As

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[1] Hereinafter *NIGC.*
[2] Hereinafter *Tribe.*
[3] *City of Council Bluffs, Iowa v. United States Dep't of Interior*, No. 117CV00033SMRCFB, 2019 WL 1368561, at *18 (S.D. Iowa Mar. 26, 2019).
[4] *Id.*
[5] *Id.* ("As to how crucial [these facts and circumstances] were, and how they balance against other factual, temporal, and geographic factors, the Court leaves that determination to the NIGC.").
[6] Hereinafter *IGRA*, 25 U.S.C. § 2701, et seq.
[7] 25 U.S.C. § 2702(1).

previously explained[8], IGRA generally prohibits gaming on parcels taken into trust after 1988 but provides certain exceptions to the prohibition.[9] The restored lands exception is for lands "taken into trust as part of … the restoration of lands for an Indian tribe that is restored to Federal recognition."[10]

"IGRA does not define 'restoration of lands'; therefore, courts have held it to be ambiguous and interpreted it broadly,"[11] meaning, "read broadly, in service of IGRA's overall goal of promoting tribal economic development and self-sufficiency."[12] Moreover, the Indian canon of statutory construction has been applied to the exception, affording tribes a liberal construction of it in their favor.[13] The exception's terms *restored* and *restoration* have been given their common meanings,[14] including: "to put back into a former or proper position;" "to bring it back to an original state;" "to give back, return, make restitution, reinstatement, renewal, and reestablishment."[15] As explained recently, "the syntax of the restored lands exception, which discusses not simply the restoration of the lands themselves, but their restoration 'for an Indian

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[8] The Commission incorporates herein its prior explanations of IGRA's Section 20, the restored lands exception, and the exception's purpose and legal framework. *See* Commission Final Decision and Order in re: Gaming Ordinance of the Ponca Tribe of Nebraska (Dec. 31, 2007) (2007 Commission Decision) at 6-7; Commission Amendment to Final Decision and Order in re: Gaming Ordinance of the Ponca Tribe of Nebraska (Nov. 13, 2017) (2017 Commission Amendment to Decision) at 30-32.

[9] 25 U.S.C. § 2719.

[10] 25 U.S.C. § 2719(b)(1)(B)(iii).

[11] *Butte Cty., Cal. v. Hogen*, 609 F. Supp. 2d 20, 29 (D.D.C. 2009) (citing as an example: *City of Roseville v. Norton,* 348 F.3d at 1020, 1026–27 (D.C.Cir.2003)); *see also Grand Traverse Band of Ottawa & Chippewa Indians v. Office of U.S. Atty. for W. Div. of Michigan*, 369 F.3d 960, 971 (6th Cir. 2004) (the "presumptive bar against casino-style gaming on Indian lands acquired after the enactment of the IGRA [ ] should be construed narrowly (and the exceptions to the bar broadly) in order to be consistent with the purpose of the IGRA, which is to encourage gaming").

[12] *Koi Nation of N. California v. United States Dep't of Interior*, No. CV 17-1718 (BAH), 2019 WL 250670, at *22 (D.D.C. Jan. 16, 2019), *appeal pending* (quoting in part *City of Roseville v. Norton,* 348 F.3d 1020, 1030 and 1032 (D.C. Cir. 2003)).

[13] *See City of Roseville*, 348 F.3d at 1032; *Butte Cty.*, 609 F. Supp. at 28 fn. 8.

[14] *See* 2017 Commission Amendment to Decision at 30-31 for a full discussion.

[15] *Koi Nation*, *supra* at *18 (quoting *TOMAC, Taxpayers of Michigan Against Casinos v. Norton* ("*TOMAC*"), 433 F.3d 852, 865 (D.C. Cir. 2006); *City of Roseville*, 348 F.3d at 1027; *Grand Traverse*, 369 F.3d at 967.).

tribe,' fits more comfortably with the concept of restitution, for decades of improper treatment as a terminated tribe."[16]

Yet courts instruct that the common meaning of *restoration* may also inform the analysis to limit "after-acquired property in some fashion."[17] A parcel's restoration may possibly "be limited by the factual circumstances of the acquisition, the location of the acquisition, or the temporal relationship of the acquisition to the tribal restoration."[18] Here, we apply this test[19] to determine whether the Carter Lake parcel was taken into trust as part of the restoration of land to the Ponca Tribe of Nebraska (Tribe).[20]

II. Factual Circumstances Factor

"Under this factor, the factual circumstances of the acquisition must provide indicia of restoration."[21] In assessing whether the factual circumstances surrounding the acquisition of a tribe's land qualified as a restoration of lands, the court in *Grand Traverse II* utilized a time period that began with the tribe's effort to acquire land and ended when that effort concluded:

> [B]etween March 1988 and July 1990, the Band engaged in significant efforts to acquire land. The United States took into trust multiple parcels of property that continue to constitute the majority of its trust lands. On April 20, 1989, the Band acquired title to a parcel of land [ ] that is commonly referred to as the 'Turtle Creek' site. . . . The site was placed into trust on August 8, 1989. The trust application for the Turtle Creek site did not indicate that it was being acquired for gaming purposes, though it did specify that it may be used for future economic development. . . . The Band [ ] has introduced uncontradicted evidence of the intent of the Band in acquiring properties between 1988 and 1990.[22]

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[16] *Id.* at *22.
[17] *Grand Traverse II,* 198 F. Supp. 2d at 935.
[18] *Id.; Nebraska ex rel. Bruning v. U.S. Dep't of Interior*, 625 F.3d 501, 510 (8th Cir. 2010) (quoting *Grand Traverse II, supra* at 935.).
[19] The district court upheld the Commission's decision not to apply the Part 292 regulations. *See City of Council Bluffs, supra* at *16.
[20] No one contests that the Tribe is a restored tribe for purposes of the exception. *See Nebraska*, 625 F.3d at 510.
[21] *Wyandotte Nation v. Nat'l Indian Gaming Comm'n*, 437 F. Supp. 2d 1193, 1214 (D. Kan. 2006).
[22] 198 F. Supp. 2d at 925 and 937.

In the matter at hand, the time period at issue begins on September 24, 1999, when the Tribe purchased the Carter Lake parcel in fee and shortly thereafter[23] applied to have it put into trust, and ends on February 10, 2003, when the trust acquisition was completed by Interior.[24]

A. Initial Trust Application, Initial Interior Decision & IBIA Appeal

Of consequence during this time period is the Tribe's intent in acquiring the parcel.[25] Initially, in 2000, the Tribe informed Interior that "[t]he primary justification for taking this land into trust is the intent of Congress in passing the Ponca Restoration Act and the Assistant Secretary's support for and understanding of the Ponca Economic Development Plan."[26] The BIA Superintendent agreed, recommending approval of the trust acquisition because it was in line with the Plan "that proposes having land in trust in Pottawattamie County."[27] During the same year, the Assistant Secretary of Indian Affairs described the Plan as "call[ing] for a diverse portfolio of development" in five tribal service areas, including where the parcel is located, and characterized the Plan as "mean[ing] self-sufficiency for the Tribe and an end to the poverty the Tribe has lived with since termination."[28] On September 15, 2000, the BIA Regional Director announced her decision to take the parcel into trust, noting that it was "within the aboriginal land once used and occupied" by the Tribe and that the Tribe was "in need of additional land to deliver [ ] services to their members."[29] The decision quoted the Tribe's Chairman as stating:

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[23] This occurred on January 10, 2000. *See* 2017 Commission Amendment to Decision at 4 (citing Tribe Resolution 00-01).
[24] *See* 2017 Commission Amendment to Decision at 6 and fn. 27.
[25] *See Grand Traverse II,* 198 F. Supp. 2d at 936-37.
[26] Letter to Cora L. Jones, BIA Regional Director, from Mr. Fred LeRoy, Tribal Chairman (Aug. 23, 2000).
[27] Memorandum to BIA Area Director, Aberdeen, from Superintendent, Yankton Agency re: Ponca – fee to trust – Carter Lake, IA (Aug. 11, 2000).
[28] Letter from Kevin Gover, Assistant Secretary – Indian Affairs to Honorable Albert E. Gore, President of the Senate (Feb. 17, 2000); *See also* 2017 Commission Amendment to Decision at 36-37 and fn. 178.
[29] Letter from BIA Great Plains Regional Director to Carter Lake Mayor, Iowa Governor, and Pottawattamie County Supervisors at 1-2 (September 15, 2000) (internal citations omitted).

"[o]ur land base is very small and only one tiny parcel in Niobara is held in trust," which the Regional Director agreed was "very true."[30]

Therefore, we conclude that as of September 15, 2000, the Tribe's and Interior's intent was to take the Carter Lake parcel into trust for the purpose of promoting the Tribe's economic vitality and self-sufficiency along with reestablishing the Tribe's land base, which aligned with Ponca Economic Development Plan and the PRA[31]. As the D.C. Circuit found in *City of Roseville v. Norton*:

> A reading allowing the Auburn Tribe to participate in that economic base furthers this purpose of IGRA .... The same objective is apparent in AIRA, which directs the Secretary to consult with the tribe regarding a plan for economic development. AIRA's purpose of reestablishing the Auburn Tribe as an economically viable entity would be served by considering the new reservation established under the Restoration Act a "restoration of lands" allowing it to operate a gaming facility.[32]

Essentially, this case is similar in that the intent as of September 15, 2000, was the Tribe's economic renewal and reestablishment of its land base; two grounds for supporting a finding of restored lands.[33]

And it is no matter that the Tribe did not contemplate a gaming use for the parcel when it applied to have it taken into trust or on appeal of BIA's trust decision before the IBIA in 2001, but instead represented that the parcel would be used for a health care facility. Nor is the IBIA's reliance in 2002 on the Tribe's representation of its intended use for the parcel relevant. As we have held, intended use of a parcel and representations regarding such are not proper considerations for a restored lands analysis – "the focus of the analysis is whether the land was

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[30] *Id.* at 2.
[31] 25 U.S.C.A. § 983h.
[32] 348 F.3d at 1030.
[33] *See* page 2, *supra* (*Restoration* means to renew and reestablish).

acquired as part of the Tribe's restoration, not on what the Tribe planned to do with the land at the time."[34]

B. Agreement, Corrected Notice, & Subsequent Ratification

That being said, we must consider the circumstances that occurred after the administrative appeal of Interior's decision to accept the parcel into trust as well as any modification of the Tribe's intent in acquiring the parcel. As detailed at great length in both our prior decisions, Iowa and the Tribe's attorney reached an agreement to avoid further litigation (an appeal of the IBIA decision to federal court) that was acknowledged by Iowa and the Tribe's attorney but not memorialized in writing.[35] On November 26, 2002, the Tribe's attorney sent the BIA an e-mail asking that the notice to take the parcel into trust (*Corrected notice*) include the following language:

> The trust acquisition of the Carter Lake lands has been made for non-gaming related purposes, as requested by the Ponca Tribe and discussed in the September 15, 2000 decision under the Regional Director's analysis of 25 C.F.R. 151.10(c). As an acquisition occurring after October 17, 1988, any gaming or gaming-related activities on the Carter Lake lands are subject to the Two-Part Determination under 25 U.S.C. sec. 2719. In making its request to have the Carter Lake lands taken into trust, the Ponca Tribe has acknowledged that the lands are not eligible for the exceptions under 25 U.S.C. sec. 2719(b)(1)(B). There may be no gaming or gaming-related activities on the land unless and until approved under the October 2001 Checklist for Gaming Acquisitions, Gaming-Related Acquisitions and Two-Part Determinations under Section 20 of the Indian Gaming Regulatory Act has been obtained.[36]

The BIA published the notice on December 6, 2002, including the language.[37] An internal BIA email characterized this paragraph in the notice as "a compromise reached by" the Tribe and

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[34] 2007 Commission Decision at 2, 9-12.
[35] 2007 Commission Decision at 3-5; 2017 Commission Amendment to Decision at 4-5.
[36] E-mail from Michael Mason to BIA Superintendent, Yankton Agency, re: Carter Lake settlement language (Nov. 26, 2002).
[37] *See* Corrected Notice, *Council Bluffs Daily Nonpareil* (Dec. 6, 2002).

Iowa, "agreed upon by the Ponca's attorney," which "[t]he Solicitor's office had no problem including," because if it was not included, "Iowa would have litigated the matter in Federal Court."[38] By letter dated December 13, 2002, to the Tribe's attorney, the Iowa Assistant Attorney General described their agreement:

> Based upon our agreement that the lands will be used in a manner consistent with the original application and the corrected Public Notice, and not for gaming purposes, you have requested that the State of Iowa and Pottawatomie County forego judicial review and further appeals. Inasmuch as the corrected Public Notice now filed in this case contains the non-gaming purpose restriction to which we have agreed, the State of Iowa has agreed not to pursue judicial review or further appeals of the final decision of the United States Department of the Interior in this case.[39]

Previously, we determined that the agreement is invalid,[40] because the record is devoid of materials demonstrating the Tribe's attorney's express or implied actual authority to enter into it.[41] And we further found that Iowa accepted the risk of inaccurately assessing the attorney's authority to bind the Tribe, because it was the State's burden to confirm that an agent of a sovereign tribe had actual authority to enter into the agreement.[42] Given these findings and the fact that they show nothing of the Tribe's intent since their agent lacked actual authority, the agreement – as agreed to by the Tribe's attorney and reflected in the Corrected Notice - does not weigh against the Tribe. Likewise, the Iowa Assistant Attorney General's letter to the Tribe's attorney, acknowledging the agreement, as well as BIA's email, characterizing it, cannot be factored against the Tribe , as they also do not demonstrate the Tribe's or the Federal Government's intent[43] and only recognize an invalid agreement.

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[38] Email from Tim Lake re: Ponca Tribe of Nebraska – Carter Lake, Iowa Fee-to-trust (Dec. 3, 2002).
[39] Letter from Jean M. Davis, Assistant Attorney General, Iowa Department of Justice, to Michael Mason re: Ponca Tribe of Nebraska, Department of the Interior, Trust Acquisition of Carter Lake lands (Dec. 13, 2002).
[40] NIGC 2017 Amendment to Decision at 23.
[41] NIGC 2017 Amendment to Decision at 16-20.
[42] *Id.* at 20-22.
[43] Interior did not make a restored lands determination in the Corrected notice or the email. *See Nebraska*, 625 F.3d at 510–11.

However, we also previously concluded that the Tribe subsequently ratified its attorney's agreement: "[w]hen we review all of the circumstances, we must conclude that the Tribe had actual or constructive knowledge at some point during the period between 2002 and 2005 and for a limited period of time acquiesced in the agreement."[44] As set forth above, the time period for assessing the factual circumstances of the trust acquisition here is from September 24, 1999 through February 10, 2003.[45] Since the Tribe's ratification occurred at some point between 2002 through 2005, the beginning of this period - up and until February 10, 2003 - comes within the circumstances surrounding the trust acquisition and, therefore, the Tribe's ratification must be considered. Though, as decided earlier:

> Significantly, neither [the Tribe's attorney's] agreement nor the Tribe's short-lived acquiescence was an admission that the Carter Lake parcel did not satisfy IGRA's definition of restored lands. At best the agreement attempted to memorialize the Tribe's pledge that it would not invoke that exception to IGRA's prohibition of gaming on lands acquired after IGRA's enactment in exchange for the State's agreement not to seek judicial review of the IBIA's decision.[46]

Consequently, at the time of the trust acquisition, the Tribe's ratification equated to a promise not to invoke the restored lands exception as to the parcel. And although this was not an admission that the parcel did not qualify as restored lands, it reflects the Tribe's intent not to assert or rely upon the parcel's status as such at that time.[47] This fact weighs against the Tribe.

Further, Iowa's decision not to challenge the trust acquisition in federal court must be viewed amongst all the circumstances surrounding the trust acquisition, including: the lack of actual authority by the Tribe's attorney to enter the agreement; its own failure to ascertain and

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[44] *Id.* at 25.
[45] *See* page 4, *supra.*
[46] NIGC 2017 Amendment to Decision at 27.
[47] As explained in our 2017 Amendment, the Tribe "clearly repudiated [the] agreement beginning with the October 7, 2005 [ ] letter." NIGC 2017 Amendment to Decision at 26. However, the factual circumstances of the trust acquisition end on February 10, 2003; therefore, the Tribe's repudiation is not considered.

confirm the bounds of that authority; its assumption of the risk of inaccurately assessing that authority; its failure to protect its interests by obtaining the Tribal Council's express authorization of the agreement in 2002;[48] and the Tribe's subsequent ratification based upon the sum of the events described in our 2017 Amendment (which began in September 29, 2002[49]). In addition, we also consider our prior finding that "Iowa expended no resources in reliance on the [ ] agreement."[50] In light of all these circumstances, we give no weight to Iowa's decision not to initiate a lawsuit against Interior for taking the parcel into trust. It is simply a neutral fact due to Iowa's own failures in coming to that decision and in expending no resources in reliance on the agreement.

The trust acquisition was completed on February 10, 2003, noting that the application to take the land into trust was made under the Indian Reorganization Act,[51] the Corrected notice was published, and "no litigation was filed" by Iowa or Pottawattomie County, and, therefore, the deed was approved.[52]

C. Weighing of All the Factual Circumstances

Our 2017 Amendment discussed in extensive detail other factual circumstances of the trust acquisition that weighed in the Tribe's favor:

(i) there were no significant intervening trust acquisitions prior to the parcel;[53]
(ii) the parcel's acquisition was in line with the Ponca Economic Development Plan, mandated by the PRA, to reestablish the Tribe's economic viability;[54]
(iii) the parcel was acquired into trust from the PRA's service area;[55] and

[48] NIGC 2017 Amendment to Decision at 29.
[49] *Id.* at 25 (citing date of the *Omaha World Herald* publication containing the Tribe's attorney's statement).
[50] *Id.* at 28. Iowa expended no resources in reliance on the agreement during the period at issue (September 24, 1999 through February 10, 2003) as well as afterwards, up and until the Tribe's repudiation in October 2005.
[51] 25 U.S.C. § 476.
[52] Warranty deed (Jan. 28, 2003); Letter from BIA Acting Great Plains Regional Director to BIA Superintendent, Yankton Agency (Feb. 10, 2003).
[53] NIGC 2017 Amendment to Decision at 36-37;
[54] *Id.* at 36-38.
[55] *Id.* at 38.

(iv) the parcel was acquired in trust to reestablish the Tribe's land base and to compensate it for historical wrongs.[56]

These facts are now weighed against our finding above, weighing against the Tribe, that it intended not to assert or rely upon the parcel's status as restored lands during September 29, 2002 through February 10, 2003. Given the significance of the all the facts weighing in favor of the Tribe though - that the parcel is among its first meaningful acquisitions with no other significant intervening parcels; that the acquisition correlated directly with a systematic economic and land acquisition plan to acquire and develop land in Pottawattomie County for reestablishing the Tribe's land base, economic viability, self-sufficiency, and ending its longstanding poverty;[57] that the parcel is located in the PRA's service area; and that the parcel was taken into trust to compensate it for the historical wrongs of termination,[58] resultant poverty,[59] loss of its reservation, and forced removal that resulted in the death of many of its members[60] - they outweigh the Tribe's intent.

The restored lands "exception requires only that the lands in issue [ ] be part of 'the restoration of lands for an Indian tribe that is restored to Federal recognition.'" "*That language implies a process rather than a specific transaction, and most assuredly does not limit restoration to a single event.*"[61] As noted before, a restoration of lands: "compensates the Tribe not only for what it lost by the act of termination, but also for opportunities lost in the interim;" "could *easily* encompass new lands given to a restored tribe to re-establish its land base and

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[56] NIGC 2017 Amendment to Decision at 38-39.
[57] Letter from Kevin Gover, Assistant Secretary – Indian Affairs to Honorable Albert E. Gore, President of the Senate (Feb. 17, 2000); *see, e.g.,* .
[58] Chair Disapproval at 19-21; *City of Roseville,* 348 F.3d. at 1029 ("Had the Auburn Tribe never been terminated, it would have had opportunities for development in the intervening years, including the possible acquisition of new land prior to the effective date of IGRA.").
[59] Letter from Kevin Gover, Assistant Secretary – Indian Affairs to Honorable Albert E. Gore, President of the Senate (Feb. 17, 2000).
[60] Chair Disapproval at 15-17.
[61] *Grand Traverse II,* 198 F. Supp. 2d at 936 (emphasis added).

compensate it for historical wrongs;" and are "the lands the Secretary takes into trust to re-establish the tribe's economic viability."[62] Here, the parcel's acquisition fits squarely within the renewal and reestablishment of the Tribe, its economic well-being, and its land base as well as within restitution, "for decades of improper treatment as a terminated tribe"[63] and the historical wrongs occurring before that time.[64] These facts overcome and outweigh the Tribe's intent not to claim or rely on the parcel's status as restored lands at the time of the acquisition. Therefore, the factual circumstances factor weighs in favor of the Tribe.

III. Temporal & Geographic Factors

The temporal and geographic factors are not at issue here. On two occasions, we have affirmed the Chairman's conclusions that both factors weigh in favor of the Tribe, supporting a finding that the Carter Lake parcel constitutes restored lands. We incorporate our prior discussions of these factors herein.[65]

Of import, however, is that "land may be considered part of a restoration of lands on the basis of timing alone."[66] As set forth in both our prior decisions, the Tribe purchased the Carter Lake parcel in September 1999, filed its application to take the land into trust in January 2000, and "[t]he trust acquisition would have been complete in September 2000 but for litigation."[67] Similarly, under circumstances such as these, the geographic factor may by itself be grounds for finding land restored. Lands taken into trust located within a tribe's historical area are regarded as restored lands. As we explained:

> In *Wyandotte Nation v. National Indian Gaming Commission*, the court underscored that the geographic factor is 'arguably most important [ ] component of the test,' as it 'relates

[62] *City of Roseville*, 348 F.3d. at 1027, 1029, and 1031; *See also Grand Traverse II*, 198 F. Supp. 2d at 936 ("the Band's evidence clearly established that the parcel was of … economic …significance to the Band.").
[63] *Koi Nation, supra* at *22.
[64] *See, e.g., Koi Nation, supra* at *18.
[65] 2007 Commission Decision at 17; 2017 Commission Amendment to Decision at 33-34.
[66] *Grand Traverse II,* 198 F. Supp. 2d at 936.
[67] 2017 Commission Amendment to Decision at 33 (quoting Chair Disapproval at 25-27).

> to the location of the land in relation to the tribe's historical location.' Similarly, in *Grand Traverse II*, the court concluded that the reasoning contained in prior Solicitor's opinions was appropriate – 'if a tribe is a restored tribe under the statute, any lands taken into trust that are located within the areas historically occupied by the tribes are properly considered to be lands taken into trust as part of the restoration of lands under § 2719.'[68]

The parcel is within the Tribe's historical area.[69]

IV. Balancing of All Factors

All three factors weigh in favor of the Tribe; accordingly, the Carter Lake parcel qualifies as restored lands for a restored tribe. But even if our analysis of the factual circumstances factor is in err (though we believe it is not), we hold that together, the temporal and geographic factors outweigh the factual circumstances factor. Moreover, we hold that the parcel constitutes a restoration of lands on the basis of timing and location, each standing alone. There were only 13 years between the Tribe's restoration and the parcel's trust acquisition[70] and only one year between the Tribe's acquisition of the land and its application to have the land taken into trust. And, since the parcel is within the aboriginal territory of the Tribe and the Tribe possesses modern connections to it, based upon the geographic factor alone, the parcel is restored lands. In accordance with prior Solicitor's opinions, if a tribe is a restored tribe, "any lands taken into trust that are located within the areas historically occupied by the tribes are properly considered to be lands taken into trust as part of the restoration of lands under § 2719."[71]

V. Conclusion

We affirm our decision of November 13, 2017.

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[68] *Id.* at 34 (internal citations omitted).
[69] *Id.* (quoting Chair Disapproval at 24-25: "[s]cholars have identified the aboriginal territory of the Ponca, and it includes Carter Lake").
[70] *Id.* at 40.
[71] *Id.* at 34 (internal citations omitted).

It is so ordered by the NATIONAL INDIAN GAMING COMMISSION on this 30th day of April, 2019.

Jonodev O. Chaudhuri
Chairman

Kathryn Isom-Clause
Vice Chair