

**TESTIMONY**  
**OF**  
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**UNITED STATES DEPARTMENT OF THE INTERIOR**  
**BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS**  
**OVERSIGHT HEARING ON**  
**DOUBLING DOWN ON INDIAN GAMING: EXAMINING NEW ISSUES AND OPPORTUNITIES FOR**  
**SUCCESS IN THE NEXT 30 YEARS**  
**OCTOBER 4, 2017**

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. My name is John Tahsuda and I am the Acting Assistant Secretary for Indian Affairs at the Department of the Interior (Department or Interior). Thank you for the opportunity to testify before this Committee on the Department's role in Indian gaming.

The framework for Indian gaming both on and off reservation was established by Congress with the passage of the Indian Gaming Regulatory Act (IGRA) [Pub.L. 100-497, 25 U.S.C. § 2701 et seq.] in 1988. The regulatory scheme codified into law assigns the Department certain responsibilities for regulating gaming on Indian lands. As laid out in IGRA, Class I gaming is regulated exclusively by Indian tribal governments; Class II gaming regulation is reserved to tribal governments in cooperation with the federal government; and, Class III gaming is regulated primarily by tribal governments in cooperation with the federal government and, to the extent negotiated in an approved compact, a state government. Under IGRA, Interior reviews and determines whether to approve tribal-state gaming compacts and fee-to-trust applications for gaming.

The passage of IGRA serves as recognition on behalf of Congress that well-regulated gaming provided a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. Indian gaming has resulted in considerable financial resources for a wide range of tribal services and programs, from education and housing to law enforcement and health care, and has bolstered jobs in local and tribal communities.

That said, the Department is mindful that, while gaming has great potential to improve economic conditions for tribal and non-tribal communities, it can also introduce new complications to communities, including a drain on local resources, increased traffic, visitation, and crime, such as drugs and prostitution. The Department, under Secretary Zinke's leadership, firmly believes there needs to be a thoughtful and thorough consideration of all factors relating to gaming applications. Given our commitment to being a good neighbor and steward, we believe local voices must have a fair opportunity to provide insight and input into these decisions.

This emphasis on a balanced process is also critical for the acquisition of trust lands located off reservation, which the Department firmly believes should move forward in tandem with federal consideration of tribal gaming. The Department previously testified during the 115th Congress about its role in the fee-to-trust process, which can be further complicated by the prospect of off reservation gaming. Off-reservation lands that are acquired through the Fee-to-Trust process

have the potential to raise jurisdictional uncertainties in local communities, as well as complicating land-use planning and the provision of services. Moreover, non-Indian communities may experience tax revenue consequences if payments in lieu of taxes are not agreed upon. Ultimately, the Department has received comments that taking land located off reservation into trust for gaming can introduce economic or other conditions that can have significant impacts on the immediate and surrounding communities. As a result, the Department's off-reservation trust regulations require particular attention to issues of jurisdiction and taxation.

Off-reservation trust acquisitions also raise the possibility that a tribe may initiate gaming operations once the land is held in trust by the federal government, even though that was not in the original plan. This matter continues to complicate and isolate some communities near these facilities. In those instances, local communities that may have offered support or participated in the process could now need to engage in a new public input process.

Collectively, this is why an in-depth and balanced consideration of all factors will be at the core of the Department's decision making process for any off reservation gaming or land into trust applications. The Department will closely adhere to the law when reviewing tribal gaming matters as detailed in IGRA, but also plans to put more emphasis on all of the applicable criteria. No single criteria by itself will be considered dispositive in these intricate proposals, nor will local communities be denied an opportunity to voice their concerns. We are committed to striking a balance between differing interests, which we fully recognize are prevalent in these matters, while following the provisions of the law.

In addition to being more thoughtful when considering gaming and fee-to-trust proposals, Interior is also committed to providing tribes realistic expectations during the formal review process. For instance, in the case of off reservation land into trust efforts, the commitment of time and resources required can be exorbitant, particularly if that proposal is denied. Therefore, we believe it is important to be upfront about proposals that may not be acceptable. As a result, we are considering changes to our land-into-trust process [25 CFR § 151] to provide feedback earlier in the process.

The Department recognizes that the equities may be different for restored tribes and landless tribes when it comes to off reservation gaming and land into trust proposals. For example, the Department is currently reviewing the Shawnee Tribe of Oklahoma's fee-to-trust. The Shawnee are a landless tribe and, given the unavailability of land in close proximity to its members, the Tribe elected to explore other alternatives. They have worked closely in collaboration with other Oklahoma tribes, the Governor of Oklahoma, the local community, and a number of Members of the Congressional delegation to identify and secure a potential location. While a decision on that acquisition is pending with the Department, Interior is committed to reviewing all factors and seeking broad input in its decision making.

As this Committee looks ahead at the next thirty years of Indian gaming, the Department sees an opportunity to think strategically about its own role. Our commitment is to be thorough and balanced in our considerations for both trust land acquisitions and gaming proposals. The Department will closely adhere to the law when reviewing these matters, putting emphasis on all

the applicable criteria and ensuring that local communities will not be denied an opportunity to voice concerns. The Department welcomes the opportunity to work with this Committee and the Congress on Indian gaming matters, recognizing the plenary authority Congress holds in all tribal matters. If there is interest in further discussing these issues, we stand ready and able to work with you.

This concludes my written statement. Thank you for the opportunity to testify today and I am pleased to answer any questions you may have.