# STATEMENT
# OF
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# FOR POLICY AND ECONOMIC DEVELOPMENT
# DEPARTMENT OF THE INTERIOR
# AT THE OVERSIGHT HEARING
# BEFORE THE COMMITTEE ON INDIAN AFFAIRS
# U.S. SENATE
# ON
# THE PROCESS FOR CONSIDERING GAMING APPLICATIONS

**February 28, 2006**

Good morning, Mr. Chairman and Members of the Committee. My name is George Skibine, and I am the Acting Deputy Assistant Secretary – Indian Affairs for Policy and Economic Development at the Department of the Interior. I am pleased to be here today to discuss the role of the Department in the process for considering applications for gaming, particularly the two part determination which I will discuss in more detail later in my statement.

When an Indian tribe decides that it wants to engage in gaming activities under the Indian Gaming Regulatory Act of 1988 (IGRA) on a parcel of land, assuming that the parcel is not already into trust, it will have to submit an application to the appropriate regional office of the Bureau of Indian Affairs (BIA) to have the land taken into trust. The basis for the administrative decision to place land into trust for the benefit of an Indian tribe is established either by a specific statute applying to a tribe, or by Section 5 of the Indian Reorganization Act of 1934 (IRA), which authorizes the Secretary to acquire land in trust for Indians "within or without existing reservations." Under these authorities, the Secretary applies the applicable criteria for trust acquisitions in our "151" regulations (25 CFR Part 151). The 151 regulations were promulgated under the authority of the IRA. The regulations outline the process the Department uses when making a determination of whether to take land into trust. When a land into trust acquisition is intended for gaming, consideration of the requirements of Section 20 of IGRA are applied during the 151 process. Section 20 of IGRA does not provide authority to take land into trust for Indian tribes. Rather, it is a separate and independent requirement to be considered before gaming activities can be conducted on land taken into trust after October 17, 1988, the date IGRA was enacted into law.

For a discretionary land into trust acquisition the BIA regional office will process the tribe's application by complying with the various requirements of the "151" regulations, which includes consultation with State and local officials having regulatory jurisdiction over the land to be acquired, and compliance with the requirements of the National Environmental Policy Act (NEPA). The public has an opportunity to comment during the NEPA process, which includes a review of socioeconomic impacts such as housing, jobs, and the rate of population growth in the

area. The regional office will also request from the BIA central office in Washington, DC a determination whether the parcel will qualify for one or more of the statutory exceptions to the prohibition on gaming on "after-acquired" lands contained in Section 20(a) of IGRA.

Section 20(a) provides that if lands are acquired in trust after October 17, 1988, the lands may not be used for gaming, unless one of the following statutory exceptions applies:

(1) the lands are located within or contiguous to the boundaries of the tribe's reservation as it existed on October 17, 1988;

(2) the tribe has no reservation on October 17, 1988, and "the lands are located…within the Indian tribe's last recognized reservation within the state or states where the tribe is presently located;"

(3) the "lands are taken into trust as part of: (i) the settlement of a land claim; (ii) the initial reservation of and Indian tribe acknowledged by the Secretary under the Federal acknowledgment process; or (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition."

There is also a specific exception for lands taken into trust in Oklahoma for Oklahoma tribes. Tribes in Oklahoma may game on lands that are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or are contiguous to other land held in trust or restricted fee status for the tribe in Oklahoma.

Since 1988, the Secretary has approved 34 applications that have qualified under these various exceptions to the gaming prohibition contained in Section 20(a) of IGRA.

An Indian tribe may also conduct gaming activities on after-acquired trust land (land taken into trust after 1988 that does not meet one of the above exceptions) if it meets the requirements of Section 20(b)(1)(A) of IGRA, the "two-part determination" exception. Under Section 20(b)(1)(A), gaming can occur on the land if the Secretary, after consultation with appropriate state and local officials, and officials of nearby tribes, determines that a gaming establishment on newly-acquired land will be in the best interest of the tribe and its members, and not detrimental to the surrounding community.

The role of the Secretary under Section 20(b)(1)(A) is limited to making objective findings of fact regarding the best interests of the tribe and its members, and any detriment to the surrounding community. Therefore, while the trust acquisition regulations provide broad discretion, Section 20(b)(1)(A) does not authorize the Secretary to consider other criteria in making her two-part determination, thus limiting her decision-making discretion to that degree.

The Department's process for making two-part determinations is contained in the "Checklist for Gaming Acquisitions and IGRA Section 20 Determinations" first published in 1994, and last revised in March of 2005. The Department is in the process of formulating regulations that

implement Section 20 of IGRA. The Department intends to begin tribal consultation on this regulatory proposal before a proposed rule is published in the Federal Register.

The checklist recommends that regional directors of the BIA consult with governing bodies of tribes located within 50 miles of the proposed gaming establishment, and with state and local officials located within ten miles of the proposed gaming establishment. The consultation letter will ask the governmental officials to address potential detriments to the surrounding community, including, but not limited to, the following:

- environmental impacts, impacts on the social structure, infrastructure, services, housing, community character, and land use patterns;
- potential impacts on economic development, income, and employment; Costs of impacts and sources of revenue to mitigate these impacts;
- proposed programs to address compulsive gambling; and
- any other information deemed relevant to a finding regarding detriment to the surrounding community.

The Department will also consider the findings made in an environmental assessment or an environmental impact statement developed pursuant to the NEPA to determine whether the proposed gaming establishment will be detrimental to the surrounding community.

Section 20(b)(1)(A) of IGRA also requires consultation with the Indian tribe submitting the application for a two-part determination. The consultation letter to the applicant tribe will seek the views of the tribe in determining whether the proposed gaming establishment is in the best interest of the tribe and its members. The tribe will be asked to assess the following issues:

- Projections of income statements, balance sheets, and cash flow;
- projected tribal employment, job training, and career development; projected benefits from tourism;
- projected benefits from the proposed uses of the increased tribal income;
- projected benefits to the relationship between the tribe and the local community;
- possible adverse impacts and plans for dealing with those impacts; and
- any other information which may provide a basis for a Secretarial determination that the proposed gaming establishment is in the best interest of the tribe and its members.

The decision of whether the parcel will be subject to the two-part determination in Section 20(b)(1)(A) is made in Washington DC at the BIA central office. The BIA regional office will submit its recommendation on the tribe's land-into-trust application for gaming and gaming related purposes to the central office where it will be evaluated by the Office of Indian Gaming. That office will provide a final recommendation to the Assistant Secretary for Indian Affairs whom the Secretary has delegated the final decision-making authority for land acquisitions. If the proposed parcel is subject to the two-part determination in Section 20(b)(1)(A) of IGRA, the regional director's recommendation will also include proposed Findings of Fact relative to that determination. The Secretarial two-part determination will be made before the decision is made on whether to take the land into trust.

If the Secretary agrees with a proposed positive two-part determination, she will ask the governor of the state where the proposed gaming establishment is to be located to concur in her determination. If the governor does not affirmatively concur in the determination, gaming cannot take place on the land. Since 1988, state governors have concurred in only three positive two-part determinations for off-reservation gaming on trust lands: the Forest County Potawatomi gaming establishment in Milwaukee, Wisconsin; the Kalispel Tribe gaming establishment in Airway Heights, Washington; and the Keweenaw Bay Indian Community gaming establishment near Marquette, Michigan.

This concludes my remarks. I will be happy to answer any questions the Committee may have. Thank you.