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BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS

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Good morning Chairman McCain, Vice-Chairman Dorgan, members of the Committee and staff. My name is Penny Coleman. I am the Acting General Counsel of the National Indian Gaming Commission (NIGC). Thank you for this opportunity to discuss the NIGC's role in, and process for, making Indian lands determinations for off-reservation gaming. I understand that you are specifically concerned about such determinations when a tribe is trying to establish gaming off of its reservation or when a tribe is trying to begin gaming when it does not have a reservation at all.

Under the Indian Gaming Regulatory Act (IGRA), tribes may conduct gaming operations only on "Indian lands," a term which is defined by the statute to include reservation land, as well as non-reservation land held in trust or restricted status by the United States for the benefit of a tribe or individual member of a tribe. IGRA prohibits gaming on non-reservation trust lands acquired after October 17, 1988, unless the tribe and its proposed gaming site qualify for one of six (6) statutory exceptions in 25 U.S.C. section 2719.

In fulfilling its statutory duties under IGRA, there are three circumstances when the NIGC must make determinations regarding whether a site qualifies as "Indian land" on which a tribe is allowed to conduct gaming operations. The first circumstance arises under the Chairman's duty to approve all management contracts between Indian tribes

and gaming management contractors. In those cases, the NIGC will first confirm that the gaming operation to be managed is located on Indian lands eligible for gaming. Similarly, the second circumstance that may call for an Indian lands determination is created by the NIGC Chairman's duty to approve all tribal gaming ordinances. Third, the Office of General Counsel, within the NIGC, issues Indian lands opinions when the Commission must determine whether it has regulatory authority over an existing gaming operation since the NIGC's authority is limited to Indian gaming operations on Indian lands. In conducting our analysis, we attempt to reach consensus with the Department of the Interior.

The working relationship that we have with the Department of the Interior on these issues is guided by a memorandum of understanding. Our practice of notifying the state Attorney General is based on our internal policy developed as a result of a request by the Conference of Western Attorneys General. Regarding the issue of public notice and participation, our policy is to respond openly to inquiries and accept and consider any information provided by the subject tribe, other governments, community groups, or any member of the public. We typically do not provide public notice that any particular Indian lands analysis is underway because this process involves a narrow, legal determination that does not require the solicitation of public comment.

Presently, we have approximately 21 active Indian lands opinions pending. The NIGC has assumed the responsibility for drafting 17 and the Department of the Interior is drafting 4. Of the 21, four include pending management contracts as well as pending trust acquisitions: Ione Band of Miwok Indians; Elk Valley Rancheria; Federated Indians of Graton Rancheria and Hopland Band of Pomo Indians. The public will receive notice

of these pending trust acquisitions through the environmental compliance processes, as well as the Department of the Interior's trust acquisition process.

I am available to answer any questions or provide further information that might assist in your review of this issue.