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
CONCERNING OFF-RESERVATION GAMING:
THE PROCESS FOR CONSIDERING GAMING APPLICATIONS

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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 off-reservation gaming.

When an Indian tribe decides that it wants to engage in gaming activities under the Indian Gaming Regulatory Act of 1988 (IGRA) on an off-reservation 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). However, when the acquisition is intended for gaming, consideration of the requirements of Section 20 of IGRA apply before the Indian tribe can engage in gaming on the trust parcel. 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 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 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.

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 Governor of the state in which the gaming activities are to occur must concur with the Secretary's determination. 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.

As a matter of practice, the decision of whether the parcel will be subject to the two-part determination in Section 20(b)(1)(A) is made at Central Office . The Department has developed criteria to determine whether a parcel of land will qualify under one of the various statutory exceptions in Section 20. For instance, to qualify under the "initial reservation" exception, the Department reviews the tribe's historical and cultural ties to the land. To qualify under the "restoration of land" exception, the Department requires that either the land is either made available to a restored tribe as part of its restoration legislation or that there exist substantial historical and modern connections to the land, as well as temporal indicia between the land and the restoration of

the tribe. The Department's definition of restored land has been guided by fairly recent federal court decisions in Michigan, California, and Oregon. 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. I have attached to my testimony a document listing the various tribes that have qualified under the exceptions since October 17, 1988.

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.

The Department's process for reviewing these acquisitions, "Checklist for Gaming Acquisitions and IGRA Section 20 Determinations," is attached to my testimony. Finally, 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.

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