

EXHIBIT D



October 8, 2015

Nita Battise, Chairperson
Alabama-Coushatta Tribe of Texas
571 State Park Road 56
Livingston, TX 77351

RE: Alabama-Coushatta Tribe of Texas Class II Tribal Gaming Ordinance and Resolution No. 2015-038.

Dear Chairperson Battise:

This letter responds to the request by the Alabama-Coushatta Tribe of Texas July 10, 2015, to the National Indian Gaming Commission to review and approve the Tribe's Class II gaming ordinance. The gaming ordinance was adopted by Resolution No. 2015-038 by the Alabama-Coushatta Tribal Council.

Resolution No. 2015-038 adopts the Tribal gaming ordinance, which was created to govern and regulate the operation of Class II gaming on the Tribe's *Indian lands*. Because the Tribe's ordinance permits it to conduct gaming on its *Tribal Indian lands*,¹ as defined by the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (Restoration Act)² an analysis of whether the Tribe's lands are eligible for gaming was necessary.

Analysis

The Alabama-Coushatta's ordinance permits it to conduct gaming on its *Tribal Indian lands*.³ It defines *Indian Lands*, *Tribal Lands*, or *Tribal Indian lands* as all lands within the limits of the Tribe's Reservation. It additionally defines *Tribal Indian lands* "as lands acquired by the Secretary in trust prior to October 17, 1988, or those lands acquired by the Secretary in trust after October 17, 1988, that meet one or more of the exceptions set forth in 25 U.S.C. § 2719. Finally, the Tribe defines *Reservation* as it is defined in the Tribe's Restoration Act.

As discussed in greater detail below, the *Tribal lands* or *Tribal Indian lands* specified in the ordinance amendment are *Indian lands* as defined by IGRA and are eligible for gaming under

¹ Alabama-Coushatta Tribe of Texas II Tribal Gaming Ordinance § 5.

² 25 U.S.C. §§ 731 *et seq.*

³ Alabama-Coushatta Tribe of Texas Class II Tribal Gaming Ordinance § 5.

the Act. The Restoration Act, however, provides a general grant of state jurisdiction over the Alabama-Coushatta's lands, through Public Law 280, and applies state gaming laws to the Tribe's lands, with a qualification. Accordingly, the Restoration Act must be taken into consideration as part of this ordinance review.

Jurisdiction

Because a similar question regarding the Ysleta del Sur Pueblo's Restoration act arose when the Pueblo submitted its ordinance to the NIGC for the Chairman's approval, and the Secretary of the Interior administers tribal restoration acts, the NIGC Office of General Counsel sought the Department of Interior, Office of the Solicitor's opinion as to whether under the Restoration Act the Pueblo can game pursuant to IGRA on its Indian lands; specifically, whether the Pueblo possesses sufficient jurisdiction over its Restoration Act lands for IGRA to apply and if so, how to interpret the interface between IGRA and the Restoration Act.⁴ Because the Tribe and Pueblo share the same Restoration Act, with nearly identical language, that same jurisdictional analysis applies to the Alabama-Coushatta's portion of the Restoration Act.

As a preliminary analysis, we must examine the scope of IGRA to determine whether the NIGC has jurisdiction over the Tribe's Restoration Act lands or phrased alternatively, whether the Tribe's Restoration Act lands are exempt from IGRA's domain. Nothing in the IGRA's language or its legislative history indicates that the Tribe is outside the scope of NIGC's jurisdiction. As such, the NIGC has broad jurisdiction over the Tribe's land.

Next, we must look to the Office of the Solicitor's opinion on the Ysleta del Sur Pueblo. On September 10, 2010, the Office of the Solicitor concurred with our conclusion that IGRA applies to the Pueblo and further opined the Pueblo possesses sufficient legal jurisdiction over its settlement lands for IGRA to apply, that IGRA governs gaming on the Pueblo's reservation, and IGRA impliedly repeals the portions of the Restoration Act repugnant to IGRA.⁵ Again, because the Tribe and Pueblo share the same Restoration Act, with nearly identical language, the Office of the Solicitor's analysis applies to the Alabama-Coushatta. Therefore, the only remaining questions are whether those lands qualify as Indian lands as defined in IGRA and whether they are eligible for gaming.

Indian Lands

IGRA permits an Indian Tribe to "engage in, or license and regulate, gaming on Indian lands with such Tribe's jurisdiction."⁶ It defines *Indian lands* as all lands with the limits of any

⁴ May 29, 2015, Letter to Deputy Solicitor, Indian Affairs Venus Prince from NIGC General Counsel, Eric N. Shepard.

⁵ September 10, 2015, Letter to NIGC General Counsel, Michael Hoenig, from Deputy Solicitor for Indian Affairs, Venus McGhee Prince. (*Attachment A.*)

⁶ 25 U.S.C. § 2710(b)(1).

Indian Reservation.⁷ In 1987, the Restoration Act established a reservation for the Alabama-Coushatta,⁸ comprised of the Tribe's land holdings at that time.⁹ Because the Tribe has a reservation – established a year before Congress passed IGRA –it has IGRA-defined *Indian lands*. Further, the Tribe identified in its ordinance that it authorizes gaming on its *Tribal Indian lands* – defined as all lands within the limits of its *Reservation*. The Alabama-Coushatta's ordinance limits where it can operate a class II gaming facility to its *Reservation*. Accordingly, the Restoration Act lands qualify as *Indian lands* under IGRA.

Finally, because the Tribe's Restoration Act, which created the reservation, pre-dates IGRA, an after-acquired land analysis is not necessary.¹⁰

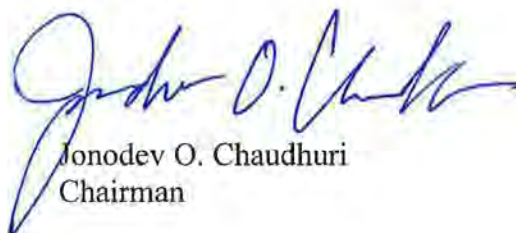
Conclusion

In conclusion, because the Tribe possesses sufficient legal jurisdiction over its Restoration Act lands, IGRA applies. Further, because the lands qualify as *Indian lands* under IGRA, the lands are eligible for gaming under IGRA.

Thank you for bringing the amended gaming ordinance to our attention. The ordinance is approved, as it is consistent with the requirements of IGRA and NIGC regulations.

If you have any questions, please contact staff attorney Heather Corson at (202) 632-7003.

Sincerely,



Jonodev O. Chaudhuri
Chairman

Enclosure

cc: Fred Petti
Petti and Briones (via email, only: fpetti@pettibriones.com)

⁷ 25 U.S.C. § 2703(4)(A); 25 C.F.R. § 502.12(a): "*Indian lands* means: (a) Land within the limits of an Indian reservation."

⁸ 25 U.S.C. § 736(a)

⁹ 25 U.S.C. § 731(3).

¹⁰ See generally 25 U.S.C. § 2719.