United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

TAKE PRIDE IN AMERICA

SEP 2 2 2006

Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Thank you for your letter of August 22, 2006, to Secretary Kempthorne forwarding correspondence you had received from two members of the state legislature. The legislators were concerned about recent actions by the Prairie Band of Potawatomi Nation. The Secretary referred your letter to my office for response.

Most of the questions raised in the correspondence from the legislators concern issues addressed by former Solicitor John Leshy, in his January 21, 2001, letter to you concerning the Prairie Band's claim to land located near Shabbona, Illinois. In his letter, Mr. Leshy indicated that, after considerable review of the relevant facts, the Department of the Interior determined the Prairie Band, a federally recognized Indian tribe, had a credible claim for the unextinguished title to the land at issue. Mr. Leshy noted also: "[t]he success of any litigation to vindicate this claim is necessarily uncertain."

The issues in any litigation would center on the fundamental issue of the extent to which this recently purchased land is subject to state and local jurisdiction. State jurisdiction over Indian owned lands is a complex area of the law dominated by the unique history of each parcel of land but recent case law provides guidance. For example, in *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 1031 (1998), the Supreme Court held that once Congress authorized the alienability of that tribe's land within the boundaries of its clearly established reservation, the tribe's repurchase of the land did not reinstate its non-taxability. More recently in the *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005), the Court held that the Oneida Indian Nation could not unilaterally revive Indian sovereign control over lands it had purchased within the exterior boundaries of its reservation. The Court relied on several factors, including for example, the justifiable expectations of the non-Indian community based on long, uncontested occupancy in good faith belief that their titles were good and laches, impossibility and acquiescence. The *Sherrill* decision is of fundamental importance and any assertion of rights over land would require an analysis under these and other relevant cases.

In addition, the status of the land must be determined prior to gaming occurring on this land. The Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2701 et seq., states that for class II gaming to occur on the land it must be "Indian Lands", which are

"all lands within the limits of any Indian reservation; and any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." 25 U.S.C. 2703 (4)(A)-(B). The Department has not yet reviewed this land to determine if it would be considered Indian land within the definition of IGRA, and we do not know if the National Indian Gaming Commission has approved "any tribal ordinance or resolution concerning the conduct of or regulation of class II gaming on the Indian lands." 25 U.S.C. 2710 (B)(2).

Any claim to jurisdiction over Indian owned land within a tribe's former territory, and conversely any claim to immunity from such jurisdiction, will have to deal with the complex application of all the factors referenced by the treaties, courts, and statutes in the context of the specific claim.

Sincerely,

Michael D. Olsen
Principal Deputy Assistant Secretary –
Indian Affairs