



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Former Secretary and Chief of Staff Did Not Comply With Their Duty of Candor

This is a revised version of the report prepared for public release.



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REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

We investigated actions related to a U.S. Department of the Interior (DOI) decision with respect to two Indian Tribes' plans to jointly construct and operate a casino in Connecticut. During the investigation, Secretary of the Interior Ryan Zinke and the DOI Chief of Staff (COS) made statements to DOI Office of Inspector General (OIG) investigators regarding their involvement in that decision.¹ Although we ultimately did not focus on the DOI's underlying decision, in part due to litigation between the Tribes and the DOI that was ongoing during our investigation and has since been resolved, we found that Secretary Zinke and the COS made statements to OIG investigators with the overall intent to mislead them. We found that both Secretary Zinke and the COS made statements that presented an inaccurate version of the circumstances in which the DOI made key decisions. As a result, we concluded that Secretary Zinke and the COS did not comply with their duty of candor when questioned about their respective involvement in the DOI's decision.² Appendix 1 includes a timeline reflecting the events we discuss in this report.

We referred our findings to the U.S. Department of Justice (DOJ) in 2018. The DOJ declined prosecution in this matter in the summer of 2021.

We offered the subjects the opportunity to review portions of the draft report. Former Secretary Zinke, through counsel, accepted this offer and provided comments. We have included the full text of Secretary Zinke's comments in Appendix 2, as well as our assessment of those comments in Appendix 3. We also made minor clarifying revisions to the draft report in light of Secretary Zinke's comments but made no substantive changes in our analysis or conclusions. The former COS did not accept our offer to review portions of the draft report.

¹ Secretary Zinke and the COS spoke with us while they held these positions. Secretary Zinke left the DOI on January 2, 2019, and the COS left the DOI in the spring of 2019.

² Separately, during our investigation, we discovered that on his last day in office, Secretary Zinke failed to return his Personal Identity Verification (PIV) card, which DOI employees use to access federally controlled facilities and systems. On June 4, 2019, a transportation security officer at the Will Rogers World Airport in Oklahoma City, OK, notified her supervisors that Secretary Zinke handed her his boarding pass and Government-issued PIV card as his identification to proceed through the security line and that she had confirmed he was no longer a Federal employee. The supervisor contacted our office. We requested that Secretary Zinke return the PIV card, and we retrieved it from his attorney on June 18, 2019.

We are providing this report to the current Secretary of the Interior for any action deemed appropriate.³

II. BACKGROUND

A. The Indian Gaming Regulatory Act (IGRA)

IGRA was enacted “to provide a statutory basis for the operation of gaming by Indian tribes” on Indian lands.⁴ Under IGRA, tribes may operate a Class III casino (e.g., blackjack or slot machines) only if they have a compact (i.e., an agreement), known as a “Tribal-State compact,”⁵ with the State in which the casino is located or Secretarial Gaming Procedures are in place.⁶

Under IGRA, compacts and amendments to compacts must be submitted to the Secretary of the Interior and do not take effect until notice of approval by the Secretary of the Interior has been published in the *Federal Register*.⁷ IGRA further provides that “[t]he Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.”⁸ Alternately, “the Secretary may disapprove a compact” but only if the compact violates IGRA, another Federal law, or the United States’ trust obligations to Indians.⁹ Finally, “[i]f the Secretary does not approve or disapprove a compact” within 45 days after a party submits the compact to the Secretary for approval, “the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with [IGRA].”¹⁰ IGRA further provides that “[t]he Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under [IGRA],”¹¹ and IGRA’s implementing regulations explain that “[t]he notice of approval must be published in the Federal Register within 90 days from the date the compact or

³ In his comments, Secretary Zinke cited DOJ guidelines and contended that we should postpone release of this report until after the conclusion of the November 2022 election in which he is seeking public office. As we explain in more detail in Appendix 3, we believe that doing so would itself be inappropriate as well as inconsistent with DOJ guidance and our ordinary processes. Secretary Zinke similarly contended that the “delay” in finalizing this report supported postponing release until after the election, but, as we also explain in Appendix 3, there was no unnecessary delay, and we completed our work approximately 1 year after receiving formal notice of the DOJ’s declination.

⁴ 25 U.S.C. §§ 2702(1), 2702(3).

⁵ 25 U.S.C. § 2710(d)(3)(B).

⁶ Pursuant to the statute, Secretarial Gaming Procedures are created if a tribe and a State cannot agree on compact wording. The dispute is submitted to a mediator, who selects one of the positions and sends it to the DOI with instructions to issue Secretarial Gaming Procedures based on that submission. Tribe 1 has been operating its casino under Secretarial Gaming Procedures, and Tribe 2 has been operating its casino under a Tribal-State compact.

⁷ 25 U.S.C. § 2710(d)(3)(B); 25 C.F.R. § 293.15(a).

⁸ 25 U.S.C. § 2710(d)(8)(A).

⁹ *Id.* § 2710(d)(8)(B).

¹⁰ *Id.* § 2710(d)(8)(C).

¹¹ *Id.* § 2710(d)(8)(D).

amendment is received by the Office of Indian Gaming.”¹² This same process applies to amendments to compacts submitted to the Secretary for approval.¹³

B. The Tribes’ Efforts To Jointly Operate a Casino and the DOI’s Decision On the Tribes’ Amendments

Tribe 1 has operated a casino in Connecticut for more than 30 years. Similarly, Tribe 2 has operated a casino in Connecticut for nearly 30 years. Both Tribes have agreements with Connecticut that provide the State with 25 percent of the casinos’ video facsimile game gross operating revenues in return for the State’s grant of exclusivity rights to the Tribes to operate this type of gaming.

In the summer of 2014, the Massachusetts Gaming Commission awarded a resort-casino license to a limited liability company owned by a casino (Casino).¹⁴ The location of the casino was approximately 5 miles north of the Connecticut border in Massachusetts.

In September 2015, in response to Casino’s plans to open and operate the casino just over the Connecticut border, the Tribes entered into an agreement to jointly build and operate a casino on nontribal lands in Connecticut, approximately 13 miles south of Casino’s Massachusetts location “to help save Connecticut jobs and revenue jeopardized by the opening of [Casino’s] \$900 million casino in 2018.”

In April 2016, pursuant to their agreement to jointly construct and operate the Connecticut casino, the Tribes jointly submitted a request for technical assistance to the DOI Office of Indian Gaming related to a proposed amendment to their respective Secretarial Gaming Procedures (Tribe 1) and Tribal-State Compact (Tribe 2) with Connecticut. The request stated that the Tribes had “crafted a draft amendment . . . to make clear that [their] joint venture w[ould] in no way alter or compromise the Tribes’ existing agreements with the State relating to the Tribes’ gaming under” IGRA. The Tribes requested “technical assistance from [the DOI Office of Indian Gaming] relating to the proposed amendment” before presenting the proposed amendment to the Governor of Connecticut for his consideration.

In late April 2016, the DOI’s Acting Assistant Secretary for Indian Affairs provided the Tribes with individual technical assistance letters stating that “we believe the proposed amendment reflects the unique circumstances of the [Tribes] and the State. Our view is that the Tribes’ existing exclusivity arrangement [with Connecticut] would not be affected by a new State-authorized casino that is jointly and exclusively owned by the Tribe[s].”

Almost 1 year later, on March 1, 2017, Ryan Zinke was confirmed as Secretary of the Interior.

¹² 25 C.F.R. § 293.15(b).

¹³ See generally 25 C.F.R. Part 293, “Class III Tribal State Gaming Compact Process.” The regulation does not explicitly state whether this process also applies to proposed amendments to Secretarial Gaming Procedures, but we need not address this issue for purposes of the findings contained in our report.

¹⁴ Casino is a corporate entity with a large presence in Nevada.

Due to the change in presidential administrations in 2017, the Tribes resubmitted their 2016 request for technical assistance to the DOI. In May 2017, the DOI issued another technical assistance letter to each of the Tribes. The 2017 letters referred to the 2016 letters, stating, “The Department responded with a technical assistance letter dated [April 2016]. . . . We confirm that the current Administration supports the views expressed in the technical assistance letter.” The 2017 letters to the Tribes were signed by the Associate Deputy Secretary, who, at the time, was the DOI Acting Deputy Secretary.¹⁵

In the summer of 2017, the State of Connecticut enacted a Public Act, which authorized the Tribes’ joint casino in Connecticut. The Act stated, however, that the authorization would not be effective unless the Tribes’ amendments were first approved or deemed approved by the Secretary of the Interior pursuant to IGRA.¹⁶

Based on the favorable technical assistance letters they received from the DOI in May 2017 and the new Connecticut law authorizing their proposed joint casino, the Tribes submitted for consideration their proposed amendments to their existing Secretarial Gaming Procedures and Tribal-State Compact to the DOI Office of Indian Gaming in August 2017.

In September 2017—the day of the expiration of the 45-day period the Secretary had to approve or disapprove the amendments under IGRA—the Acting Assistant Secretary for Indian Affairs notified the Tribes and the State of Connecticut that the DOI was “returning” the amendments to the Tribes.¹⁷ In its letters to the Tribes, the DOI wrote:

We return the Amendment to you to maintain the status quo as action on the Amendment is premature and likely unnecessary. The Amendment addresses the exclusivity provisions of the [Gaming Compact and Procedures]. We find that there is insufficient information upon which to make a decision as to whether a new casino operated by [Tribe 1 and Tribe 2] (Tribes) would or would not violate the exclusivity clauses of the Gaming Procedures. The Tribes have entered an agreement with the State whereby they have agreed that the exclusivity provisions will not be breached by this arrangement. Therefore, our action is unnecessary at this time.

The Tribes and Connecticut jointly sued the DOI in late 2017, in the U.S. District Court for the District of Columbia.¹⁸ In their lawsuit, the plaintiffs alleged that the DOI had not complied with IGRA. Specifically, the plaintiffs alleged that once the Secretary failed to approve or disapprove the Tribes’ amendments, the amendments were “deemed approved” by operation of law, and, under IGRA, the Secretary was required to publish a notice of approval in the *Federal Register* within 90 days of receipt of the amendments, which the Secretary failed to do.

¹⁵ We refer to this individual throughout the report as the Associate Deputy Secretary. The Associate Deputy Secretary left the DOI in early 2021.

¹⁶ 2017 Conn. Pub. Act.

¹⁷ The Acting Assistant Secretary for Indian Affairs who signed the 2016 letters is not the same Acting Assistant Secretary for Indian Affairs who signed the 2017 letters due to a change in administrations.

¹⁸ [Citation omitted].

Seven months later, in the summer of 2018, the DOI published a notice in the *Federal Register* announcing approval of Tribe 2's Tribal-State Compact Amendment, which stated that "[t]he Secretary took no action on the Amendment to the compact . . . within 45 days of its submission. Therefore, the Amendment is considered to have been approved . . ." ¹⁹ The DOI did not at that time address the proposed amendments to the Secretarial Gaming Procedures Tribe 1 submitted.

Later in the summer of 2018, Tribe 2 and the DOI filed a Stipulation of Dismissal in the U.S. District Court for the District of Columbia regarding Tribe 2's claims against the DOI.

Casino's Massachusetts location opened to the public in the late summer of 2018.

In September 2018, the U.S. District Court for the District of Columbia dismissed Connecticut's and Tribe 1's claim that the Secretary was obligated under IGRA to act on the Tribe's proposed amendments to its Secretarial Gaming Procedures within IGRA's 45-day time limit. Specifically, the court found that IGRA does not apply the same approval timing requirements to Secretarial Gaming Procedures as it does to Tribal-State Compacts, and thus, the Secretary was not obligated to approve or disapprove the proposed amendments to Tribe 1's Secretarial Gaming Procedures within 45 days of their submission, nor was the Secretary required to consider the amendments approved after 45 days and publish approval in the *Federal Register*. ²⁰ Subsequently, in February 2019, the court allowed Connecticut and Tribe 1 to amend their claim to allege that the Secretary's letter returning the Tribe's amendments was "arbitrary and capricious" in violation of the Administrative Procedure Act. ²¹

On January 2, 2019, Ryan Zinke resigned as Secretary of the Interior.

In March 2019, the DOI approved the proposed amendments to Tribe 1's Secretarial Gaming Procedures. The DOI published a notice in the *Federal Register* approving the proposed amendments to the Tribe's Secretarial Gaming Procedures in late March 2019. That same day, Tribe 1 and Connecticut voluntarily dismissed their lawsuit against the DOI. ²²

¹⁹ [Citation omitted].

²⁰ [Citation omitted].

²¹ [Citation omitted].

²² Notice of Voluntary Dismissal.

III. RESULTS OF INVESTIGATION

A. Facts

1. Actions Taken by Casino Lobbyists, Casino Representatives, and Others Regarding the Tribes' Amendments

a. Secretary Zinke's and the COS' Initial Interactions With Casino Representatives and a U.S. Senator

In March 2017, Casino hired a lobbying firm to represent its interests in Washington, DC. Lobbyist 1, the president of the lobbying firm, asked a Political Consultant—who had a long personal history with Secretary Zinke—to introduce Lobbyist 1 to the Secretary and assist in lobbying Secretary Zinke against approving the Tribes' amendments.²³ From early March through mid-September 2017, Lobbyist 1 and the Political Consultant each represented Casino's interests in an effort to persuade Secretary Zinke not to approve the amendments.²⁴

In March 2017, the Political Consultant texted Lobbyist 1, stating, "I fly back Monday. When are you around? I just told Ryan [Zinke] about you. He and I are skiing . . . today...[sic] I will work with his schedule for a time - but needs to just be a couple of us to keep it tight." The Political Consultant told OIG investigators that while on a personal trip with Secretary Zinke, he told the Secretary that Lobbyist 1 would like to meet the Secretary to discuss the Tribes' amendments and that Lobbyist 1 was lobbying on behalf of Casino. The Political Consultant stated that he briefed Secretary Zinke at that time about the Tribes' amendments so the Secretary would understand the issue before meeting with Lobbyist 1.

According to the Political Consultant, he scheduled a meeting between Lobbyist 1, Lobbyist 1's partners, and the COS for March of 2017, at the Stewart Lee Udall Department of Interior Building (commonly known as the Main Interior Building) in Washington, DC. The day before the meeting, the Political Consultant emailed the COS confirming the meeting and listing the attendees (see Figure 1). The Political Consultant was one of the attendees.

²³ We use the term "lobbying" throughout this report in keeping with statutory definitions and industry guidance. The National Conference of State Legislatures generally defines "lobbying" as "an attempt to influence government action through either written or oral communication." See <https://www.ncsl.org/research/ethics/50-state-chart-lobby-definitions.aspx#:~:text=%E2%80%9CLobbying%E2%80%9D%20means%20communicating%20with%20any.action%20or%20a%20ballot%20issue> (last visited April 1, 2022). We found no evidence of wrongdoing by Casino, the lobbyists, or the Political Consultant in their communications with Secretary Zinke or other DOI officials.

²⁴ Lobbyist 1, his partners, and his firm were registered lobbyists for Casino through the Clerk of the House of Representatives and the Secretary of the Senate in accordance with Section 4 of the Lobbying Disclosure Act of 1995. We found no similar registration for the Political Consultant, nor did we investigate whether the Political Consultant was required to register as a lobbyist under the Lobbying Disclosure Act of 1995.

Figure 1: Email From the Political Consultant Confirming Meeting

From: [Political Consultant]
Date: [March 2017]
To: [COS]
Subject: 1:30 pm Mtg with [COS]

[COS] –

We are confirmed for the meeting tomorrow at 1:30 pm - with you in your office at the Department of Interior.

In the meeting will be the following if you can add us to the Security Clearance downstairs:

1. [Lobbyist 1]
2. [Lobbyist 2]
3. [Another lobbyist]
4. [Political Consultant]

[Political Consultant]

The Political Consultant said the meeting with the COS lasted 1 hour and began with the Political Consultant introducing Lobbyist 1 and his lobbying partners to the Secretary, who briefly came into the COS' office to introduce himself but otherwise did not attend the meeting. Following the introductions and the Secretary's departure, the Political Consultant said they discussed Lobbyist 1's clients and issues, including the Tribes' amendments, with the COS. The Political Consultant told us he specifically remembered Lobbyist 1 arguing to the COS on behalf of Casino that the DOI should not approve the Tribes' amendments. Lobbyist 1 confirmed the Political Consultant's recollection by stating he was "100 percent sure" that he briefed the COS on the Tribes' amendments during the March meeting.

After the March meeting with the COS, Casino Executive 1 sent a copy of the DOI's April 2016 technical assistance letters issued to the Tribes to Lobbyist 2. Lobbyist 2 later replied to Casino Executive 1, stating, "[The] Chief of Staff . . . asked for it and understood the importance. I will send and follow up. I asked for a retraction."

Two months later, in May 2017, the Political Consultant texted Lobbyist 1, writing, "Zinke and I are having dinner tonight, just the 2 of us. I will mention casually [Casino], but anything else?" Lobbyist 1 responded 2 minutes later, "Thanks . . . Re dinner [Casino] is important." The Political Consultant told us that he regularly ate dinner with Secretary Zinke, primarily at the Secretary's residence in Washington, DC, and that he discussed Casino's argument against the Tribes' amendments with Secretary Zinke during one or more of those dinners.

In June 2017, Secretary Zinke met with a U.S. Senator in Nevada, where the Secretary was a speaker at an event. According to the Senator, he and Secretary Zinke discussed the Tribes'

amendments and whether the Secretary had the authority and jurisdiction to approve the amendments.²⁵

In late June 2017, Lobbyist 3 and the Political Consultant exchanged a series of text messages discussing Lobbyist 1’s efforts to “bring a [Casino] person in to meet with [the COS].” One text stated that “[t]hey just want to make sure the political people are in the loop if a DOI decision has to be made, and that it’s not just done by careers.”

In early July 2017, Lobbyist 3 texted the Political Consultant asking if the Political Consultant would “follow . . . up with [the COS] to see if . . . we could get [Lobbyist 1] and [Casino] in on Tuesday to see him.”

Later in July 2017, Lobbyist 3 emailed the COS at his personal email address requesting a meeting for Casino Executive 1 (see Figure 2).

Figure 2: Lobbyist 3 Email Requesting a Meeting Between Casino Executive 1 and the COS

From: [Lobbyist 3]
Sent: [July 2017]
To: [COS’ Personal Email]
Subject: good seeing you and follow up

[COS],

Great seeing you . . . last week. I hope you had an enjoyable Fourth and were able to get a little down time.

[Lobbyist 1] asked if [I] could follow up and see if he could bring in [Executive 1] from [Casino] for a brief meeting. No heavy lifts, no asks, just a quick introduction. [Lobbyist 1] is getting in tomorrow and should be here through at least Thursday.

Thanks so much!

[Lobbyist 3]

The Political Consultant stated that, based on Lobbyist 3’s early July request, he set up a meeting between the COS, Lobbyist 1, and a Casino representative to discuss the Tribes’ amendments. This meeting took place in the COS’ DOI office in late July 2017, where the COS met with Lobbyists 1, 2, and 3 and Casino Executive 1.

²⁵ The U.S. Senator explained to OIG investigators that Casino, a large employer in the State, had contacted him in 2017 to express its concerns about the Tribes’ amendments and inform him of its legal arguments against them. He also told OIG investigators that Casino representatives explained to him how approval of the Tribes’ amendments would allow the Tribes to open a casino only 13 miles from, and in direct competition with, Casino’s new casino in Massachusetts.

In late July 2017, Casino Executive 1 emailed Lobbyists 2 and 3, stating, “Thanks again for arranging Tuesday’s meeting with [the COS]. I have attached the final white paper and accompanying one-pager detailing our [Connecticut] issue. I am happy to send these documents directly to [the COS] or ask you to do it, as you suggest.” The one-page document referred to in Casino Executive 1’s email was titled, *DOI Should Disapprove the Connecticut Tribes’ Proposed Compact Amendments Because They Violate IGRA*.²⁶

b. Casino’s Contacts With the Associate Deputy Secretary

The Associate Deputy Secretary stated that, ordinarily, Indian gaming issues do not rise to the level of secretarial interest and that compact amendments are usually delegated to the Bureau of Indian Affairs and the DOI Office of the Solicitor (SOL). The Associate Deputy Secretary also told us he had not briefed Secretary Zinke on the technical assistance letters. The Associate Deputy Secretary stated, however, that Casino lobbyists contacted him in early August 2017 following the submission of the Tribes’ amendments to the DOI. The Associate Deputy Secretary also said that the level of interest in the Tribes’ amendments escalated during this time. According to the Associate Deputy Secretary, the Casino lobbyists argued that the substantive effect of approving the proposed amendments created a third casino on nontribal land and that the proposed amendments were outside of the DOI’s jurisdiction. Thus, Casino argued, Secretary Zinke did not have the authority to approve the Tribes’ amendments.

The Associate Deputy Secretary told us that, during staff meetings, he kept Secretary Zinke apprised of Casino’s lobbying efforts arguing against the Tribes’ proposed amendments, even though he did not find those arguments compelling, and that he conveyed that opinion to Secretary Zinke. The Associate Deputy Secretary stated he provided information to Secretary Zinke on the three standard responses pursuant to IGRA (approve, disapprove, or “deemed approved”) and recommended that the DOI approve the amendments and proceed with the approval letters. He stated he did not discuss the amendments with the Secretary beyond these updates and that Secretary Zinke never solicited his opinion or advice on the merits.

c. Casino’s Continued Interactions With the COS

In August 2017, Casino Executive 1 texted Lobbyist 2, asking, “[D]id you connect with [the COS] last week? If so, how did it go?” Lobbyist 2 responded, “Yes, [Lobbyist 3] did . . . let him know that you were meeting with [the Associate Deputy Secretary] and asked that [the COS] bird dog the process, which he said that he was. We are following up with [the COS] this week. Did you get any feedback yet from your meeting with [the Associate Deputy Secretary]? How much time is left for DOI to act?”

²⁶ The Political Consultant and lobbyists referred to this document as the “one-pager.” For clarity, we refer to this document throughout the report as “the Casino one-pager.”

One minute later, Lobbyist 2 forwarded Casino Executive 1 a text message he had previously sent to the Political Consultant, which stated:

[Political Consultant], today was a travel day. Let's try to touch base tomorrow. [Casino] spoke to [the Associate Deputy Secretary] and previously to [the COS]. Both appeared to be sensitive to the issue of not allowing Connecticut to grant a private off reservation casino. Connecticut is trying to get DOI to approve an amendment to [the] compact to allow such a casino. Once approved if it is DOI would then cease to have further jurisdiction over the operations. And this opening Pandora's box for other States to consider deals like these. Bottom line DOI cannot approve such an amendment and [the COS] needs to know that. Thanks. (FYI, this is a note I sent to [the Political Consultant] who is from Montana and is a close personal friend and political consultant to Zinke and [the COS]. [The Political Consultant] consults for us.)

Two days later, in August 2017, Casino Executive 1 emailed Lobbyists 2 and 3 the following message: "I have attached a revised one-pager simplifying our arguments along the lines you suggested. Please review and let me know if you have any comments." Lobbyist 2 then emailed the Casino one-pager to the Political Consultant. The Political Consultant told us that Lobbyist 2 asked him to forward the Casino one-pager containing Casino's arguments against approval of the Tribes' amendments directly to Secretary Zinke. The Political Consultant recalled personally discussing this with the Secretary and specifically stating how concerned Casino was about the matter.

Later in August 2017, Lobbyist 2 emailed the Casino one-pager to the COS' personal email address, copying Lobbyists 1 and 3 and Casino Executive 1 (see Figure 3).

Figure 3: Lobbyist 2 Email to the COS With Casino One-Pager Attachment

From: [Lobbyist 2]
Sent: [August 2017]
To: [COS' Personal Email Address]
Cc: [Lobbyist 3]; [Lobbyist 1]; [Casino Executive 1]
Subject: Fwd: Revised One-Pager
Attachments: 2017-08-18.One Pager.DOI Compact Review.pdf;
ATTOO001.htm

Hey [COS], hope you are well. Thank you for meeting with [Lobbyist 3], [Casino Executive 1] and me a couple weeks ago re the Connecticut tribal casino issue. I understand that DOI has been asked to approve an amendment to the State compact allowing a third tribal casino in the State which, unlike the other two is not to be located on federally approved tribal property. Rather, it is to be located on commercial property in . . . Connecticut. I have enclosed a one pager that argues that the request to approve the amendment is clearly a federal issue; and that any such approval by DOI appears to violate federal Indian gaming law. Under federal law governing Indian gaming, DOI has only 45 days to act on this amendment request. If DOI does not act within that time period, the request is deemed approved. The clock runs out [in September] and thus time is of the essence. Accordingly, we respectfully request that the Department disapprove this amendment within the time period allowed. To do otherwise could have national implications in a significant number of other States where tribes, relying on this precedent, also could seek their States to allow commercial Indian casinos off reservation lands. Thank you for your consideration.

Regards,

[Lobbyist 2]

The COS forwarded the email with the Casino one-pager to his official Government email address and then forwarded the email and attachment from his work email address to his executive assistant, asking the executive assistant “Can you print”.²⁷

d. Casino’s Interactions With Secretary Zinke in August 2017

In late August 2017, Lobbyist 2 texted the Political Consultant, stating that he had sent the Casino one-pager to the COS and asking the Political Consultant to “follow up to determine the position of Department.” The Political Consultant said he called Secretary Zinke that day and asked the Secretary if the Political Consultant could send the Secretary the Casino one-pager.

²⁷ In August 2017, Casino Executive 1 provided the Casino one-pager containing Casino’s arguments against approving the Tribes’ amendments to Casino Executive 2 and the U.S. Senator’s staff. Casino Executive 2 was scheduled to meet with the U.S. Senator later that day.

According to the Political Consultant, Secretary Zinke said, “[S]ure,” and told the Political Consultant that he would review the document and then call Lobbyist 1 to discuss it with him. The Political Consultant then sent the Casino one-pager to Secretary Zinke’s personal email.

The Political Consultant later texted Lobbyist 1’s cell phone number to Secretary Zinke’s personal cell phone. The Political Consultant said he then called Lobbyist 1 and told him that Secretary Zinke would review the Casino one-pager and call Lobbyist 1 to discuss the document.

Five days later, Lobbyist 2 and the Political Consultant organized and coordinated a dinner for the Political Consultant, Lobbyist 1, and Secretary Zinke at the Secretary’s residence in Washington, DC, for that evening. Before the dinner, Lobbyist 1 texted Casino Executive 1, stating, “I’m having dinner with Zinke tonight. . . . Obviously [Casino] matters will be on [t]he menu.” To prepare Lobbyist 1, Casino Executive 1 emailed the Casino one-pager to Lobbyist 2, with a comment that the DOI’s affirmative approval of the compact amendments “would expand off-reservation gaming in an unprecedented manner” and that the DOI “can achieve the same result by doing nothing and allowing the compact amendments to be deemed approved.” Casino Executive 1 opined that “[b]oth of these options would open Pandora’s box on off-reservation gaming in a manner that would be very difficult to reverse.”

The Political Consultant told us that he discussed Casino’s arguments against the Tribes’ amendments with Secretary Zinke and Lobbyist 1 during that dinner and that, in fact, the purpose of the dinner was for Lobbyist 1 to articulate Casino’s position against the Tribes’ amendments directly to Secretary Zinke. Throughout dinner that night, Lobbyist 1 sent text messages to Casino Executive 1 about the discussions Lobbyist 1 had with Secretary Zinke related to the Tribes’ amendments.

Lobbyist 1’s final text message to Casino Executive 1 that evening read, “Night two tomorrow.” The following night, Lobbyist 1 was an invited guest to a reception Secretary Zinke hosted at his office. Following the reception, Lobbyist 1 texted Casino Executive 1, stating, “Good meeting tonight.” The Political Consultant told us that he observed Lobbyists 1 and 2 talking with Secretary Zinke at the reception but he could not overhear their conversation.

e. September 2017 Efforts To Persuade the DOI Not To Approve the Amendments

The U.S. Senator told OIG investigators that he spoke with the Associate Deputy Secretary the day before the DOI issued its letters in September 2017 to discuss the Tribes’ amendment request and his concerns about the precedent the DOI would be setting if it approved a tribal casino on nontribal lands. According to the U.S. Senator, his concerns were based on a prior conversation he had with Secretary Zinke in which the Secretary questioned whether the Secretary had the authority to approve the Tribes’ amendments. The Associate Deputy Secretary told OIG investigators that he did not feel pressured by the U.S. Senator’s call and described the call as one where a politician was providing a constituent service by letting him know Casino’s position.

The Associate Deputy Secretary stated that, on the same afternoon in September 2017, the COS contacted him and told him that Secretary Zinke did not want to approve, disapprove, or allow

the amendments to be deemed approved; rather, the Secretary wanted a “fourth option.” After this conversation, the Associate Deputy Secretary said he discussed how to proceed with two senior SOL attorneys with Indian Affairs expertise. The Associate Deputy Secretary then worked with the two attorneys to draft a letter to the Connecticut Governor and the Tribes’ respective chairmen stating that the DOI was “choosing not to act on the amendment” because of concerns that “acting on the amendment may imply tacit approval, pursuant to our IGRA authority, for a casino that does not and is not intended to comply with the provisions of IGRA.”²⁸

On the evening before the DOI’s decision on the Tribes’ amendments was due under IGRA, Lobbyist 1 and Secretary Zinke attended the White House Historical Association reception and dinner. During the reception, Lobbyist 1 texted Casino Executive 1, stating, “He’s going to send a letter taking no position. Saying something to the effect that this may not be allowed under [IGRA]. Can’t talk but it’s not an approval letter. But not what we want. He thinks we can litigate against State. He thinks it’s a half loaf. That’s from Zinke.” In discussing this interaction, Lobbyist 1 told us that, based on what he described as “legal briefs” provided to him by Casino attorneys, he informed Secretary Zinke that it appeared to him that the Tribes’ amendments were “creating a third way for an approval process that didn’t exist, and how can the State of Connecticut create a third way for the federal government to authorize tribal gaming on non-tribal locations? . . . It doesn’t seem to make sense to me.”

Later during the evening of the reception, Lobbyist 1 texted an executive (Executive 1) of another casino located in Nevada (Casino 2), stating, “Worked him all the way through the Lincoln Bedroom,” and then, “Just left. Zinke . . . thinks he helped us.”

In addition, during that same evening, Casino Executive 3 called Casino 2 Executive 1 to inform him about the potential impending approval of the Tribes’ amendments. Casino 2 Executive 1 told OIG investigators he became involved in the matter after Casino Executive 3 explained how approval of the Tribes’ amendments could negatively impact the casino industry and asked Casino 2 to assist Casino in lobbying Secretary Zinke not to approve the amendments. Casino forwarded information about its position against approving the amendments to Casino 2 Executive 1, who then directed his subordinate, Casino 2 Executive 2, to contact Secretary Zinke and arrange a telephone call between Secretary Zinke and Casino 2’s Chief Executive Officer (CEO). According to Casino 2 Executive 1, the telephone call between Casino 2’s CEO and Secretary Zinke never occurred.²⁹

The U.S. Senator said he spoke with Secretary Zinke before the DOI issued its letters on the Tribes’ amendments later that day. According to the U.S. Senator, he “directly asked the Secretary at that point that he not approve the compact amendments—that’s what I asked him to do that day.” The U.S. Senator said he argued to Secretary Zinke that he did not believe the Secretary had the jurisdiction or authority to approve amendments that would result in “commercial gaming” that was not truly “tribal gaming” because it would occur off Indian reservation lands. The U.S. Senator stated that Secretary Zinke did not reveal his ultimate

²⁸ This language was not included in the final letter sent to the Connecticut Governor and the Tribes’ respective chairmen.

²⁹ Separately, Casino 2 Executive 2 told the OIG that, as part of this effort during the same time period, he called a former fundraiser for Secretary Zinke who was friendly with the Zinke family and informed her that he was trying to reach Secretary Zinke.

decision and that he did not learn of that decision until he read a copy of the letters sent to the Tribes and the Governor of Connecticut later that day. When asked if he believed that Secretary Zinke fully understood the U.S. Senator's purpose in contacting the Secretary directly and asking the Secretary not to approve the amendments, the U.S. Senator said, "There was no confusion in our conversations." In a subsequent conversation with OIG investigators, the U.S. Senator added that anyone claiming his position was unclear would be incorrect.

2. *In September 2017, the DOI Issued Its Final Letters to the Tribes and Connecticut Returning the Amendments as Premature and Unnecessary*

Phone records revealed that Secretary Zinke spoke to the COS at 7:37 a.m. the day the DOI issued its letters. The COS then emailed his executive assistant at 8:03 a.m. asking the executive assistant to set up a call with the Associate Deputy Secretary later that morning. In his email, the COS wrote, "I need to talk to [the Associate Deputy Secretary] this morning sooner rather than later. It's about the letter he's writing."

The Associate Deputy Secretary told us that he provided the COS with a status update of the letter and a copy of his draft letter to the Tribes. He said he edited the letter after talking to the COS and added language stating that the DOI was "choosing to return the amendments as premature and likely unnecessary." He then sent the edited draft back to the COS and the SOL attorneys for further review at 12:48 p.m.

That same day, before the letter was finalized, the SOL attorneys consulted with other attorneys knowledgeable about IGRA, conducted their own legal research, and verbally briefed the COS and the Associate Deputy Secretary of their concerns. They stated they believed returning the Tribes' amendments without following one of the actions set forth under IGRA would expose the DOI to litigation risk.³⁰

The SOL attorneys told us they informed the COS that if the DOI returned the Tribes' amendments without following one of the three options prescribed by IGRA, the DOI probably would not prevail if the Tribes challenged the DOI's actions in court. According to one SOL attorney, the COS responded by stating he would not care if the DOI lost in court because then it would be the court's decision and therefore no one would be able to say that Secretary Zinke approved a casino that was located off Indian lands. The COS said that while he did not specifically recall this discussion, he vaguely recalled discussing it with "the Associate Deputy Secretary and two . . . other people."

³⁰ SOL Attorney 1 forwarded the DOI's draft letter returning the Tribes' amendments to a fellow SOL attorney with significant IGRA experience. That attorney responded in an email that "[n]either IGRA nor [DOI regulations] provide for us sending a compact back" and stated that in one case, the court "slammed [the DOI] for trying something like this." This attorney said that, if the DOI had concerns, the DOI "need[ed] to disapprove" the amendments. SOL Attorney 1 responded that he had read the case in question and had told the Associate Deputy Secretary that the DOI's proposed letter returning the amendments with no decision "amount[ed] to a deemed approval." Separately, SOL Attorney 2 told us that, because of his concerns, he drafted a one-page "Information/Briefing Memorandum for the Secretary" on the morning the decision was due in September 2017. The memorandum outlined the process set forth under IGRA in which the Secretary could approve, disapprove, or take no action (which would result in the amendments being deemed approved). The memorandum also stated that, under governing case law, the Secretary could not toll the 45-day time period due to uncertainty within the DOI. SOL Attorney 2 stated that the memorandum was not sent to Secretary Zinke and was reviewed only by other SOL attorneys.

Later that day, at 1:50 p.m., SOL Attorney 1 circulated additional edits from the Associate Deputy Secretary to SOL Attorney 2 and other DOI employees in the Office of the Secretary, Office of the Assistant Secretary for Indian Affairs, and the Bureau of Indian Affairs for awareness. This version of the letter was issued to the Tribes and the State of Connecticut later that day.

3. Communications With and Among Casino 2 Executives

On the evening of the day the DOI issued its letters, Casino Executive 3 emailed Casino 2 Executive 1 to follow up on whether Casino 2's CEO had personally called Secretary Zinke. Casino 2 Executive 1 responded by stating he was not certain but said, "[i]n any regard Zinke and staff know our position and if the call wasn't made it will be." As noted previously, Casino 2 Executive 1 told us this call never occurred.³¹

Later in September 2017, Casino 2 Executive 1 texted Casino Executives 3 and 4, stating that "Zinke asked to see me at 6:15." Casino 2 Executive 1 told us that he and Casino 2 Executive 2 attended an event in Washington, DC, that evening. Casino 2 Executive 1 did not recall who told him that Secretary Zinke requested to meet with him there.

While at the event, Casino 2 Executive 1 said that he and Casino 2 Executive 2 were led to a private hallway where Secretary Zinke would be entering the building and where they could talk to him before he proceeded to the main reception area. According to Casino 2 Executive 1, he and Casino 2 Executive 2 introduced themselves to Secretary Zinke in the hallway and had a brief discussion with him. In this conversation, Casino 2 Executive 1 said the Secretary told them that he was "sticking with his decision," which Casino 2 Executive 1 said they understood referred to the DOI's decision not to approve the Tribes' amendments. Casino 2 Executive 1 said Secretary Zinke further stated, "I know that [Casino 2's CEO] was trying to get in touch with me" and that the Secretary wanted to ensure that Casino 2's CEO knew the Secretary made the decision that Casino 2's CEO desired concerning the amendments. According to Casino 2 Executive 1, Zinke said, "I made the right decision and will not change this policy."

After meeting Secretary Zinke at the event, Casino 2 Executive 1 texted Casino Executives 3 and 4, stating, "All good. He gets it." Casino Executive 3 responded with a thumbs-up emoji and "dinner on me tomorrow!" When asked why he sent the text message, Casino 2 Executive 1 said he did so to let Casino know that Secretary Zinke appeared to be planning to stand by his decision not to approve the Tribes' amendments.

4. The OIG's Interview of the COS

Approximately 6 months later, on May 9, 2018, OIG investigators interviewed the COS about his involvement in the decision to return the Tribes' amendments without action. The COS told us he did not recall when he first learned about the Tribes' amendments. He stated that he

³¹ Casino 2 Executive 2 told us that he spoke with Secretary Zinke's wife in September 2017 and informed her that Casino 2's CEO wanted to speak directly with the Secretary about the Tribes' amendments. Casino 2 Executive 2 said that he never did so but assumed that Secretary Zinke's wife relayed the message to her husband. Telephone records showed that Secretary Zinke dialed Casino 2 Executive 2's number that afternoon and again the next morning.

recalled seeing a draft letter that was very lengthy with “a lot of legal terminology” and that he recommended that the letter be shortened. He explained he thought it was unnecessary to have a multiple page legal discussion and that the letter should simply state the bottom-line decision.

The COS emphasized he was new to his position when this issue arose and said he was not familiar with IGRA. He stated the DOI had “staff and attorneys who are subject-matter experts.” As noted above, the COS recalled discussing the final letter with the Associate Deputy Secretary and “two other people,” but he was unsure of the names and titles of the other two people. He said he relied on “Indian Affairs” and the Associate Deputy Secretary for their views on the amendments because the Associate Deputy Secretary was the “main point” for the DOI on all gaming and Indian affairs issues. The COS also said he seemed to recall the decision was potentially one that the agency did not have to make, and he characterized the ultimate resolution by stating, “I think the decision was to not make a decision.”

The COS stated he did not recall the Associate Deputy Secretary or any SOL attorney telling him that they recommended approving the amendments. When asked who decided to return the amendments as premature, the COS stated he believed that the Associate Deputy Secretary might have made that decision. The COS also stated he did not discuss the letter or the decision with the Secretary.

We also asked the COS if he was “ever contacted from anybody outside of the Department of Interior who had input, either congressional representatives or people from other firms like [Casino] or anything like that.” The COS responded, “I have talked to—I mean, I talk to multiple people about a lot of different issues. . . . I can’t—anything specific regarding this issue, I—no, nobody from Congress. No.” The OIG investigator confirmed the COS’ response by asking, “No?” and the COS responded, “Uh-uh.”

The COS went on to say that the “only real role” he had in the issue was reviewing the draft letter returning the amendments to the Tribes and suggesting that the letter be “pared down.” He agreed that he may have had discussions on the topic but said, “I don’t recall the specific time when . . . I did.”

5. The OIG’s First Interview of Secretary Zinke

a. Secretary Zinke’s Statements

On May 9, 2018, OIG investigators interviewed Secretary Zinke about his involvement in the decision to return the Tribes’ amendments without action. The OIG investigators specifically sought to obtain information about how Secretary Zinke made the decision and why he took the approach that he did. In response, Secretary Zinke stated more than 10 times that he had relied on the Associate Deputy Secretary and the SOL attorneys in making his decision to return the Tribes’ amendments without action. Secretary Zinke also made other comments that either indirectly stated or implied that his decision to return the Tribes’ amendments without action was consistent with the advice he received from the SOL.

Examples of relevant statements include:

- “But on, on counsel of the solicitors, do we have jurisdiction if it’s not on trust land? In this action, the Connecticut Legislature wanted Interior to weigh in either approval or disapproval. And it’s, since it’s not trust land, . . . on advice of counsel, are we obligated to give approval or disapproval[?] And the answer is no.”
- “And if it’s not trust property, and what’s driving it is the State of Connecticut on their legislation is driving a Interior decision, um, on the advice of counsel, we’re within . . . the rights of Interior to say we’re not going to take a position on it. And on the advice of counsel, we were fine on that opinion.”
- In recounting discussions with the Associate Deputy Secretary and the SOL, Secretary Zinke stated, “And I remember these guys want to approve it or disapprove it. I said, ‘Well . . . it goes back to, is it on trust land? . . . [A]re we obligated or not obligated to take a position? If we don’t have to take a position, then we shouldn’t take a position, especially if . . . Connecticut is the driving force behind mandating that the Department of Interior either approve or disapprove. And on nontrust property. And on the advice of counsel . . . is our position defensible and . . . our position is defensible, according to counsel.’ So, that’s the discussion I had with [the Associate Deputy Secretary]. Do we take a position or not?”
- The Secretary explained that he asked, “Am I [on] legal ground to do this?” and that the SOL told him “yes.”
- “Because my principal advice from counsel, and counsel is [the Associate Deputy Secretary], who’s been here before, uh – we don’t have a full team in. On gaming it’s the solicitors on . . . all sides.”
- “But I’m confident at the end of the day this was exactly the right decision. So, I’m happy the decision was made. And I think it’s on legal ground, according to what my solicitors tell me.”

Secretary Zinke also repeatedly stated that “the solicitors” or “counsel” informed him that “if it’s not on trust land, I don’t have to make a decision. At least that’s what the solicitors said in one way or the other.” He repeatedly mentioned the DOI Solicitor, and although he did not expressly state that the Solicitor provided legal counsel, he raised the Solicitor’s name during multiple questions regarding how he came to his decision.

OIG investigators also asked Secretary Zinke about any discussions he may have had with individuals outside the DOI about the Tribes’ amendment requests. They specifically asked the Secretary, “Did . . . you discuss, uh, outside of—outside of, say the DOI personnel, did you have these same discussions with—with representatives from the Tribes, the states? Others?” Secretary Zinke responded, “I didn’t—no.”

When asked about his conversations with the U.S. Senator, Secretary Zinke stated he did not discuss details of his decision to return the Tribes' amendments. Secretary Zinke also stated the U.S. Senator did not ask him to take a particular action regarding the amendments. When OIG investigators specifically asked Secretary Zinke if the U.S. Senator or anyone from the Senator's office had asked him to either not approve or not take action on the Tribes' amendments, Secretary Zinke responded, "No." He went on to say that "on this issue, I don't know who [the U.S. Senator] represented, tell you the truth, whether he represents the Indian Gaming or non-Indian Gaming or Connecticut." When asked whether the U.S. Senator or anyone from his office asked him to either not approve it or not take action on it, Secretary Zinke said, "No. They're smart enough to know that." According to Secretary Zinke, it is "just not wise policy" for the U.S. Senator to advocate with him as the DOI Secretary "one way or other on Indian Gaming."

When asked about his interactions with Lobbyist 1 regarding the Tribes' proposed amendments, Secretary Zinke stated he recalled meeting Lobbyist 1 and his partners in August 2017 but did not recall any other interactions with them. When OIG investigators asked Secretary Zinke if he had spoken with any representatives or lobbyists from Casino about the Tribes' proposed amendments, Secretary Zinke responded, "I didn't discuss—I was warned. I was advised about [Lobbyist 1]'s relationship with [Casino]" and "[s]o I was advised not to talk to him . . . about this specific issue."

b. Interviews of the Associate Deputy Secretary and the Two SOL Attorneys in Response to Secretary Zinke's Statements

In light of Secretary Zinke's statements, OIG investigators re-interviewed the two senior SOL attorneys who worked on the matter. In their second interviews, held in May 2018, both attorneys denied discussing Secretary Zinke's concerns about whether the DOI had the authority or jurisdiction to approve the Tribes' amendments before September 2017—the day before the DOI issued its letters notifying the Tribes and the State of Connecticut that it was returning the amendments without action. Both attorneys told OIG investigators that the first time they learned that the Secretary did not want to approve the Tribes' amendments was the day before the DOI issued the letters, when the Associate Deputy Secretary told them this. They stated, though, that they never communicated directly with Secretary Zinke and instead spoke only with the Associate Deputy Secretary and the COS.

The Associate Deputy Secretary likewise stated that Secretary Zinke had never expressed concerns directly to him about approving the Tribes' amendments. In fact, he commented that it was his impression the Secretary was generally supportive of tribal interests. According to the Associate Deputy Secretary, it was not until the day before the decision date that the Associate Deputy Secretary learned from the COS that Secretary Zinke did not want to approve the amendments.

6. *The OIG's Second Interview of Secretary Zinke*

a. *Secretary Zinke's Statements*

On July 9, 2018, OIG investigators interviewed Secretary Zinke a second time. After being informed that the Associate Deputy Secretary and the SOL attorneys had denied discussing the DOI's authority or jurisdiction concerning the Tribes' amendments with him, Secretary Zinke responded by reiterating his previous statements and further asserting that he had discussed the matter with the Associate Deputy Secretary, the Solicitor, and a Deputy Solicitor.

For example, when asked, "Could you please tell us exactly which solicitor attorneys you had these jurisdictional discussions with for 2 months leading up to [September 2017]?", Secretary Zinke responded:

We had multiple meetings here and it was, 'Give me a range of options.' It was [the Solicitor]. It was . . . [the Associate Deputy Secretary] multiple, and then, and did I have, one of the baseline of the policy was this, is it, if it's not trust property, should we, do we, can we, should we not have a responsibility. . . . So, the option was, at the heart of the matter was, do we have a treaty obligation on land that is not into trust. And the answer is no. And, on talking to solicitors, was that an option that was legal and appropriate and the answer was yes. . . . [I]f the State wants gambling . . . let the State fix it where they have the authority one way or the other. But we should not be making decisions. And upon legal counsel, that was the basis of the decision.

Secretary Zinke explicitly stated, "I didn't follow any advice of [Casino] or the[ir] legal counsel. I followed my legal counsel." He reiterated that his question was whether he was "in a legal position to do that or not":

It was not a basis of other legal counsel. It was in the basis of mine. . . . So my staff of opinions were [the Associate Deputy Secretary], who's not an attorney but has experience with Indian Gaming and such things, [the Solicitor], who's not an Indian Gaming attorney. [The Deputy Solicitor] and, 'cause we've had multiple meetings in here about, Give me the options. Give me the options. Well, what's, what's the issue? And at the end of the day, do we, you know, are we on firm legal ground to do this? . . . I don't know what the genesis of . . . whose light bulb it was, 'cause in a . . . conversation with the solicitors, you know, do we—do we have to make the decision? No. Uh, okay. So—so we don't have to make a decision. What's—what's available? I'm sure they gave me a list of options. Initially the options weren't there. As—as we went into more options, somebody brought this as an option. And it was legally, uh, on—on firm ground.

When again asked about his conversations with the U.S. Senator, Secretary Zinke stated he did not have a detailed discussion about the Tribes' proposed amendments with the Senator. When specifically asked if he knew whether the U.S. Senator was for or against the Tribes'

amendments, Secretary Zinke responded, “I’m not sure he was informed enough to make that call, whether . . . he knew enough detail, ‘cause certainly I did not.”

Secretary Zinke also told OIG investigators he did not recall the conversation with the U.S. Senator on the day the DOI issued its letters, or whether the U.S. Senator asked him to take a particular stance on approving the amendments.³² Secretary Zinke responded, “My conversation to [the U.S. Senator] was never on the specifics. At the time our conversation is, the specifics weren’t there. So, he may have . . . brought it up as I would listen to it, but it was not . . . a detailed discussion.” He subsequently reiterated that he did not recall the U.S. Senator asking him to take a particular stance.

OIG investigators also asked Secretary Zinke about his interactions with Lobbyist 1 at a social event that occurred in September 2017.³³ When informed that Lobbyist 1 told OIG investigators he had spoken with Secretary Zinke about the amendments at the social event and argued that the amendments created an approval process that did not exist and would authorize tribal gaming on nontribal lands, Secretary Zinke responded that he did not discuss details of the Tribes’ amendments with Lobbyist 1 and did not recall this specific meeting. Secretary Zinke explained that “if it was . . . in a social setting, I’m sure it was listening, going, ‘uh-huh.’ But I . . . didn’t commit one way or the other. I probably cordially listened.”

When told that OIG investigators had spoken to Lobbyist 1, the U.S. Senator, and Casino executives and that Casino executives “said that they’ve done some white papers,” Secretary Zinke stated, “I’ve never seen [a Casino] white paper. . . . Nor have I talked to any [Casino] attorney . . . or [Lobbyist 1] on this.”

b. Witness Responses to Secretary Zinke’s Statements

In August 2019, OIG investigators re-interviewed the U.S. Senator about Secretary Zinke’s statements. As he stated in his first OIG interview, the U.S. Senator explained that he called Secretary Zinke in September 2017 to discuss the Tribes’ amendments, which was the same day the DOI issued its decision letter on the matter. The U.S. Senator said he and Secretary Zinke discussed the amendments in detail that day; in fact, the Senator reiterated to us that discussing the amendments was the purpose of the call. The U.S. Senator also stated that he was sure he asked the Secretary not to approve the Tribes’ amendments and that his communications to the Secretary were clear.

OIG investigators also interviewed the Associate Deputy Secretary, the Solicitor, and a Deputy Solicitor with respect to Secretary Zinke’s statements that he had discussed the Tribes’ amendments with them. The Associate Deputy Secretary told OIG investigators he never

³² An OIG investigator asked, “[T]he next question I had was in your first interview you stated that [U.S. Senator] did not ask you to take a particular stance on the amendments. And in fact, you were not certain whether the Senator contacted you to support Indian Gaming or was actually opposing Indian Gaming interests. We’ve interviewed [U.S. Senator], and he told us he informed you directly on separate occasions that he did not believe you had jurisdiction and authority to approve the amendments and he specifically asked you to not approve the amendments. Does this information help you recollect your conversation with [U.S. Senator] at all?”

³³ This is the interaction about which Lobbyist 1 recounted that he had “[w]orked [Secretary Zinke] all the way through the Lincoln Bedroom.”

discussed the decision to return the Tribes' amendments with Secretary Zinke, that he could not recall ever speaking directly with Secretary Zinke regarding the DOI's change from approving the Tribes' amendments to returning them, and that he did not witness any conversation between Secretary Zinke and SOL attorneys in which they discussed returning the Tribes' amendments as "premature and likely unnecessary."

Although the Associate Deputy Secretary stated that Secretary Zinke never asked him his opinion or sought his advice about any aspect of the Tribes' amendments, including the merits of Casino's arguments, the Associate Deputy Secretary said he provided his own assessment of the appropriate response to the Tribes during staff meetings. Specifically, the Associate Deputy Secretary said he kept Secretary Zinke apprised of Casino's lobbying efforts against the amendments and told Secretary Zinke he did not find Casino's arguments compelling; explained to Secretary Zinke the three options he had to address the amendments under IGRA (namely, approve, disapprove, or take no action, which would result in the amendments being deemed approved); and consistently recommended to Secretary Zinke that the DOI approve the Tribes' amendments and proceed with the approval letters. The Associate Deputy Secretary told OIG investigators that he did not discuss the Tribes' amendments with Secretary Zinke beyond this.

The Solicitor also told OIG investigators that he did not discuss the Tribes' amendments with the Secretary or the DOI's options for handling them under IGRA before the decision was made to return the amendments. He acknowledged that, although he did not recall for certain, he may have had a conversation with the SOL attorneys about the topic before the letters were issued. Referring to what IGRA permitted, the Solicitor commented that the SOL attorneys were "quite certain there were only three options" and that he was "surprised" that "somehow a fourth option had been reached."³⁴ Similarly, the Deputy Solicitor told OIG investigators that he had never discussed the Tribes' amendments with Secretary Zinke. We found no evidence to the contrary.

B. Analysis

We assessed whether Secretary Zinke violated his duty of candor when he answered questions regarding his interactions with agency attorneys and employees, Casino representatives, the U.S. Senator, and others regarding the Tribes' amendments. We specifically asked him what had led the DOI to make the decision to return the Tribes' amendments as "premature and likely unnecessary." As discussed in detail below, we concluded Secretary Zinke answered these questions in a manner intended to mislead OIG investigators and, as a result, violated his duty of candor.³⁵

³⁴ Over the course of his interview, the Solicitor commented that he believed the "fourth option"—returning the amendments—was "compliant" in the sense that it was not illegal and that he would be "surprised" if "there was a statutory mandate that says it's impossible to get to a fourth option." He emphasized, however, that the SOL attorneys "weren't thrilled about getting to option four" and that they viewed this as increasing the agency's exposure to litigation in which that option would likely be unsuccessful. The Solicitor did not suggest in his OIG interview that these attorneys ever counseled that returning the amendments would be preferable to other approaches.

³⁵ In Secretary Zinke's comments, he expressed his disagreement with this conclusion. As noted in more detail in Appendix 3, Secretary Zinke's comments do not meaningfully address the evidence set forth in this report and incorrectly focus on whether his decision regarding the Tribes' amendments was justified. Our analysis herein, however, assesses whether Secretary Zinke spoke candidly with OIG investigators about his role in the decision pertaining to the Tribes' amendments, not whether that decision was defensible or legally permissible.

Similarly, we evaluated whether the COS violated his duty of candor when responding to questions posed to him by OIG investigators regarding his interactions with lobbyists and casino representatives and their desire for the DOI to disapprove the Tribes' amendments. We specifically asked questions about the extent and nature of his interactions with lobbyists and casino representatives. We concluded that the COS responded in a way intended to mislead OIG investigators and, as a result, violated his duty of candor.

In drawing these conclusions, we considered a wide range of evidence, including interviews with DOI officials, the U.S. Senator, lobbyists, a political consultant, and executives from Casino and Casino 2. We also considered information obtained from our review of emails and text messages exchanged with Secretary Zinke, the COS, and others with an interest in the Tribes' amendments, including text messages and emails between Casino's lobbyists and executives that were sent contemporaneously with the events they were describing.

1. *Legal Standard*

The Merit System Principles, which govern the management of executive branch employees, provide that “[a]ll employees should maintain high standards of integrity, conduct, and concern for the public interest.”³⁶ With regard to lack of candor, the Merit Systems Protection Board (MSPB)³⁷ has established that Federal employees have a duty to be honest and candid in their dealings with their agency and that their failure to do so may constitute a lack of candor.³⁸ Employees can be disciplined, up to and including removal, for a lack of candor.³⁹

Lack of candor includes an employee's duty to be forthcoming in responses about all facts and information in his or her possession.⁴⁰ Lack of candor requires proof that: (1) the employee gave incorrect or incomplete information and (2) he did so knowingly.⁴¹ Lack of candor “is a broader and more flexible concept” than falsification and does not require proof of an affirmative misrepresentation or an intent to deceive.⁴² Instead, lack of candor “may involve a failure to

³⁶ 5 U.S.C. § 2301(b)(4). Even though presidentially appointed, Senate-confirmed officials do not have appeal rights before the Merit Systems Protection Board (MSPB), we examined MSPB guidance and case law as persuasive authority.

³⁷ The MSPB is an independent, quasi-judicial agency in the Executive branch whose mission is to “[p]rotect the Merit System Principles and promote an effective Federal workforce free of Prohibited Personnel Practices.” U.S. Merit Systems Protection Board, About MSPB, available at <https://www.mspb.gov/about/about.htm> (last visited July 18, 2022).

³⁸ *Ludlum v. Dep't of Justice*, 87 MSPR 56, 68 (2000) (sustaining agency's lack of candor charge and stating that “an agency has a right to expect its workers to be honest, trustworthy, and candid”), *aff'd*, 278 F.3d 1280 (Fed. Cir. 2002).

³⁹ See *Jackson v. Dep't of the Army*, 99 MSPR 604 (2005) (holding that an administrative judge erred in mitigating penalty of removal to two-grade demotion and sustaining agency's removal actions for conspiring to falsify results and lack of candor).

⁴⁰ *Ludlum v. Dep't of Justice*, 278 F.3d 1280, 1285 (Fed. Cir. 2002) (affirming the MSPB's finding that a special agent lacked candor when speaking to an FBI investigator because “he did not respond fully and truthfully to the questions he was asked”) (internal quotations omitted); see also *Swan Creek Communications, Inc. v. Federal Communications Commission*, 39 F.3d 1217, 1222 (D.C. Cir. 1994) (stating in matter involving private party's application to the Federal Communications Commission (FCC) that “[l]ack of candor . . . exists when an applicant breaches its duty to be fully forthcoming as to all facts and information relevant to a matter before the FCC, whether or not such information is particularly elicited”) (internal quotations omitted).

⁴¹ *Fargnoli v. Dep't of Commerce*, 123 MSPR 330, 338 (2016).

⁴² *Ludlum v. Dep't of Justice*, 278 F.3d 1280, 1284-85 (Fed. Cir. 2002).

disclose something that, in the circumstances, should have been disclosed in order to make the given statement accurate and complete.”⁴³

2. *Secretary Zinke Did Not Comply With His Duty of Candor When Interviewed by OIG Investigators*

a. *Secretary Zinke’s Statements Were Material*

To be “material” a statement must influence, or have the potential to influence, official agency actions or activities.⁴⁴ We found that the statements made by Secretary Zinke were material to the OIG’s inquiry into his involvement in the decision to return the Tribes’ amendments and had the potential to change the analysis or outcome of the investigation. These statements included assertions about his involvement in the decision to return the Tribes’ amendments as “premature and likely unnecessary.” Secretary Zinke’s statements also conflicted with the evidence and statements made by the Associate Deputy Secretary, who recommended approving the amendments, and the SOL attorneys, who told the Associate Deputy Secretary they believed returning the amendments subjected the DOI to litigation risk. Candid and truthful answers to the OIG investigators’ questions were necessary to determine the extent of Secretary Zinke’s involvement in returning the amendments and, in particular, the extent of outside influences on that decision.

b. *Secretary Zinke’s Statements to the OIG Were Inaccurate and Incomplete*

Based on our analysis of Secretary Zinke’s statements, we concluded that he provided a misleading portrayal of the basis for his decision to return the Tribes’ amendments. A fair reading of Secretary Zinke’s statements, taken as a whole, is that Secretary Zinke had based his decision to return the Tribes’ amendments on the advice of SOL attorneys (or those who worked with these attorneys, such as the Associate Deputy Secretary) and that he was not influenced by the considerations or recommendations of third parties. Although Secretary Zinke periodically stated it was “his” decision, he also repeatedly stated he based his decision to return the Tribes’ amendments on the advice of SOL attorneys, whom he said told him that the DOI had no jurisdiction over the proposed casino. He also repeatedly stated that he had not had conversations with anyone *outside* the agency—including the U.S. Senator or industry lobbyists—who advised him to take a different course of action. Given the number and extent of communications with these outside personnel, combined with the absence of information that anyone—counsel or otherwise—*within* the agency advised this course of action, we find that Secretary Zinke’s description of events was not accurate.

i. *The U.S. Senator*

During both his first and second interviews, Secretary Zinke made numerous specific statements that inaccurately described his encounters with the U.S. Senator.

⁴³ *Id.*

⁴⁴ *United States v. Safavian*, 644 F. Supp. 2d 1, 10 (D.D.C. 2009) (citing *United States v. Barrett*, 111 F.3d 947, 953 (D.C. Cir. 1997) (quoting *United States v. Hansen*, 772 F.2d 940, 949 (D.C. Cir. 1985)).

During his first interview, when OIG investigators directly asked Secretary Zinke whether the U.S. Senator or anyone from the Senator’s office had asked him to either not approve or not take action on the Tribes’ amendments, Secretary Zinke responded, “No.” Secretary Zinke also stated he did not know who the U.S. Senator represented in terms of being for or against Indian gaming and that the Senator did not advocate for any specific actions regarding the amendments during their discussions. He went so far as to say that the Senator and his staff were “smart enough” not to raise these issues with him.

During his second interview, OIG investigators told Secretary Zinke that they had received information contradicting his earlier statements and gave Secretary Zinke the opportunity to clarify his testimony. Secretary Zinke again asserted that he did not have a detailed discussion about the specifics of the Tribes’ proposed amendments with the U.S. Senator and that he did not know whether the Senator was for or against the Tribes’ request. Secretary Zinke also told OIG investigators that he did not recall a conversation with the U.S. Senator on the day the DOI issued its letters, or whether the U.S. Senator asked the Secretary to take a particular stance on approving the Tribes’ amendments.

Contrary to Secretary Zinke’s statements to the OIG, the U.S. Senator told us that he discussed the Tribes’ amendments with Secretary Zinke during a meeting in June 2017. He also recounted a telephone call with the Secretary in September 2017—the day the DOI issued its final letter returning the Tribes’ amendments—in which the Secretary and the Senator discussed the amendments in detail. The U.S. Senator said that during that telephone call, he “directly asked” Secretary Zinke not to approve the Tribes’ amendments. When asked if he believed that Secretary Zinke fully understood the U.S. Senator’s purpose in contacting the Secretary, the U.S. Senator responded, “There was no confusion in our conversations” and said that anyone claiming his position was unclear would be incorrect.

We found the U.S. Senator to be credible in his description of his communications with Secretary Zinke regarding Casino’s opposition to approving the Tribes’ amendments. The U.S. Senator’s statements to us were clear and consistent with the actions of a legislator advocating for the interests of a constituent and large employer in his State. It is also consistent with the Associate Deputy Secretary’s statements to OIG investigators that the U.S. Senator contacted him to argue against approving the amendments. Finally, we found the U.S. Senator to be credible because it is unclear why he would have been engaged in these communications with Secretary Zinke other than to advocate for his constituent. Thus, we concluded that Secretary Zinke did not accurately describe his communications with the U.S. Senator when he stated that he did not know whether the U.S. Senator supported Casino’s position against approving the amendments and that the U.S. Senator had not made a request for a particular approach.

ii. Interactions With Casino Representatives and Others Seeking Rejection of the Tribes’ Amendments

During his first interview with the OIG, Secretary Zinke stated he had not spoken about the specifics of the Tribes’ amendments with Casino lobbyists. When asked “did you ever speak with any representatives from [Casino] or lobbyists from [Casino] about this issue?”, Secretary Zinke replied, “I didn’t discuss—I was warned. I was advised about [Lobbyist 1]’s relationship

with [Casino]” and “[s]o I was advised not to talk to him . . . about this specific issue.” Secretary Zinke also stated, in response to a question about a particular interaction the day before the DOI issued its letters in September 2017, that he had not “talked to any [Casino] attorney or [Lobbyist 1] on this.”

During his second interview, after OIG investigators advised Secretary Zinke that they had received information that conflicted with his earlier statements, Secretary Zinke said that, if he had talked to Lobbyist 1, it was in a “social setting” and that he “probably cordially listened” but “didn’t commit one way or the other.” Secretary Zinke also stated that he had not seen the Casino one-pager setting forth the reasons why Casino thought the Tribes’ amendments should not be approved.

Extensive evidence, however, showed that Lobbyist 1 engaged the Political Consultant specifically to convey Casino’s concerns about approving the Tribes’ amendments to Secretary Zinke and that Casino lobbyists spoke to Secretary Zinke directly about Casino’s position on multiple occasions, including the day before the DOI issued its letters in September 2017—the day that the COS first suggested to the Associate Deputy Secretary that the Tribes’ amendments would not be approved.

For example:

- The Political Consultant stated that he and Secretary Zinke went skiing together in March 2017 and that he conveyed to Secretary Zinke that Lobbyist 1 wanted to talk with the Secretary about the Tribes’ amendments. The Political Consultant recounted that he specifically told Secretary Zinke during that trip that Lobbyist 1 was opposed to approval of the Tribes’ amendments.
- Lobbyist 1 asked the Political Consultant to talk to Secretary Zinke about Casino’s concerns during a dinner the Political Consultant attended with Secretary Zinke at the Secretary’s Washington, DC residence in May 2017. The Political Consultant stated that he discussed Casino’s arguments against the Tribes’ Connecticut casino with Secretary Zinke during this dinner and at other dinners he attended at the Secretary’s residence.
- The Political Consultant recounted that he spoke with Secretary Zinke in August 2017 and asked if he could send the Casino one-pager to him. He told us that Secretary Zinke responded, “[S]ure,” and the Political Consultant subsequently sent the Casino one-pager to Secretary Zinke’s personal email later that day.⁴⁵ He also sent a text message to Secretary Zinke containing Lobbyist 1’s cell phone number. The Political Consultant told OIG investigators that he recalled telling Secretary Zinke how concerned Casino was about the possibility that the amendments would be approved.
- In late August 2017, the Political Consultant and Lobbyist 1 had dinner at Secretary Zinke’s house. The Political Consultant told OIG investigators the purpose of the dinner

⁴⁵ While we were unable to confirm that the Secretary actually received or read the email containing the Casino one-pager, there is no doubt that it was sent to his personal email address.

was to allow Lobbyist 1 to argue on behalf of Casino against approval of the Tribes' amendments. During the dinner, Lobbyist 1 texted Casino Executive 1, including one message that said, in part, "[Casino] matters will be on [t]he menu," and another that said, "Night two tomorrow."

- Lobbyist 1 told us that sometime in the summer or early fall of 2017, he raised the issue with Secretary Zinke that the Tribes' amendments created an approval process that did not exist or "make sense" because such an approval would authorize tribal gaming on nontribal lands. The day before the DOI issued its letters in September 2017, Lobbyist 1 texted Casino Executive 1, stating, "He's going to send a letter taking no position. Saying something to the effect that this may not be allowed under [IGRA]. Can't talk but it's not an approval letter. But not what we want. He thinks we can litigate against State. He thinks it's a half loaf. That's from Zinke." When asked about this exchange, Secretary Zinke told us that, if he spoke with the lobbyist, he "didn't commit" and "probably cordially listened."
- Casino 2 Executive 1 recounted attending an event with Casino 2 Executive 2 and Secretary Zinke in late September 2017, in which Casino 2 Executive 1 told us that the Secretary said, "I know that [Casino 2's CEO] was trying to get in touch with me" and asked them to make sure that Casino 2's CEO knew he had made the decision on the Tribes' amendments that Casino 2's CEO wanted.

We found that Secretary Zinke's denials of substantive communications with the lobbyists and the Political Consultant to be less credible than those of the various external parties who stated that there were such discussions about the Tribes' amendments. We based our finding on a number of factors. First, we found the contemporaneous text messages and emails recounting these discussions—including those sent by Lobbyist 1 and the Political Consultant—to be particularly persuasive. These included, for example, communications on or shortly after the events of late May 2017, late August 2017, and mid-September 2017. There was no reason to doubt the veracity of these communications because there is no reasonable explanation why these individuals would have prepared and sent inaccurate descriptions of events while those events were taking place, particularly given that the descriptions they sent consistently recounted conversations with Secretary Zinke about their efforts to persuade him not to approve the Tribes' amendments. Second, we have no reason to doubt that the various lobbyists and the Political Consultant raised the topics with Secretary Zinke that they were hired to discuss with him. Given the extent of the interactions between the various lobbyists, the Political Consultant, and Secretary Zinke, we find it difficult to believe that there was no substantive communication about the Tribes' amendments between Secretary Zinke and the lobbyists and the Political Consultant, given that this was the precise purpose for which these individuals were retained.

We also note that Casino representatives sought the assistance of Casino 2 executives to help put Secretary Zinke in touch with Casino 2's CEO, confirming the importance of the amendments issue to Casino, and making it unlikely that Casino's representatives would not have raised these issues directly with Secretary Zinke when in contact with him.

Third, efforts to lobby Secretary Zinke are consistent with the testimony of the Associate Deputy Secretary, who stated that Casino lobbyists argued to him in early August 2017 that the Tribes' amendments were outside the DOI's jurisdiction and that the DOI should not approve them.

Finally, the lobbyists and the Political Consultant had no reason to provide untruthful statements on this topic to the OIG. In contrast, Secretary Zinke told us that he "was advised not to talk to [Lobbyist 1]" about the Tribes' amendments, evidence that he thought—correctly or not—that he should not be talking to Casino representatives on this topic and giving him a reason to be less than candid with OIG investigators. In other words, Secretary Zinke's own statements suggest that reputational and other considerations made it less likely that Secretary Zinke would acknowledge to OIG investigators that his decision regarding the Tribes' amendments may have considered the position of Casino representatives.

In light of the evidence discussed above, we concluded Secretary Zinke's statements to the OIG were inaccurate. We also concluded that Secretary Zinke's overall portrayal of events suggested that he had not engaged in meaningful conversations or interactions with a U.S. Senator, the lobbyists, and the Political Consultant hired to advance Casino's interests. That suggestion, however, is belied by the number and circumstances of his personal contacts with these individuals, including interactions outside of the professional setting—for example, dinners at Secretary Zinke's home and a personal trip.

iii. Secretary Zinke Told OIG Investigators He Relied On Advice From the Associate Deputy Secretary and SOL Attorneys

We also concluded that Secretary's Zinke's statements regarding his interactions with SOL attorneys were inaccurate. Taken as a whole, Secretary Zinke's statements created the impression that he based his decision on the advice and guidance of DOI staff.

During his first interview, Secretary Zinke told OIG investigators multiple times that he relied on advice from the Associate Deputy Secretary and SOL attorneys in deciding to return the amendments and that his decision was consistent with advice received from the SOL. He stated, for example, that he had had conversations about whether the DOI had "jurisdiction if it's not on trust land" and "on advice of counsel, are we obligated to give approval or disapproval[?] And the answer is no." Similarly, he said with respect to the same issue, "[O]ur position is defensible, according to counsel. So, that's the discussion I had with [the Associate Deputy Secretary]."⁴⁶ Likewise, in the second interview, even after OIG investigators informed Secretary Zinke that they had received conflicting information, Secretary Zinke continued to assert that he did not make the decision to return the Tribes' amendments based on any information provided by Casino lobbyists or the U.S. Senator. Instead, Secretary Zinke stated, "I didn't follow any advice of [Casino] or the[ir] legal counsel. I followed my legal counsel." He again referred to the Solicitor and a Deputy Solicitor and suggested that he had asked them for advice. This information and Secretary Zinke's statements are not supported by the evidence.

⁴⁶ We have not recounted each instance in which Secretary Zinke made similar comments; these statements are detailed in the preceding section and are, for the most part, functionally identical.

The Associate Deputy Secretary and the SOL attorneys told us that the DOI had planned to issue letters to the Tribes approving their respective amendments and that, in meetings with the Secretary, the Associate Deputy Secretary had recommended the Secretary take this approach. The Associate Deputy Secretary also told us that Secretary Zinke never asked for his opinion or advice on the merits of Casino’s arguments that the DOI did not have jurisdiction to consider the Tribes’ amendments and, thus, should reject them. In fact, the Associate Deputy Secretary told us it was not until the day before the 45-day time limit under IGRA expired that the COS told the Associate Deputy Secretary that Secretary Zinke wanted another option besides those prescribed by IGRA and instructed the Associate Deputy Secretary to write a letter returning the amendments without action. In sum, the Associate Deputy Secretary denied recommending this course of action to Secretary Zinke, and we found no other evidence suggesting that the Associate Deputy Secretary ever recommended to Secretary Zinke or anyone else that this was the preferred—or even appropriate—action to take.

Moreover, the evidence we obtained from the two senior SOL attorneys who worked with the Associate Deputy Secretary supports the conclusion that they argued *against* the final version of the letter. These attorneys told the Associate Deputy Secretary and the COS that they believed there was no provision under IGRA for the Secretary to return the amendments to the Tribes. They also reported conveying this opinion to the Solicitor, who confirmed in his OIG interview that the attorneys advised that there were three—not four—options under the statute. While they did not present their views directly to the Secretary, one SOL attorney drafted a document titled “Information/Briefing Memorandum for the Secretary” that set forth the options the Secretary had under IGRA and did not include an option to return the Tribes’ amendment without action.⁴⁷

The other SOL attorney emailed a colleague who agreed that the case law suggested that the only options open to the Secretary were those prescribed under IGRA and that if the DOI failed to approve or disapprove the amendments and was subsequently sued, a court would likely find that the amendments were deemed approved under IGRA. The SOL attorney responded to the colleague that he had told the Associate Deputy Secretary that issuing the letter would amount to a “deemed approval.” This evidence counters Secretary Zinke’s assertion that the SOL attorneys were in *favor* of returning the amendments to the Tribes or that they advised the Associate Deputy Secretary or anyone else to represent on their behalf that this was a prudent approach. Furthermore, we found no evidence that the Solicitor or Deputy Solicitor ever expressed an opinion on this issue before the decision to return the amendments was made, much less advised Secretary Zinke that he could or should return the Tribes’ amendments without action. To the contrary, the Solicitor and Deputy Solicitor both told us that they had never discussed this issue with the Secretary, and we found no other evidence—such as email communications, memoranda, or calendar entries of meetings on the topic—that contradicted their statements.

In sum, we found no evidence that any of the individuals named by Secretary Zinke advised him to return the amendments. At most, the evidence showed that the Associate Deputy Secretary, working with the SOL attorneys, prepared a draft letter returning the amendments to the Tribes for the Secretary’s consideration at the request of the COS. Even in that document, however, there was no suggestion that this was the preferred option or that it was the “advice” of anyone

⁴⁷ As stated above, according to the SOL attorney who drafted the “Information/Briefing Memorandum for the Secretary,” it was not actually sent or presented to Secretary Zinke.

within the DOI with expertise in this area. We therefore concluded that Secretary Zinke's repeated statements to the OIG that his decision to return the Tribes' amendments was based on advice he received from the Associate Deputy Secretary and the SOL attorneys were inaccurate and misleading.

c. Secretary Zinke Knowingly Made These Statements

We also concluded that Secretary Zinke knew the statements described above were inaccurate or incomplete when he made them in his interviews with OIG investigators. That is, we concluded that Secretary Zinke knowingly provided information intended to lead a reasonable person to believe that he had relied solely on internal guidance in making his decision regarding the Tribes' amendments while knowing these statements were inaccurate.

We drew this conclusion in large part based on the content and extent of the documentary evidence that we reviewed, as well as the interviews we conducted with the U.S. Senator, the Casino lobbyists, the Associate Deputy Secretary, the SOL attorneys, and other witnesses. We note that the witnesses' statements to OIG investigators and their emails and text messages were consistent with each other and generally conflicted with Secretary Zinke's statements to us.

We believe that the nature and extent of the involvement by the U.S. Senator, the Casino lobbyists, and the Political Consultant make it unlikely that Secretary Zinke would have forgotten or misconstrued his communications with them. We also note that the encounters described in the witnesses' emails and text messages and in their statements to OIG investigators did not describe casual exchanges but instead reflected an in-depth, long-term effort to advocate against a decision that they believed would be harmful to the interests of their constituent and client, respectively. Moreover, as noted above, many of the interactions between Secretary Zinke and these third parties occurred in targeted, personal settings. The Political Consultant told OIG investigators he went skiing with Secretary Zinke in 2017. In addition, only 2 weeks before the final decision letter was issued, Lobbyist 1 and the Political Consultant had dinner at Secretary Zinke's home to give Lobbyist 1 the opportunity to speak directly with the Secretary about Casino's opposition to approval of the Tribes' amendments. The very next night—described as “night two” in one text message—Lobbyist 1 went to a reception, again for the purpose of discussing the Tribes' amendments with Secretary Zinke.

The night before the amendments were returned, Lobbyist 1 attended another dinner with Secretary Zinke at the White House. Text messages from that night between Lobbyist 1 and Casino 2 Executive 1 recounted that Secretary Zinke “thinks he helped us.” And, the day the DOI issued the final decision letter, the U.S. Senator contacted Secretary Zinke and, in his words, “directly” asked the Secretary not to approve the amendments. In short, Secretary Zinke was contacted repeatedly, personally, and directly in the days leading up to and the day of the final decision, and it strains credulity to conclude that Secretary Zinke simply forgot or misspoke when he was interviewed by OIG investigators less than 1 year after the events in question. This is particularly true here, as Secretary Zinke was expressly given the opportunity to correct his statements during his second interview with the OIG.

We therefore concluded that Secretary Zinke violated his duty of candor when he spoke to the OIG.

3. *The COS Did Not Comply With His Duty of Candor When Interviewed by OIG Investigators*

a. *The COS' Statements Were Material*

As an initial point, we concluded that the COS' statements to OIG investigators were material for the same reason we concluded that Secretary Zinke's statements were material—namely, because his statements were material to the OIG's inquiry into his involvement in the decision to return the Tribes' amendments and had the potential to change the analysis or outcome of the investigation. Thus, we do not separately set forth that same analysis here.

b. *The COS' Statements to the OIG Were Inaccurate and Incomplete*

We similarly concluded that the COS made inaccurate statements in speaking with OIG investigators. When we asked the COS if he was “ever contacted from anybody outside of the Department of Interior who had input, either congressional representatives or people from other firms like [Casino] or anything like that,” the COS responded that he did not recall any such interactions, stating, “I have talked to—I mean, I talk to multiple people about a lot of different issues. . . . I can't—anything specific regarding this issue, I—no, nobody from Congress. No.” The OIG investigator confirmed by asking the COS, “No?” The COS then responded, “Uh-uh.” According to the COS, the “only real role” he had regarding the Tribes' amendments was shortening the final decision letter issued to the Tribes. He also stated he did not recall the SOL attorneys recommending approval of the Tribes' amendments or advising against returning the Tribes' amendments without action.

The evidence, however, established that Casino lobbyists contacted the COS multiple times to discuss the Tribes' amendments and the DOI's response to them. In particular, the evidence showed that:

- The Political Consultant organized a meeting in March 2017, between Lobbyist 1 and the COS to discuss the Tribes' amendments. The Political Consultant specifically recalled that Lobbyist 1 argued to the COS that the DOI should not approve the Tribes' amendments. That same day, Lobbyist 2 emailed Casino Executive 1, stating that the COS had asked for the technical assistance letters submitted by the Tribes and “understood the importance.” Lobbyist 1 told OIG investigators that he was “100 percent sure” that the COS was briefed on Casino's position regarding the Tribes' amendments during the March 2017 meeting.
- In July 2017, Lobbyist 3 emailed the COS' personal email account, stating that Lobbyist 1 wanted to bring Casino Executive 1 in to the DOI for a “brief meeting” with the COS.
- In late July 2017, the COS; Lobbyists 1, 2, and 3; and Casino Executive 1 met to discuss the Tribes' amendments.

- In August 2017, Casino Executive 1 exchanged text messages with Lobbyist 2 asking about Lobbyist 2's contacts with the COS. Lobbyist 2 told Casino Executive 1 that Lobbyist 3 had "asked that [the COS] bird dog the process, which he said that he was."
- On the same day in August 2017, Lobbyist 2 texted the Political Consultant and Casino Executive 1, stating that the COS was "sensitive" to the issue of not allowing Connecticut to grant a private, off-reservation casino.
- Later in August 2017, Lobbyist 2 emailed the Casino one-pager to the COS' personal email account, which the COS then forwarded to his DOI email account and asked his assistant to print out that same day.

The evidence also established that the COS did more than simply recommend shortening the final decision letter. Instead, the evidence showed that the day before the DOI issued its letters in September 2017, the COS contacted the Associate Deputy Secretary and told him that Secretary Zinke wanted a "fourth option," or an option other than the ones explicitly set forth in the statute. The next day, the COS again contacted the Associate Deputy Secretary to discuss the letter the Associate Deputy Secretary was writing to address the Tribes' amendments. According to the Associate Deputy Secretary, he provided the latest draft of the letter to the COS, discussed it with the COS, and, after that discussion, revised the letter to include the language that the DOI would be returning the amendments to the Tribes as "premature and likely unnecessary." In addition, the SOL attorneys stated to OIG investigators that they told the COS that same day that returning the amendments to the Tribes without following one of the prescribed options under IGRA would expose the DOI to litigation risk. These attorneys stated that the COS responded by stating he did not care if the DOI was successfully sued over the matter because then it would be the court's decision and no one could say that Secretary Zinke approved a casino that was not located on tribal lands.

In light of the above evidence, we concluded that the COS' statements to OIG investigators regarding to whom he spoke, his role in the DOI's letter returning the Tribes' amendments, and his recollection of what the SOL attorneys advised was inaccurate and incomplete.⁴⁸

c. The COS Knowingly Made These Statements

Although it is a closer call, we similarly concluded that the COS knowingly made misleading statements to OIG investigators. We acknowledge that, for the most part, the COS claimed not to recall any of the interactions OIG investigators asked him about. Given the evidence discussed above, however, including the number and substance of his interactions with third parties on the Tribes' amendments, we found the COS' assertion that he could not recall the events about which OIG investigators questioned him to be implausible.

We note at the outset that an individual is not insulated from a lack of candor finding by claiming "not to recall" events. Notably, one Federal court upheld a lack of candor charge against an employee who replied, "I don't recall" or "I don't remember" to questions posed to him during

⁴⁸ We address our assessment of the COS' claim that he could not recall these incidents in the next section.

an interview with OIG agents.⁴⁹ In that case, the MSPB determined that the subject should have remembered making the statements about which the OIG agents asked, and that, therefore, the subject lacked candor in his responses during the interview.⁵⁰ The appellate court affirmed the MSPB's finding, concluding that the MSPB had "substantial evidence" for its conclusion.⁵¹ The court also agreed with the MSPB that, under the circumstances, the subject "should have remembered" making the statements in question, and so had a "duty to candidly admit that he used such language, then offer an explanation."⁵² The court further agreed that the subject "elected not to do that and that he did so to deflect the investigation."⁵³ Here, we similarly concluded that the COS likely recalled the incidents in question but chose not to address them.⁵⁴

Our finding that the COS knowingly made inaccurate and incomplete statements to the OIG is based on the significance and extent of the contacts he had with the third parties discussed above. As summarized previously, in March 2017, the COS attended a meeting with Lobbyist 1 that focused on the Tribes' amendments and Casino's desire not to have them approved. In subsequent communications, Lobbyist 2 expressed a belief that the COS understood the importance of the issues discussed at that meeting. In July 2017, the COS met with the Political Consultant, the Casino lobbyists, and a Casino executive to discuss the Tribes' amendments. In August 2017, Lobbyist 2 sent text messages stating that Lobbyist 3 had asked the COS to "bird dog" the process, which—according to the lobbyist's text message—the COS said he would do. Later that same day, Lobbyist 2 recounted a conversation with the COS on this topic via a text message sent to Casino Executive 1. The next week, Lobbyist 2 sent the Casino one-pager to the COS' personal email account. In the cover email, Lobbyist 2 described this as a decision with "national implications" and emphasized the precedential significance of the issue. Perhaps most significantly, the day before the DOI issued its letters in September 2017, the COS contacted the Associate Deputy Secretary and specifically said that Secretary Zinke wanted a "fourth option" and engaged in a discussion with the SOL attorneys on this issue; the next day, he again contacted the Associate Deputy Secretary to discuss further revisions to the DOI letter, which would ultimately return the Tribes' amendments to them without further action or decision by the DOI.

In sum, given the number of times the issue of the Tribes' amendment issue was brought before the COS, the number of witnesses who recounted communications with and by the COS, and the significance of the issue, we find it implausible that the COS forgot all these interactions and his role in the process. Thus, we concluded that the COS violated his duty of candor during his interview with the OIG.

⁴⁹ *Martin v. Dep't of Homeland Security*, 810 Fed. Appx. 867, 872 (Fed. Cir.), *cert. denied*, 141 S. Ct. 366, 208 L. Ed. 2d 92 (2020).

⁵⁰ *Id.*

⁵¹ *Id.* at 871.

⁵² *Id.* at 871–72.

⁵³ *Id.* at 872.

⁵⁴ *Id.* Similarly, courts have also found that efforts to "mislead" can constitute a lack of candor. For example, the court in *Powell v. National Labor Relations Board* upheld an MSPB decision finding that an employee lacked candor during an OIG investigation based on evidence that the employee misled the OIG investigator by relating a policy that was not in place at the time of the incident being investigated. See *Powell v. National Labor Relations Board*, 2019 WL 157743, at *4 (N.D. Ala, 2019).

IV. CONCLUSION

We concluded that Secretary Zinke and the Chief of Staff did not comply with their duty of candor when they knowingly provided incorrect, incomplete, and misleading answers to OIG investigators in response to questions about their involvement in the decision to return the Tribes' amendments without action.

V. SUBJECTS

1. Ryan Zinke, former Secretary of the U.S. Department of the Interior.
2. The former Chief of Staff, U.S. Department of the Interior.

VI. DISPOSITION

We referred this matter to the DOJ in 2018. The DOJ declined prosecution in the summer of 2021.

We are providing this report to the current Secretary of the Interior for any action deemed appropriate.

Appendix 1: Timeline of Events¹

2014	
Summer	The Massachusetts Gaming Commission awards a resort-casino license to a limited liability company owned by a casino (Casino) at a location approximately 5 miles north of the Connecticut border.
2015	
September	Tribe 1 and Tribe 2 (the Tribes) agree to jointly build and operate a casino on nontribal lands in Connecticut, approximately 13 miles south of Casino’s proposed Massachusetts location.
2016	
April	The Tribes jointly submit a request for technical assistance to the U.S. Department of the Interior (DOI) Office of Indian Gaming related to proposed amendments to their respective Secretarial Gaming Procedures and Tribal-State Compact with Connecticut.
April	The DOI sends the Tribes individual technical assistance letters stating that the proposed amendments to jointly operate a State-authorized casino would not affect the Tribes’ respective exclusivity gaming arrangements with Connecticut.
2017	
March 1	Ryan Zinke is confirmed as Secretary of the Interior.
March	Casino hires a lobbying firm to represent its interests in Washington, DC. Lobbyist 1, the firm’s president, separately retains a Political Consultant to introduce him to the Secretary and assist in lobbying against approving the Tribes’ amendments.
March	The Political Consultant texts Lobbyist 1, stating that he is skiing with Secretary Zinke. The Political Consultant tells the Secretary that Lobbyist 1 would like to meet the Secretary to discuss the Tribes’ amendments.
March	The Political Consultant, Lobbyist 1, and Lobbyist 1’s partners meet with the DOI Chief of Staff (COS) in his office at the DOI’s Stewart Lee Udall Building.
May	The DOI issues another technical assistance letter to each of the Tribes confirming that the “current Administration supports the views expressed in the [2016] technical assistance letter.”
May	The Political Consultant texts Lobbyist 1 that he is having dinner with Secretary Zinke at his residence in Washington, DC, and would mention Casino.
June	Secretary Zinke meets with a U.S. Senator to discuss the Tribes’ amendments.

¹ Events are ordered chronologically to the extent we had information allowing us to do so.

June	Lobbyist 3 and the Political Consultant exchange a series of text messages discussing Lobbyist 1's efforts to "bring a [Casino] person in to meet with [the COS]."
Summer	Connecticut enacts a Public Act, which authorizes the Tribes' joint casino in Connecticut, only if the Tribes' amendments were approved or deemed approved by the Secretary of the Interior pursuant to the Indian Gaming Regulatory Act (IGRA).
July	Lobbyist 3 texts the Political Consultant asking the Political Consultant to follow up "with [the COS] to see if . . . we could get [Lobbyist 1] and [Casino] in on Tuesday to see him."
July	Lobbyist 3 emails the COS at his personal email address, stating, "[Lobbyist 1] asked if [I] could follow up and see if he could bring in [Executive 1] from [Casino] for a brief meeting."
July	Lobbyists 1, 2, and 3 and Casino Executive 1 meet with the COS in his DOI office to discuss the Tribes' amendments.
July	Casino Executive 1 emails Lobbyists 2 and 3 thanking them for "arranging Tuesday's meeting with [the COS]" and attaches "the final white paper and accompanying one-pager detailing our [Connecticut] issue."
August	The Tribes submit for consideration their proposed amendments to their existing Secretarial Gaming Procedures and Tribal-State compact to the DOI Office of Indian Gaming; following the Tribes' submission, Casino lobbyists contact the Associate Deputy Secretary (ADS) to discuss the Tribes' proposed amendments.
August	Casino Executive 1 texts Lobbyist 2 asking if he connected with the COS, adding, "If so, how did it go?" Lobbyist 2 replies that Lobbyist 3 had met with the COS and they were "following up with [the COS] this week."
August	Lobbyist 2 forwards Casino Executive 1 a text message he had sent to the Political Consultant regarding Casino's communications with the ADS and the COS about "the issue of not allowing Connecticut to grant a private off reservation casino."
August	Casino Executive 1 emails Lobbyists 2 and 3 a revised one-pager for review and comment. Lobbyist 2 emails the Casino one-pager to the Political Consultant and asks the Political Consultant to forward it to Secretary Zinke.
August	Lobbyist 2 emails the Casino one-pager to the COS' personal email address, copying Lobbyists 1 and 3 and Casino Executive 1. The COS forwards the email with the Casino one-pager to his official Government email address and asks his executive assistant to print it.
August	Lobbyist 2 texts the Political Consultant, stating that he sent the Casino one-pager to the COS and asking the Political Consultant to "follow up to determine the position of Department."
August	The Political Consultant calls Secretary Zinke asking if he could send the Secretary the Casino one-pager. Secretary Zinke agrees and says he will call Lobbyist 1 to discuss it.

August	The Political Consultant texts Lobbyist 1's cell phone number to Secretary Zinke's personal cell phone. The Political Consultant calls Lobbyist 1 and tells him that Secretary Zinke will review the Casino one-pager and call Lobbyist 1 to discuss it.
August	The Political Consultant, Lobbyist 1, and Secretary Zinke meet for dinner at the Secretary's residence. Throughout the evening, Lobbyist 1 texts Casino Executive 1 about his discussions with Secretary Zinke.
August	Lobbyist 1 attends a reception to speak with Secretary Zinke.
September	The U.S. Senator speaks with the ADS to discuss the Tribes' amendment request and any precedent the DOI would set if it approved a tribal casino on nontribal lands.
September	The COS contacts the ADS to tell him that Secretary Zinke wanted an alternate to approving, disapproving, or allowing the amendments to be deemed approved. The ADS discusses how to proceed with two senior Office of the Solicitor (SOL) attorneys.
September	Lobbyist 1 and Secretary Zinke attend the White House Historical Association reception and dinner. During the reception, Lobbyist 1 texts Casino Executive 1 regarding his discussion with Secretary Zinke about the Tribes' amendments.
September	Lobbyist 1 texts Casino 2 Executive 1, "Worked him all the way through the Lincoln Bedroom," and "Just left. Zinke . . . thinks he helped us."
September	Casino Executive 3 calls Casino 2 Executive 1 to inform him of the potential approval of the Tribes' amendments. Casino 2 Executive 1 directs Casino 2 Executive 2 to contact Secretary Zinke and arrange a telephone call between Secretary Zinke and Casino 2's Chief Executive Officer (CEO). (According to Casino 2 Executive 1, the telephone call between the CEO and Secretary Zinke never occurred.)
September	Casino 2 Executive 2 speaks with Secretary Zinke's wife and informs her that Casino 2's CEO wanted to speak with the Secretary about the Tribes' amendments. (Casino 2 Executive 2 says he never spoke with Secretary Zinke directly but assumed his wife relayed the message.)
September	The U.S. Senator speaks with Secretary Zinke and asks the Secretary not to approve the compact amendments.
September	Secretary Zinke speaks to the COS at 7:37 a.m. The COS emails his executive assistant at 8:03 a.m. asking the executive assistant to set up a call with the ADS that morning to discuss the letter the ADS is writing.
September	The ADS provides the COS with a copy of his draft letter to the Tribes. The ADS adds language that the DOI was "choosing to return the amendments as premature and likely unnecessary." The ADS sends the edited draft back to the COS and SOL attorneys for further review at 12:48 p.m.
September	The SOL attorneys brief the COS and ADS, stating that if the DOI returns the Tribes' amendments without following one of the three options prescribed by IGRA, the DOI probably would not prevail if the Tribes challenge the DOI's actions in court.

September	At 1:50 p.m., SOL Attorney 1 circulates additional edits from the ADS to SOL Attorney 2 and other DOI employees in the Office of the Secretary, Office of the Assistant Secretary for Indian Affairs, and the Bureau of Indian Affairs for awareness. This version of the letter was issued to the Tribes and the State of Connecticut later that day.
September	The DOI returns the amendments to the Tribes, writing that the DOI maintained “the status quo as action on the Amendment is premature and likely unnecessary.”
September	Casino 2 Executives 1 and 2 attend an event in Washington, DC, where they introduce themselves to the Secretary and have a brief discussion with him regarding the Tribes’ amendments.
September	Casino 2 Executive 1 texts Casino Executives 3 and 4, stating, “All good. He gets it.” Casino Executive 3 responds with a thumbs-up emoji and “dinner on me tomorrow!”
November	The Tribes and Connecticut jointly sue the DOI in the U.S. District Court for the District of Columbia alleging that the DOI did not comply with IGRA in addressing the Tribes’ amendments.

2018

May 9	OIG investigators interview the COS and Secretary Zinke.
Summer	The DOI publishes a <i>Federal Register</i> notice regarding Tribe 2’s Tribal-State compact stating that “[t]he Secretary took no action on the Amendment to the compact . . . within 45 days of its submission. Therefore, the Amendment is considered to have been approved.”
Summer	Tribe 2 and the DOI file a Stipulation of Dismissal in the U.S. District Court for the District of Columbia regarding Tribe 2’s claims against the DOI.
July 9	OIG investigators interview Secretary Zinke a second time.
Late summer	Casino’s Massachusetts location opens to the public.
September	The U.S. District Court for the District of Columbia dismisses Connecticut’s and Tribe 1’s claim that the Secretary was obligated under IGRA to act on the Tribe’s proposed amendments within IGRA’s 45-day time limit.

2019

January 2	Secretary Zinke resigns as Secretary of the Interior.
February	The U.S. District Court for the District of Columbia allows Connecticut and Tribe 1 to amend their claim.
March	The DOI approves the proposed amendments to Tribe 1’s Secretarial Gaming Procedures.
March	The DOI publishes a <i>Federal Register</i> notice approving the proposed amendments to Tribe 1’s Secretarial Gaming Procedures.
March	Tribe 1 and Connecticut voluntarily dismiss their lawsuit against the DOI.

August 3, 2022

VIA ELECTRONIC MAIL DELIVERY

██████████
Supervisory Investigative attorney
Special Investigations and Reviews
Office of Inspector General
U.S. Department of Interior

Dear Agent ██████████

We are writing to provide comments and feedback after having an opportunity to consult with our client regarding the contents of the draft report. For the reasons that follow, we ask that you remove any finding that Secretary Zinke lacked candor during his interviews. Moreover, it would be inappropriate to release any version of the report so close to a Congressional Election given Former Secretary Zinke's candidacy.

More than 4 years ago, then Secretary of the Interior Ryan Zinke was interviewed on two occasions by the Department of State's Office of Inspector General regarding an investigation concerning the Indian Gaming Regulatory Act and an application by the ██████████ Tribe to open an off-reservation, commercial casino in ██████████, Connecticut. There was no basis to even conduct such a review of Secretary Zinke, but it is crystal clear that Secretary Zinke acted lawfully and ethically in carrying out his duties.

It is well known that former Secretary Zinke is running for a Congressional seat in Montana and the election is set for November of 2022, about three months from now. Given the unnecessary delay in completing the report, we find the timing of the release of this report disturbing and improper. The release of this report undoubtedly runs afoul of Department of Justice guidelines regarding public accusations against a candidate with an election imminent. Thus, to the extent that any report is to be issued, it must be made after the election. To do otherwise, would insert the findings of this stale and inaccurate investigative report into the electoral process and could prejudice Secretary Zinke.

Turning to the merits, the report and its findings are inaccurate and flawed. The report does not mention crucial facts that show Secretary Zinke was justified in his actions and was not subject to any influence. Here are some of the critical facts that undermine the so-called findings:

- The report fails to clarify that Secretary Zinke did not adopt the position of any lobbyist for or against the project. The Secretary rightfully believed it is not the role of DOI and may even be an inherent conflict of interest for DOI to determine the legitimacy of

sovereign nation activities outside of non-trust lands. His testimony was, and remains, that the DOI should not have jurisdiction over off-reservation land. In other words, he did not believe Interior had jurisdiction over the issue and therefore refused to opine.

- The report fails to mention that Secretary Zinke’s position was ultimately upheld by a federal judge, who dismissed a complaint filed by the State of Connecticut and the [REDACTED] Tribe seeking to force him to act on the matter. *See Connecticut v. United States Department of the Interior, [REDACTED]* (“the Secretary was under no obligation to approve or disapprove the proposed amendments to the [REDACTED] Procedures within 45 days of their submission, nor was the Secretary required to consider the amendments approved by law after 45 days and publish that approval in the Federal Register.”)
- Collectively, the Department of Interior’s lawyers gave Secretary Zinke legal advice that he followed, and his position was endorsed as lawful by a federal judge. The suggestion that Secretary Zinke’s actions were wrong, or the Department had “litigation risk,” is undermined by the Court opinion. The draft report does not even mention this significant fact, which illustrates the wrongfulness of this inquiry and undermines the remaining findings in the report.
- The draft is distorted and misleading in its assertion that Secretary Zinke was not truthful about the interactions he had with lobbyists from the casino. The report fails to mention that Secretary Zinke was unaware of the significant private discussions, emails and text messages exchanged between parties opposing the project.
- Secretary Zinke had routine chance encounters with literally hundreds of people at events around Washington, D. C. when he was in office. Secretary Zinke never initiated discussions on the matter with lobbyists.
- The report fails to highlight that Secretary Zinke did not believe he had jurisdiction over this issue in at least June of 2017, if not sooner, well-before the efforts of any lobbyists. Since Secretary Zinke thought all along that he did not have jurisdiction, he was not influenced or subject to influence by any lobbyist. His position regarding jurisdiction never changed. The Secretary was not influenced by anyone other than his own judgment and in accord with his discussions with legal counsel. Thus, his comments were neither misleading nor material in any respect.
- The report does not mention whether Connecticut state officials, the [REDACTED] Tribe or any of its lobbyists attempted to speak with Department of Interior officials or Secretary Zinke on this matter.
- The Solicitor’s testimony is in stark contrast to the testimony of the U.S. Senator who acknowledges that Secretary Zinke discussed whether he even had jurisdiction to consider this issue in June of 2018. It is apparent that Secretary Zinke felt this way for many months and the Secretary’s position should not have been a “surprise” to anyone, including the Solicitor. This fact alone illustrates that the Secretary was truthful at all times.
- In short, Secretary Zinke had his mind made up about this matter months before any attempts to influence him. He consulted with legal counsel who did not tell him it would be unlawful or legal to take no action on the measure. He therefore relied on the

advice of counsel when he took no action and was truthful when he discussed the matters with the OIG. In sum, he was cooperative and candid when interviewed about these issues. Any suggestion to the contrary is wrong.

In sum, we believe the finding that Secretary Zinke lacked candor are wrong and without merit. We ask that you consider the above and not so find in any report. Moreover, we believe the timing of the release of the report is flawed and given the passage of time, must wait until after the election. We thank you for the opportunity to review the draft report and are willing to discuss the matter further should you have any questions.

Very truly yours,

A large black rectangular redaction box covering the signature and name of the sender.A black rectangular redaction box covering contact information, likely a phone number.

Appendix 3: The Office of Inspector General’s Assessment of Former Secretary Zinke’s Comments

As noted in our report, the Office of Inspector General (OIG) offered both former Secretary Zinke and his former Chief of Staff the opportunity to review relevant portions of the draft report.¹ Secretary Zinke, through counsel, accepted that offer and reviewed the materials *in camera* on July 26, 2022. On August 3, 2022, Secretary Zinke provided written comments, which are included in their entirety in Appendix 2. We made minor clarifying revisions to the report to address certain points noted in Secretary Zinke’s comments but made no substantive changes in our analysis or conclusions. We address two specific points below.

The Timing of the Release of the Report

In his comments, Secretary Zinke noted that he is currently seeking elected office and that the election will be held in November 2022. He expressed the belief that it would be “inappropriate” for us to release the report at this time and that the timing of release “is disturbing and improper” and due to “unnecessary delay.” Secretary Zinke requested that we postpone release of the report until “after the election.”

We cannot agree to this request. We conduct our investigations in accordance with the *Quality Standards for Investigations* as put forth by the Council of the Inspectors General on Integrity and Efficiency, and we release reports once our processes are complete in light of those standards. In this case, we are releasing the report at the conclusion of our work and after interested parties—including the U.S. Department of the Interior (DOI) and Secretary Zinke—received an opportunity for review and comment. Moreover, the DOI OIG’s investigation and reporting on this matter included no “unnecessary delay.”² We note that we referred this matter to the U.S. Department of Justice (DOJ) for its consideration in accordance with the *Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority* in late July of 2018. The DOJ formally notified us that it was declining prosecution on July 29, 2021. We then continued our investigation as an administrative matter and issued our draft report to the DOI on July 20, 2022, approximately 1 year after the DOJ’s declination.

In support of his request to postpone release of this report, Secretary Zinke contended that DOJ guidelines require that it be released “after the election.” This is inaccurate. To the extent the guidelines apply to our work, they weigh in favor of releasing the report consistent with our typical processes. The DOJ guidelines provide that “partisan politics must play no role” in investigative decisions and that law enforcement officers “may never select the timing of public statements (attributed or not), investigative steps, criminal charges, or any other action for the purpose of affecting an election, or for the purpose of giving an advantage or disadvantage to a candidate or political party.”³ Given that there are more than 2 months until the election occurs, we believe that intentionally delaying release of this report because of the election would itself

¹ As discussed previously, the former Chief of Staff did not accept our offer to review portions of the report.

² Secretary Zinke’s response inaccurately referred to an investigation by the U.S. Department of State OIG. The Department of State OIG had no involvement in this matter.

³ Attorney General Memorandum for All Department Employees, *Election Year Sensitivities* (May 25, 2022).

create the risk of timing report release for what could be perceived as a political purpose and would be inconsistent with our typical processes. We also note that the DOJ guidelines provide no specific guidance for how close to an election an investigative report may be released, and we believe that releasing the report at this time—more than 60 days before the election—would not run afoul of the DOJ’s own practices even if the guidelines were binding on us.

The Lack of Candor Finding

We considered Secretary Zinke’s comments and provided additional contextual information to our draft report as appropriate. As set forth below, however, Secretary Zinke’s comments did not identify any inaccuracies in our report that would cause a change in our conclusion that Secretary Zinke did not comply with his duty of candor when he spoke to OIG investigators about his involvement in the decision to return the Tribes’ amendments without action.

In his comments, Secretary Zinke stated repeatedly that he “did not believe he had jurisdiction” with respect to whether he should approve the Tribes’ amendments involving a casino on non-Tribal lands and thus that he “was not influenced or subject to influence by any lobbyist.” Our report, however, does not address the propriety of Secretary Zinke’s decision to return the Tribes’ amendments without action or whether that decision was influenced by casino lobbyists. We discontinued our examination of these issues because the DOI’s decision to return the Tribes’ amendments became the subject of litigation filed by the Tribes and the State of Connecticut against the DOI and Secretary Zinke as Secretary of the Interior. Our report instead addressed the question of whether Secretary Zinke was candid with OIG investigators when they questioned him about his involvement in the DOI’s decision to return the Tribes’ amendments without action.

Specifically, our report set forth evidence that Secretary Zinke misled OIG investigators when they asked him if he discussed the matter of the Tribes’ amendments with anyone outside the DOI and Secretary Zinke replied that he had not. Secretary Zinke’s response did not directly address the multiple examples of his lack of candor detailed in our report, and so we have no basis upon which to alter our findings. On a related point, Secretary Zinke commented that he could not have been aware of the internal communications between “parties opposing the project.” We do not suggest that Secretary Zinke was or should have been aware of these communications. Rather, these communications are recounted as evidence of the nature and extent of the contacts Secretary Zinke had with these individuals over multiple months and how those contacts undermine Secretary Zinke’s statements to OIG investigators.

Finally, Secretary Zinke contended that “the Department of Interior’s lawyers gave Secretary Zinke legal advice that he followed.” Secretary Zinke, however, identified no DOI attorney who advised him to return the amendments to the Tribes without action, and we identified no agency employee who advised Secretary Zinke to take that approach. The report itself explicitly addresses this claim and does not support Secretary Zinke’s contention.



REPORT FRAUD, WASTE, ABUSE, AND MISMANAGEMENT

The Office of Inspector General (OIG) provides independent oversight and promotes integrity and accountability in the programs and operations of the U.S. Department of the Interior (DOI). One way we achieve this mission is by working with the people who contact us through our hotline.



If you wish to file a complaint about potential fraud, waste, abuse, or mismanagement in the DOI, please visit the OIG's online hotline at www.doioig.gov/hotline or call the OIG hotline's toll-free number: **1-800-424-5081**

Who Can Report?

Anyone with knowledge of potential fraud, waste, abuse, misconduct, or mismanagement involving the DOI should contact the OIG hotline. This includes knowledge of potential misuse involving DOI grants and contracts.

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