

**Appendix B**  
**Stockbridge-Munsee Casino**

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requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303-236-7400.

**SUPPLEMENTARY INFORMATION:** The following applicant has requested issuance of an enhancement of survival permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

*Applicant:* Jeff Hagener, Montana Department of Fish, Wildlife and Parks, Helena, Montana, TE-077698.

The applicant requests a permit for the future take of Westslope cutthroat trout (*Oncorhynchus clarki lewisi*) in conjunction with recovery in Montana. The permit application includes a proposed Candidate Conservation Agreement with Assurances, in which the applicant voluntarily implements conservation activities to benefit the Westslope cutthroat trout. Candidate Conservation Agreements with Assurances encourage implementation of conservation efforts and reduce threats to species that are proposed for listing under the Endangered Species Act.

Dated: October 21, 2003.

**Ralph O. Morgenweck,**

*Regional Director, Denver, Colorado.*

[FR Doc. 03-28973 Filed 11-19-03; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Stockbridge-Munsee, Casino, Sullivan County, NY

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs, with the cooperation of the Stockbridge-Munsee Community, Band of Mohican Indians (Tribe), intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for the proposed Stockbridge-Munsee Casino, Town of Thompson, Sullivan County, New York. The purpose of the proposed action is to help the Stockbridge-Munsee Community meet tribal economic needs and to serve as one part of the land claim settlement between the Tribe and the State of New

York. This notice also announces a public scoping meeting to identify potential issues and content for inclusion in the EIS.

**DATES:** Written comments on the scope and implementation of this proposal must arrive by December 19, 2003. The public scoping meeting will be held December 4, 2003, at 7 p.m.

**ADDRESSES:** You may mail, hand carry or telefax written comments to, Franklin Keel, Regional Director, Eastern Regional Office, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214, telefax (615) 467-1701.

The public scoping meeting will be held at the Sullivan County Government Center, Legislative Meeting Room, 2nd Floor, 100 North Street, Monticello, New York 12701.

**FOR FURTHER INFORMATION CONTACT:** Jim Kardatzke, (615) 467-1675.

**SUPPLEMENTARY INFORMATION:** The Tribe proposes that 333 acres of land into trust on behalf of the Tribe, on which the Tribe, through a development agreement with trading Cove New York, proposes to build a casino. The property is located on County Highway 161 at State Route 17, Exit 107, in the town of Thompson, Sullivan County, New York. The project would consist of a 584,000 square foot casino and supporting facilities, including food and beverage outlets, retail facilities, a service station, a warehouse and parking, to be constructed entirely on the proposed trust acquisition. In a second phase of the proposed project, a hotel would be built immediately adjacent to the casino.

The Tribe prepared and submitted to the BIA an Environmental Assessment (EA) on the proposed action in February, 2001, that was released for public comment in December, 2002. The BIA has withdrawn this EA and elected to complete an EIS. The EA will, however, serve as a part of the scoping process for the EIS.

Issues identified to date to be addressed in the EIS include, but are not limited to the following:

- Soil erosion and sediment control—design of construction controls to manage exposed soils.
- Stormwater management—design of stormwater controls to manage runoff from the developed area from both a water quality and quantity standpoint.
- Wetlands—minimization and avoidance of direct or indirect wetland impacts and mitigation plans for unavoidable impacts.
- Wildlife and fisheries—measures to avoid and minimize impacts to species, including listed species.

- Historical and archeological resources—identification and avoidance of cultural resources.

- Traffic—analysis of future traffic and proposal of adequate mitigation.

- Air quality—analysis of local and regional air quality impacts from mobile sources.

- Socio-economic—project effects on local economy (including population and housing) and public services.

- Utilities—provision of water supply and wastewater treatment to the project and how provision of those services may affect existing capacities.

- Cumulative effects—review of cumulative environmental impacts of the project when considered together with other reasonably foreseeable development projects in the region.

- Alternatives to the preferred alternative.

The range of issues and alternatives addressed in the EIS may be further expanded based on comments received in response to this notice, or to the scoping meeting announced in this notice.

#### Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

#### Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: November 12, 2003.

**Aurene M. Martin,**  
Principal Deputy Assistant Secretary—Indian Affairs.  
[FR Doc. 03-29087 Filed 11-19-03; 8:45 am]  
BILLING CODE 4310-W7-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[WO-320-1990-PB-24 1A]

**Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act; OMB Approval Number 1004-0194**

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On July 30, 2002, the BLM published a notice in the **Federal Register** (67 FR 49369) requesting comment on this information collection. The comment period ended on September 30, 2002. BLM received no comments. You may obtain copies of the

collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004-0194), at OMB-OIRA via facsimile to (202) 395-6566 or e-mail to [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov). Please provide a copy of your comments to the Bureau of Information Collection Clearance Officer (WO-630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

**Nature of Comments**

We specifically request your comments on the following:  
1. Whether the collection of information is necessary for the property functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* Surface Management Activities under the General Mining Law of 1872 (43 CFR 3809).

*OMB Approval Number:* 1004-0194.

*Bureau Form Numbers:* 3809-1, 3809-2, 3809-4, 3809-4a, and 3809-5.

*Abstract:* The Bureau of Land Management (BLM) collects and uses the information to manage the surface management activities under the General Mining Law of 1872 and the regulations at 43 CFR 3809.

*Frequency:* Occasional.

*Description of Respondents:* Individuals, groups, or corporations.

*Estimated Completion Time:*

Information collected	Public burden hours/action	Estimated number actions	Total burden hours	Total public burden cost
<b>Notices (nonform)</b>				
Small Exploration .....	16	193	3,088	\$231,600
Medium Exploration .....	48	193	9,264	694,800
Sub Total .....		386	12,352	926,400
<b>Plan of Operations</b>				
Exploration .....	48	15	720	64,800
Placer .....	160	67	10,720	964,800
Open Pit .....	480	45	21,600	1,944,000
Industrial .....	160	8	1,280	115,200
Underground .....	160	7	1,120	100,800
Milling .....	160	8	1,280	115,200
Sub Total .....		150	36,720	3,304,800
<b>NEPA</b>				
Exploration .....	320	15	4,800	336,000
EA (Simple) .....	320	82	26,240	1,836,800
EA (Standard) .....	890	45	40,050	3,600,000
EIS .....	2,480	8	19,840	4,075,600
Sub Total .....		150	90,930	9,848,400
Section 106—NHPA .....	30	150	4,500	744,490
Forms .....				
<b>Financial Guarantee</b>				
Notices .....	18	386	51	2,040
Plans of Operations .....	18	150	21	840
Bond/Surety Riders or Change of Operator .....	18	180	24	960

personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

This notice is published in accordance with sections 1501.7, 1506.6 and 1508.22 of the Council of Environmental Quality Regulations (40 CFR, Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371, *et seq.*), and the Department of the Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: February 15, 2008.

**Carl J. Artman,**

*Assistant Secretary, Indian Affairs.*

[FR Doc. E8-4354 Filed 3-5-08; 8:45 am]

BILLING CODE 4310-W7-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Notice of Cancellation of the Environmental Impact Statement for the Proposed Stockbridge—Munsee Casino, Sullivan County, NY**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs (BIA) intends to cancel work on the Environmental Impact Statement (EIS) for the proposed taking into federal trust of land in Sullivan County, New York, for the Stockbridge—Munsee Community Band of Mohican Indians of Wisconsin (Tribe). The Tribe proposed to develop and operate a Class III gaming facility and associated facilities on the trust property. The EIS is no longer needed because the Department of the Interior has decided not to accept the land into trust, on the basis that the proposed action did not adequately meet criteria in 25 CFR 151.3; 151.10(b); 151.10(c); and 151.11(b) for trust acquisition.

**DATES:** This cancellation is effective April 8, 2008. Any written comments must arrive by April 7, 2008.

**ADDRESSES:** You may mail, hand carry or fax written comments to Mr. Franklin

Keel, Regional Director, Eastern Region, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214, fax (615) 564-6701.

**FOR FURTHER INFORMATION CONTACT:** Kurt G. Chandler, (615) 564-6832.

**SUPPLEMENTARY INFORMATION:** The BIA published its Notice of Intent to prepare the EIS on November 24, 2003, in the *Federal Register* (68 FR 65467). The notice included project details. The U.S. Environmental Protection Agency published its Notice of Availability of the Draft EIS for this proposed action on February 11, 2005, in the *Federal Register* (70 FR 7257).

**Public Comment Availability**

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

This notice is published in accordance with sections 1503.1 and 1506.6 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: February 22, 2008.

**James E. Cason,**

*Associate Deputy Secretary.*

[FR Doc. E8-4356 Filed 3-5-08; 8:45 am]

BILLING CODE 4310-W7-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Trust Acquisition of an Initial Reservation for the Mashpee Wampanoag Tribe in the Town of Mashpee, Barnstable County, and Town of Middleboro, Plymouth County, MA, Including a Gaming Facility at the Middleboro Property**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs (BIA) as Lead Agency, with the Mashpee Wampanoag Tribe (Tribe) as Cooperating Agency, will be gathering information needed for an Environmental Impact Statement (EIS) for the proposed trust acquisition of approximately 679 acres of land as the Tribe's initial reservation. The proposed acquisition includes approximately 140 acres in the Town of Mashpee, Barnstable County, Massachusetts, and approximately 539 acres in the Town of Middleboro, Plymouth County, Massachusetts. The property in Mashpee would be used for tribal administrative and cultural purposes and housing for tribal members. For the property in Middleboro, the Tribe plans the construction of a gaming facility with related facilities. The purposes of the proposed federal action are to provide a land base for the Tribe and to help meet the economic needs of the Tribe and its members. This notice also announces public scoping meetings to identify potential issues, alternatives and content for inclusion in the EIS.

**DATES:** Written comments on the scope and implementation of this proposal must arrive by April 9, 2008. The public scoping meetings will be held March 25 and March 26, 2008, starting at 6 p.m. and continuing until all those who register to make statements have been heard.

**ADDRESSES:** You may mail, hand carry or fax written comments to Franklin Keel, Regional Director, Eastern Regional Office, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214, fax (615) 564-6550.

The March 25, 2008, meeting will be at the Middleboro High School Auditorium, 71 East Grove Street, Middleboro, Massachusetts. The March 26, 2008, meeting will be at the Mashpee High School Auditorium, 500





# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**FEB 18 2011**

The Honorable Andrew M. Cuomo  
Governor of New York  
Albany, New York 12224

Dear Governor Cuomo:

On January 5, 2011, the Department received the tribal-state compact (Compact) between the Stockbridge-Munsee Community Band of Mohican Indians (Tribe) and the State of New York (State), dated November 22, 2010. On January 25, 2011, the Director of the Office of Indian Gaming requested additional information from the Tribe and the State. Both the Tribe's and the State's responses were received on February 10 and 11, 2011, respectively.

Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710 (d)(8)(C), the Secretary may approve or disapprove the Compact within 45 days of its submission. If the Secretary does not approve or disapprove the Compact within 45 days, IGRA provides that the Compact is considered to have been approved by the Secretary, "but only to the extent the compact is consistent with the provisions of [IGRA]." 25 U.S.C. § 2710 (d)(8)(C).

## **DECISION**

We have completed our review of the Compact, along with the additional material submitted by the Tribe and the State. For the following reasons, the Compact is hereby disapproved.

## **ANALYSIS**

The Secretary may only disapprove a proposed Compact when it violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligation of the United States to Indians. 25 U.S.C. § 2710 (d)(8)(B).

The Department is committed to upholding IGRA, which describes the provisions that may be negotiated in a Class III gaming compact. See 25 U.S.C. § 2710(d)(3)(C).

### *Restriction on Use of Trust Lands*

Section 14 of the Compact provides, in part: "Any such [trust] lands shall be utilized for gaming and only commercial activities traditionally associated with the operation or conduct of a casino facility." Compact at § 14.

The Department inquired as to why the Tribe and the State believed that the Compact's restriction against using the proposed Sullivan County trust lands for any purposes other than gaming and commercial activities traditionally associated with the operation or conduct of a casino facility was permissible. The Tribe responded that it believes it would not be advantageous to have a non-gaming-related development on the parcel.

While we respect the Tribe's right to determine the best use of lands that may be acquired in trust for its benefit, we find the restrictions violate IGRA because they exceed Congress's requirement that gaming compacts be the vehicle for "governing the conduct of gaming activities." *See* 25 U.S.C. § 2710 (d) (3) (A).

The IGRA lists provisions relating to gaming on Indians lands that may be included in a tribal-state gaming compact. 25 U.S.C. § 2710 (d) (3) (C)<sup>1</sup> None of these provisions permit using a gaming compact as a means to limit the use of newly-acquired trust lands only to gaming purposes. The purpose of IGRA is to foster economic development opportunities for tribes, and does not limit or restrict the use of Indian lands should a tribe later determine that a different use is desirable.

While we have previously approved gaming compacts limiting the location of tribal gaming facilities, we have not approved compacts restricting the use of all tribal trust lands within a state *only* to gaming and related commercial activities. The success of Indian gaming enterprises varies greatly among tribes, and we find that approving a provision like Section 14 opens the door to areas of negotiation we believe Congress never intended under IGRA. Moreover, our position is supported by IGRA's legislative history.<sup>2</sup>

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<sup>1</sup> Any Tribal-State gaming compact negotiated under subparagraph (A) may include provisions relating to –

- (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
- (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
- (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
- (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
- (v) remedies for breach of contract;
- (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
- (vii) any other subjects that are directly related to the operation of gaming activities.

<sup>2</sup> See 134 Cong. Rec. S12643-01, at S12651:

Mr. EVANS. On the question of precedent, am I correct that the use of compacting methods in this bill are meant to be limited to tribal-state gaming compacts and that the use of compacts for this purpose is not to be construed to signal any new congressional policy encouraging the subjugation of tribal governments to state authority.

Mr. INOUE. The vice chairman is correct. No subjugation is intended. The bill contemplates that the two sovereigns address their respective concerns in the most equitable fashion. There is no intent on the part of Congress that the compacting methodology be used in such areas such as taxation, water rights, environmental regulation, and land use.



## RELATED QUESTIONS AND CONCERNS

### *Revenue Sharing*

The Department has outstanding questions regarding the Compact's revenue sharing and exclusivity provisions. We review revenue sharing requirements in gaming compacts with great scrutiny. Our analysis first looks to whether the State has offered meaningful concessions. We view this concept as one where the State concedes something it was not otherwise required to negotiate such as granting exclusive rights to operate Class III gaming or other benefits sharing a gaming-related nexus. We then examine whether the value of the concessions provides substantial economic benefits to the tribe that justifies the revenue sharing required.

We did not receive sufficient information to conduct this analysis in this instance, and therefore reserve the right to review this issue in any future compact submissions by the Tribe and the State.

### *Settlement of the Tribe's Pending Land Claim*

We are aware that the Compact is closely linked with the Tribe's and the State's proposed settlement agreement. That proposed agreement provides that the approval of the Compact is a condition precedent to the proposed agreement becoming effective.

The Department has outstanding questions regarding the unique relation of the Compact to the proposed settlement agreement.

The Department has issued separate correspondence to the Tribe and the State on that matter concluding that the Secretary cannot execute the proposed agreement.

As noted above, the Compact's restriction on the Tribe's use of proposed trust lands itself was a violation of IGRA, and a sufficient basis for our disapproval in this instance.

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And the Committee Report for IGRA, S. Rep. 100-446 at 14:

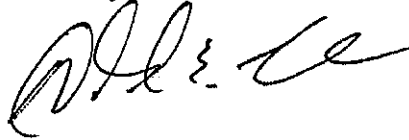
The Committee does not intend that compact be used as subterfuge for imposing state jurisdiction on tribal lands.

## **CONCLUSION**

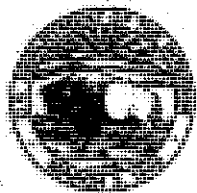
Based on this analysis I find that the Compact is in violation of IGRA. Therefore, I hereby disapprove the Compact. I deeply regret that our decision could not be more favorable at this time.

A similar letter has been sent to the Honorable Kimberly Vele, President of the Stockbridge-Munsee Community of Mohican Indians.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Laverdure", written in a cursive style.

Donald Laverdure  
Principal Deputy Assistant Secretary – Indian Affairs



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**FEB 18 2011**

Honorable Kimberly M. Vele  
President, Stockbridge-Munsee Community  
of Mohican Indians  
N8476 Moh He Con Nuck Road  
Bowler, Wisconsin 54416

Dear President Vele:

On January 5, 2011, the Department received the tribal-state compact (Compact) between the Stockbridge-Munsee Community Band of Mohican Indians (Tribe) and the State of New York (State), dated November 22, 2010. On January 25, 2011, the Director of the Office of Indian Gaming requested additional information from the Tribe and the State. Both the Tribe's and the State's responses were received on February 10 and 11, 2011, respectively.

Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710 (d)(8)(C), the Secretary may approve or disapprove the Compact within 45 days of its submission. If the Secretary does not approve or disapprove the Compact within 45 days, IGRA provides that the Compact is considered to have been approved by the Secretary, "but only to the extent the compact is consistent with the provisions of [IGRA]." 25 U.S.C. § 2710 (d)(8)(C).

## **DECISION**

We have completed our review of the Compact, along with the additional material submitted by the Tribe and the State. For the following reasons, the Compact is hereby disapproved.

## **ANALYSIS**

The Secretary may only disapprove a proposed Compact when it violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligation of the United States to Indians. 25 U.S.C. § 2710 (d)(8)(B).

The Department is committed to upholding IGRA, which describes the provisions that may be negotiated in a Class III gaming compact. See 25 U.S.C. § 2710(d)(3)(C).

### *Restriction on Use of Trust Lands*

Section 14 of the Compact provides, in part: "Any such [trust] lands shall be utilized for gaming and only commercial activities traditionally associated with the operation or conduct of a casino facility." Compact at § 14.

The Department inquired as to why the Tribe and the State believed that the Compact's restriction against using the proposed Sullivan County trust lands for any purposes other than gaming and commercial activities traditionally associated with the operation or conduct of a casino facility was permissible. The Tribe responded that it believes it would not be advantageous to have a non-gaming-related development on the parcel.

While we respect the Tribe's right to determine the best use of lands that may be acquired in trust for its benefit, we find the restrictions violate IGRA because they exceed Congress's requirement that gaming compacts be the vehicle for "governing the conduct of gaming activities." See 25 U.S.C. § 2710 (d) (3) (A).

The IGRA lists provisions relating to gaming on Indians lands that may be included in a tribal-state gaming compact. 25 U.S.C. § 2710 (d) (3) (C)<sup>1</sup> None of these provisions permit using a gaming compact as a means to limit the use of newly-acquired trust lands only to gaming purposes. The purpose of IGRA is to foster economic development opportunities for tribes, and does not limit or restrict the use of Indian lands should a tribe later determine that a different use is desirable.

While we have previously approved gaming compacts limiting the location of tribal gaming facilities, we have not approved compacts restricting the use of all tribal trust lands within a state *only* to gaming and related commercial activities. The success of Indian gaming enterprises varies greatly among tribes, and we find that approving a provision like Section 14 opens the door to areas of negotiation we believe Congress never intended under IGRA. Moreover, our position is supported by IGRA's legislative history.<sup>2</sup>

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Mr. EVANS. On the question of precedent, am I correct that the use of compacting methods in this bill are meant to be limited to tribal-state gaming compacts and that the use of compacts for this purpose is not to be construed to signal any new congressional policy encouraging the subjugation of tribal governments to state authority.

Mr. INOUE. The vice chairman is correct. No subjugation is intended. The bill contemplates that the two sovereigns address their respective concerns in the most equitable fashion. There is no intent on the part of Congress that the compacting methodology be used in such areas such as taxation, water rights, environmental regulation, and land use.

## **RELATED QUESTIONS AND CONCERNS**

### *Revenue Sharing*

The Department has outstanding questions regarding the Compact's revenue sharing and exclusivity provisions. We review revenue sharing requirements in gaming compacts with great scrutiny. Our analysis first looks to whether the State has offered meaningful concessions. We view this concept as one where the State concedes something it was not otherwise required to negotiate such as granting exclusive rights to operate Class III gaming or other benefits sharing a gaming-related nexus. We then examine whether the value of the concessions provides substantial economic benefits to the tribe that justifies the revenue sharing required.

We did not receive sufficient information to conduct this analysis in this instance, and therefore reserve the right to review this issue in any future compact submissions by the Tribe and the State.

### *Settlement of the Tribe's Pending Land Claim*

We are aware that the Compact is closely linked with the Tribe's and the State's proposed settlement agreement. That proposed agreement provides that the approval of the Compact is a condition precedent to the proposed agreement becoming effective.

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And the Committee Report for IGRA, S. Rep. 100-446 at 14:

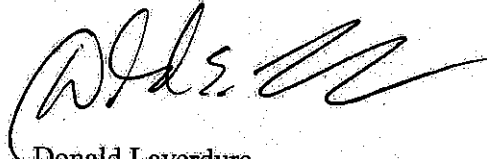
The Committee does not intend that compact be used as subterfuge for imposing state jurisdiction on tribal lands.

## CONCLUSION

Based on this analysis I find that the Compact is in violation of IGRA. Therefore, I hereby disapprove the Compact. I deeply regret that our decision could not be more favorable at this time.

A similar letter has been sent to the Honorable Andrew Cuomo, Governor of the State of New York.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Laverdure", with a stylized flourish at the end.

Donald Laverdure  
Principal Deputy Assistant Secretary – Indian Affairs