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)[1] 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.[2]

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[1] 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.

[2] 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. INOUYE. 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.

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,

Donald Laverdure
Principal Deputy Assistant Secretary – Indian Affairs