

**TEXT OF THE LETTER FROM JAMES E. CASON, ASSOCIATE DEPUTY
SECRETARY, U.S. DEPARTMENT OF THE INTERIOR, DISAPPROVING A
TRIBAL-STATE GAMING COMPACT PRIOR TO THE TRIBAL LAND BEING
ACQUIRED INTO TRUST. DATED MAY 20, 2005**

Honorable Theodore R. Kulongoski
Governor, State of Oregon
State Capital,
Salem, Oregon 97301-4047

Dear Governor Kulongoski:

On April 8, 2005, we received the Tribal-State Compact for the regulation of Class III Gaming between the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribes) and the State of Oregon (State), executed on April 6, 2005 (Compact). Under the Indian Gaming regulatory Act (IGRA) 25 U.S.C. § 2710 (d)(8)(C), the Secretary of the Interior (Secretary) may approve or disapprove the compact within forty-five days of its submission. Under IGRA, the Secretary can disapprove the Compact if she determines that the Compact 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.

Decision

We have completed our review of the Compact along with the submission of additional documentation submitted by the parties and some third parties. For the following reason, the Compact is hereby disapproved.

Discussion

Article V(C) of the Compact authorizes a gaming facility on the Cascade Locks Land, “provided that the federal government takes the Cascade Locks Land into trust for the Tribes for gaming purposes pursuant to Section 20(b)(1)(A) of IGRA, 25 U.S.C. § 2719(b)(1)(A).” Section 2710(d)(8)(A) of IGRA authorizes the Secretary “to approve any Tribal–State compact entered into between an Indian tribe and a State governing gaming *on Indian lands of such Indian tribe.*” This section does not authorize the Secretary to approve a compact for the conduct of Class III gaming activities on lands that are not now, and may never be, Indian lands of such Indian tribe.

In addition, IGRA requires that gaming may only occur on lands subject to the tribe’s jurisdiction and over which the tribe exercises governmental power. Currently, the Cascade Locks Land is not currently held in trust for the benefit of the Tribes and will have to undergo a rigorous process under 25 C.F.R. Part 151 before a decision can be made regarding whether to take the land into trust. In addition, compliance with the requirements of Section 20(b)(1)(A) of IGRA will have to be addressed before the land is

eligible for gaming. This provision of IGRA requires a Secretarial determination, following consultation with appropriate State and local officials, including officials of nearby tribes, that a gaming establishment on the newly-acquired trust lands is in the best interest of the Tribes and their members, and not detrimental to the surrounding community. After this determination is made, the Governor of the State must decide whether he will concur in the Secretary's determination. Therefore, approval of the Compact before the Cascade Locks Land is taken into trust would violate Section 2710 (d)(8)(A) of IGRA, and thus, the Compact must be disapproved.

We are aware that the Department has previously approved compacts for the regulation of class III gaming activities before the specified lands qualified as Indian lands under IGRA. However, on closer examination of the statute, we have concluded that the Secretary's authority to act on proposed compacts under 25 U.S.C. § 2710(d)(8)(A) is informed by Section 20 of IGRA. Thus, the proposed gaming lands are subject to a two-part determination and State Governor concurrence under section 20. These two conditions must be complete before Departmental action on a compact can occur.

This decision does not address the other terms and conditions embodied by the proposed compact. The Department is supportive of the efforts of the Tribes and the Governor to discuss Indian gaming. The Department is encouraged by the prospects that there is a foundation for mutual agreement on these issues at some point in the future.

Only after the Tribes have acquired the Cascade Locks Land into trust, will the Department consider the terms and conditions of a timely submitted compact pursuant to the applicable provision of IGRA. Until then, we trust that the Warm Springs Tribes will continue to engage in Class III gaming activities on its reservation.

We regret that our decision could not be more favorable at this time. A similar letter is being sent to the Honorable Ron Suppah, Chairman, Confederated Tribes of the Warm Springs Reservation of Oregon.

Sincerely,

James E. Cason
Associate Deputy Secretary