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Indian Gaming-Mass Issue [2]

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	Handwritten notes. (6 pages)	n.d.	P5
002. note	Handwritten notes. (2 pages)	n.d.	P5
003. memo	Memorandum to Troy Woodward from George T. Skibine. [Subject: Tribal-State Compact] (4 pages)	10/24/1995	P5

COLLECTION:

Clinton Presidential Records
 Counsel's Office
 Elena Kagan
 OA/Box Number: 8287

FOLDER TITLE:

Indian Gaming - Mass. Issue [2]

2009-1006-F

vz130

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]**
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]**
- P3 Release would violate a Federal statute [(a)(3) of the PRA]**
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]**
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]**
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]**

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]**
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]**
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]**
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]**
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]**
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]**

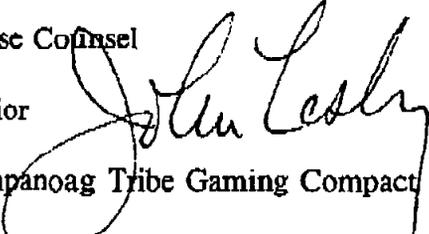


United States Department of the Interior

OFFICE OF THE SOLICITOR
 Washington, D.C. 20240
 January 25, 1996

Memorandum

To: John M. Quinn, White House Counsel

From: John Leshy, Solicitor, Interior 

Subject: State of Massachusetts/Wampanoag Tribe Gaming Compact

This follows up my telephone conversation with Elena Kagan yesterday, in which I described the three problems - one policy, one mixed legal/policy, and one legal - we had identified with the proposed compact. These are discussed in order.

The issues arise because the Indian Gaming Regulatory Act (IGRA) authorizes State-tribal gaming compacts to contain provisions addressing the costs incurred by the State in regulating Indian gaming activities. 25 U.S.C. § 2710(d)(3)(C)(iii). IGRA goes on to say that, with that single exception, nothing in the Act shall be construed "as conferring upon a State . . . authority to impose any tax, fee, charge, or other assessment upon an Indian tribe . . . to engage in a class III activity." 25 U.S.C. § 2710(d)(4).

I. Department policy precludes approval of compacts that do not provide total exclusivity for Indian gaming.

The compact contemplates annual payments of approximately \$90 million to the State for six years in exchange for limited restrictions on non-Indian gaming in certain areas of the State. The Department has approved more than one hundred State/tribal gaming compacts to date. Only a few have called for tribal payments to States (over and above whatever expenses the States incur in regulating gaming authorized by the compacts). The Department has approved compacts containing such payments only if the State agreed to completely prohibit non-Indian gaming from competing with Indian gaming.

The \$90 million payment by the tribe is designated for various purposes, some of which are authorized under IGRA,¹ but most of the money (more than \$77 million), is to be paid directly to the State in consideration for limited tribal gaming exclusivity. This purpose does not fall within the allowable uses of net gaming revenue under IGRA.

¹ A small portion of the money will be paid to surrounding cities and towns and to non-profit organizations providing services for compulsive gamblers. IGRA specifically authorizes such payments to local governments and non-profits. See 25 U.S.C. § 2710(b)(2)(B)(iv) and (v).

My Office has previously determined that a payment by the Mohegan Tribe to the State of Connecticut in exchange for the State's agreement to maintain a tribal monopoly on commercial slot machine gaming within the borders of Connecticut could be considered a cost of operation. As such, it was authorized by IGRA to be paid from gross revenue and not net revenues.

While IGRA restricts Indian tribes' use of net revenues from tribal gaming, it does not restrict Indian tribes' use of gross revenues from gaming if those revenues are used for operating expenses. IGRA defines net revenues as "gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees." 25 U.S.C. § 2703(9).

We believe the Tribe's payment to the State is an operating expense. The payment buys an exclusive right, not required or contemplated by IGRA, to operate commercial slot machines in Connecticut. Under the agreement, the State agrees to prohibit commercial slot machines by all other entities. If any other entity is allowed to conduct commercial slot machines in the State, the tribes are no longer obligated to make payments. Since the agreement provides something of great value above and beyond the requirements of IGRA, the payment constitutes "the cost of doing business" and as such qualifies as an operating expense. Since IGRA does not prohibit or restrict use of gross revenues for operating expenses, we believe that the slot agreement does not violate IGRA.

Memorandum of Associate Solicitor for Indian Affairs (July 13, 1994) (footnotes omitted).

The proposed Wampanoag compact provides for tribal exclusivity only in the "Boston Consolidated Metropolitan Statistical Area" and the "New Bedford Consolidated Metropolitan Statistical Area" -- not throughout the State as in the Mohegan compact. Expressly excepted from this grant of exclusivity is the right of the State to authorize 700 slot machines at each of four racetracks in the Boston area (2800 total) and a non-Indian casino gaming facility in Hampden County.²

As a matter of policy, the Department has determined that it will not approve compacts that call for tribal payments in exchange for less than state-wide exclusivity for Indian gaming. Our rationale has been that anything less than total exclusivity gives States an effective opportunity to leverage very large payments from the tribes. Moreover, anything less would require difficult line-drawing judgments to assess the value of particular arrangement to determine whether they are in a tribe's best interest.

² As explained in part II, below, the State also appears free to authorize non-Indian gaming outside of the statistical areas set out above, as well as to authorize additional non-Indian slot machines outside a 20-mile radius of the Tribe's casino.

II. Assuming that we will depart from our previous policy and consider approving this proposed compact with its less-than-statewide exclusivity, we still have a legal obligation not to approve a compact that violates our trust responsibility for Indians. The exclusivity provisions of this compact will require further scrutiny to determine whether they are so limited as to foreclose our approval.

Section 11 of IGRA, 25 U.S.C. § 2710(d)(8)(B)(iii), authorizes the Secretary to reject proposed compacts that "violate[] the trust obligations of the United States to Indians." At minimum, this requires us to determine that the tribe's proposed gaming operation has a reasonable chance of financial success.

The Wampanoag compact's exclusivity provisions are quite limited. The Department has been led to understand that the State would allow only one casino in western Massachusetts and a total of 2800 slot machines at four race tracks in the Boston area. Indeed, the text of the proposed compact expressly authorizes these non-Indian gaming facilities. But it does not expressly prohibit others. Thus, it is possible that the State could, consistent with the compact, allow many other opportunities for additional non-Indian gaming in the State.

Before the current discussions between this Department and the White House ensued, we had anticipated undertaking further discussions with the Tribe and its attorneys on this point. Our concern is that the exclusivity afforded to the Tribe by this compact may be so insignificant as to make unjustified the large payment the compact obliges the tribe to make to the State. If there is substantial non-Indian competition, the tribe's large payment obligation could cripple its ability to make a profit on its casino operation. The Secretary could not approve the compact without further evaluating, in light of his trust responsibility, the value of the exclusivity protection the Tribe obtains.

III. Here the proposed compact expressly requires tribal payments even after the State is relieved of any obligation to maintain exclusivity. Therefore, the Secretary cannot approve this compact in its current form.

Section 27(h) of the proposed compact provides (emphasis added):

If the Tribe loses the exclusivity described [elsewhere in the compact] after completion of the six (6) year period described in this sentence, the Tribe agrees to make a contribution equal to the greater of: 1) the State's actual costs for regulation, licensing and Compact oversight of the Tribes's Gaming Facility, plus fifteen (15%) of the amount the Tribe would have paid under this Compact if the exclusivity had been maintained, or 2) an amount calculated at the lowest rate which is paid to the State by any other casino in the Commonwealth.

As noted earlier, IGRA disclaims any intent to confer on a State the "authority to impose any tax, fee, charge, or other assessment upon an Indian tribe . . . to engage in a class III activity." 25 U.S.C. § 2710(d)(4). As we have always construed it, IGRA prohibits a compact from obliging a Tribe to pay a State out of its net gaming revenues more than the State's actual costs

of regulating the gaming activity authorized by the compact. Accordingly, once the State is relieved of any obligation to limit a tribe's competition, tribal payments to it beyond those necessary to defray the State's regulatory costs are forbidden by IGRA. The tribal payment requirement quoted above thus falls before IGRA.

TRIBAL-STATE COMPACT
BETWEEN THE
WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)
AND
THE COMMONWEALTH OF MASSACHUSETTS

*see in particular page 60
regarding the 75% payment.*

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**TRIBAL-STATE COMPACT
BETWEEN THE
WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)
AND
THE COMMONWEALTH OF MASSACHUSETTS**

TABLE OF CONTENTS

RECITALS	1
1. TITLE	2
2. PURPOSES AND OBJECTIVES	3
3. DEFINITIONS	4
4. AUTHORIZED CLASS III GAMING	12
5. GAMING FACILITIES	15
a. Size	15
b. Date of Completion	15
c. Temporary Facility Authorized	15
d. Compliance with State and Local Codes	16
e. Cessation of Operations	16
6. THE AQUINNAH WAMPANOAG TRIBAL GAMING REGULATORY COMMISSION	16
a. Assignment of Tribal Responsibilities	16
b. Authority	16
c. Hours and Days for Gaming	17
d. Members and Employees	17
e. Identification Badges	17
7. COMMONWEALTH OF MASSACHUSETTS CLASS III GAMING REGULATORY BOARD	18
8. QUARTERLY MEETINGS OF THE STATE BOARD AND THE COMMISSION	18
9. ENFORCEMENT OF COMPACT PROVISIONS	18
a. Cooperation	18
b. Tribal Commission Supervision	18
c. State Review Authority	20

	d.	Enforcement Authority of the State Board	23
	e.	Enforcement Authority of the National Indian Gaming Commission	24
10.		LAW ENFORCEMENT MATTERS	24
	a.	Jurisdiction of the State	24
	b.	State Criminal Jurisdiction	24
	c.	Powers of State Law Enforcement Officers	24
	d.	Concurrent Authority of Tribal Law Enforcement Authority	25
11.		CERTIFICATION AND LICENSING OF GAMING EMPLOYEES	25
	a.	Cooperation	25
	b.	Classes of Gaming Employee Licenses	26
	c.	Requirement of Key Gaming Employee License.	26
	d.	Requirement of Standard Gaming Employee License	26
	e.	Procedures for Key Gaming Employee License Applications.	26
	f.	Background Investigation of Key Gaming Employee License Applicants	27
	g.	Procedures for Standard Gaming Employee License Applications	28
	h.	Background Investigation of Standard Gaming Employee License Applicants	29
	i.	License Fees	30
	j.	Action by the Board on Request for Certification	30
	k.	Action by the Commission.	32
	l.	Temporary Certification and Licensing	32
	m.	Duration of Certification and License	33
	n.	Renewal of Certification and License	33
	o.	Denial, Suspension or Revocation of Certification by the Board and Appeal	34
	p.	Denial, Suspension or Revocation of License by the Commission	35
	q.	Display of License	35
	r.	Identification Badges	35
12.		INVESTIGATION OF NON-GAMING EMPLOYEES	36
13.		CERTIFICATION AND LICENSING OF GAMING SERVICES ENTERPRISES	36
	a.	Requirement of License for Operation of a Gaming Services Enterprise	36
	b.	Procedures for Gaming Services License Applications	37
	c.	Background Investigation of Applicants	38
	d.	License Fees	39
	e.	Action by the Board on Request for Certification	39
	f.	Action by the Commission	41
	g.	Temporary Certification Licensing	41
	h.	Duration of Certification and License	42
	i.	Renewal of Gaming Services Certification and License	43
	j.	Licenses Required of Employees of a Gaming Services Enterprise	43

k.	Denial, Suspension or Revocation of Gaming Services Certification by the Board and Appeal Rights	44
l.	Denial, Suspension or Revocation of Gaming Services License by the Commission	44
14.	APPROVAL OF MANAGEMENT CONTRACTS	45
15.	INVESTIGATION OF NON-GAMING ENTERPRISES AND OTHER PERSONS	46
16.	STANDARDS OF OPERATION AND MANAGEMENT FOR GAMES OF CHANCE	47
a.	Adoption of Standards of Operation and Management	47
b.	Revisions of Standards of Operation and Management	47
c.	Technical Standard for Electronic Gaming Devices	47
17.	MISCELLANEOUS PROHIBITIONS	48
a.	Prohibition on Possession of Firearms.	48
b.	Persons Barred From Facilities.	48
c.	Prohibition on Attendance of Minors.	48
18.	MISCELLANEOUS PROVISIONS	49
a.	Authorized Forms of Payment.	49
b.	Sale of Liquor.	49
c.	Compliance with Reporting Requirements.	49
d.	Organization of Tribal Operations.	50
19.	TORT REMEDIES FOR PATRONS	50
20.	TRIBAL CONSTRUCTION OF OTHER FACILITIES ON THE SITE.	51
a.	Entertainment Area.	51
b.	Hotel.	51
21.	TRIBAL PAYMENT OF CERTAIN STATE TAXES	51
a.	Hotel Taxes	51
b.	Certain Sales and Excise Taxes	51
c.	State and Federal Income Taxes	52
d.	Unemployment Taxes	52
22.	PREFERENCE IN EMPLOYMENT	52
23.	LABOR RELATIONS	52
24.	TRIBAL FUNDING OF COMPULSIVE GAMBLING AWARENESS, EDUCATION AND REHABILITATION PROGRAM	52

25.	TRIBAL PAYMENT FOR FACILITY RELATED COSTS	53
26.	OPTIONAL DISPUTE RESOLUTION	53
	a. General Terms	53
	b. Notice	53
	c. Procedures for Dispute Resolution	54
	d. Arbitration Costs	54
	e. Remedies	54
	f. Arbitration Decision	55
	g. Preservation of Remedies	55
→ 27.	GRANT OF EXCLUSIVITY	55
	a. Recognition of Unique Circumstances	55
	b. Settlement of Controversies and Grant of Exclusivity	56
	c. Absolute Exclusivity	56
	d. Terms of Exclusivity	57
	e. Amount of Contribution	57
	f. Revenue Sharing	58
	g. Payment Date	59
	h. Length of Exclusivity	60
28.	AMENDMENT AND MODIFICATION	61
	a. Compact	61
	b. New State Authorized Class III Games	61
29.	TERMINATION	61
30.	SOVEREIGN IMMUNITY	61
31.	CALCULATION OF TIME	62
32.	ENTIRE AGREEMENT	62
33.	COUNTERPARTS	62
34.	SEVERABILITY	63
35.	EFFECTIVE DATE	63
36.	NOTICES	63
37.	FILING OF COMPACT WITH SECRETARY OF STATE	64

- g. **Preservation of Remedies.** The option to pursue arbitration pursuant to this section is in addition to any other remedies that may be available to the parties under applicable law.
- h. **Judicial Enforcement.** The United States District Court shall have jurisdiction over any cause of action relative to the interpretation or enforcement of this Compact. The Tribe and the State hereby waive any defense which they may have by virtue of their sovereign immunity from suit with respect to any such action in the United States District Court only for the limited purposes of interpreting and enforcing the provisions of this Compact or to enforce a decision of an arbitrator under this Section.

27. **GRANT OF EXCLUSIVITY.**

- a. **Recognition of Unique Circumstances.** In July, 1993, the Tribe requested that the State allow the Tribe to locate the Tribal Gaming Facility in New Bedford. This request was made in recognition of the unique circumstances of the Tribal reservation's location on the Island of Martha's Vineyard, an ecologically and environmentally sensitive area within the State which would be adversely effected by the operation of a gaming facility on said Tribal reservation, and which would also limit the success of a gaming facility on said reservation, and by reason of the location of a significant number of Tribal members residing in New Bedford, a City with strong historical ties to the Tribe. The Tribe has substantially improved the economic benefits it will receive from a gaming facility by locating the facility in New Bedford rather than on its reservation on Martha's Vineyard.

Further, the City of New Bedford has in recent years experienced high unemployment and economic distress, which conditions will be ameliorated by locating the Gaming Facility within the City of New Bedford.

- b. **Settlement of Controversies and Grant of Exclusivity.** In full settlement and satisfaction of outstanding controversies between the parties hereto and in consideration of the mutual agreements set forth herein, the parties have agreed on exclusivity set forth in this Section in return for voluntary contributions to the State described in subsection (e). The Tribe agrees that so long as no other Gaming Facility offering Casino Gaming or Electronic Gaming Devices is authorized by State law except as provided in this Compact, and no other person operates such a Facility; the Tribe will make the contributions set forth in subsection (e) of this Section.
- c. **Absolute Exclusivity.** The Tribe and the State agree that the Tribe has absolute exclusivity as follows:
- i. In Massachusetts, the Tribe has the only unlimited right to operate Electronic Gaming Devices and the sole and exclusive right to operate Class III games other than Slot Machines ("Table Games") without regard to numerical restrictions within what is known as and designated by the Office of Management and Budget of the federal government ("OMB") as the Boston Consolidated Metropolitan Statistical Area, which Consolidated Metropolitan Statistical Area consists of approximately 5,400,000 people;
 - ii. The Tribe has the sole and exclusive right to operate Slot Machines within

- a twenty (20) mile radius of the Tribal Gaming Facility;
- iii. The Tribe has the sole and exclusive right to operate Class III Gaming within the New Bedford Metropolitan Statistical Area as designated by OMB; and
- iv. The Tribe has an economic interest, as set forth in subsection (e) of this Section, in the proceeds of every Slot Machine operating in the Commonwealth of Massachusetts.
- d. **Terms of Exclusivity.** It is expressly understood that the following fall outside the grant of exclusivity described in the preceding subsection: a) the State may authorize a single facility offering Casino Gaming in Hampden County; and b) the State may authorize not more than a total of seven hundred slot machines located at each of the four racetracks licensed in the Commonwealth (at Foxboro, Raynham, Revere, and East Boston). Further, notwithstanding anything in this Section to the contrary, the exclusivity described in subsection (b) of this Section shall not be deemed to cover, and shall be deemed to exclude: a) games currently offered by the Massachusetts State Lottery, and any future games developed by the Massachusetts State Lottery in accordance with General Laws Chapter 10, section 24; and b) any gaming carried out pursuant to the provisions of General Laws Chapter 271, §7A.
- e. **Amount of Contribution.** The Tribe has determined, after consultation with duly qualified and informed consultants, professionals, and gaming and business experts, that this Compact confers upon the Tribe substantial and significant

economic advantage and benefit consistent with the goals of IGRA, and therefore, the Tribe voluntarily agrees that the Tribal contribution shall be annually the sum of ninety million dollars (\$90,000,000), less thirty-three and one-third percent (33 1/3%) of the amount by which the Annual Net Gaming Revenues of the Tribe are less than three hundred seventy-five million dollars (\$375,000,000); provided, however, that this contribution will be reduced by a credit of one-half of one percent (1/2%) of all gross non-Tribal slot machine Net Gaming Revenues generated in the Commonwealth, and by an offset for any state regulatory costs paid by the Tribe during that period. (Any license or application fee charged by the Commonwealth shall not be deemed to be a "state regulatory cost.") In the event the Tribe's Annual Net Gaming Revenues are less than three hundred fifty million (\$350,000,000), the Tribe will also receive an additional credit of eight percent (8%) of the amount by which the aggregate gross slot machine Net Gaming Revenues of any single race track in the Commonwealth exceeds fifty million dollars (\$50,000,000) annually. Notwithstanding the foregoing and subject to the terms and conditions hereof, the Tribe shall make a contribution equal to twenty-five percent (25%) of its Annual Net Gaming Revenues during the operation of any Temporary Facility.

- f. **Revenue Sharing.** The use of the contributions of the Tribe shall include the following purposes:
- i. to help fund operations of local governmental agencies of the State and its political subdivisions;

- ii. to provide revenue to the State to cover the costs of licensing and regulation of gaming within the Commonwealth of Massachusetts;
- iii. to provide revenue to the State to cover the costs of impacts resulting from gaming; and
- iv. for any other use not specifically set forth above which is in compliance with law.

Pursuant to the foregoing and subject to the terms and conditions of this Compact, during the Tribe's occupancy of the Temporary and Permanent Facilities, twelve percent (12%) of the contribution referred to in subsection (e) of this Section shall be paid by the Tribe directly to cities and towns in Bristol County pursuant to the lottery formula, so-called, and an additional eighty-eight percent (88%) shall be paid by the Tribe as follows:

- (1) Four hundred thousand dollars (\$400,000) to the Town of Dartmouth by reason of special impacts on services caused by that Town's proximity to the Gaming Facility;
 - (2) A maximum of two percent (2%) to non-profit organizations serving the needs of compulsive gamblers. Said funds shall be distributed to such organizations and in such amount as the Tribe and the Board, after consultation with one another, agree; and
 - (3) The remainder shall be paid to the Commonwealth.
- g. **Payment Date.** Payments of the contribution described in subsection (f) of this Section shall be made on or before the fifteenth (15th) day of each month, and

such monthly contributions shall be determined by calculating the cumulative Annual Net Gaming Revenues for the number of months of the fiscal year which have elapsed concluding with the month preceding the month in which the payment is due, projecting such cumulative Net Gaming Revenues over the full fiscal year on a pro forma basis, and dividing the pro forma result by twelve. The final monthly payment shall be due July 15 of each year for the year ending the preceding June 30. Credit shall be given for any monthly contributions made previously for that fiscal year.

- h. **Length of Exclusivity.** The exclusivity described in subsection (b) of this Section shall have a duration of six (6) years from the earlier of the date the Tribe opens the Temporary or the Permanent Gaming Facility to the public; provided, however, that such six (6) year period shall commence to run no later than six (6) months after a Management Contractor has been approved by the Bureau of Indian Affairs and the National Indian Gaming Commission. In the event the Tribe loses such exclusivity within such six (6) year period, the Tribe agrees to pay for the actual costs of regulation, licensing, and Compact oversight of the Tribe's Gaming Facility. If the Tribe loses the exclusivity described in subsection (b) of this Section after completion of the six (6) year period described in this sentence, the Tribe agrees to make a contribution equal to the greater of:
- 1) the State's actual costs for regulation, licensing and Compact oversight of the Tribe's Gaming Facility, plus fifteen (15%) of the amount the Tribe would have paid under this Compact if the exclusivity had been maintained, or
 - 2) an amount

calculated at the lowest rate which is paid to the State by any other casino gaming facility operating in the Commonwealth.

28. **AMENDMENT AND MODIFICATION.**

- a. **Compact.** The terms and conditions of this Compact may be modified or amended by written agreement of both parties, and any such amendment or modification shall be subject to the approval of the Secretary of the Interior of the United States and the Massachusetts General Court, to the extent required by law. A request to amend or modify this Compact by either party shall be in writing, specifying the manner in which a party requests this Compact to be changed, the reason(s) for the modification and the proposed language. Representatives of the parties shall meet within thirty (30) days of the request and shall expeditiously and, in good faith, negotiate whether and on what terms and conditions this Compact will be amended or modified.
- b. **New State Authorized Class III Games.** Notwithstanding subsection (a) of this Section, if the State enters into a Class III Gaming Compact with any other Indian Tribe or Nation, and that Compact contains games not currently authorized in this Compact, those new games shall be added automatically to the list of authorized games of chance contained in this Compact.

29. **TERMINATION.**

Once effective, this Compact shall be in effect until terminated by written agreement of both parties.

counterparts with the same effect as if the signatures were upon the same instrument.
All such counterparts shall together constitute one and the same document.

34. **SEVERABILITY.**

In the event that any Section, subsection or provision of this Compact is held invalid, or its application to any particular activity is held invalid, it is the intent of the parties that the remaining Sections, subsections and provisions of this Compact and the remaining applications of such Section, subsections or provisions shall continue in full force and effect. This Section shall not apply if Section 27, or any subsection or material provision thereof, is held invalid.

35. **EFFECTIVE DATE.**

This Compact shall become effective at the later of (1) the Secretary of the Interior's publication of this Compact in the *Federal Register* or (2) the enactment of the Compact by the Massachusetts General Court and approval of such enactment by the Governor.
(This is the state legislature)

36. **NOTICES.**

All notices and other communications required or authorized to be served in accordance with this Compact shall be served by registered or certified mail, return receipt requested, at the following addresses:

Governor, Commonwealth of Massachusetts
Office of the Governor
State House, Executive Office
Boston, MA 02133

Chairperson
Wampanoag Tribe of Gay Head (Aquinnah)

20 Black Brook Road
Gay Head, MA 02535-9701

or to such other address or addresses as either the Tribe or the State may from time to time designate in writing.

37. **FILING OF COMPACT WITH SECRETARY OF STATE.**

Upon execution by the Governor of the Commonwealth of Massachusetts and enactment by the Massachusetts General Court, a certified copy of this Compact shall be filed by the Governor with the Commonwealth's Secretary of State. Any subsequent amendment or modification of this Compact shall be similarly filed.

IN WITNESS WHEREOF, the Tribal Chairperson acting for the Wampanoag Tribe of Gay Head (Aquinnah), and the Governor of the Commonwealth of Massachusetts hereto set their hands and seals.

Date _____

Date _____

By _____
Beverly Wright, Chairperson

By _____
Governor

APPROVAL BY THE SECRETARY OF THE INTERIOR

The Secretary of the Interior ("Secretary") is charged by the Indian Gaming Regulatory Act at 25 U.S.C. 27610(d)(8)(A) with approving certain Compacts between Indian tribes and States of the United States. The Secretary's approval of a Compact pursuant to IGRA does not make the Secretary or the United States a party to the Compact. The undersigned representative of the Secretary has reviewed that certain Compact, executed by and between the Wampanoag Tribe of Gay Head (Aquinnah) and the Commonwealth of Massachusetts dated September 29, 1995, to ensure the Compact complies with the requirements of IGRA and other applicable federal laws and regulations. The undersigned finds that the Compact complies with and satisfies the requirements of IGRA. Accordingly, pursuant to the authority delegated to me by 209 DM 8, the undersigned hereby approves said Compact.

Dated _____, 1995

Assist. Secretary
United States Department
of the Interior

Withdrawal/Redaction Marker

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United States Department of the Interior

OFFICE OF THE SOLICITOR

In reply, please address to:
Main Interior, Room 6456

JUL 8 1994

Memorandum

To: Director, Congressional and Legislative Affairs *Michael Anderson*
From: Associate Solicitor, Division of Indian Affairs
Subject: H.R. 4653: "Mohegan Nation of Connecticut Land Claims Settlement Act of 1994"

We have completed our review of H.R. 4653, the "Mohegan Nation of Connecticut Land Claims Settlement Act of 1994." The following are our comments on this bill.

Section 3 of the bill provides that Section 5 (extinguishment of the tribe's land claims) will not take effect until the State of Connecticut and the Mohegan Tribe have an approved compact for Class III gaming and title to certain lands has vested in the United States in trust for the Mohegan Tribe. We are concerned that these two events may not occur for some time and that as a result the bill would not take effect for some time.

While the Connecticut-Mohegan Tribe compact has not been submitted to the Department for approval, a copy of the compact was provided to this office for review. It appears that the compact as written would be approved as it is nearly identical to the gaming procedures promulgated by the Secretary for class III gaming on the Mashantucket Pequot reservation. However, we are aware that the Mohegan Tribe and the Governor of Connecticut negotiated and entered into an agreement (slot agreement) that is not included in the compact. The slot agreement allows the Mohegan Tribe to share in a "tribal monopoly"¹ on commercial slot machines in exchange for a yearly payment or percentage of slot machine revenues to the State.

We believe that the slot agreement should be considered part of the compact. The slot agreement was negotiated simultaneously with the compact and represents a significant part of the Mohegan Tribe-State of Connecticut gaming regulatory scheme. As such, we

¹ We understand that the Mashantucket Pequot Tribe has negotiated a similar agreement with the State of Connecticut, and that the Tribe has been paying the State for the exclusive right to operate slot machines commercially in the State of Connecticut.

believe that the agreement is part of the compact and must be submitted and approved by the Secretary before it can take effect under IGRA.

The next question raised by the slot agreement is whether it violates IGRA. In this specific instance, we believe that the tribe's agreement to pay the state in exchange for the right to participate in the tribal monopoly on commercial slot machine gaming does not violate IGRA because the money paid by the tribe to the state constitutes an operating cost and as such would be paid from "gross revenues," and not "net revenues." While IGRA restricts Indian tribes' use of net revenues from tribal gaming,² it does not restrict Indian tribes' use of gross revenues from gaming if those revenues are used for operating costs.³ Because IGRA does not prohibit or restrict use of gross revenues for operating expenses, we believe that the slot agreement would conform with IGRA.

In the past, we have concluded that tribal payments to states for non-regulatory purposes violated IGRA. Our conclusion that the Mohegan Tribe's payments to the State of Connecticut do not violate IGRA is distinguishable from these opinions. Unlike other payment agreements we have considered, in this case the federally recognized Indian tribes in Connecticut are purchasing a valuable right from the state.⁴ As discussed above, the tribal payment for this right is an operating cost which does not violate IGRA.

Even if the money the Mohegan Tribe plans to pay the state were considered net revenues from tribal gaming, the payment could be considered net revenues used to promote tribal economic development, a use that is clearly sanctioned by IGRA, 25 U.S.C. §2710(b)(2)(B)(iii), because, as discussed above, the tribe is exchanging the revenues for an exclusive right to commercial operation of slot machines within the state.

² 25 U.S.C. § 2710(b)(2)(B) provides that net revenues from tribal gaming are not to be used for purposes other than (i) to fund tribal government operations or programs; (ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government agencies.

³ IGRA defines net revenues as "gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees." 25 U.S.C. § 2703(9).

⁴ The state has agreed that it will not allow commercial operation of slots by any other entity as long as the tribes continue make the agreed payments.

Section 4(b)(1) extinguishes "[a]ll claims to lands within the State of Connecticut based upon aboriginal title by the Mohegan Tribe, or any predecessor or successor in interest." We are concerned that this language could have the effect of extinguishing the rights of other Indian groups located in the State of Connecticut that are not currently recognized by the Department of the Interior but are in the process of petitioning the Secretary for acknowledgment as Indian Tribes pursuant to 25 CFR Part 83, the Department's acknowledgment regulations. We suggest that this language be amended or deleted so that it is clear that the Mohegan Tribe is the only entity whose rights are extinguished by the bill.

Section 5(a) directs the Secretary to take certain lands into trust for the benefit of the Mohegan Tribe and states that the lands shall be the "Mohegan's Tribe's Initial Indian Reservation". This language should be amended so as to recognize not only what is DOI policy but that which is also the current status of federal law as it applies to acquisition of land into trust; lands which are encumbered and/or not in compliance with environmental standards (CERCLA, NEPA, etc.) simply are not taken into trust. This can be done by inserting language that states the land will be taken into trust provided it meets the Attorney General's guidelines for acquisition of land and that land is clear of environmental hazards or in the alternative, that the U.S. and the tribe are held harmless. Finally, it is not clear from the present language whether or not the land will simply be held in trust or whether it will designated as reservation. If the lands are to be designated as a reservation, the language should clearly state the same.

Section 5(b) provides for Secretarial consultation with the Town of Montville with respect to taking into trust certain lands "subject to Exhibit B...". It appears that the intent of this provision is to provide assurance that the Secretary will comply with 25 C.F.R. 151 when acquiring the subject lands into trust. If this is the intent, it would make the provision less ambiguous if it were amended to state that the Bureau's land acquisition regulations would be applicable.

Withdrawal/Redaction Marker

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Elena Kagan
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FOLDER TITLE:

Indian Gaming - Mass. Issue [2]

2009-1006-F
vz130

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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RR. Document will be reviewed upon request.

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- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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October 4, 1994

The Honorable Bruce Babbitt
Secretary
Department of The Interior
1849 C St. N.W.
Washington, DC 20240

Dear Mr. Secretary:

I understand that you will soon be getting a letter from some residents of Dartmouth and Westport Massachusetts in which they express their concern about the proposal to allow the Wampanoag Indian tribe to establish a gambling casino on lands they will have in trust in the city of New Bedford. As the Member of Congress who represents New Bedford, I wanted to report to you that this is a project which is overwhelmingly supported by the people in the area. This makes an enormous amount of sense both for the Wampanoag tribe, and for the Greater New Bedford Area, and while obviously no project is unanimously supported anywhere, this one is impressive in the breadth and depth of its support. It is not simply in New Bedford and its surrounding communities that we have broad support either. The city of Fall River, not far from New Bedford, voted in a referendum to support legalized gambling, and while this facility will be sited in New Bedford, a large number of people from Fall River will also be involved in it. I have been touch with Assistant Secretary Deer and we are in the process of following all the appropriate steps. But given that a group of local residents have indicated that they plan to write to you to express opposition, I wanted to let you know as the Member of Congress in whose district this is to take place of my extremely strong support for it, and of the overwhelming support that exists in the region as well.


BARNEY FRANK

BF/meg

**Indian Gaming Management
BCCO #5487**

NOV 04 1994

**Honorable Barney Frank
House of Representatives
Washington, D.C. 20515**

Dear Mr. Frank:

Thank you for your letter dated October 4, 1994, to Secretary Babbitt. You express support for the placement of title to land located in New Bedford, Massachusetts, into trust status for the Wampanoag Tribe of Gayhead (Aquinnah) of Massachusetts (Tribe) for gaming purposes. This office has been asked to respond to your letter.

The Tribe's application will initially be filed and reviewed by staff of the Bureau of Indian Affairs (BIA), Eastern Area Office, located in Arlington, Virginia. After a review and an analysis of the application by the BIA Eastern Area Office, it will be submitted to this office for final review and approval.

As a matter of policy, the decision to place land in trust for the benefit of an Indian tribe is committed to the discretion of the Secretary of the Interior after consideration of the criteria for land acquisitions found in Title 25, Code of Federal Regulations, Part 151. When the land acquisition is intended for gaming purposes, the decision is made after consideration of the requirements of Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719, in addition to 25 CFR 151.

It should be noted that all land acquisitions in trust must also comply with specific laws and regulations, including the National Environmental Policy Act (NEPA). The environmental analysis involves a number of other laws, regulations and executive orders. A few of which are: Archaeological Resources Protection Act, Archaeological and Historic Preservation Act, Clean Water Act of 1977, Safe Drinking Water Act of 1974, Endangered Species Act of 1973, Antiquities Act of 1906, National Historic Preservation Act of 1966, Clear Air Act, and executive orders relating to floodplain management, wetlands protection and protection of cultural resources.

By copy of this letter we are advising the BIA Eastern Area Office of your support for the acquisition. Your letter will provide an important preliminary indicator of the sentiments of the local community.

Your interest and support of Indian gaming is appreciated.

Sincerely,

/S/ HILDA MANUEL

Acting Deputy Commissioner of Indian Affairs

cc: Eastern Area Office w/incoming

bcc: Surname, 101-A, Bureau RF, ES:AAK(96512), ██████████, Hold
BIA:LScriver:trw:10/25/94:219-4068 wp:a:bcco5487



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAR 8 1995

Honorable Barney Frank
House of Representatives
Washington, D.C. 20515-2104

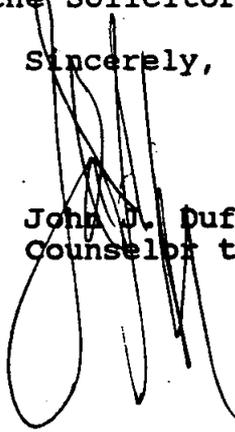
Dear Mr. Frank:

We have received your letter in which you expressed concerns about statements made by the Conservation Law Foundation (CLF) in its October 28, 1994, letter to the Secretary. The Secretary has asked me to respond.

The Wampanoag application to take land into trust has not yet been received by the Department. When the application is forwarded to us, we obviously will be in a better position to fully assess the environmental analyses that will be necessary. In the meantime, our staff has been working with the Tribe to provide assistance with the preparation of its application. When the application is received, I assure you that your views will be carefully considered.

Please contact me or my assistant, Heather Sibbison, if you would like further information or assistance in this matter. (Copies of your letter have also been shared with the Bureau of Indian Affairs' Gaming Office, and with the Solicitor's Office.)

Sincerely,


John J. Duffy
Counselor to the Secretary

DATE: 11/28

TO: SECRETARY BABBITT

The attached correspondence from REP FRANK is being sent to you as marked below:

- For your information
- References direct communication with you
- Is information which you requested

- Original has been controlled to BIA for the signature of the SECRETARY.
- Original has been controlled to _____ for appropriate action.

Acknowledgment letter sent Yes No

PADDY
Executive Secretariat

Attachment(s)

DEPARTMENT OF THE INTERIOR
TASKING PROFILE

Date Printed: 11/29/94

ACCN #: 98460

Open/Closed Status: 0

Fiscal Year: 95

Received Date	Document Date	Due Date	Action Office	Action Required
11/28/94	11/17/94	12/14/94	BIA	SS

Addressee: Secretary Babbitt
From: Frank, Barney
House of Representatives
Washington, DC

510
Duffy
DOWN 6/11/95
TO JJD

Subject Text: Representative is concerned about the negative statements made by the Conservation Law Foundation regarding the establishment of gambling casinos by the [REDACTED] be.

Recommended Surnames: SOL\PMB\CL

Copies To: ES:PL

Cross-Reference:

Special Interest: Special Interest Id:

Acknowledgement Letter Sent Within 24 Hours

SRO	Analyst	ES Phone	Source
AAKEARY	<i>cf</i> CHOWARD	208-3572	CM

NOV 30 1994

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November 17, 1994

The Honorable Bruce Babbitt
Secretary
Department of The Interior
1849 C St. N.W.
Washington, DC 20240

Dear Bruce:

I am writing in response to the letter addressed to the Secretary of Interior from the Conservation Law Foundation, dated October 28, 1994. In that letter, CLF makes a series of negative comments about gambling casinos, in the form of arguing for a full environmental impact. Obviously I agree that the law should be followed with regard to assessing the environmental effects of the gambling casino proposed by the Wampanoag tribe for New Bedford. But I am writing to take exception to the negative generalizations which CLF makes about casino gambling, and specifically to their inclusion of the proposed casino in New Bedford in a letter which cites what they believe to be negative environmental impacts, even when such impacts have no relevance whatsoever to the New Bedford site.

For example, the letter cites the impact on "farming in Massachusetts and adjacent states" as one of the problems. According to the letter, "a large casino and its accompanying trappings could negatively impact remaining farmland and the commercial and cultural network that keeps this farmland in active use." This has absolutely no relevance whatsoever to the New Bedford casino -- I express no view on what its relevance might be to other proposed sites. Including this statement in a letter which deals with, among others, the casino in New Bedford is hardly a rational way to conduct environmental debate.

Thus, to the extent that the CLF bolsters the case it is seeking to make by reference to farmland, etc., it should be noted that this has no relevance whatsoever to the New Bedford site. A similar point applies with reference to the state that "the Foxwoods casino provides concrete evidence of the impacts a casino can impose on the environment, public health and traditional character of communities in this largely rural corner of New England." New Bedford is not in a rural corner of New England. Once again CLF has made an assertion here which has no relevance to New Bedford. I do not know quite what they mean by the "traditional character of communities in this largely rural

DATE: 11/28

TO: SECRETARY BABBITT

The attached correspondence from REP FRANK
being sent to you as marked below:

For your information

References direct communication with you

Is information which you requested

Original has been controlled to BIA

the signature of the SECRETARY

Original has been controlled to _____

appropriate action.

Acknowledgment letter sent Yes

No

Paddy
Executive Secretariat

Attachment(s)

BRIEFING PAPER

PREPARED FOR: Assistant Secretary - Indian Affairs

SUBMITTED: May 5, 1995

ISSUE: Land Acquisition for Gaming Purposes in the City of New Bedford, Massachusetts.

BACKGROUND: The Wampanoag tribe of Gay Head (Tribe) has submitted an application for acquisition of land off-reservation to be taken in trust status for class III gaming. The initial application was submitted to the Eastern Area Office by letter dated April 16, 1995. The Tribe remitted a courtesy copy of the application to the Indian Gaming Management Staff. The Tribe's application does not include an Environmental Assessment of the transaction, required under the National Environmental Policy Act (NEPA). We understand that the Tribe will furnish environmental documents later.

The Tribe's current land base is located in Gay Head on the island of Martha's Vineyard. The subject property is approximately 168.2 acres and located approximately 25 miles directly across the water for the Tribe's reservation. The City of New Bedford owns the property and it is currently operated as a municipal golf course by a contractor under lease from the City. The Tribe's proposed complex on the New Bedford site includes construction and development costs estimated at \$250 million for the casino, entertainment facility and a 500-room hotel.

The Tribe have entered into a management contract with Carnival Hotels & Casinos. This contract is currently under review by the National Indian Gaming Commission (NIGC). The NIGC will be involved in environmental compliance with NEPA, because the transaction involves a management contract and construction activities. A Memorandum of Understanding has been entered into between the State and the Tribe for negotiations on a compact.

STATUS: The Tribe has submitted their request and application to the Eastern Area Office for processing the land acquisition for gaming as an off-reservation fee-to-trust transaction.

with
ACTION: The Eastern Area Office will review the submitted documentation for conformity to the applicable regulations and policy. The Area Director will initiate the consultation process and prepare a findings of fact addressing the two-part criteria of Section 20 of the IGRA - best interest and not detrimental. The Area Director's final document will be submitted to the Central Office for final review and decision.

ISSUES: 1. The Tribe, by memorandum dated April 13, 1995, to the Acting Eastern Area Director, has requested that the Section 20 consultation with surrounding communities be limited to communities within a ten mile radius. The BIA Section 20 guidelines require such consultation within a 30 mile radius. The BIA's Eastern Area Office has agreed to the Tribe's request because everyone agrees that, given the densely populated area on which the site is located, it makes little sense to extend the consultation process to communities further than 10 miles. There are 69 communities within 30 miles of the site. However, BIA will publish notices in local newspapers within the ten to thirty miles radius to permit communities located in that area to offer comments. To our knowledge, the consultation letters have gone out to communities within the ten mile radius.

2. On April 14, 1995, Congressman Frank wrote to the Assistant Secretary - Indian Affairs, asking for our review of a March 8, 1995, letter to Mr. Frank from the law firm of Goodwin, Procter & Hoar, regarding the possibility of Secretarial acquisition of the New Bedford site by condemnation proceedings because of a provision in Massachusetts law that could require 2/3 vote of the Massachusetts legislature to authorize the land transaction. The Solicitor's Office is in the process of evaluating this legal opinion.

PREPARED BY: Emily Ramirez, Realty Specialist
IGMS, Lakewood, CO
(303) 969-5141

FILE COPY
SURNAME

G. Skibine
5/22/95
5-239

BCCO ~~5992~~ 5922

JUN 05 1995

Honorable Barney Frank
U.S. House of Representatives
Washington, D.C. 20515-22104

Dear Mr. Frank:

Thank you for your letter of April 14, 1995, to Assistant Secretary Ada E. Deer, enclosing a March 8, 1995 letter to you from Mr. Joseph W. Haley, regarding the legal basis for using condemnation proceedings to acquire the New Bedford golf course site to be held in trust for the Wampanoag Tribe of Gay Head.

As you know, the Wampanoag Tribe has submitted an application to the Bureau of Indian Affairs (BIA) to take a parcel of land of approximately 168 acres, located in New Bedford, Massachusetts, in trust for the Tribe to operate a gaming establishment. The New Bedford site is located off-reservation. We do not believe that condemnation proceedings are a reasonable way of proceeding in this case, notwithstanding the merits of Mr. Haley's legal analysis. Rather, it is our position that the acquisition of this parcel of land in trust for the Wampanoag Tribe should be subject to the requirements of Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. Section 2719, and the BIA's land acquisition regulations in 25 CFR Part 151.

We thank you for your interest in this acquisition, and hope that we can be of assistance to you in the future regarding this matter.

Sincerely,

/S/ HILDA MANUEL

Deputy Commissioner of Indian Affairs

BIA: ~~5992~~/101a/Bureau RF/IA-Young/Sol-IA/Chron
130: G.Skibine/tal/5/22/95-219-4070/wp a:bcco5992

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April 14, 1995

BUREAU OF INDIAN AFFAIRS
EXECUTIVE SECRETARIAT

The Honorable Ada Deer
Assistant Secretary
Indian Affairs
MS 4140-MIB
1849 C Street, N.W.
Washington, DC 20240

Dear Ada:

We have discussed the New Bedford casino project and its importance. A problem has arisen because some people have suggested that it might require a two thirds vote of the state Legislature to allow the taking of the land. I don't believe this is accurate, but it could delay the process. If we could proceed as outlined in the attached letter it would avoid an unfair obstacle. Could you have your lawyers look this over and let me know whether it would be a reasonable way of proceeding? I will call you when I return from out of town travel next week. - //

Barney
BARNEY FRANK

BF/pk
Encl.

RECEIVED

APR - 5 1995

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COUNSELLORS AT LAW

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March 8, 1995

Congressman Barney Frank

JOSEPH W. HALEY, P.C.
(617) 570-1440

TELEPHONE (617) 570-1000
TELECOPIER (617) 227-8581
TELEX 94-0840
CABLE - GOODPROCT BOSTON

Congressman Barney Frank
Congress of the United States
House of Representatives
2404 Rayburn Building
Washington, DC 20515-2104

Dear Congressman Frank:

Richard Friedman has asked me to respond to your letter to Dick of February 14, 1995 requesting a clarification of the legal basis for using condemnation powers to acquire the New Bedford golf course site to be held in trust for the Wampanoag Tribe of Gay Head.

There is a combination of federal statutes which provide the Secretary of the Interior with the power to acquire trust land for Indians through eminent domain proceedings. They are:

- The Indian Reorganization Act of 1934 (the "Indian Reorganization Act");
- The Indian Gaming Regulatory Act (the "IGRA"); and
- The Act of August 1, 1888 (the "Condemnation Act").

The courts have interpreted the Secretary of the Interior's power to acquire lands in trust for Indian tribes under the Indian Reorganization Act as carrying with it the power to condemn such lands under judicial process if the Secretary decides that it is necessary or advantageous for the Government to do so.

The Indian Reorganization Act created the system of trust land for the benefit of Indians.

"The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands ... for the purpose of providing land for Indians.

Title to any lands or rights acquired ... shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired"

25 U.S.C. § 465.

GOODWIN, PROCTER & HOAR

Congressman Barney Frank
March 8, 1995
Page 2

The IGRA authorizes the Secretary to allow gaming on newly entrusted land acquired for the benefit of Indians if:

"the Secretary, after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination"

25 U.S.C. § 2719.

Whenever the Secretary of the Interior (or another federal official) has the power to acquire land another federal statute, the Condemnation Act, allows the acquisition to be effected through eminent domain.

"In every case in which ... any ... officer of the Government has been, or hereafter shall be, authorized to procure real estate for ... public uses, he may acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the Attorney General of the United States, upon every application of ... such other officer, shall cause proceedings to be commenced for condemnation within thirty days from receipt of the application at the Department of Justice."

40 U.S.C. § 257.

Courts have interpreted the Condemnation Act as it is written. "It has been uniformly held that authority to acquire real property conferred by enactment of a statute after the Act of August 1, 1888, 40 U.S.C. § 257, carries with it the power to condemn." United States v. 16.92 Acres of Land, 670 F.2d 1369, 1371-72 (7th Cir.), cert. denied, 459 U.S. 824 (1982). In particular, the Supreme Court has observed that "government agencies . . . under [40 U.S.C. § 257] have been held to have a power to condemn coextensive with their power to purchase." United States ex rel. Tennessee Valley Auth. v. Welch, 327 U.S. 546, 554 (1946). Accordingly, "unless [Congress] desires to exclude condemnation, there is no need for Congress to specifically include 'condemnation' as a permissible method of property acquisition in a statute." 16.92 Acres, 670 F.2d at 1371.

GOODWIN, PROCTER & HOAR

Congressman Barney Frank
March 8, 1995
Page 3

The effectiveness of the specific combination of the Reorganization Act and the Condemnation Act has been validated by the 8th Circuit Court of Appeals. See United States v. 29 Acres of Land More or Less, 809 F.2d 544, 546 (8th Cir. 1987):

"Thus, the power to purchase granted under [25 U.S.C. §465], includes the power to condemn under [40 U.S.C. §257]."

Once the Secretary determines that it is appropriate to acquire the New Bedford site in trust for the benefit of the Wampanoag Tribe of Gay Head for gaming purposes pursuant to IGRA, he can by letter to the Attorney General citing the authority for the taking request the Justice Department to commence eminent domain proceedings and within 30 days the Justice Department must initiate such condemnation proceedings. Kirby Forest Indus. Inc. v. United States, 467 U.S. 1, 3 (1984).

The Land Acquisition Section of the Justice Department implements the judicial process in accordance with the General Procedures in Land Acquisition Litigation, §§5-15.500 to 5-15.556 of the Department of Justice Manual and in conformity with Federal Rule of Civil Procedure 71A. In order to assure consistent treatment of landowners, the condemnation process is also guided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §4651).

The Declaration of Taking Act (40 U.S.C. §258a) provides for a more expeditious condemnation procedure. This Act allows the United States, in cooperation with the Land Acquisition Section of the Justice Department and in conformance with the Federal Rule of Civil Procedure 71A, to file a taking declaration "declaring that said lands are thereby taken for the use of the United States" whereupon title and right to possession would vest immediately in the United States. The Government would, under this procedure, be obligated at the time of the filing of such declaration to deposit into court, to the use of the persons entitled thereto, an amount of money equal to the estimated value of the land so taken. As it is intended that the terms of the acquisition of the New Bedford property will be agreed upon prior to the condemnation, this more expeditious procedure would probably not be required.

One needs to look no further than the Massachusetts Indian Land Claims Settlement Act (25 U.S.C. §§ 1771-1771i, the "Settlement Act") for evidence that Congress has been willing to invoke eminent domain powers to acquire land or "confirm title" for the benefit of Indian Tribes. The Settlement Act officially recognized the Wampanoag Tribal Council of

GOODWIN, PROCTER & HOAR

Congressman Barney Frank
March 8, 1995
Page 4

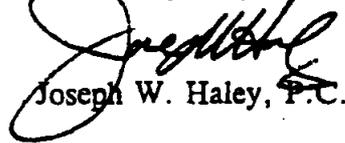
Gay Head, Inc. as an Indian tribe and awarded the Tribe land in Gay Head, Massachusetts in settlement of the Tribe's land claim lawsuit.

"The Secretary is authorized to commence such condemnation proceedings as the Secretary may determine to be necessary--(1) to acquire or perfect any right, title or interest in any private settlement land, and (2) to condemn any interest adverse to any ostensible owner of such land."

25 U.S.C. § 1771d (e).

I hope this summary adequately answers your questions about the basis and procedure for condemnation by the Secretary of Interior. Please let me know if I can assist further.

Yours very truly,



Joseph W. Haley, P.C.

JWH:hr
cc: Mr. Richard Friedman

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BARNEY FRANK
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April 6, 1995

Mr. Joseph W. Haley, P.C.
Goodwin, Proctor & Hoar
Counsellors At Law
Exchange Place
Boston, MA 02109-2881

Dear Mr. Haley:

Thank you for that very useful letter about the right of the Interior Department to take land for Indian gaming. Obviously the next step for me is to find out if the Interior and Justice Departments agree with this, because if they do it will make it easy. If they don't, we will have more work to do but I will be willing to try to do it. We are about to depart for recess, and I should note that while your letter to me was dated March 8, it did not arrive in my office until April 3 -- that is not a problem, but I did want to explain what might otherwise appear to be a delay since I don't know exactly when you mailed it. I will be in touch with these departments when I get back to Washington late in April and I may well be in touch with you then for further conversation.


BARNEY FRANK

BF/meg



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



JUL 07 1995

Honorable Barney Frank
House of Representatives
Washington, D.C. 20515-2104

Dear Mr. Frank:

Thank you for your letter of June 16, 1995, expressing your disappointment with the Department of the Interior's position that obtaining land through Federal condemnation proceedings for Indian gaming purposes is unwise. You also expressed your disappointment that the Secretary has not come forward with some "favorable comment" about the project.

Regarding the first matter, I want to emphasize that my staff in the Indian Gaming Management Staff Office and attorneys in the Department's Solicitor's Office studied the condemnation proposal very carefully before presenting their recommendations to me. Their recommendations only confirmed the strong sense of concern with which I viewed the proposal. We believe that using the Federal condemnation power in instances such as this would have significant political, policy and legal ramifications adverse to Indian gaming as a whole.

That being said, I wish to assure you by rejecting the condemnation proposal, the Department has not rejected the notion of Wampanoag gaming in New Bedford. We believe that there are other ways to address the difficulties inherent to this issue and we are working with the Wampanoag Tribe's attorney to explore these other possibilities.

I am, as always, happy to meet with you on this issue. I suggest, however, that more productive at this time would be a meeting between our staffs. I would be happy to make our people available to you for a detailed discussion both on the problems with the condemnation proposal and on other possible ways to approach the Wampanoag's present difficulties.

Regarding your disappointment that the Secretary has not announced "some favorable comment" about the project, we are simply not in a position to make a favorable public comment at this time. In any event, in the meeting I have suggested above, your staff could give us a better sense of what steps, if any, we should next undertake.

I look forward to your response.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

bcc: Secy Surname, Secy RF(2), JDUFFY, 101-A, Bureau RF, Surname, Chron, Hold
BIA:GSKibine/HSibbison:trw:6/29/95:219-4068 wp:a:frank.ltr
corr per GSKibine:trw:6/30/95 corr per MAnderson:trw:7/6/95

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June 16, 1995

The Honorable Ada Deer
Assistant Secretary
Indian Affairs
MS 4140-MIB
1849 C Street N.W.
Washington, DC 20240

Dear Ada,

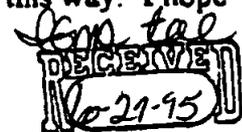
I am writing to you with a deep sense of disappointment. A few weeks ago, I and my staff assistant in charge of our work on the proposed Wampanoag gambling casino came to the Department to talk to you and some of your officials. We made two requests -- one for some favorable comment by the Secretary about the project, another for a response on whether a particular approach to the taking of the land was doable.

Despite a very pleasant reception, I have spent a very frustrating few weeks after this, first being given the bureaucratic line on it, and finally being rejected on one request and simply ignored on the other -- neither with any explanation. I do not regard this as reasonable given the department's professed support for casinos run by Native Americans, and given my own record of support for and cooperation with the department.

On the question of the takings, I gave your staff a letter which outlined a proposed way to avoid a requirement that there be a 2/3rds vote in the Massachusetts Legislature. They accepted the letter and then I heard nothing about it. I called, and was told that Mr. Duffy was supposed to be getting back to me. Mr. Duffy then did get back to me and said he did not know what I was talking about in that specific case. I then faxed another copy of the letter to Mr. Duffy, hoping that I would be able to at least to talk to someone about it. Finally, sometime after faxing that letter, I received a brush off letter from your department saying that while this might be legally interesting, it wasn't something you were interested in. I received no explanation of why you weren't interested, nor any chance to talk about it.

As to the request for the Secretary to say something favorable, that has simply disappeared. No one in your department has even given me the courtesy of a response. I write this to you because I cannot let it simply rest here. I intend to pursue this, but I wanted to discuss it with you first to try to get some understanding of why my requests have simply been dismissed this way. I hope you will be able to get back to me.


BARNEY FRANK



RECEIVED
6-21-95



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



AUG 09 1995

Honorable Barney Frank
House of Representatives
Washington, D.C. 20515

Dear Barney:

I am pleased to report that our staffs met last friday and ~~that~~ I believe ~~that~~ the meeting was productive. It is my understanding that misunderstandings on both sides have been addressed and that our staffs are committed to working closely together on issues affecting the proposed Wampanoag Casino in New Bedford.

I trust that Ms. Maria Giesta has briefed you by now, and that the concerns you raised in your July 14, 1995 letter to me have been addressed. However, if you have any further questions, please do not hesitate to contact the Director of the Indian Gaming Management Staff Office, Mr. George T. Skibine, at (202) 219-4066, or Ms. Heather Sibbison, Special Assistant to the Secretary at (202) 208-7351, who is working on this matter on behalf of Mr. John Duffy, Counselor to the Secretary.

Again, it is my hope that the Wampanoag Tribe will be successful in their bid to conduct off-reservation gaming and we stand ready to provide assistance where appropriate.

Sincerely,

/s/ Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

bcc: Secy Surname, Secy RF(2), 101-A, Bureau RF, SOL-IA, AS-IA, 100, Surname, Chron, Hold

BIA:GSkibine:trw:7/28/95:219-4068

wp:a:bcc06109

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July 14, 1995

16.7.95 3
The Honorable Ada Deer
Assistant Secretary
Indian Affairs
MS 4140-MIB
1849 C Street N.W.
Washington, DC 20240

Dear Ada,

Your letter I must tell you furthers my sense of disappointment, not so much for the substantive points it makes as for the brusque way in which you and your colleagues continue to deal with me. I asked for a meeting and made a couple of requests. At the meeting I was given no indication that I was asking for anything improper or inappropriate. What disturbs me is that a long time after the meeting, when I had heard nothing at all, I get simple flat refusals with no explanation of why, and no offer to give me an explanation. In fact, it is not until I received your letter, in response to my complaint, that I learned that you don't have any plans for the Secretary to say anything positive about the project. Since I was told by representatives of the Wampanoags that the Secretary had made some favorable comments about projects in similar states of application, I am very disappointed simply to get a flat no with no explanation. Maybe the examples I was given were incorrect. Maybe there are some reasons why this shouldn't be done in this case. But for you simply to tell me no -- a very long time after I asked, and only after I complained about no answer at all -- does not comport with the treatment I expect to get from an administration with which I assumed I was cooperating.

As to the taking proposal, I was aware that that was a difficult one, but I am also disturbed first to receive no answer for a while, then to have gotten a phone call from Mr. Duffy in which it seemed clear to me that there was a misunderstanding of what I had requested, and then once again simply to get a brusque no with no explanation.

You say in your letter that "there are other ways to address the difficulties inherent to this issue", and you suggest "that more productive at this time would be a meeting between our staffs... for a detailed discussion both on the problems with the condemnation proposal and on other possible ways to approach the Wampanoags present difficulties." I am asking my staff to follow up on the suggestion and set up such a meeting. But I must express my dismay that when I met with you and your staff before, no such suggestions were forthcoming. I do not think I can be accused of having been resistant to suggestions you would make -- this is the first time I've gotten any indication that you or your staff are prepared to do so, and once again this comes only after I had to write a letter of complaint and repeat the complaint to you personally.

My staff will be in touch with you about how to follow up on this but I want to repeat that the way in which you have been dealing with me leaves me unconvinced that this administration considers me someone with whom cooperation is appropriate.


BARNEY FRANK

BF/mg

Slide Manual

cc: *Bob Anderson*
George Shubins
Froy Woodward
Paula Hart

Frank says disputed part of gaming pact no problem

By Bob Hohler
GLOBE STAFF

WASHINGTON - Rep. Barney Frank said yesterday Interior Secretary Bruce Babbitt assured him that a key provision of a proposed agreement between the Wampanoag tribe and the Weld administration to build a casino in New Bedford does not violate the Indian Gaming Regulatory Act.

A federal official told The Boston Globe 10 days ago that the casino compact appeared to violate the 1988 law because it would grant the Wampanoags partial exclusivity rights on casinos in the New Bedford area.

"I talked to Babbitt, and he said, 'Nonsense, it's absolutely not a problem,'" said Frank, a Newton Democrat

whose district includes New Bedford.

Babbitt's spokeswoman, Stephanie Hanna, would not confirm or deny that Babbitt made the comment to Frank. "The secretary is free to voice his opinion. He can say whatever he wants."

Hanna said lawyers for the Interior Department were studying all aspects of the proposed contract, including the exclusivity issue.

The department, which has jurisdiction over Indian gaming laws, has approved two compacts granting tribes statewide exclusivity rights, including the Mashantucket Pequots in Connecticut.

"Obviously, if it's legal for a tribe to pay for total exclusivity, it's legal to pay for partial exclusivity," Frank asserted.

Babbitt has until Nov. 17 to rule on the proposed contract.

Here's a better copy -

A.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. memo	Memorandum to Troy Woodward from George T. Skibine. [Subject: Tribal-State Compact] (4 pages)	10/24/1995	P5

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: 8287

FOLDER TITLE:

Indian Gaming - Mass. Issue [2]

2009-1006-F
vz130

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



NOV 08 1995

Honorable Beverly M. Wright
Chairperson
Wampanoag Tribe of Gay Head (Aquinnah)
20 Black Brook Road
Gay Head, Massachusetts 02535-9701

Dear Chairperson Wright:

We have completed our review of the Tribal-State Compact (Compact) between the Wampanoag Tribe of Gay Head (Aquinnah) and the Commonwealth of Massachusetts (State), executed on September 29, 1995.

Section 35 of the Compact provides that the Compact shall become effective at the later of (1) the Secretary of the Interior's publication of this Compact in the *Federal Register* or (2) the enactment of the Compact by the Massachusetts General Court and approval of such enactment by the Governor. We believe that the effective date of the Compact can only be the date the Secretary's approval is published in the *Federal Register*. Section 11(d)(3)(B) of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d)(3)(B) provides as follows:

Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the *Federal Register*.

It is our position that we can only approve compacts between Indian tribes and states that have been entered into by the appropriate state and tribal officials. In this instance, the Tribe and the State agree that the Compact is subject to the additional approval of the Massachusetts General Court. The Compact before us may yet be amended during its consideration by the State legislature. Therefore, it is inappropriate for us to approve the Compact at this time because it is not yet binding on the parties, and therefore, we must defer approval of the Compact until legislative approval has been obtained.

For the foregoing reason, this Compact is hereby disapproved. We regret that our decision could not be more favorable at this time.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

Enclosure

Identical Letter sent to: Honorable William F. Weld
Governor, Commonwealth of Massachusetts
State House, Executive Office
Boston, Massachusetts 02133

DRAFT
11/8/95

Honorable Beverly M. Wright
Chairperson
Wampanoag Tribe of Gay Head (Aquinnah)
20 Black Brook Road
Gay Head, MA 02535-9701

Dear Chairperson Wright:

We have completed our review of the Tribal-State Compact between the Wampanoag Tribe of Gay Head (Tribe) and the State of Massachusetts (State), executed on September 29, 1995.

Section 35 of the Compact provides that the Compact shall become effective at the later of (1) the Secretary of the Interior's publication of this Compact in the *Federal Register* or (2) the enactment of the Compact by the Massachusetts General Court and approval of such enactment by the Governor. We believe that the effective date of the Compact can only be the date the Secretary's approval is published in the *Federal Register*. Section 11(d)(3)(B) of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(d)(3)(B) provides as follows:

Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the *Federal Register*.

It is our position that we can only approve compacts between Indian tribes and states that have been entered into by the appropriate State and Tribal officials. In this instance, the Tribe and the State agree that the Compact is subject to the additional approval of the Massachusetts General Court. The Compact before us may yet be amended during its consideration by the State legislature. Therefore, it is inappropriate for us to approve the Compact at this time because it is not yet binding on the parties, and therefore, we must defer approval of the Compact until legislative approval has been obtained.

Although we believe that the Compact was submitted prematurely, we note the following areas of concern:

Subsection 2(j) and Subsection 5(c) of the Compact authorize the Tribe to conduct class II and class III gaming, under the terms of this Compact, in an off-reservation facility within the boundaries

of the City of New Bedford, Massachusetts, and located on land which is neither held in trust nor otherwise owned by the Tribe. These lands fall outside the definition of "Indian Lands" in IGRA. See 25 U.S.C. § 2703(4). We do not believe that it is appropriate for the Compact to contain such a provision because the IGRA specifically provides that tribal/state compacts govern gaming activities on Indian lands as defined in Section 4 of the IGRA. See 25 U.S.C. § 2710(d)(3). While there is no legal impediment to the Tribe conducting Class II and Class III gaming under State law on lands that are not trust or restricted, that type of gaming is not governed by the IGRA. Therefore, it is inappropriate for an IGRA compact to contain provisions regulating this matter. We recommend that these provisions of the Compact, as well as any other incidental references to gaming on the temporary facility, be deleted.

Subsection 3 (z) of the Compact defines net gaming revenues as "the total sum wagered on all gaming conducted within the gaming facility less amounts paid out as winnings and prizes." This definition differs from the definition of "net revenues" in the IGRA, 25 U.S.C. § 2703(9). IGRA defines "net revenues" as gross revenues of an Indian gaming activity less amounts paid out as, or paid for , prizes and total operating expenses, excluding management fees. We do not believe that it is appropriate for the Compact to redefine a term that has a precise meaning in the IGRA. We recommend that the term "net revenues" in the Compact be changed to "net win" to avoid a conflict with the definition of "net revenues" in the IGRA.

Subsection 4 (xxiii) of the Compact makes it automatic for the Tribe and the State to add games without Interior approval. The Secretary will disapprove a compact if it violates the IGRA, other federal law or the Secretary's trust responsibility. The scope of permissible games is a term of the compact and any amendment to this term should also be subject to the Secretary's approval. In exercising his trust responsibility, the Secretary could not sanction an automatic approval provision when there is a possibility that an amendment will violate the IGRA, other federal laws or the Secretary's trust responsibility to the Tribe. Therefore, this provision of the Compact may violate Federal law.

Subsection 9 (e) of the Compact contemplates that the National Indian Gaming Commission (NIGC) will have enforcement authority over provisions of the Compact. The NIGC has enforcement authority over Class II gaming and approval authority for management contracts and Class III tribal gaming ordinances. See 25 U.S.C. §§ 2705, 2706, and 2710. The remedy provided in the IGRA for violations of a tribal-state compact is a suit in federal district court to enforce the provisions of the compact. See 25 U.S.C. § 2710(d)(7)(A)(ii). The NIGC is not an agency with the authority to regulate Class III gaming, a function specifically reserved to the tribes and the states. An agreement between the Tribe and the

State cannot expand the authority of the NIGC. Therefore, this provision of the Compact may violate Federal law.

Subsection 27 (h) of the Compact provides that if the Tribe loses the exclusivity described in paragraphs (d) and (e) of Section 27 of the Compact within six years of opening its gaming facility, the Tribe agrees to pay for the actual costs of regulation, licensing, and Compact oversight of the Tribe's gaming facility. If the Tribe loses exclusivity after six years, it agrees to make a cash contribution equal to the greater amount of a) the State's actual costs of regulation, licensing, and Compact oversight of its gaming facility, plus 15% of the amount the Tribe would have paid to the State under this Compact if the exclusivity had been maintained, or b) an amount calculated at the lowest rate which is paid to the State by any other casino in the Commonwealth of Massachusetts. This provision contemplates that if the Tribe loses exclusivity rights after the first six years, it will be required to continue to pay the State an amount in excess of actual costs to regulate gaming. This provision does not appear to come within any of the authorized purposes under 25 U.S.C. § 2710(b)(2)(B)(i-v), and therefore, may not be in accordance with Federal law.

For the foregoing reasons, this Compact is hereby disapproved. We would be happy to meet with representatives of the State and the Tribe to discuss our concerns with the Compact. Please do not hesitate to contact the Indian Gaming Management Staff at (202)219-4066 if you believe that such a meeting is desirable.

Sincerely

Ada E. Deer
Assistant Secretary - Indian Affairs

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Mark W. Bennett
Jill H. Cambridge
Douglas C. Dufault, Jr.*
Stephen J. Duggan
Stephen J. Durkin
Thomas M. Grimmer
Douglas A. Hale
Scott D. Houseman
Mark R. Karsner
Catherine M. Kuzmiski*
Joseph P. McKenna, Jr.
Brenda J. McNally
James K. Meehan
Robert F. Mills
Charles D. Mulcahy
Charles A. Murray, III
James J. Nixon
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Matthew R. Quinn
Rebecca C. Richardson
Janice E. Robbins
William Rosa*
Nancy McGuirk Silvia
Sean E. Spillane
Luke P. Travis
Michael F. Walsh
Paul F. Wynn
Thomas J. Wynn

Christopher J. Muse
of Counsel

Wynn & Wynn, P.C.

ATTORNEYS • AT • LAW

*file →
Wampanoag*

October 10, 1995

VIA FACSIMILE: 202-208-6956

**V. Heather Sibbison
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240**

*Admitted through
SJE to Mass.
no written
agreement*

RE: Wampanoag Tribe of Gay Head (Aquinnah)

Dear Heather:

As you know, I represent the Wampanoag Tribe of Gay Head Aquinnah and since today is a Wampanoag Holiday, Cranberry Day, Beverly Wright, Chairperson of the Tribe has asked that I write to you concerning the enclosed article which appeared in the Boston Globe.

As you can see, the Boston Globe quotes an unnamed federal official throughout the article and the remarks of this official are quite negative. The Tribe is fearful that this type of media comment may cause it irreparable harm and prejudice in its effort to obtain Compact approval.

The Tribe needs to have an open and fair hearing on all issues and believes negative media comments impact decisions at all levels. The Tribe does not want the Compact judged in the media but rather at the appropriate levels of government.

We seek therefore, your help and the help of the Department in preventing this type of media comment. We wish to thank you for your cooperation and eagerly look forward to working with the Department to resolve all issues.

Very truly yours,

WYNN & WYNN, P.C.

Thomas J. Wynn
Thomas J. Wynn

TJW/ch
Enclosure

The Boston Globe

SATURDAY, OCTOBER 7, 1995

Legality of Wampanoag casino deal in doubt

By Mitchell Zuckoff
and David M. Halbfinger
GLOBE STAFF

Key parts of the casino deal between the Wampanoag tribe and Gov. Weld appear to violate federal Indian gambling law and would require precedent-setting action by the Clinton administration to take effect, federal officials said yesterday.

Questions about the legality of the agreement's financial structure could complicate, if not stall, an already tortuous and politically charged process.

Fee to state may violate 1988 Indian gaming law

However, a top Wampanoag official and Gov. Weld's chief legal counsel downplayed the issue and predicted federal approval.

The federal officials, who spoke on the condition of anonymity, said the agreement's requirement that the tribe pay \$90 million a year to the state was "a red flag" that conflicts with the federal law governing Indian gambling.

That law prohibits states from imposing "any tax, fee, charge or other assessment" in exchange

for approving a tribe's plan to open a casino on Indian land. The only allowed payments by a tribe to a state are reimbursements for its regulatory costs.

The officials said the \$90 million promised by the Wampanoags would fall under the definition of a tax or fee. Therefore, it could be grounds for disapproval of the deal, called a compact, under the 1988 Indian Gaming Regulatory Act, which sparked the explosive growth of Indian casinos.

"Even if a tribe supports the payment, if it's illegal in accordance with IGRA, then the compact can't be approved," said one federal official close to the deal.

WAMPANOAGS, Page 8

Legality of tribe's casino deal in doubt; fee may violate law

■ WAMPANOAGS

Continued from Page 1

to the approval process.

Nevertheless, the Interior Department has in two instances allowed states to receive money from casino-owning tribes. But in both cases, the tribes received exclusive, statewide gambling rights in exchange for the payments.

In Connecticut, the Mashantucket Pequot tribe has a franchise on slot machines, and in New Mexico, 11 tribes operate that state's only casinos. Connecticut's Mohegan tribe also will be allowed to install slot machines when it opens a casino next year, but no non-Indian casino would be allowed to follow suit without jeopardizing the tribes' payments to the state.

By contrast, the deal signed last week between the Wampanoags and Weld would give the tribe no statewide exclusivity on either slot machines or casino gambling.

Rather, it would require the tribe to make payments to the state from proceeds of its planned New Bedford casino even if a non-Indian casino were built in Hampden County and up to 700 slot machines were installed at each of the state's four race tracks.

Moreover, the compact calls for the Wampanoags to pay the state 15 percent of the \$90 million even if it were to lose its limited exclusivity

after the first six years of the deal.

"The policy of the [Interior] department is exclusivity," the official said. "Approving what the Wampanoags' compact calls for would go beyond the precedent that has already been set" in Connecticut and New Mexico.

Jeffrey Madison, the Wampanoags' economic development director, said yesterday he is confident the tribe's compact will win approval from Interior Secretary Bruce Babbitt, who has until Nov. 17 to issue his decision.

"The two basic tenets of IGRA are whether something is in the best interest of the tribe and is not to the detriment of the surrounding communities," Madison said. "We pass both those tests with flying colors."

"Anybody can argue the finer points of the law, but we are confident. We've had good people review this and we feel we're within the definition of IGRA."

Madison said that although the tribe does not receive exclusive, statewide gambling rights for casinos or slot machines, several provisions of the compact satisfy the spirit of that policy.

For instance, the compact says the tribe would have "sole and exclusive right to operate slot machines within a 20-mile radius" of its New Bedford casino. Also, the tribe would have the only casino within a defined region of the state, all of eastern Massachusetts.

"Tribes in Connecticut and New Mexico were buying a significant business advantage," Madison said. "What we have proposed is a significant business advantage and a degree of exclusivity within a defined region."

Brackett Denniston 3d, Weld's chief legal counsel, said he has been assured by Interior officials that "the agreement rests on very sound ground."

"In fact, the New Mexico and Connecticut precedents apply fully here," Denniston said. "The principle is that the tribe can choose to make payments to a state in return for a commercial advantage."

Nevertheless, questions about the compact's legality quickly drew criticism from a top aide to Attorney General Scott Harshbarger, a potential candidate for governor and frequent casino critic.

Thomas Green, first assistant attorney general, said it was the federal government's job to interpret the law, "but it would be extremely unwise for the state to enter into an agreement with the tribe that did not comply with federal law."

"This type of potential problem with the casino documents demonstrates that despite heavy backing by the gambling interests, the casino in New Bedford is far from a done deal," Green said.

In addition to Interior Department and state legislative approval of the compact, the tribe needs the Legislature to allow the New Bedford Municipal Golf Course to be transferred from public to private land for use as the casino site. Federal officials also must approve the site's proposed designation as tribal land.

SENATOR KENNEDY'S OFFICE

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Wampanoags sign compact

BUSINESS PG 61 9:30

Agreement a big step towards establishing New Bedford casino

By Mitchell Zuckoff
GLOBE STAFF

NEW BEDFORD - Gov. Weld and the Wampanoag tribe, in closer harmony than any time since the governor's ancestors were greeted three centuries ago by the tribe's forebearers, yesterday put Massachusetts on the fast track toward casino gambling.

"It's a deal. Put 'er there," a buoyant Weld said as he shook hands with Wampanoag chairwoman Beverly Wright.

After more than two years of talks, including 18 months of intense negotiations, Weld and Wright had just signed an agreement spelling out the terms under which the tribe could open a high-stakes gambling and entertainment complex.

The agreement, called a compact, would give the tribe exclusive casino rights for six years in eastern Massachusetts in exchange for giving the state \$90 million a year, of which 12 percent would go to the cities and towns of Bristol County. That number could rise or fall depending on the casino's revenues, and also would be reduced by the cost of regulating the casino.

That deal would remain intact even if the Legislature approved up to 700 slot machines at each of Massachusetts' four race tracks and the construction of a casino in Hampden County. If the Legislature went beyond those limits, the tribe's payments to the state would fall by 85 percent.

The compact signing drew more than 200 people to a patch of grass at the New Bedford Municipal Golf Course, the pro-



Joe Pacheco of Dartmouth holds a sign expressing his concerns.

posed site of the \$175 million casino complex.

Although the event was the culmination of the tribe's talks with the governor, speaker after speaker cautiously acknowledged that the casino plan still needs approval from the Legislature.

With that in mind, the emphasis returned repeatedly to two themes designed

to win over skeptical lawmakers: creating jobs and stopping the flow of Massachusetts' money to the Foxwoods casino in Connecticut.

"I can't tell you how frustrated I've been to see all those buses pick up our residents and head to Connecticut, and take our revenues to Connecticut," said New Bedford Mayor Rosemary Tierney, a staunch supporter of the tribe's plans.

"If I were going to list the top 10 reasons why southeastern Massachusetts deserves a casino," said Weld, "I'd have to say, 'jobs, jobs and more jobs.'"

Tribal officials and their corporate backers, Carnival Hotels and Casinos, have estimated that more than 3,000 construction workers would be needed to build the complex and another 5,400 workers would be needed for permanent jobs paying an average of \$28,000 a year. They also have said thousands more jobs would result from the casino's economic spinoff.

The promise of those jobs brought out several dozen unionized construction trades workers, several of whom held signs reading, "Weld & Wampanoags = Jobs."

Supporters of the casino plan repeatedly courted legislators, promising cooperation and pledging confidence in their wisdom. Weld, for one, made clear that the issue has been added to his "top priority list" for the current legislative session, which ends Nov. 15.

Wright was equally consultative to lawmakers. But at one point she made clear the 750-member tribe will not let anything CASINO, Page 63

Weld, Wampanoags sign casino compact

■ CASINO

Continued from page 61

2/2

stand it its way.

"We offer our compact to the Legislature and ask that they approach this issue with an open mind," she said. "We want their support and do not want to have to exercise our federal rights without their consent."

That comment was widely interpreted as putting the Legislature on notice that the tribe would seek remedies in federal court if lawmakers moved unreasonably to block the compact from taking effect.

Gambling compacts have been signed with more than 113 tribes in 24 states, now including Massachusetts, and in most cases the compact signing was the last hurdle before casino construction could begin.

The Wampanoags' plan, by contrast, is different for several reasons. First, Weld agreed to give the Legislature a vote on the compact, despite court rulings that have said a governor could enter into a gambling deal with a tribe without such approval.

Second, the Wampanoags decided to build the casino at the golf course rather than on tribal land on Martha's Vineyard, resulting in a required two-thirds' vote by the Legislature to transfer the land.

Turning the land into tribal prop-

We offer our compact to the Legislature and ask that they approach this issue with an open mind.'

BEVERLY WRIGHT

erty, which would make it eligible for a casino under a 1988 federal law, also requires approval from the Department of Interior. Federal officials have repeatedly signaled support for the Wampanoags' plans.

Two of the most satisfied members of the crowd were Thomas J. Wynn, the tribe's lawyer, and James Sylvia, Tierney's top aide.

"Two years ago, I called Jim to ask, 'Hey, have you got 200-plus acres available for a casino?'" recalled Wynn, a smiling Sylvia by his side. "He said, 'absolutely,' and that was the beginning of this process."

The only organized opposition at the compact signing came from a handful of golfers, who criticized the plan to sell the public course. Several wore mock Indian headdresses with multicolored feathers, either unaware or uninterested that the Wampanoag tribe never wore such decorative headgear.

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State Manual
cc: *Bob Anderson*
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Frank says disputed part of gaming pact no problem

By Bob Hohler
GLOBE STAFF

WASHINGTON - Rep. Barney Frank said yesterday Interior Secretary Bruce Babbitt assured him that a key provision of a proposed agreement between the Wampanoag tribe and the Weld administration to build a casino in New Bedford does not violate the Indian Gaming Regulatory Act.

A federal official told The Boston Globe 10 days ago that the casino compact appeared to violate the 1988 law because it would grant the Wampanoags partial exclusivity rights on casinos in the New Bedford area.

"I talked to Babbitt, and he said, 'Nonsense, it's absolutely not a problem,'" said Frank, a Newton Democrat

whose district includes New Bedford. Babbitt's spokeswoman, Stephanie Hanna, would not confirm or deny that Babbitt made the comment to Frank. "The secretary is free to voice his opinion. He can say whatever he wants."

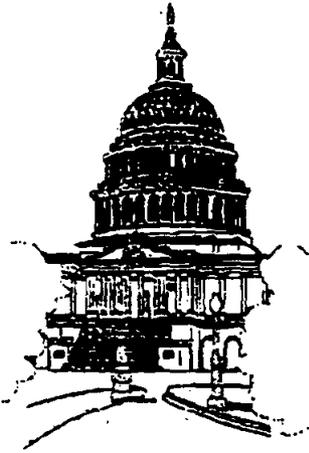
Hanna said lawyers for the Interior Department were studying all aspects of the proposed contract, including the exclusivity issue.

The department, which has jurisdiction over Indian gaming laws, has approved two compacts granting tribes statewide exclusivity rights, including the Mashantucket Pequots in Connecticut.

"Obviously, if it's legal for a tribe to pay for total exclusivity, it's legal to pay for partial exclusivity," Frank asserted.

Babbitt has until Nov. 17 to rule on the proposed contract.

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A.



Edward M. Kennedy

U.S. Senator for Massachusetts

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Legality of Wampanoag casino deal in doubt

By Michael Zuckoff
and David M. Halbfinger
GLOBE STAFF

10:30
1/2

Fee to state may violate 1988 Indian gaming law

However, a top Wampanoag official and Wald's chief legal counsel downplayed the issue and predicted federal approval.

The federal officials, who spoke on the condition of anonymity, said the agreement's requirement that the tribe pay \$90 million a year to the state was "a red flag" that conflicts with the federal law governing Indian gaming.

That law prohibits states from imposing "any tax, fee, charge or other assessment" in exchange

for approving a tribe's plan to open a casino on Indian land. The only allowed payments by a tribe to a state are reimbursements for its regulatory costs.

The officials said the \$90 million promised by the Wampanoags would fall under the definition of a tax or fee. Therefore, it could be grounds for disapproval of the deal, called a compact, under the 1988 Indian Gaming Regulatory Act, which opened the explosive growth of Indian casinos.

"Even if a tribe supports the payment, if it's illegal in accordance with IGRA, then the compact can't be approved," said one federal official close to WAMPANOAGS, Page 20

Key parts of the casies deal between the Wampanoag tribe and Gov. Weld appear to violate local Indian gaming law and would require resident-voting action by the Clinton administration to take effect, federal officials said yesterday.

Questions about the legality of the agreement's financial structure could complicate, if not stall, an already tortuous and politically charged case.

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gree of exclusivity within a defined
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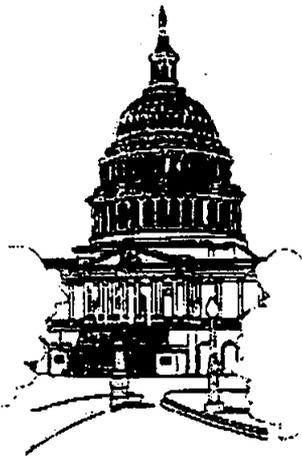
Brackett Denniston 3d, Weld's
chief legal counsel, said he has been
assured by Interior officials that
"the agreement rests on very sound
ground."

19

R-98x

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Edward M. Kennedy

U.S. Senator for Massachusetts

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