



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 07 2009



The Honorable Lisa Waukau
Chairperson,
Menominee Indian Tribe of Wisconsin
P.O. Box 910
Keshena, Wisconsin 54135-0910

Dear Chairperson Waukau:

This letter is to inform you of the Secretary of the Interior's decision to decline to acquire approximately 223 acres of land in Kenosha, Wisconsin, known as the Dairyland Greyhound Park (Land or Kenosha Facility), in trust on behalf of the Menominee Indian Tribe (Tribe) pursuant to the Indian Reorganization Act, 25 U.S.C. § 465 (IRA), for the purpose of operating a Class III gaming facility under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* (IGRA). Pursuant to the IRA's implementing regulations and the January 3, 2008, Memorandum entitled "Guidance on taking off-reservation land into trust for gaming purposes" (Guidance), the Secretary has given "greater scrutiny to the tribe's justification of the anticipated benefits from the acquisition." 25 C.F.R. § 151.11(b).

After a thorough review of the administrative record, and as explained below, the Secretary has decided to exercise his discretion to decline acquiring the Land into trust. The Secretary has determined that the Land is not "necessary" to facilitate economic development as required under the IRA regulations, 25 C.F.R. 151.3(a)(3). Although the Tribe may want additional revenues derived from the operation of a casino, and unquestionably has unmet needs, the land itself is not necessary to achieve these results. The Tribe has not shown that it has insufficient land within the boundaries of its existing Reservation on which to develop economic enterprises in order to address its unmet needs.

Additionally, the Secretary has determined that the acquisition would not further the goals of the IRA. In particular, operating a Class III gaming facility on trust land so far from the Tribe's Reservation could exacerbate, not diminish, the effects of termination the Tribe has suffered by encouraging the splintering of the tribal community. The Tribe has not convincingly demonstrated why the potential negative impacts on Reservation life from taking land into trust beyond a commutable distance are outweighed by the positive financial benefits of tribal ownership in a distant gaming facility.

Background

In July 2004, the Tribe submitted an application to the Bureau of Indian Affairs, Midwest Region (Region), Department of the Interior (Department), requesting that the Secretary acquire the Land under the IRA for the purposes of operating a Class III gaming facility

under IGRA. The Land is located approximately 170 miles from the Tribe's Reservation. The Tribe currently operates a Class III gaming facility on the Reservation.

According to the Department's Manual, the authority for approving or disapproving acquisitions of land for gaming purposes is vested with the Assistant Secretary – Indian Affairs (AS-IA), as delegated from the Secretary. 209 Departmental Manual 8.1. The Office of Indian Gaming (OIG) makes recommendations to the AS-IA regarding the proposed acquisition after the administrative record of the proposed acquisition is forwarded from the Regional Director, in accordance with a July 19, 1990 Secretarial directive, which requires that all acquisitions for gaming be approved or disapproved by the AS-IA. The Secretary retains the ultimate authority to make land acquisition decisions under the IRA.

On January 19, 2007, the Regional Director recommended to the OIG that it issue a positive "two-part determination" under IGRA. 25 U.S.C. § 2719(b)(1)(A). Midwest Region Office, Administrative Record (*MRO-AR, Tab 1*). Under this provision of IGRA, land acquired into trust after October 17, 1988, is eligible for gaming if:

[T]he Secretary, after consultation with the Indian tribe and appropriate State, and local officials, including officials of 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 after the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination.

Id.

On May 1, 2007, the Regional Director prepared a draft Record of Decision pursuant to the National Environmental Policy Act and the IRA regulations, 25 C.F.R. Part 151, for review by the OIG (*MRO-AR, Tab 14*).

On December 19, 2007, the Regional Director transmitted the administrative record and recommended to the OIG that the land be acquired into trust for gaming purposes (*MRO-AR, Intro*).

On January 3, 2008, the Department issued the Guidance to the Regional Directors (*OIG Exhibit A*). The purpose of the Guidance is to clarify how certain provisions of the IRA regulations set forth in 25 C.F.R. Part 151 are to be interpreted and applied, particularly when considering the acquisition of off-reservation land into trust for gaming purposes. The Guidance explains that section 151.11 sets forth factors that the Department will consider when exercising its discretionary authority to acquire off-reservation land into trust. In particular, section 151.11(b) provides that, as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give: 1) greater scrutiny to the tribe's justification of anticipated benefits from the acquisition; and 2) greater weight to concerns raised by state and local governments as to the acquisition's

potential impacts on regulatory jurisdiction, real property taxes and special assessments. 25 C.F.R. § 151.11(b).¹

The Guidance set forth several questions that should be reviewed and answered by the Department in the acquisition process. For example, the Department should consider the commute distance for tribal members from the reservation to the off-reservation facility, the unemployment rate of the reservation, the likely number of tribal members who will move off the reservation as a result of the off-reservation facility and the consequential effects on the reservation's community life, and the on-reservation benefits that are envisioned by the off-reservation gaming facility. Questions such as these are meant to implement the policy of the Federal government, as articulated in the IRA, to support and encourage growth of reservations governed by tribal governments, and to ensure that off-reservation acquisitions do not negatively impact the economic and social conditions that exist for the reservation community.

On January 14, 2008, the Tribe submitted a memorandum regarding additional analysis on how it viewed the proposed acquisition of the Land complies with the Guidance (*OIG Exhibit B*). On May 14, 2008, the Department requested additional information and analysis from the Tribe concerning compliance with the Guidance. Specifically, the Department requested information on: 1) unemployment rate on the Reservation and how it will be affected by the operation of the Kenosha facility; 2) how many tribal members are likely to leave the Reservation to seek employment at the Kenosha facility; 3) how many tribal members are likely to return to the Reservation as a result of the operation of the Kenosha facility; 4) how much on reservation land will be purchased with the additional revenues and how that land will be used to benefit the community; and 5) what sort of projects will be developed on reservation with off-reservation gaming revenues, such as housing, health care, business, training/education centers, and how will these projects help draw back members of the Tribe to the reservation, thereby meeting the intent of the IRA (*OIG Exhibit C*).

On July 31, 2008, the Tribe responded to the May 14 letter by providing additional information and analysis in a report entitled "Impact of Kenosha on the Menominee Reservation" (Report) (*OIG Exhibit D*). The Tribe also hand delivered several documents at a meeting held September 29, 2008, with the Department. Included in the administrative record are several articles from the Internet, a report entitled "The Unmet Needs of the Menominee Nation: Challenges and Opportunities." (Unmet Needs Report) (*OIG Exhibit E*), and a survey entitled "Menominee Tribal Reservation Survey." (Survey) (*OIG Exhibit F*).²

¹ Of particular relevance to this decision is the Tribe's justification of anticipated benefits from the acquisition. The Department considered all the factors in 25 C.F.R. Part 151 and all the factors in the Guidance. It is unnecessary to extensively detail all of the findings under the factors, however, because a few of the factors were determinative. Therefore, a summary is provided in this decision.

² The Department reviewed the entire administrative record even though not every document or argument advanced by the Tribe is specifically refuted or addressed herein.

Brief History of the Tribe

In 1817, the Menominee entered into its first treaty with the United States. 7 Stat. 153. This treaty was one of peace and friendship, and did not involve the cession of land. Through a series of subsequent treaties in 1831, 1832, 1836, 1848 and 1856, the Tribe ceded over 9.5 million acres to the United States. The Tribe's current Reservation was established by Treaty of 1854 comprised of approximately 234,000 acres. 10 Stat. 1064.

In 1954, Congress passed the Menominee Termination Act which became effective on October 1, 1961. 68 Stat. 250, codified at 25 U.S.C. §§ 891-902. The Act abolished the Reservation and terminated Federal recognition of the Tribe's government.

On December 22, 1973, after years of tribal efforts, Congress passed the Menominee Restoration Act. Pub. L. 93-197, 87 Stat. 770 (Act.). The Act repealed the Termination Act, made the provisions of the IRA applicable to the Tribe, and reinstated all the rights and privileges of the Tribe under treaty, statute, or otherwise. Pursuant to the Act, the Tribe enacted a Constitution and Bylaws in 1977.

Relevant Effects of Termination and Current Data

Before termination, the record reflects that the Reservation had a fully functioning tribal government, a law enforcement agency, telephone services, electric companies, a hospital and a clinic, and schools. (*MRO-AR, Tab 9 at p.3*). At the time, the Reservation's quality of life was similar to that of the surrounding communities. (*MRO-AR, Tab 9 at p.3*). Revenues from the Tribe's timber industry provided the means to support education, health, utilizes, employment, tribal offices, law enforcement, fire protection and cultural activities. (*MRO-AR, Tab 9 at p.6*). Immediately preceding termination, the Tribe was viewed by the Federal government as one of the ten wealthiest tribes. (*MRO-AR, Tab 9 at p.8*).

The record shows that the effects of termination on the Tribe were significant. Prior to termination, approximately three-fourths of its members resided on the Reservation. (*Report at 14*). According to the Tribe, individuals and families left the Reservation in record numbers after termination due to the devastation and poverty that took hold of the Tribe. The Report states that "[t]he disruption to the economy of Menominee as a result of termination continues to disadvantage the tribe and its members and to drive an exodus of individuals seeking employment in areas and occupations not related to the Tribe or tribal enterprises." (*Report at 10 (citation omitted)*). Alcohol and drug abuse, increased violence and gang activity, and increased domestic violence also have occurred. (*Report at 10*). The Report indicates that tribal members left the Reservation due to inadequate health care, perceptions regarding hope for the future, lack of safety, poor education, and otherwise general low quality of life. (*Report at 10-11*). Many tribal members moved to the Kenosha area, which is equidistant between Milwaukee and Chicago, during the termination era with mixed emotions. (*Report at 11*). *MRO-AR, Tab 9* of the administrative record details other negative effects of termination.

Today, according to the Tribe, approximately half of the tribal membership resides on the Reservation. (*Report at 9*). Forty-two percent of the on-Reservation population is under the age of 20, with 38.9% being younger than 18. (*Report at 9*). As of 2000, Approximately 45% of households were headed by a female single parent without a spouse. (*MRO-AR, Tab 9 at p.15*). Currently 868 members, more than 10 percent of the total tribal population, reside in the greater Kenosha area, including Chicago and Milwaukee. (*Report at 12*). As the Tribe explains, it “continue[s] to struggle to overcome the effects of Termination.” (*MRO-AR, Tab 9 at p.16*).

The Tribe keeps the off-Reservation population politically, socially, culturally, and spiritually connected with the Reservation community. The Tribe formed the Menominee Community Center of Chicago. (*Report at 9*). The Menominee Constitution allows two seats in the legislature to be held by members residing off the Reservation. (*Report at 9*).

The Tribe speculates that the Reservation population could increase by one-fourth, or 1,140 members, if the off-reservation gaming facility is opened. (*Report at 14*). This prediction was based upon a study by the Harvard University Project on American Indian Economic Development that concluded, in general, the quality of life on reservations increased and reservation populations increased by one-third largely due to an increase in gaming revenues from 1990-2000. (*Report at 14*). It is unclear if this study concerned gaming revenues generated from on or off-reservation facilities.

In its own Survey, 59 percent of off-reservation members who responded to the survey said they would not live on the Reservation sometime in the future. (*Survey at 3*). 67 percent of those 59 percent said they were satisfied with where they were living now. (*Survey at 3*). 66 percent of those 59 percent said they would return to the reservation if certain Reservation services and quality of life issues (such as adequate housing, health care, drug and alcohol abuse prevention) were substantially improved. (*Survey at 4*).

The Tribe’s Report, along with other documents in the administrative record, set forth its goals and projections concerning decreasing unemployment on the Reservation, increasing migration to the Reservation, plans for acquiring on-reservation lands, use plan for the Kenosha gaming revenues, its business strategy, and projected tribal budgets. In general, the Tribe’s projections concerning these areas are based upon the channeling of off-reservation gaming revenues back to the Reservation.

Decision to Decline Acquiring the Land

After a thorough review of the administrative record, the Secretary is declining to acquire the Land under the IRA. Although the Regional Director recommended that the Department accept the Tribe’s application to acquire the Land, that recommendation predated the January 3, 2008, Guidance. Therefore, the Department had to reassess the administrative record in light of the Guidance’s clarification regarding the application of the IRA regulations, particularly 25 C.F.R. § 151.11(b). Additionally, the ultimate

decision concerning compliance with the IRA, the regulations, and federal policy resides with the Secretary.

A. 25 C.F.R. 151.3 Land acquisition policy.

The regulations, in 25 C.F.R. 151.3(a)(3), require the Department to make a determination that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing. The justification provided with the land-into-trust application stated that economic development through gaming is the reason for seeking our approval of this application. Given that the proposed gaming site is approximately 170 miles from the Tribe's existing Reservation, the application suggests that the economic contribution to the Tribe would be a projected cash flow from the casino operations at Kenosha which could then be channeled to the Reservation to fund programs, services, operations, and projects. The Department must ensure the Tribe's stated justification is consistent with the Department's land acquisition policy, the IRA and its regulation. The Secretary has determined that it does not.

The Secretary finds that acquiring the Land is not necessary to facilitate economic development. Section 151.3(a)(3) of the regulations provides that "land may be acquired for a tribe in trust status . . . when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing." 25 C.F.R. 151.3(a)(3). All governments, including tribal governments, can make the argument that revenues are necessary. But under the regulations, the pertinent analysis is whether the land itself is necessary.

The Tribe currently has a reservation of approximately 234,000 acres. The Tribe states that approximately 97 percent of the Reservation is dedicated to the sustained forest and cannot be used for other purposes. (*Report at 3*). Approximately 8,138 acres remain. (*Report at 3*). The Tribe states broadly that the remaining acreage is developed, can not be developed, or is underperforming. The record does not provide a detailed supportive explanation of that statement. Specifically, the Tribe does not discuss why economic ventures, including operating another casino, cannot occur on some of the underperforming, available, or underused land. The record does not convincingly show that the Tribe's current Reservation land base is unable to support additional economic development.

Moreover, the Tribe's Survey does not make a connection between the necessity for the Land and the Survey results. In other words, the Survey does not ask and does not show that off-reservation members would move back to the Reservation if a casino were opened in Kenosha. Instead, the results show that some off-reservation members would return if certain Reservation services and quality of life issues (such as adequate housing, health care, drug and alcohol abuse prevention) were substantially Improved. (*Survey at 4*). Substantial improvement can be achieved in many ways, and the record does not show that the Land itself is necessary. The record only shows that revenues are necessary.

For Indian gaming purposes, in particular, this same economic development paradigm could be proffered by most Tribes to justify all land-into-trust applications that, if approved by the Department, would likely result in the proliferation of off-reservation gaming nationwide. It is the Secretary's view that IGRA intended to enable on-reservation gaming as the rule and off-reservation gaming as the exception to the rule. Therefore, the Secretary, in an effort to curtail the potential proliferation of off-reservation gaming, rejects the generic economic development paradigm that cash flow from off-reservation gaming operations can be used to satisfy section 151.3(a)(3).

In sum, the record does not convincingly show that the Land itself is necessary to facilitate economic development as required under 25 C.F.R. 151.3(a)(3).

B. 25 C.F.R. 151.10 (a) The existence of statutory authority for the acquisition.

The statutory authority to acquire the land in trust is the IRA, 25 U.S.C. 465; *see also* 25 U.S.C. § Section 2202.

C. 25 C.F.R. 151.10 (b). The need of the individual Indian or tribe for additional land.

The regulations, in 25 C.F.R. 151.10(b), require the Department to evaluate the need of the Tribe for additional land. The Menominee Indian Tribe owns approximately 235,077.64 acres of trust land. This application does not involve an acquisition to support Tribal housing, government infrastructure, or to resolve local land management conflicts. Rather, the application seeks a particular site of 223 acres, more or less, located 170 miles from the Reservation for the purpose of establishing a gaming facility. The parcel has been selected, in large part, due to its proximity to urban markets, and not necessarily selected because the Tribe needs additional land. The Tribe already operates a Class III gaming facility on its Reservation.

D. 25 C.F.R. 151.10 (c). The purposes for which the land will be used.

The regulations, in 25 C.F.R. 151.10(c), require the Department to consider the purposes for which the land will be used. In this case, the Land would be used for the development of a large off-reservation class III gaming facility under IGRA. It is worth noting that the Tribe already has a class III gaming facility located on its Reservation.

E. 25 C.F.R. 151.10 (e). If the land to be acquired is currently in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.

The City of Kenosha submitted a letter dated December 20, 2005. The City states the annual amount of property tax allocated to the City is \$ 194,908.81. The annual amount of personal property tax allocated to the City is \$ 7,640.33. The City reports no special assessments currently assessed against the Land. Services provided by the City to the Land are police, fire, building inspection, storm sewer, sanitary sewer, water, and streets.

The County of Kenosha submitted a letter dated January 3, 2006. The County states the annual amount of property tax allocated to the County is \$ 93, 292.72. The annual amount of personal property tax allocated to the County is \$ 3,657.02. There are no special assessments currently assessed against the Land. The County provides services such as health inspections, sheriff patrols on adjacent roadways, and county-wide emergency services.

Both the City and the County realize the impact of placing the Land in trust status. The resulting loss of taxes and future development in the City and County have been addressed in the Intergovernmental Agreement (IGA) with the Tribe. The IGA provides for payments to the City and County for municipal services and support for local governmental operations as well as for community activities.

F. 25 C.F.R. 151.10 (f). Jurisdictional problems and potential conflicts of land use which may arise.

The intended use of the Land is consistent with current zoning requirements. The IGA addresses law enforcement and the application of Public Law 280 to the Land. The Tribe, City, and County acknowledge each has adopted ordinances referenced in Section 2(I) of the IGA and the parties agree to enforce all such ordinances adopted pursuant to the IGA. All claims or disputes concerning the IGA are subject to mediation as outlined in the IGA. There are no jurisdictional problems, potential land use conflicts, or inconsistent zoning requirements.

G. 25 C.F.R. 151.10 (g). If the land to be acquired is in fee status whether the Bureau of Indian Affairs (BIA) is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

The Land would be under the administrative jurisdiction of the Midwest Regional Office in Fort Snelling, Minnesota. Currently, the Tribe has a Public Law 93-638 contract for non-inherent BIA functions on the Reservation. Because Minnesota is a Public Law 280 state, the State will continue to have criminal jurisdiction over the Land.

The Regional Director concluded that it expects a minimal amount of review and approvals for leases, rights of way, and associated land transactions if the Land were acquired in trust. The Regional Director also found that the taking the Land into trust status would not impose any significant additional responsibilities beyond those already inherent in the Federal trusteeship and the requirement of the Menominee Restoration Act, 25 U.S.C. § 903a(a). Currently, the BIA does not have staff on the Reservation and performs its duties remotely or through site visits as needed. If the Land is acquired, the BIA would continue to operate in the same manner. Therefore, the BIA is equipped to handle any additional responsibilities associated with the Land acquisition.

H. 25 C.F.R.151.10 (h). The extent to which the applicant has provided sufficient information to allow compliance with 516 DM 6, Appendix 4, National

Environmental Policy Act (“NEPA”) Revised Implementing Procedures and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

The BIA has completed its review under NEPA and the draft ROD is included in the administrative record. (*MRO, Tab14.*) The BIA determined that the acquisition would not create significant unmitigated environmental impacts. The ROD is in compliance with NEPA and the BIA NEPA Handbook section 6.6B. The Final Environmental Impact Statement (FEIS) has not been published yet for the 30-day comment period. Because the Secretary’s decision is to decline acquiring the Land on grounds other than environmental, the FEIS will not be published.³

I. 25 C.F.R. 151.11(b). The location of the land relative to state boundaries, and its distance from the boundaries of the Tribe’s reservation.

The regulations, in 25 C.F.R. 151.11(b), apply to off-reservation acquisitions such as this. This provision requires the Department to consider the location of the land relative to state boundaries and its distance from the boundaries of the Tribe’s reservation. As the distance increases, the Secretary must give greater scrutiny to the Tribe’s justification of anticipated benefits from the acquisition, and greater weight to the concerns of local governments.

The IRA was enacted to reverse the devastating effects and tremendous loss of land that resulted from the failed allotment era policies. The legislative history of the IRA indicates that “[t]he intent and purpose of the Reorganization Act was ‘to rehabilitate the Indian’s economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.’” *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152 (1973) (quoting H. R. Rep. No. 1804, 73rd Cong., 2d Sess., at 6 (1934)). The broad goal was “to conserve and develop Indian lands and resources.” H. R. Rep. No. 1804, 73rd Cong., 2d Sess., at 5 (1934).

The legislative history also reveals that Congress believed that additional land was essential for the economic advancement and self-support of the Indian communities. *See, e.g.*, S. Rep. No. 1080, at 2; H. R. Rep. No. 1804, at 6 (noting that the purchase of lands would help Indians be self-supporting); 78 Cong. Rec. 11,730; Rep. No. 1080, at 2. In other words, the IRA was to restore Indian lands so that tribes could develop thriving, self-sufficient communities.

In light of the IRA’s purpose, it has been determined that the acquisition of the Land would not further the goals of the IRA and that the Land is not “necessary” to facilitate economic development. First, acquiring the Land so far from the existing Reservation could extend

³ A trust acquisition request can be denied on the basis of less than all of the factors of Part 151 if the Bureau’s analysis shows that one or more factors weighed heavily against the trust acquisition. *Johnnie Louis McAlpine v. Muskogee Area Director*, 19 IBIA 2 (1990). Here, the analysis of the Tribe’s application under sections 151.3(a) (3) and 151.11(b) are determinative in denying the acquisition, making the issuance of the final EIS unnecessary.

the effects of the Tribe's termination by perpetuating the splintering of the tribal community, which in turn, would not foster a strong Reservation life. Even though the Tribe's submissions speculate that the injection of revenue may address some of the Reservation's needs, they do not convincingly demonstrate that the financial benefits of an off-reservation gaming facility outweigh the negative effects on reservation life of having trust land beyond a commutable distance. It is unlikely and somewhat illogical that the tribal members who live in the Kenosha area – near the proposed Kenosha facility -- would move back to the Reservation once a near-by gaming facility is available for employment. Although the proposed facility would be within a commutable distance for the off-reservation members, the Guidance concerns commutability for on-reservation members. This is because one of the IRA's goals is to provide tribes with a reservation land base in order foster strong communities and economic development.

Furthermore, the Tribe has not convincingly demonstrated that the mere injection of revenues would directly decrease Reservation unemployment, ameliorate social and health care problems, or balance the Tribe's Reservation demographics, which is 42 percent under the age of 20 and 45 percent female head of households as of the year 2000. These and other issues were identified by the Tribe as devastating effects of termination, but the Tribe's submissions have not made a convincing case that these conditions would not be exacerbated by having a distant off reservation facility. Although the Tribe argues that the influx of revenues can address some of these issues, the Tribe's submissions are speculative and do not make a convincing showing that this Land in particular needs to be in trust status as being necessary for the generation of revenues.

A gaming operation on or close to the Reservation, however, allows a tribe to use the gaming facility as a conduit for job training and employment programs for tribal members without forcing the members to travel great distances, relocate off the reservation, remain off-reservation, or be absent from the community for great periods of time. *See Lands of Opportunity: Social and Economic Effects of Tribal Gaming on Localities, Policy Matters*, Vol. I Issue 4 (Summer 2007), by M. Marks and K. Contreras. (Communities closer in proximity to a gaming facility receive more social and economic benefits than communities further away); *An Impact Analysis of Tribal Government Gaming in California, A Summary of Key Findings* (Jan. 2006), by The Center for California Native Nations (Census tracts in close proximity to reservations with gaming experienced more employment growth than those not in close proximity). In short, the Tribe's submissions are speculative, and do not convincingly demonstrate how a thriving Reservation life as envisioned by the IRA would be directly achieved through the acquisition of the Land that is 170 miles away beyond a commutable distance from the Reservation.

The Tribe's Reservation is located 170 miles from the Land. As explained in more detail above, the Secretary is concerned that approval of this application would not support the option for tribal members to live on their existing Reservation and to have meaningful employment opportunities at the proposed gaming establishment because it will not be located within a reasonable commuting distance from the Tribe's Reservation. One stated benefit of a gaming facility is the opportunity for job training and employment of tribal members living on the Reservation, however, the location of the proposed gaming facility

may encourage reservation residents to leave the Reservation for an extended period to take advantage of the job opportunities created by the tribal gaming facility in Kenosha. The potential departure of a significant number of reservation residents and their families could have serious and far-reaching implications for the remaining tribal community and its continuity as a community. These far-reaching implications could mimic the drastic effects that the Tribe has identified as a result of termination in its application: unbalanced demographics, drainage of working age members, increased social and health care problems, decreased safety in the community, and the like. (*Report; MRO Tab 9*).

Moreover, it is unlikely and somewhat illogical that members residing in the Kenosha area would relocate back to the Reservation when their employment at the facility is close-by in Kenosha. While the financial benefits of the proposed gaming facility might create revenues for the Tribe and may mitigate some potential negative impacts, the Tribe's projections about the beneficial and negative impacts on reservation life are merely speculative and do not convincingly demonstrate why these should be overshadowed by the financial benefits of tribal ownership of a remote gaming facility.

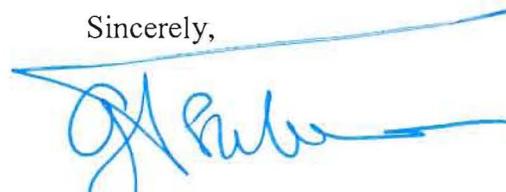
The City and the County are in support of the Tribe's application and gaming project. The State did not submit comments in response to the BIA's Notice of Application dated December 5, 2005. There were a total of 5 letters in support of the Tribe's application and 5 letters of opposed. Due to the local governmental support of the Tribe's application, the Secretary did not need to give "greater weight" to their concerns under the Guidance and IRA regulations.

Conclusion

I regret the decision cannot be more favorable. The Tribe is free, of course, to pursue off-reservation business enterprises without the Secretary's approval to acquire remote off-reservation land into trust.

This decision is a final agency action for the Department and may be appealed in accordance with applicable laws.

Sincerely,



George T. Skibine
Acting Deputy Assistant Secretary
for Policy and Economic Development