



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Washington, D.C. 20240

IN REPLY REFER TO:
Indian Gaming Management
MS 4543-MIB

NOV 29 2002

Memorandum

To: Assistant Secretary - Indian Affairs

Through: Deputy Commissioner of Indian Affairs *Lawrence L. Virdin*

From: Director, Office of Indian Gaming Management *George T. Skibine*

Subject: Request of the Seneca Nation of Indians of New York
for 12.8 Acres of Land into Restricted Fee Status

I. INTRODUCTION

On October 29, 2002, the Seneca Nation of Indians of New York (Nation) submitted to the Secretary of the Department of the Interior (Secretary), a request to acquire in restricted fee 12.8 acres of land pursuant to the Seneca Nation Land Claims Settlement Act of 1990 (SNLCSA), 25 U.S.C. § 1774 et. seq. The 12.8 acres, referred to as the Niagara Falls Convention and Civic Center (NFCCC) property are located at 305 4th Street within the City of Niagara Falls, Niagara County, New York and will be used to operate a Class III gaming facility. The Constitution of the Nation was adopted in 1848, as amended (*Tab 2*) and effective as of November 9, 1993.

The Nation is a federally recognized Indian tribe and resides on three Reservations: The Allegany, Cattaraugus and Oil Springs Reservations which were established by the Treaty of November 11, 1794, 7 Stat. 44. The lands comprising the Reservations lie within the Nation's aboriginal territory and are held by the Nation in restricted fee.

The Nation's request and supporting documentation were submitted in accordance with a July 19, 1990 Secretarial Directive, which requires that all acquisitions for gaming be approved or disapproved by the Assistant Secretary - Indian Affairs. The documents were referred to the Office of Indian Gaming Management (OIGM). The OIGM has completed its review of the request and the supporting documentation. The findings, analysis, and recommendations of the OIGM are set forth in this memorandum for your review and final consideration.

This memorandum documents the findings of the transaction's compliance with the requirements of Section 20 of the Indian Gaming Regulatory Act (IGRA), and the SNLCSA.

II. AUTHORITY

In 1990, Congress enacted the SNLCSA which provides the Nation with fair compensation for use of its land and for the impact on the Nation from prior lease arrangements in the City of Salamanca, New York. The funds appropriated under the SNLCSA are available for the Nation to acquire additional land which could be placed into restricted fee status by the Secretary. Specifically, the land acquisition provision of the SNLCSA, 25 U.S.C. 1774f(c) provides:

Land within its aboriginal area in the State or situated within or near proximity to former reservation land may be acquired by the Nation with funds appropriated pursuant to this subchapter. State and local governments shall have a period of 30 days after notification by the Secretary or the Nation of acquisition of, or intent to acquire such lands to comment on the impact of the removal of such lands from real property tax rolls of State political subdivisions. Unless the Secretary determines within 30 days after the comment period that such lands should not be subject to the provision of section 2116 of the Revised Statutes (25 U.S.C. § 177), such lands shall be subject to the provisions of that section and shall be held in restricted fee status by the Nation. Based on the proximity of the land acquired to the Seneca Nation's reservations, land acquired may become a part of and expand the boundaries of the Allegany Reservation, the Cattaraugus Reservation, or the Oil Springs Reservation in accordance with the procedures established by the Secretary for this purpose.

The land acquisition provision of the SNLCSA defines the criteria that govern the acquisition and placement of land into restricted fee for the benefit of the Nation. Under the land acquisition provision of the SNLCSA, only three conditions must be met for the land to be eligible for placement in restricted fee status:

- 1) the land must be situated within or near proximity to former reservation land;
- 2) the land must be purchased with funds appropriated under the SNLCSA; and
- 3) the State and local governments must be given notice of the acquisition or of the Nation's intent to acquire the land, and 30 days within which "to comment on the impact of the removal of such lands from real property tax rolls of State political subdivisions."

The Secretary has 30 days after the expiration of the comment period within which she may decide that the land should not be subject to restrictions against alienation under 25 U.S.C. § 177.

In a letter dated November 12, 2002, to the President of the Nation and to the Governor of the State of New York, the Secretary determined that the proposed parcels meet the SNLCSA's requirement that the lands are "situated within or near proximity to former reservation lands" because the Nation provided sufficient documentation demonstrating that the exterior boundaries of the Nation's former Buffalo Creek Reservation overlap a portion of the present day boundary of the City of Buffalo and are within twenty-two miles of the City of Niagara Falls.

The Nation's request documents that the NFCCC was purchased by the Nation using SNLCSA funds. See Council Resolution No. CN:R-09-21-02-28, dated September 21, 2002 (*Tab 19*), and Affidavit of Nation Comptroller Karen S. Watt (*Tab 21*).

III. PROPERTY TO BE ACQUIRED

The property consists of 12.8 acres in Niagara Falls, Niagara County, New York. The legal description (*Tab 11*) of the property is as follows:

Parcel I:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Niagara Falls, County Niagara and State of New York, part of 43 Mile Reserve, more particularly described as follows:

BEGINNING at a point in the center line of Falls Street produced easterly, said point being eight-three (83) feet west of the intersection of the center line of Falls Street so produced and the center line of Fourth Street, said distance measured along the center line of Falls Street produced; running thence northerly at right angles to the center line of Falls Street, a distance of three hundred seventy-five (375) feet to a point; thence easterly, a distance of two hundred nine (209) feet to a point; thence northerly, a distance of forty-five (45) feet to a point; thence easterly, a distance of sixty-three (63) feet to a point; thence southerly, a distance of thirty (30) feet to a point; thence easterly, a distance of one hundred twenty-six (126) feet to a point; thence southerly, a distance of twenty-six (26) feet to a point; thence easterly, a distance of one hundred forty-six (146) feet to a point; thence southerly along a line, said line lying perpendicular to the aforementioned center line of Falls Street produced, a distance of seven hundred twenty-nine (729) feet to a point; thence westerly, a distance of eighty-three (83) feet to a point; thence southerly, a distance of thirty-three (33) feet to a point; thence westerly, a distance of sixty-three (63) feet to a point; thence northerly, a distance of twenty (20) feet to a point; thence westerly, a distance of two hundred thirty-eight (238) feet to a point; thence northerly, a distance of four (4) feet to a point; thence westerly, a distance of one hundred sixty (160) feet to a point; thence northerly, a distance of three hundred seventy-four (374) feet to a point or place of beginning.

PARCEL II:

ALL THAT TRACT OR PARCEL OR LAND, situate in the City of Niagara Falls, County of

Niagara and State of New York more particularly described as follows:

COMMENCING at a point formed by the intersection of the center line of Fourth Street and the center line of Falls Street extended; thence westerly along the center line of Falls Street extended a distance of 83.00 feet to the point of beginning; thence southerly on a deflection of 90° to the left, a distance of 325.00 feet to a point on the northerly boundary of proposed road south; thence westerly at an interior angle of 90° and along the northerly boundary of proposed road south, a distance of 232.87 feet to a point on the easterly boundary of existing Third Street; thence northerly at an interior angle of 89° 38'24" and along the easterly boundary of existing Third Street, a distance of 650.01 feet to a point on the southerly boundary of proposed road north; thence easterly at an interior angle of 90° 21'36" and along the southerly boundary of proposed road north, a distance of 228.79 feet to a point; thence southerly at an interior angle of 90°, a distance of 325.00 feet to the point of beginning.

IV. TITLE TO THE PROPERTY

The First American Title Insurance Company of New York prepared a Commitment for Title Insurance, Title No. 905-NI-172,094, Amendment 2 (*Tab 11*). Subject to the recommendations made by the Pittsburgh Field Solicitor's office, this transaction satisfies the standards.

V. COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT

The Nation and the State of New York entered into a Class III gaming compact which is considered to have been approved on October 25, 2002, pursuant to 25 U.S.C. § 2710(d)(8)(C). The Compact will take effect when notice that it is considered to have been approved is published in the *Federal Register*.

Section 20 of IGRA, 25 U.S.C. § 2719 contains a general prohibition on gaming on land acquired in trust by the Secretary for the benefit of an Indian tribe after October 17, 1988, unless one of the several statutory exceptions is applicable to the land. By letter dated November 12, 2002, to the President of the Nation and to the Governor of the State of New York, the Secretary has concluded that lands held in restricted fee status pursuant to an Act of Congress, such as the SNLCSA, are subject to the requirements of Section 20 of IGRA. Further, the Secretary found that the legislative history of the SNLCSA makes clear that one of its purposes was to settle some of the Nation's land claim issues. Thus, the Nation's parcels to be acquired pursuant to the SNLCSA will be exempt from the prohibition on gaming contained in Section 20 because they are lands acquired as part of the settlement of a land claim, and thus fall within the exception in 25 U.S.C. § 2719(b)(1)(B)(i).

The Nation's Class II Gaming Ordinance was approved by the National Indian Gaming Commission (NIGC) on September 16, 1994 and an amendment approved on June 21, 1995. A Class III Gaming Ordinance is currently pending with the NIGC.

VI. COMPLIANCE WITH CONSULTATION REQUIREMENTS OF THE SNLCSA

The land acquisition provision of the SNLCSA, 25 U.S.C. § 1774f(c) provides that the State and local governments must be notified of the Nations' request to place land into restricted fee status and are afforded an opportunity "to comment on the impact of the removal of such lands from real property tax rolls of state political subdivisions." On August 23, 2002 (*Tab 22*), the Nation notified the State, City and County governments within whose jurisdiction such land is located of the Nation's intent to acquire the lands located with the City of Niagara Falls and provided them an opportunity to comment on the impact of the removal of such lands from real property tax rolls from State political subdivisions.

State of New York

The State of New York response dated September 20, 2002 (*Tab 13*), requests the Secretary not to disapprove the proposed acquisition by the Seneca Nation. The October 11, 2002 (*Tab 18*), letter from the State addresses questions submitted by the BIA regarding the compact between the Nation and the State of New York.

A letter dated September 24, 2002, from Senator George D. Maziarz of the State of New York supports and recommends approval of the tribal state compact and proposed acquisition of land in Niagara Falls (*Tab 24*).

A letter dated September 23, 2002, from Francine DelMonte, Member of Assembly, State of New York, Albany supports the tribal state compact and recommends approval (*Tab 26*).

City of Niagara Falls

The October 8, 2002, response from the Mayor of Niagara Falls consents to the establishment of a casino by the Nation and will make every effort to facilitate the construction of the facility (*Tab 14*).

A letter dated October 7, 2002, from the Chairman, Niagara Falls Coalition for Casino Gaming support the Nation's plans and that the proposed gaming facilities will provide the catalyst needed to boost the economy and tourism in western New York (*Tab 23*).

A letter of support dated September 17, 2002, from Robert L. Newman, President & CEO of Niagara USA recommends approval of the tribal state compact and proposed acquisition of land in Niagara Falls (*Tab 30*).

Town of Niagara

A letter of support dated September 18, 2002, from Suzanne Marie Fulle, President, Town of Niagara Business and Professional Association supports the tribal state compact and recommends quick approval (*Tab 28*).

A letter of support dated September 18, 2002, from Steven C. Richard, Supervisor, Town of Niagara urges approval of the tribal state compact and support the Seneca Nation's intent to acquire land in downtown Niagara Falls (*Tab 29*).

Niagara County

A letter of support dated October 9, 2002, from the Chairman of the Niagara County Legislature requests approval of the tribal state compact to provide an economic boost to the area not only in revenue but tourism and employment (*Tab 15*).

A letter of support dated September 20, 2002, from Clyde J., Johnston Jr.; President, Niagara County Building and Construction Trades Council of WNY requests approval of the tribal state compact (*Tab 28*).

VII. REVIEW OF ENVIRONMENTAL DOCUMENTATION

The Nation's request includes an Environmental Assessment (EA) prepared by URS Corporation, and dated October 21, 2002 (*Tab 32*), to satisfy the requirements of the National Environmental Policy Act (NEPA) . In a memorandum dated November 25, 2002, to the Regional Director, Eastern Region, OIGM provided its comments on the October 21, 2002, EA. In response to our comments, the Nation provided a revised EA, dated November 27, 2002. We have reviewed the revised EA, and are satisfied that it meets the concerns identified in our earlier comments. We have prepared a proposed Finding of No Significant Impact (FONSI) for your signature.

VIII. OTHER REQUIREMENTS

There are no other requirements. The regulations governing the acquisition of trust land for Indian tribes set forth in 25 CFR Part 151 do not apply to this request because the land is acquired by the Nation in restricted fee. Similarly, the requirements of 602 DM 2 (Hazardous Substances Determinations) are not applicable in this case because the United States is not acquiring title to the property.

IX. OIGM RECOMMENDATION


Our review indicates that the State of New York and appropriate local governments support the proposed acquisition of the NFCCC by the Nation in restricted fee, and have not indicated that the removal of the land from real property tax rolls of State political subdivisions would have any detrimental impacts. To the contrary, the comments received indicate that the conversion of the NFCCC into a Class III gaming facility will have beneficial effects on the economy of the region. All applicable federal requirements for the acquisition of the NFCCC in restricted fee status have been satisfied. This office recommends that you decline to make a finding that the identified parcel should not be subject to the provisions of 25 U.S.C. § 177, and that you issue the attached FONSI to satisfy the requirements of NEPA.

We have provided a signature line below to indicate whether you concur with our recommendation.

I concur X

I do not concur

Dated: NOV 29 2002

A handwritten signature in black ink, appearing to read "Neal A. McCaleb", is written over a light blue horizontal line. The signature is cursive and stylized.

Neal A. McCaleb
Assistant Secretary - Indian Affairs

Attachment