



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Director of Budget

March 8, 2012

NOTE

To: David LesStrang, Rick Healy, Rachael Taylor, Leif Fonnesebeck

From: Director, Office of Budget

Subject: Indian Gaming Conference Report No. 112-331 Directive

This letter transmits the Department's response to a Congressional Directive in Conference Report No. 112-331 regarding Secretarial Determinations on Indian Gaming. The attached affirms Indian Affairs' position regarding the Secretarial Determinations issued on September 1, 2011, for two tribal gaming applications in Yuba County and Madera County. The attached paper responds to the Committee's concerns identified in the conference report language as follows:

*Other Matters.*—The conferees are aware of a lack of local support for two recent off-reservation gaming projects in Yuba, California, and Madera, California, which received Secretarial Determinations on September 1, 2010. The evidentiary record provided by the Bureau of Indian Affairs indicates that only two of the 33 elected officials or bodies that were consulted on these projects expressed support for them. The conferees are also concerned that in one case, the Department appears to have largely ignored a popular vote which indicated a majority of the county was opposed to the construction of a casino on the site which was approved by the Department. Therefore, the conferees direct the Secretary to review these applications to verify the claim of "strong local support" and report those findings to the Committees within 60 days of enactment of this Act.

The attachment provides additional background on the factors supporting the September 2011, Determinations and also provides copies of the determinations for reference. Should you or your staff require additional information regarding this directive please contact me at (202) 208 – 5308.

Attachments

**BUREAU: INDIAN AFFAIRS – OFFICE OF INDIAN GAMING**

**ISSUE: CONFERENCE REPORT ISSUED IN CONJUNCTION WITH  
PUB. L. NO. 112-74 (DEC. 23, 2011).**

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**Background:**

- In Conference Report No. 112-331 (Dec. 15, 2011), the Conference Committee expressed concern regarding the Department's Secretarial Determinations issued on September 1, 2011 for two tribal gaming applications in Yuba County and Madera County, California.
- The Conference Committee requested the Department issue a report to "to verify the claim of 'strong local support' and report those findings to the Committee within 60 days of enactment of [H.R. 2055]."
- The Indian Gaming Regulatory Act (IGRA) generally prohibits Indian gaming on lands acquired in trust after October 17, 1988. IGRA includes several exceptions to this prohibition, including when the Secretary determines that tribal gaming on such lands would be in the best interest of the Tribe and its members, and would not be detrimental to the surrounding community. This exception is commonly known as the "Secretarial Determination Exception," or the "Two-Part Determination Exception."
- The Governor of the State in which gaming would take place must concur in such a determination prior to a Tribe conducting gaming activities on such lands.
- The Department's regulations implementing IGRA's exceptions – 25 C.F.R. Part 292, "Gaming on Trust Lands Acquired After October 17, 1988" – contain a broad range of factors to guide the Secretary's consideration of a tribal gaming application under IGRA's Secretarial Determination Exception.
- No single factor is determining, and the Department must weigh all factors on a case-by-case basis.
- Those factors include, but are not limited to:
  - Distance of the proposed gaming site from the applicant Tribe's reservation and tribal government headquarters;
  - The scope and size of the proposed gaming facility;
  - Employment projections;

- The existence of a historical connection between the Tribe and the proposed gaming site;
  - Impacts on surrounding community infrastructure and environment; and,
  - Any other relevant factors.<sup>1</sup>
- If the Secretary issues a positive determination on a Tribe's application, it is then referred to the Governor of the State in which the gaming would be conducted for concurrence in that determination.
  - The Governor has one year from the date of the Secretary's determination to concur in that determination, or the Secretary's decision is no longer valid.<sup>2</sup>

**Secretarial Determinations Issued on September 1, 2011:**

- On September 1, 2011, the Department issued four decisions on tribal gaming applications.
- These included positive Secretarial Determinations for both the Enterprise Rancheria (Yuba County, California) and the North Fork Rancheria's (Madera County, California) gaming applications under IGRA's Secretarial Determination Exception.
- Those determinations were based upon a comprehensive evaluation of all of the factors in the Department's regulations. Each determination was made following a rigorous and thorough review of all of the relevant facts of the respective records.
- Pursuant to the Department's regulations, Interior staff solicited comments from appropriate state, local, and tribal officials, for both the Enterprise Rancheria and the North Fork Rancheria applications.
- The Department received both solicited and unsolicited responses from a range of interested parties. A number of local units of government and public officials, however, declined to submit comments on each application.
- Each determination contains a thorough evaluation of all of the relevant facts in the records, and of the views of local units of government and local communities relative to each application.

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<sup>1</sup> 25 C.F.R. §§ 292.16-18.

<sup>2</sup> 25 C.F.R. § 292.23.

- Each determination contains a description of the process the Department used to consult with potentially interested local communities and officials, as well as their responses to the Department's solicitation.
- The decision letters themselves demonstrate the Assistant Secretary's consideration of all the factors required in the Department's regulations.
- A copy of the Department's final determination for each of these applications is attached for your review, as well as a copy of the Record of Decision for each determination.

**Current Status:**

- The Department reviewed its Secretarial Determinations issued on September 1, 2011 for two tribal gaming applications for Yuba County and Madera County, California. The Department is confident that they comply with IGRA's requirements and our own implementing regulations.
- The September 1, 2011 determinations constitute the final Secretarial Determinations for both the Enterprise Rancheria and the North Fork Rancheria.
- It is important to note that these determinations do not yet permit the Tribes to conduct gaming on lands in Yuba County and Madera County, respectively.
- The Governor of the State of California has up to one year to concur in each determination. If the Governor does not concur in the Assistant Secretary's determination, the relevant gaming application will not be approved.
- If the Governor does concur in the Secretarial Determinations, the Department must then proceed with the consideration of the Tribes' respective requests to have land acquired in trust on their behalf.