United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAR 17 1995

Honorable Stanley G. Jones, Sr.
Chairman, Tulalip Tribes of Washington
6700 Totem Beach Road
Marysville, Washington 98270

Dear Chairman Jones:

On February 2, 1995, we reviewed the Third Amendment to the Tribal/State Compact for Class III Gaming Between the Tulalip Tribes of Washington (Tribe) and the State of Washington (State), dated January 26, 1995 (Amendment).

We have completed our review of the Amendment and conclude that it does not violate the Indian Gaming Regulatory Act (IGRA), other Federal law or our trust responsibility. Therefore, pursuant to my delegated authority and Section 11 of the IGRA, we approve the Amendment. The Amendment shall take effect when notice of our approval, pursuant to Section 11(d)(3)(B) of the IGRA (25 U.S.C. § 2710(d)(3)(B)), is published in the FEDERAL REGISTER.

We wish the Tribe and the State success in this economic venture.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

Enclosures

Identical Letter to: Honorable Mike Lowry
Governor of Washington
State Capitol
Olympia, Washington 95804

cc: Portland Area Office w/copy of Approved Amendment
Puget Sound Superintendent w/copy of Approved Amendment
National Indian Gaming Commission w/copy of Approved Amendment
Portland Regional Solicitor's Ofc w/copy of Approved Amendment
Western Dist. - WA, U.S. Attorney w/copy of Approved Amendment

930411.00008

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Third Amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Third Amendment to the Tribal/State Gaming Compact Between the Tulalip Tribes of Washington and the State of Washington executed on January 26, 1995.

DATES: This action is effective March 31, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: March 17, 1995.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–7940 Filed 3–30–95; 8:45 am]

BILLING CODE 4310–02–P

THIRD AMENDMENT TO TRIBAL/STATE COMPACT FOR CLASS III GAMING BETWEEN THE TULALIP TRIBES OF WASHINGTON AND THE STATE OF WASHINGTON

WHEREAS, on August 2, 1991 the Governor of the State of Washington and the Chairman of the Tulalip Tribes of Washington executed a Compact pursuant to the Indian Gaming Regulatory Act of 1988, P.L. 100-497, codified at 25 USC Section 2701-2721 and 18 USC Section 1166-1168, and

WHEREAS, pursuant to the Indian Gaming Regulatory Act of 1988 and by action of the Department of the Interior, Bureau of Indian Affairs on September 25, 1991, said Compact became effective October 3, 1991, and

WHEREAS, said Compact by First Amendment of May, 1992 has been amended as to Section 9(c), and

WHEREAS, said Compact by Second Amendment of September, 1993 has been amended as to Section 3(f), (g) and (h), and

WHEREAS, the parties wish to amend portions of Sections 3, 14 and 15 and add an Appendix C to said Compact to add new Class III activities, provide for the relocation of the gaming operations and gaming facility, the place(s) at which certain Class III gaming activities may occur, provide latitude as to the hours of operation of certain Class III gaming activities, scope, and modify the Compact provisions relating to Community Contributions and other amendments thereto,

NOW, THEREFORE, and pursuant to Sections 15(d)(i), (ii) (aa), (cc) and iii(bb) of said Compact, the following Sections of said Compact shall be and hereby are amended to read and state as follows:

Section 3(a) is hereby amended by the addition of the following sub-subsection, to wit:

(xx) Poker ~~played in the same manner as authorized in State licensed card rooms and in conformity with those laws and regulations of the State regarding hours or periods of operation of such card game and its limitations on wagers or pot sizes in such~~ card games. The Tribes shall submit the proposed rules, manner of regulation and manner of play of such poker card games to the State Gaming Agency at least thirty (30) days prior to the time play shall begin. If the State Gaming Agency does not respond within the thirty (30) days, the Tribe may begin offering the game. If a dispute

arises between the Tribe and the State Gaming Agency with respect to the nature of the game, security issues, rules of play or training and enforcement associated with regulation, it shall be resolved pursuant to Section 12(c) of this Compact.

(xxii) Lottery-type games, including but not limited to, keno and keno-type games, instant tickets, on-line games, lotto, jackpot poker or other lottery-type games authorized for play for any purpose by any person, organization or entity in the State of Washington that are not otherwise treated as Class I or II in the State of Washington pursuant to 25 USC Section 2703(6) and (7). For the purposes of the jackpot poker activity, the Class II poker stations associated with jackpot poker as well as the employees directly associated with jackpot poker shall be subject to Sections 4, 5, 6, 7, 8 and 9 of this Compact. For all such lottery-type games the Tribe shall submit the proposed rules, manner of regulation and manner of play to the State Gaming Agency at least thirty (30) days prior to the time play shall begin. If the State Gaming Agency takes no action within the thirty (30) days, the Tribe may begin offering the game. If a dispute arises between the Tribe and the State Gaming Agency with respect to the nature of the game, security issues, rules of play or training and enforcement associated with regulation, it shall be resolved pursuant to Section 12(c) of this Compact.

(xxiii) Satellite (off-track) wagering on horse races, subject to Appendix C.

Section 3(c) is hereby amended to read and state as follows:

(c) Authorized gaming operation. The Tribe may establish one gaming operation and gaming facility on the Tulalip Tribal lands for the operation of any Class III games as authorized pursuant to subsection (a) of this Section. At the option of the Tribe, the existing gaming operation and gaming facility located at 6410 - 33rd Avenue Northeast, Marysville, Washington 98271, may be relocated on other Tulalip Tribal lands and opened to the public, subject to the provisions of Compact Section 4(a); provided however, Class III lottery-type games may be conducted by the Tribe at Tribal Class II gaming facilities contiguous and adjoining to the Class III gaming facility.

Section 3(d) is hereby amended to read and state as follows:

(d) Forms of Payment. All payment for wagers made in

authorized forms of Class III gaming conducted by the Tribe on its Tribal lands, including the purchase of chips, for use in wagering, shall be made by cash, cash equivalent, credit card or personal check. ~~Personal checks shall not exceed $250.00 per person per day.~~

Section 3(e) is hereby amended to read and state as follows:

(e) Size of gaming floor. The actual gaming floor within the gaming facility upon which the gaming stations and other Class III gaming are located shall not exceed ~~12,000~~ the square footage determined as appropriate by the Tribe. ~~square feet.~~

Section 3(f) is hereby deleted in its entirety and in substitution therefor is amended to read and state as follows:

(f) Size of Class III Gaming Operation. The maximum number of Class III gaming stations shall not exceed thirty-one (31) plus, at the option of the Tribe, one (1) additional gaming station ("the nonprofit station"). The proceeds from the nonprofit station shall be dedicated to support nonprofit and charitable organizations and their activities located within Snohomish County or the State of Washington. For purposes of determination of "proceeds" from the nonprofit station only, proceeds shall mean the pro rata net profit of the nonprofit station. Such proceeds are not subject to the calculation for the community contribution under Section 14(c) of this Compact. The Tribal gaming ordinance shall require regulations be adopted concerning the types of bona fide nonprofit and charitable organizations or types of projects of such organizations that shall be supported by the nonprofit station. When the gaming operation has met the conditions set forth in Section 3(n), "phase two" may be implemented, providing for up to fifty (50) gaming stations plus, at the option of the Tribe, two (2) additional "nonprofit" gaming stations.

Section 3(g) is hereby deleted in its entirety and in substitution therefor is amended to read and state as follows:

(g) Wagering Limitations. Wager limits shall not exceed two hundred fifty dollars ($250). When the gaming operation has met the conditions set forth in Section 3(n), "phase two" may be implemented, providing for wager limits of up to five hundred dollars ($500).

Section 3(h) is hereby deleted in its entirety and in substitution therefor is amended to read and state as follows:

(h) Hours of Operation. Operating hours may not exceed one hundred twelve (112) hours per week on an annualized basis. When the gaming operation has met the conditions set forth in Section 3(n), "phase two" may be implemented, providing for operating hours of up to one hundred forty (140) hours per week on an annualized basis. Provided, however, the Class III gaming operation shall be open no more than twenty (20) hours in any twenty-four (24) hour period, and shall be closed to the public from 2:00 a.m. until 6:00 a.m. each day of operation. Provided further, the Tribe may conduct Class III gaming operations beyond 2:00 a.m. upon mutual written agreement by the State Gaming Agency, the Tribal Gaming Agency, and the Snohomish County Sheriff's Department. Provided further, upon thirty (30) days written notice to the State Gaming Agency and upon written mutual agreement between the State Gaming Agency and Tribal Gaming Agency, the Tribe may, but not more than three (3) times per calendar year, conduct continuous Class III operations for up to seventy two (72) hours. In the event the Tribe engages in lottery-type gaming activities and/or if the satellite wagering authorized by this Compact is for events occurring at hours other than the then-established operating hours for the Class III gaming facility, the satellite wagering and lottery-type gaming activities, subject to the other provisions and restrictions herein regarding hours of operation may be conducted independently of other Class III gaming activities.

Section 3(i) is hereby amended to read and state as follows:

(i) Ownership of Gaming Facility and Gaming Operation. The gaming operation, including the gaming facility, shall be owned, operated and managed by the Tribe~~.~~ ;provided however, the Tribe shall be entitled to contract for the management of the gaming facility and gaming operation. Any such management contract shall be subject to the terms of this Compact, including all certification and licensing requirements.

Section 3(m) is hereby amended to read and state as follows:

(m) Financing. ~~Any third party financing extended or guaranteed for the Class III operation and facility shall be either by an agency of the United States or a member institution of the FDIC or regulated by the Comptroller of the Currency.~~ Any person, firm, corporation or entity extending

financing, either directly or indirectly, to the gaming facility or gaming operation shall be subject to the annual licensing requirements of the Tribal Gaming Agency and shall be required to obtain State certification prior to completion of the financing agreement, and annually thereafter; provided however, the foregoing licensing and certification requirements shall not apply to any third party financing extended or guaranteed for the Class III operation and facility from either an agency of the United States or a member institution of the FDIC or an institution regulated by the Comptroller of the Currency.

Furthermore, there is hereby added by amendment to the Compact a new Section 3(n), Conditions, to wit:

(n) After any six months of operation of the Class III facility from the anniversary of its opening, the State and Tribal Gaming Agencies shall conduct a review of the Class III operation to determine general compact compliance and whether the conditions set forth below have been satisfied. If, as a result of the review, the State and Tribal Gaming Agencies determine that the operation is in compliance with these conditions, the Class III operation may implement "phase two." If the State Gaming Agency determines that the Class III operation has not satisfied the conditions, any resulting dispute will be resolved through the dispute resolution procedures set forth in Section 12(c) of this Compact. Any increase in the number of gaming stations, hours of operation, or wager limits beyond that initially authorized during "phase one" of Class III gaming operations shall be conditioned upon the following criteria:

1. There have been no violations of the provisions of the Compact that have resulted in sanctions imposed by the Federal District Court.

2. There have been no violations of the Compact which are substantial or, due to repetition, would be deemed material.

3. There have been no material adverse impacts on the public health, safety, or welfare of the surrounding communities in the nature of criminal activities directly related to the operations of the Class III gaming facility.

4. There have been no material violations of Appendix A of this Compact.

5. The Tribal Gaming Agency has developed a strong program of regulation and control demonstrating an adequate level of proficiency, which includes the hiring of trained Tribal Gaming Agents, an independent management and reporting structure separate from that of the gaming facility, a thorough and developed system for the reporting of Compact violations, and a strong and consistent presence within the Class III facility.

Section 14(c) is hereby deleted in its entirety and in substitution therefor is amended to read and state as follows:

(c) Community Contribution. A sum of money equal to two percent (2%) of the net win of the gaming stations, less and except the "non-profit" gaming station(s), shall be paid by the Tribe to Snohomish County and any other neighboring jurisdictions for law enforcement and related purposes as a contribution to defer the actual or potential impacts upon those jurisdictions resulting from the operation of the Class III gaming facility, and/or other purposes as the Tribe and a jurisdiction may agree. These funds shall be proportionately shared by the such impacted jurisdictions based upon evidence of such impacts as demonstrated by each jurisdiction. The contribution shall be made annually upon the anniversary of the opening of the initial Class III facility, in the manner and method first mutually agreed upon between the Tribe and the jurisdictions involved in writing.

Section 15(d)(ii)(aa) is hereby amended to read and state as follows:

(aa) ~~the laws of the State~~ State or Federal laws are amended, expanding gaming beyond that which is now allowed under the terms of this Compact;

Section 15(d)(ii)(cc) is hereby deleted in its entirety and in substitution therefor is amended to read and state as follows:

(cc) another tribe within the State of Washington obtains through a Compact approved by the Secretary of the Interior greater levels of wagering, hours of operation, size and/or scope of Class III gaming activities, than authorized by the provisions of this Compact; provided however, that if the other tribe is located East of the Cascade Mountains

then the Tribe must also demonstrate that the greater level or activities have resulted in an adverse economic activity upon the Tribe's Class III gaming operations.

Section 15(d)(iii)(aa) is hereby amended to read and state as follows:

(aa) ~~laws in the State~~ State or Federal laws are enacted allowing that gaming which is now prohibited; or

Section 15(d) is hereby amended by the addition of the following new section (vii) to read and state as follows:

(vii) Interim Restrictions on Renegotiation/Amendments. Compact subsections 3(c), (f), (g) and (h) will not otherwise be subject to renegotiation or amendment for thirty-six (36) months from the date of execution by the parties of this Amendment, unless one of the following occurs: (1) the laws of the State or Federal laws are amended, expanding gaming beyond that which is now allowed under the terms of this Compact; (2) a State or Federal court within the State of Washington or a Federal court interpreting the laws of the State of Washington issues a decision permitting participation in a gaming activity that was not authorized for any purpose by any person, organization, or entity at the time this Compact was executed or not authorized by this Compact; (3) another tribe West of the Cascade Mountains obtains, through a Compact approved by the Secretary of the Interior, greater levels of wagering, hours of operation, size and/or scope of Class III gaming activities, than authorized by the provisions of this Compact; or (4) another tribe East of the Cascade Mountains obtains, through a Compact approved by the Secretary of the Interior, greater levels of wagering, hours of operation, size and/or scope of Class III gaming activities, than authorized by the provisions of this Compact and the Tribe can demonstrate that such levels have resulted in an adverse economic impact on the Class III gaming operation; provided however, these interim restrictions on renegotiation/amendment shall not affect any ongoing renegotiation/amendments concerning gambling devices or renegotiation/amendments pursuant to any Tribal/State declaratory judgment lawsuit concerning the same or the settlement or mediation thereof. In the event of a dispute hereunder, this matter shall also be handled in accordance with the provisions of Compact Section 12(c) as other disputes arising under this Section 15 and other Sections elsewhere in this Compact.

Furthermore, there is hereby added by amendment to the Compact a new Appendix providing for the rules and regulation of satellite (off-track) wagering on horse races, to wit:

APPENDIX C (in the form attached hereto and incorporated herein as though set forth in full).

TULALIP TRIBES OF WASHINGTON

By _____ Dated: 20th day of December, 1994.
Stanley G. Jones, Sr.
Chairman

STATE OF WASHINGTON

By _____ Dated: 26th day of ~~December~~ January, 1994.
Mike Lowry
Governor

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DEPARTMENT OF THE INTERIOR

By: _____ Date: 3-17-95
ADA E. DEER
ASSISTANT SECRETARY - INDIAN AFFAIRS