



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 28 2016

The Honorable Jamie P. Stuck
Council Chairman, Nottawaseppi Huron
Band of the Potawatomi
1485 Mno-Bmadzewen Way
Fulton, Michigan 49052

Dear Chairman Stuck:

On October 14, 2016, the Department of the Interior received the Second Amendment to a Compact between the Nottawaseppi Huron Band of Potawatomi Indians (Tribe) and the State of Michigan (Amendment) providing for the conduct of Class III Gaming by the Tribe.

We have completed our review of the Amendment and conclude that it does not violate the Indian Gaming Regulatory Act (IGRA), any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians. *See* 25 U.S.C. § 2710(d)(8)(B). Therefore, pursuant to Section 11 of IGRA, I approve the Amendment. *See* 25 U.S.C. § 2710(d)(8)(A). This Amendment shall take effect when the notice of this approval is published in the ***Federal Register***. *See* 25 U.S.C. § 2710(d)(3)(B).

A similar letter is being sent to the Honorable Rick Snyder, Governor of Michigan.

Sincerely,

Lawrence S. Roberts
Principal Deputy Assistant Secretary -
Indian Affairs

Enclosure

**SECOND AMENDMENT TO
A COMPACT BETWEEN
THE NOTTAWASEPPI HURON BAND OF POTAWATOMI INDIANS
AND
THE STATE OF MICHIGAN
PROVIDING FOR THE CONDUCT OF TRIBAL CLASS III GAMING BY
THE NOTTAWASEPPI HURON BAND OF POTAWATOMI INDIANS**

The Compact originally made and entered on the 3rd day of December, 1998, and approved by the Secretary of the Interior by publication in the Federal Register on February 18, 1999 at 64 Fed. Reg. 8111, as first amended pursuant to an Amendment made and entered on 23rd day of July, 2009, which Amendment was approved by the Secretary of the Interior by publication in the Federal Register on October 8, 2009 at 74 Fed. Reg. 51875, is further amended in accordance with Section 16 of the Compact. All provisions of the Compact and first Amendment not explicitly altered or amended herein shall remain in full force and effect.

Section 17 is amended to read as follows:

Section 17. Economic Incentive Payments to State

(A) The State and the Tribe have determined that it is in their mutual best interests to maximize the economic benefits of Class III gaming for the Tribe and to work cooperatively toward that end. The Tribe has further determined that it is in the best interests of the Tribe to provide the State with an economic incentive intended to encourage the State to promote economic policies and activities that are beneficial to the Tribe's Class III gaming business and to discourage the State from authorizing adverse competition or other economic policies or activities that are harmful to the Tribe's Class III gaming business.

(B) In furtherance of the determinations described in subsection (A) of this section, and as consideration for other valuable concessions contained in this agreement, the Tribe agrees that it shall make an annual payment based on a percentage of the Net Win at its Class III gaming facility to the Michigan Strategic Fund, as established by the Michigan Strategic Fund Act, MCL 125.2005 et seq., or its successor as determined by State law. In order to assure that the Tribe is able to generate sufficient revenues to meet its initial obligations and operating expenses, the annual payment shall be phased in as follows:

(1) For the 2009 and 2010 fiscal periods, the Tribe shall make a payment equal to 4% of the Net Win

(2) For the 2011 fiscal period, the Tribe shall make a payment calculated on a sliding scale as follows: a) four percent (4%) of Annual Net Win of up to \$100 million; b) six percent (6%) of that portion of Annual Net Win that is over \$100 million.

(3) Commencing in 2012 and going forward for the remaining Term of the Compact the annual payment shall be calculated on a sliding scale as follows: a) four percent (4%) of Annual Net Win of up to \$75 million; b) six percent (6%) of that portion of Annual Net Win over \$75 million but less than \$150 million; c) eight percent (8%) of that portion of Annual Net Win that is over \$150 million.

(C) The annual payments described in section 17(8) are subject to the following additional adjustments:

(1) For the 2009, 2010, and 2011 fiscal periods, the Tribe shall make payment at the rate specified in subparagraph (B)(1) and (B)(2) above.

(2) For the 2012 fiscal period, prior to making the payment described in this section, the Tribe may adjust its payment as follows: Prior to making the payments, the Tribe may calculate the average annual Net Win for the preceding two fiscal periods. If the Net Win for the 2012 fiscal period is equal to or greater than the average annual Net Win for the preceding two fiscal periods, the Tribe shall make payment in full at the rate specified in section 17(8)(3) above. However, if the Net Win for the 2012 fiscal period is less than the average annual Net Win for the preceding two fiscal periods, the Tribe may calculate its payment, as follows:

The Tribe shall subtract the Net Win for the 2012 fiscal period from the average annual Net Win for the preceding two fiscal periods to determine the difference, shall calculate the ratio of that difference to the average annual Net Win for the preceding two fiscal periods to determine the percentage of reduction, and may reduce its payments for the 2012 fiscal period by twice that percentage.

By way of example, if the average annual Net Win for the 2010 and 2011 fiscal periods is \$200 million, and the Net Win for the 2012 full fiscal period falls to \$180 million, the difference would be \$20 million, the percentage difference would be 10%, and the Tribe may therefore reduce the payment otherwise due for the 2012 fiscal period by twice that rate or 20%.

(3) Beginning with the 2013 fiscal period, the Tribe may thereafter adjust its annual payments under section 17(8)(3) as follows: Prior to making the payment described in section 17(8)(3), the Tribe may calculate the average annual Net Win for the three fiscal periods immediately preceding the fiscal period for which payment is due (the "Payment Period"). If the Net Win for the Payment Period is equal to or greater than the average Net Win for the preceding three fiscal periods that preceded the Payment Period, the Tribe shall make payment in full at the rate specified in subparagraph (B)(ii) above. However, if the Net Win for the Payment Period is less than the average Net Win for the three fiscal periods that preceded it, the Tribe may calculate its payment, as follows:

The Tribe shall subtract the Net Win for the Payment Period from the average annual Net Win for the three fiscal periods that preceded the Payment Period to determine the difference, shall calculate the ratio of that difference to the average annual Net Win for the three fiscal periods that preceded the Payment Period to determine the percentage of reduction, and may reduce its payments otherwise due by twice that percentage.

By way of example, if the average annual Net Win for the preceding three years is \$200 million, and the Net Win for the preceding period falls to \$180 million, the difference would be \$20 million, the percentage difference would be 10%, and the Tribe may therefore reduce the payments otherwise due for that facility by twice that rate or 20%.

(4) If the State authorizes or consents to the opening of a new Commercial Gaming Facility within the Tribe's Competitive Market Area, or fails to take action to challenge or prohibit the opening of a new Commercial Gaming Facility in violation of state law within the Tribe's Competitive Market Area, the Tribe's payment obligation shall be modified as follows:

(a) If the Commercial Gaming Facility opens within the first four years after the Tribe commences operation of its Class III gaming facility, the Tribe's payment obligation is suspended for the fiscal period in which such new facility opened to the public and shall remain suspended indefinitely thereafter until the first fiscal period during which (i) the Tribe's class III gaming facility has been open for at least five years and (ii) the Tribe's Net Win equals or exceeds 110% of the Net Win for the fiscal period immediately preceding the period in which the payment was suspended at which time the Tribe's payment obligation is reinstated at the rate of 4% of Net Win and shall continue at that rate for the remaining term of the Compact.

(b) If the Commercial Gaming Facility opens four years or more after the Tribe commences operation of its Class III gaming facility, the Tribe's payment obligation is suspended for the fiscal period in which such new facility opened to the public and shall remain suspended indefinitely thereafter until the first fiscal period during which the Tribe's Net Win equals or exceeds 110% of the Net Win for the fiscal period immediately preceding the period in which the payment was suspended at which time the Tribe's payment obligation is reinstated at the rate of 4% of Net Win and shall continue at that rate for the remaining term of the Compact.

This subsection may be invoked by the Tribe only once during the term of this Compact but payments at the reduced 4% rate continue to be subject to the provisions of section 17(B)(1).

(5) Beginning with the payment made for the 2016 fiscal period and upon establishment by the Heritage Fund Board described in paragraph 5(c), *infra*, a portion of the annual payment under this section shall be deposited into the "Michigan Native American Heritage Fund," to be utilized for the purpose of providing grants for initiatives which promote positive relationships between public and private K-12 schools, colleges, universities, or local governments and Michigan's federally-recognized Indian tribes. If the Tribe's payment under this section becomes due and owing to the Michigan Strategic Fund prior to the establishment of the Heritage Fund Board, the amounts allocated under this sub-section shall be transferred to an interest-bearing account at a financial institution located within the State of Michigan that is subject to the laws of the State of Michigan and the federal government. The Michigan Native American Heritage Fund established under this sub-section shall be administered as follows:

(a) An initial allocation of \$500,000 from the annual payment under this section shall be made from the first payment that occurs after the effective date of this amendment. In all subsequent years during the term of this Compact, a portion of the annual payment equal to \$500,000 less than the balance of the Michigan Native American Heritage Fund at the time that the annual payment is remitted shall be allocated to the Michigan Native American Heritage Fund.

(b) Monies held in the Fund shall be available to fund grants to public and private K-12 schools, colleges and universities, and local governments within the State of Michigan for the purpose of defraying costs for initiatives that intend to promote positive relationships with and understanding of the role of Michigan's federally-recognized Indian tribes and Native Americans in the State of Michigan. Authorized projects may include, but shall not be limited to: (I) initiatives by eligible schools to replace or revise mascots and imagery which may be deemed offensive to Native Americans or which convey inaccurate representations of Native American culture or values, (II) new or improved curricula related to Michigan Indian history, and (III) initiatives which promote mutual respect and cooperation between local communities and Michigan's federally-recognized Indian tribes and Native American population. Monies held in the Fund may also be used to defray the administrative costs associated with operation of the Heritage Fund Board and the administration of the grant process.

(c) The Heritage Fund Board shall be created pursuant to an inter-local agreement under the provisions of the Urban Cooperation Act of 1967, MCL 124.501 et seq., entered into between the Tribe and the State of Michigan. The inter-local agreement shall provide that the Board shall be governed by five (5) members appointed as follows:

- i. Two (2) persons appointed by the Governor, serving at the pleasure of the Governor;
- ii. Two (2) persons appointed by the Tribal Council of the Nottawaseppi Huron Band of the Potawatomi; and

- iii. The Director of the Michigan Department of Civil Rights, or his or her designee.

The Heritage Fund Board shall manage any funds paid to the Michigan Native American Heritage Fund established under and consistent with this sub-section. Payments made to the Fund shall be held in an interest bearing account at a financial institution located within the State of Michigan that is subject to the laws of this state and the federal government. Guidelines or bylaws establishing criteria for the distribution of revenues deposited in the Fund and any actual disbursement of funds shall require a unanimous vote of the members of the Board. All other matters, including bylaws or procedures for the general functioning of the Board, and any other matters not specified in this Compact, shall be determined by a majority vote of the representatives comprising the Board. The Board shall be responsible for the establishment of timelines and procedures for soliciting applications from eligible entities, the awarding of grants, and other administrative procedures necessary and desirable to carry out the purpose of the Fund.

(6) Each annual payment under this section shall be based on a twelve month fiscal period beginning on January 1 and ending on December 31. Any payment due and owing for that fiscal period shall be made within 45 days of the end of that fiscal period.

(D) As used in this section and in section 18:

(1) "Net Win" means the total amount wagered on each electronic game of chance, minus the total amount paid to players for winning wagers at such machines. For purposes of determining "net win," the Tribe may exclude the value of promotional wagers provided that it also excludes the amounts paid out in prizes based on such promotional wagers. The formula prescribed here for computing "Net Win" applies only to the computation of the payments due under sections 17 and 18 of this compact and is not intended to preclude the Tribe from otherwise following accepted GAAP and AICPA Guidelines in its general accounting practices.

(2) "Commercial Gaming Facility" means a facility operated by any person or entity including the State that contains 85 or more electronic wagering devices that are electronic games of chance as defined in Section 3(A)(5) of this Compact or other similar electronic devices designed and intended to closely simulate an electronic game of chance, regardless of how a device is categorized under IGRA or whether the device operates independently or through any type of common server, including video lottery terminals, stand alone keno devices, and other similar devices. "Commercial Gaming Facility" shall also include multiple facilities that are adjoining or located in close walking distance to each other if they participate in a coordinated marketing arrangement that represents them collectively as a single gaming district or destination. "Commercial Gaming Facility" does not include:

(a) charitable gaming conducted under the provisions of the Traxler-McCauley-Law-Bowman Bingo Act, MCL 432.101 et seq, or

(b) a Class III gaming facility operated by a federally-recognized or acknowledged Indian Tribe (other than the Nottawaseppi Huron Band of Potawatomi Indians) unless:

(i) the facility is operated by such tribe pursuant to IGRA with the approval of the state under a compact or compact amendment with the State approved on or after the date of the compact amendment adding this provision; and

(ii) the compact or amendment permits that tribe to conduct gaming simultaneously in more than one location; and

(iii) the facility is such tribe's second or subsequent simultaneous location; and

(iv) the facility is located within the "Competitive Market Area" defined by subsection (3) below; and

(v) The Nottawaseppi Huron Band of Potawatomi Indians have not consented in writing to the opening of that tribe's second or subsequent site within its "Competitive Market."

(c) "Competitive Market Area" means the counties of Barry, Eaton, Ingham, Kalamazoo, Calhoun, Jackson, St. Joseph, Branch, Washtenaw, Kent, and Hillsdale.

Section 18 is amended to read as follows:

Section 18. Tribal Payments to Local Units of Government

(A) In addition to the payments to the State in Section 17, the Tribe shall also make payments in the manner described in this section in an amount equal to two percent (2%) of the annual Net Win to the local units of government that are located in the immediate vicinity of each tribal casino site or that are otherwise directly affected by the operation of the casino. It is the intent of the State and the Tribe that the payments to local units of government provided for in this section will be used primarily to provide financial resources to those political subdivisions of the State that actually provide services to the Tribe's Class III gaming facility or experience increased operating costs associated with the operation of the Tribe's Class III gaming facility. It is further the intent of the State and the Tribe that the payments to local governments specifically account for local governments that are affected by growth and development on and in the immediate vicinity of the Pine Creek Reservation that will result from the Tribe's operation of the casino.

(B) Local Revenue Sharing Board.

(1) The local units of government specified in Section 18(B)(2) may, at their option, form a Local Revenue Sharing Board in conjunction with the Tribe in the manner described in this subsection. In that event, the Board shall receive and direct the disbursement of the payments required by this Section.

(2) The Local Revenue Sharing Board shall be created pursuant to an inter-local agreement under the provisions of the Urban Cooperation Act of 1967, MCL 124.501 et seq., entered into between the Tribe and those local units of government that elect to participate. Each Inter-local Agreement shall provide that the Local Revenue Sharing Board shall be governed by a Board composed of the following individuals, provided that the specified unit of government has chosen to participate in the Agreement:

- (a) One (1) representative selected by the governing body of Calhoun County;
- (b) One (1) representative selected by the governing body of Emmett Township;
- (c) One (1) representative selected by the governing body of the city of Battle Creek;
- (d) One (1) representative selected by the governing body of the city of Marshall;
- (e) One (1) representative selected by the governing body of Athens Township;
- (f) One representative selected by the governing body of the Tribe.

(3) The Tribe agrees that it shall not unreasonably obstruct or impede the formation of a Local Revenue Sharing Board which is amicably formed by the non-Tribal local units of government.

(4) Guidelines or bylaws establishing criteria or formulas for the distribution of revenues, and any actual disbursement of funds shall require a unanimous vote of the representatives comprising the Board. All other matters including bylaws or procedures for the general functioning of the Board and any other matters not specified in this compact shall be determined by a majority vote of the representatives comprising the Board in accordance with the Urban Cooperation Act. The guidelines and formulas for distribution of revenues shall authorize the Board to commit to single or multi-year funding arrangements prior to such time as expenses may be incurred so that ~~permit~~ eligible units of government ~~to~~ may enter into agreements to fund services or capital improvements that qualify for reimbursement under paragraph (5) of this Section and/or amortize the cost of said services or capital improvements. The Board may enter into funding agreements with local units of government receiving allocations of funds for costs that have not been incurred to ensure that funds so allocated are used for their intended purpose and that any unused funds advanced are either returned to the Board or credited against future allocations for that local unit of government.

(5) Funds paid by the Tribe to the Local Revenue Sharing Board shall be held in an interest bearing account and the available funds shall be disbursed by the Board consistent with the following priorities:

(a) Each unit of government in the immediate vicinity of the Tribe's Class III gaming facility shall first receive an amount equal to any specific actual increased costs which have been or will be incurred by that unit of government as a result of the development or operation of the Tribe's Class III gaming facility, including payment for roads and water/sewer improvements, police, fire, and other public safety services.

(b) Of any amounts remaining a maximum of eighty percent (80%) shall be available for each unit of local government that would have received ad valorem taxes if the Tribe's Class III gaming facility and any Tribal lands located in Athens Township were subject to ad valorem property taxes. Any such unit of government shall receive from these funds the proportionate equivalent to the amount of ad valorem property taxes that the unit of government would have received had these lands been subject to ad valorem property taxes.

(c) The balance of such funds remaining after the disbursements described in subparagraphs (a), (b), and (c) shall be allocated and disbursed by the Board to eligible local units of government (including, if determined by the Board, the Intermediate School district and the school district in which the Class III gaming facility is located), to be used by those units of government for any lawful local government purpose.

(6) For purposes of determining the payments under subparagraph (c) above:

(a) The taxable value of the land, including any structures or other appurtenant improvements, shall be determined in the same manner and by the same standards used for determining the taxable value of ordinary real estate under Michigan law; if the Local Revenue Sharing Board is unable to reach a unanimous decision as to the appropriate valuation of the land, this determination shall be made by an independent auditor, who shall be retained and paid by the Local Revenue Sharing Board.

(b) The term "local unit of government" means a political subdivision of the state of Michigan and includes a school district, community college district, intermediate school district, city, village, township, county, or any similar governmental entity created under state authority that has as its primary purpose the providing of local governmental services for residents in a geographically limited area of this state; the term local unit of government does not include a private non-profit organization.

(7) For purposes of these payments, all calculations of amounts due shall be based upon a fiscal year beginning January 1 and ending December 31 of the following

calendar year, unless the parties agree on a different fiscal year, and all payments due the local units of government pursuant to the terms of this Section shall be paid no later than sixty (45) days after the end of the fiscal year. Any payments due and owing from the Tribe in the year this Compact is approved, or the final year the Compact is in force, shall reflect the actual Net Win but only for the portion of the year the Compact is in effect.

(C) So long as at least two or more eligible local units of government have executed an interlocal agreement establishing a Local Revenue Sharing Board, the Tribe shall make timely payments to the Board as provided in this Compact. In the event that the eligible local units of government fail or decline to form a Local Revenue Sharing Board pursuant to subsection (B), the Tribe shall allocate and disburse the funds required by this section consistent with the priorities described in subsection (B)(5) until such time as the eligible local units of government act to establish a Local Revenue Sharing Board.

IN WITNESS WHEREOF, the Tribal Chairperson acting for the Nottawaseppi Huron Band of Potawatomi Indians and the Governor acting for the State of Michigan have signified their approval by their respective signatures.

By: _____

Jamie Stuck,

Tribal Council Chairperson

By: _____

Rick Snyder, Governor

Dated: _____

August 18, 2016

Dated: _____

August 24, 2016

Resolution # _____

08-16-12

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True Certified Copy Shall Be Embossed

Signed by _____

Date _____