

NEW BUSINESS

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DRAFT

July 12, 2010

The Honorable Larry Echohawk
Assistant Secretary for Indian Affairs
UNITED STATES DEPARTMENT OF THE INTERIOR
1849 C Street, N.W.
Washington D.C. 20240

Ms. Paula L. Hart
Director
Indian Affairs Office of Indian Gaming
UNITED STATES DEPARTMENT OF THE INTERIOR
1849 C Street, N.W.
Washington D.C. 20240

Re: *Fee-to-Trust Application for Land for Gaming Project in Town of Middleborough of Mashpee Wampanoag Tribe – Concerns About Recent Tribal Activity.*

Dear Assistant Secretary Echohawk and Director Hart:

As you will recall, the Town of Middleborough negotiated a comprehensive Intergovernmental Agreement ("IGA") with the Mashpee Wampanoag Tribe shortly after the Tribe secured its federal acknowledgement from Interior's Office of Federal Acknowledgement three years ago. The IGA was approved on July 28, 2007, by what is believed to be the largest New England town meeting in history. That comprehensive agreement concerned the delivery of municipal services for a casino project on land within the Town.

On July 30, 2007, tribal representatives personally delivered to the Eastern Regional Office for the Bureau of Indian Affairs ("BIA") an application for fee-to-trust (gaming) acceptance of the project site, a 539 acre land parcel in Middleborough, as well as non-gaming trust land in the Town of Mashpee. Since that time and consistent with the provisions of the IGA, the Town has been a very supportive partner of the Tribe in this effort. While the Town has met both the spirit and provisions of the IGA, it now appears that the Tribe intends to unilaterally abrogate that binding agreement. Indeed, the Tribe recently announced that it has entered into an agreement for a competing casino project with the City of Fall River, Massachusetts.

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Curiously, Tribal Chairman Cedric Cromwell has stated that the Tribe will apply to have the Fall River casino site taken into trust for gaming by amending the existing trust application to add the Fall River parcel to the Middleborough application, rather than submitting an independent application. The inescapable conclusion is there is an intention to use the IGA and good will generated within the Department of the Interior by the Tribe's relationship with Middleborough to bolster the Fall River add-on amendment. The "piggy back" approach appears designed to create an illusion that the two parcels are identical as a matter of legal qualification for gaming, when in fact they are not. The Tribe has an application for an "initial reservation" in Middleborough and Mashpee with gaming to be approved for the Middleborough parcel; any subsequent "initial reservation" application is contrary to IGRA. It is nothing short of legal chicanery for the Tribe to now attempt to expand its "initial reservation" request to include land for a casino in Fall River which would directly compete with an already-contracted project in Middleborough.

Simply stated, the Town of Middleborough is inalterably opposed to the addition of the Fall River land to the existing trust application for the Middleborough project.

Middleborough has carefully and without digression fully complied with the terms and conditions of the IGA. The Town has officially supported the Tribe's July 2007 trust application, and for three years has conducted all municipal planning of its infrastructure to insure compatibility with, and accommodation of, the proposed Mashpee Wampanoag Resort/Casino facility. With the Town's assistance, that proposed tribal project has gone through the NEPA scoping process and a Draft Environmental Impact Statement has been prepared for a project in Middleborough, and the information developed and submitted to the Department is site specific in all regards. The Town worked hand-in-hand with the Tribe and its consultants on all of these matters, and the tribal progress to date would not have been achieved without our participation. Similarly, the Town has embarked on a number of extensive planning studies to insure that Middleborough would be in a position to accept the massive tribal development.

To this end, we understand that the BIA has advised the Tribe on a number of occasions that it should continue to process the fee-to-trust application for the Middleborough site and secure approval for gaming as "initial reservation land" pursuant to the specific provision therefor at 25 U.S.C. § 2719(b)(1)(B)(ii). We believe that the site's eligibility for initial reservation status is clear and demonstrated.

The Town of Middleborough continues to support that trust application, the Tribe's development and operation of Indian Gaming in Middleborough and the validity of the IGA. However, the current actions by the Mashpee Wampanoag to abrogate the valid, lawful and binding IGA, in favor of entering into a second competing agreement call into question the Tribe's capacity to honor binding contracts as a sovereign governmental entity. Of concern is how this Tribe, which has informed the Town that it does not intend to honor the IGA and all plans to pursue the casino development provided for in that agreement, can meet the

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requirements of responsibility for developing and operating a casino elsewhere. In any event, the Department should not encourage such conduct by allowing the Tribe to "amend" the Middleborough trust application to include Fall River property.

It is now public information that the Town will invoke the dispute resolution process established by the IGA. While this development is an unfortunate occurrence, it is dictated by the arbitrary, capricious and shocking actions of the Mashpee Wampanoag Tribe to abrogate the mutually-negotiated IGA. The current tribal activity is a development of which the BIA should be aware when dealing with the Mashpee Wampanoag on any land acquisition or economic development project. If the Tribe does not honor its legal obligations under valid contracts, then one must ask whether it should be allowed to operate a casino.

Respectfully yours,

TOWN OF MIDDLEBOROUGH
BOARD OF SELECTMEN

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cc: The Honorable Tracie Stevens
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