

JAY INSLEE  
Governor



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

June 8, 2016

The Honorable Sally Jewell, Secretary  
US Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Dear Secretary Jewell:

On June 15, 2015, your office issued a two-part determination, pursuant to the Indian Gaming Regulatory Act (IGRA), 25 USC § 2719(b)(1)(A), concluding that the Spokane Tribe of Indians' proposed gaming facility (STEP) on tribal trust lands in Airway Heights, Washington, would be in the best interest of the Tribe and would not be detrimental to the surrounding community.

As is statutorily required, my office has completed an extensive review of this decision, conferring with multiple tribal governments, state and local authorities from Spokane County, Airway Heights, and the city of Spokane, federal officials including U.S. Air Force leadership, and numerous interested stakeholders. I have steadfastly adhered to the requirement in the 2007 Tribal-State Compact for Class III Gaming (Compact) between the Spokane Tribe and Washington State that I deliberate and act in good faith while analyzing a concurrence decision pursuant to 25 USC § 2719(b)(1)(A). I have also endeavored to thoughtfully and fully consider the perspectives raised by the interested parties and members of the community.

Following this review I have concluded that a concurrence with your Secretarial Determination is appropriate. My concurrence as Governor of the state of Washington is required under IGRA before gaming at the proposed STEP facility can proceed, and this letter therefore constitutes that concurrence.

In conducting my concurrence analysis under IGRA, I focused on a number of critical priorities:

- respecting the sovereignty and economic development of tribal governments;
- protecting the vitality of the State's military installations;
- supporting the priorities of local governments and communities; and
- guarding against the unnecessary expansion of all forms of gaming across Washington State.

First, my analysis convinced me that the proposed STEP facility is consistent with the sovereign economic interests of Washington's tribal nations, not simply the Spokane Tribe. Washington is fortunate to have 29 federally recognized tribal nations and each one benefits when the State and



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local communities support their self-sufficiency. In this instance, in 2001 the federal government took land into trust for economic development purposes for the Spokane Tribe, which in 2006 submitted a request to your agency to pursue gaming on the property. For the past 10 years the Tribe has dutifully developed its proposal, with the ultimate goal of improving the economic opportunities of the Tribe to better support its people. By concurring with the Department of Interior's decision to allow the development of the unique STEP facility, I am supporting these objectives.

I recognize that the STEP casino will create substantial economic competition with the Kalispel Tribe's Northern Quest Resort & Casino, also located in Airway Heights, Washington. I do not believe, however, that this potential competition alone should permanently bar the Spokane from developing on trust land within the Spokane Tribe's federally recognized historical and aboriginal area. Neither the statutory requirements of IGRA, federal case law precedent, nor prior two-part determinations suggest that commercial competition to other gaming facilities constitutes detriment. Indeed, as Interior noted in 2015, the Secretarial Determination approving the Kalispel's casino in 1997 highlighted that "intense competition" to the Spokane Tribe's existing facilities "can be expected." Such is the case here, and the same standard that was applied in approving the Kalispel's Northern Quest facility must be applied while analyzing the Spokane's STEP facility.

Second, it is vitally important that all significant state decisions protect the strength and integrity of Washington State's military installations. As you are aware, the proposed STEP facility is located in close proximity to the Fairchild Air Force Base, a critical resource to Spokane County, Washington State, and the country as a whole. While some have raised concerns about the impact of a gaming facility being developed near the base, the Department's determination concluded that STEP:

"[W]ould not encroach upon Fairchild's AFB's available air space or impede its ability to implement the operational and training mission of the AFB. With the implementation of mitigation, [STEP] would not create an air navigation hazard or otherwise impede AFB operations. Further, the Tribe has agreed to accept any inconveniences associated with AFB operations during operation of the project."

This concern was of critical importance to me and I conducted additional research and analysis on STEP's potential impact to the base. Earlier this year I met with senior leadership of the Air Force, including Chief of Staff of the U.S. Air Force Gen. Mark Welsh and Assistant Secretary of the Air Force Miranda Ballentine. Based on these meetings and our correspondence, the record establishes that STEP will not interfere with Fairchild's current operations, or negatively impact future Air Force citing decisions. To give more assurance that STEP will not be detrimental to this critical installation, the Tribe has committed to specific mitigation measures.

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Importantly, the Spokane Tribe is bound to those mitigation measures, and has further demonstrated a commitment towards working collaboratively with the U.S. Air Force. As noted, in 2007 the State and Spokane Tribe executed a Class III Gaming Compact that anticipated that the Tribe could seek to establish a gaming facility where the proposed STEP project is located. That Compact will govern the size, extent, and operation of gaming activities at the STEP facility. Section XIV of the Compact requires gaming operations in all of the Tribe's gaming facilities to comply with the Spokane Tribe's Laws regarding public health and safety. In Revised Spokane Law and Order Code chapter 48, the Tribe enacted a law for the express purpose of protecting health and safety at the STEP property. Chapter 48 incorporates mitigation measures recommended by the United States Air Force to protect the integrity of operations at Fairchild Air Force Base. As a tribal law regarding public health and safety, it is enforceable through Section XIV of the Compact. I have therefore concluded that STEP will not be detrimental to Fairchild or the surrounding community.

Next, I do not believe that the proposed STEP facility causes detriment to the local communities. Substantial evidence demonstrates that the STEP project will generate significant economic benefit in the region, create thousands of jobs during construction and operation and generate millions of dollars in wages and state and local taxes. The city of Airway Heights, the immediate local jurisdiction, is an enthusiastic supporter of the project because this type of large economic development opportunity is unique.

I appreciate the concerns raised by some in the community expressing opposition to the project. My office has spent substantial time conferring with some of these representatives and considering their perspective. Some believe that if *any* local government expresses opposition to an off-reservation casino, the Governor should not approve it. Such a requirement, however, is not the legal standard IGRA requires, and I have a duty to independently determine whether a concurrence with the Interior decision is appropriate. Moreover, the vast majority of the STEP opposition raised focuses on the potential impact on Fairchild AFB. While that has certainly been a legitimate concern, as noted above I do not believe STEP will interfere with Fairchild's mission or operational effectiveness.

Lastly, I have fully considered the impact this decision will have on how tribal gaming evolves across the state. While the precedent established here is not binding on future governors, it does evince a certain policy perspective. In that regard, I firmly believe that growth in gaming should be slow and limited. The State does not benefit from a rapid proliferation of gaming facilities and therefore every new facility should be carefully scrutinized.

The decision to concur with the unique facts and circumstances of the STEP project is consistent with that perspective. There has only been one previous gubernatorial concurrence in Washington State for an off-reservation casino, when Governor Gary Locke approved what would become the Kalispel's Northern Quest Resort & Casino in 1998. Nearly 20 years later, I

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am approving the second. This lengthy period of time alone suggests that off-reservation expansion is rare and only occurs in unique, specific circumstances. The record demonstrates a similar pattern nationally, where the Secretary of the Interior has approved a limited number of two-part IGRA determinations, with only a handful ultimately receiving a gubernatorial concurrence.

More importantly, there are unique factors present here that substantially limit the likelihood of future off-reservation facilities. As noted in the Secretarial Determination in this case, Interior determined that the proposed site for the STEP facility in Airway Heights

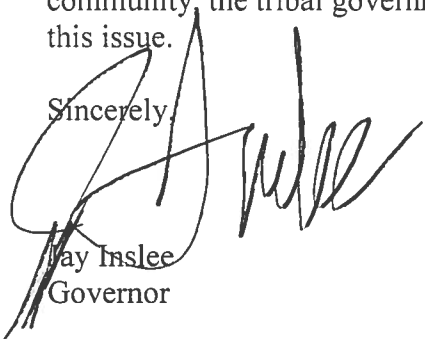
“[I]s within the aboriginal area of the Spokane Tribe, and that Airway Heights is not within the aboriginal lands of the Kalispel Tribe. We note that it would be deeply ironic to allow the Kalispel Tribe to develop a casino within the Spokane Tribe’s aboriginal area, while denying the Spokane Tribe the opportunity to use its own aboriginal lands for the same purpose.”

This is an important limiting principal moving forward, and a set of facts that is highly unlikely to be seen again.

Moreover, in evaluating the Spokane Tribe’s evidence of significant historical connection to the land, Interior relied on a federally recognized legal precedent, adjudication by the Indian Claims Commission (ICC). Interior noted that expert testimony during the ICC proceedings “established the Spokane Tribe’s exclusive use of the territory” that encompasses the STEP property. Requiring that a tribe have a federally recognized and established primary connection to a territory before considering a future off-reservation casino facility would severely restrict the expansion of gaming in the future. This requirement could be satisfied in different manners, through an ICC adjudication as in this instance, or in the tribe’s recognized original or historical reservation. Applying such limiting factors in the future appears prudent and as Governor, I certainly would adhere to such a standard.

I want to thank the Department for its thoroughness and the U.S. Air Force for its assistance. The community, the tribal governments and others have served the public well with their debate on this issue.

Sincerely,

  
Jay Inslee  
Governor