THE DEPARTMENT OF THE INTERIOR'S DENIAL OF THE WISCONSIN CHIPPEWA'S CASINO APPLICATIONS VOLUME 2

DEPOSITIONS

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

JANUARY 21, 22, 28, AND 29, 1998

Serial No. 105–92

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U.S. GOVERNMENT PRINTING OFFICE

48–493 CC WASHINGTON : 1998

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-057004-2

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THE DEPARTMENT OF THE INTERIOR'S DENIAL OF THE WISCONSIN CHIPPEWA'S CASINO APPLICATIONS

[The depositions of Michael Anderson, Loretta Avent, Michael Chapman, Thomas Corcoran, Ada Deer, Franklin Ducheneaux, John J. Duffy, Thomas Hartman, Ann Louise Jablonski, and Robin Jaeger follow:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: MICHAEL JOHN ANDERSON

WEDNESDAY, JANUARY 14, 1998

The deposition in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 1:45 p.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Robert J. Dold, Jr., Investigative Counsel; James C. Wilson, Senior Investigative Counsel; Kenneth Ballen, Minority Chief Investigative Counsel; and Michael J. Yeager, Minority Counsel.

For MR. ANDERSON:

TIMOTHY S. ELLIOTT, ESQ.
Deputy Associate Solicitor-General Law
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Mr. DOLD. Good afternoon, Mr. Anderson. On behalf of the members of the Committee on Government Reform and Oversight, I appreciate and thank you for appearing here today.

This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter and a notary public, and I will now request that the reporter place you under oath.

THEREUPON, MICHAEL ANDERSON, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. DOLD. I would like to note for the record those who are present at the beginning of this proceeding. I am Bob Dold, the designated Majority counsel, accompanied today by Jim Wilson, who is also with the Majority. Mr. Ken Ballen is the designated Minority counsel, and he is accompanied today by Michael Yeager. Mr. Anderson is accompanied today by Tim Elliott.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a court. If I ask you about conversations you have had in the past and you are unable to recall the exact words used in the conversation, you may state that you are unable to recall the exact words and then you may give me the gist or substance of any such con-

versation to the best of your recollection. If you recall only part of a conversation or only part of an event, please give me your best recollection of those—of those parts of the conversations or events that you do recall.

Majority and Minority committee counsels will be asking you questions regarding the subject matter of the investigation. Minority counsel will ask questions after the Majority counsel is finished. After Minority counsel has completed questioning of you, a new round of questioning may begin.

Members of Congress who wish to attend today's proceeding, if any do attend, and I do not know of any presently, but if they should attend, they will be afforded an immediate opportunity to ask questions, and when they have finished asking questions, we will pick up where we left off.

Pursuant to the committee's rules, you are allowed to have an attorney present to advise you of your rights. Any objections raised during the course of the deposition shall be stated for the record. If the witness is instructed not to answer a question, or otherwise refuses to answer a question, Majority and Minority counsel will confer to determine whether the objection is proper.

This deposition is considered as taken in executive session of the committee, which means that it may not be made public without the consent of the committee pursuant to clause 2(k)(7) of House Rule XI. You are asked to abide by the rules of the House and not discuss with anyone, other than your attorney, this deposition and the issues and questions raised during this proceeding.

Finally, no later than 5 days after your testimony is transcribed and you have been notified that your transcript is available, you may submit suggested changes to the Chairman, and as we discussed before we went on the record, the transcript should be available fairly quickly. It has been as quick as a day or two, and as Mr. Elliott noted before, it's sometimes been more than a week. We will certainly try to make sure that this is available in the next day or two.

Committee staff may make any typographical or technical changes requested by you. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by you must be accompanied by a letter requesting the changes and a statement of your reasons for each proposed change. A letter requesting substantive changes must be signed by you. Any substantive changes shall be included as an appendix to the transcript conditioned upon your signing of the transcript.

Mr. Anderson, do you understand everything we have gone over so far?

The WITNESS. Yes, I do.

Mr. DOLD. Do you have any questions about anything before we go on?

The WITNESS. I will wait until Mr. Elliott has spoken.

Mr. DOLD. Let me just do a couple of the ground rules first and then that will be an appropriate time to go forward.

Mr. Anderson, if you do not understand a question, please say so, and I will repeat the question or rephrase it so that you understand it. Do you understand that you should tell me if you do not understand my question?

The WITNESS. Yes, I do.

Mr. DOLD. The reporter will be taking down everything you say and will be making a written record of the deposition. You must give verbal, audible answers, because the reporter cannot record what a nod of the head or a gesture means. Do you understand?

The WITNESS. Yes, I do.

Mr. DOLD. If you can't hear me, please say so and I will repeat the question or have the court reporter read the question to you.

Your testimony is being taken under oath as if you were in a court of law, and if you answer the question it will be assumed that you understood the question and the answer was intended to be responsive to it. Do you understand that?

The WITNESS. Yes, I do.

Mr. DOLD. I understand that you are here voluntarily today, and I thank you very much for that. If you have any questions about the deposition before we begin any of the substantive portions of the proceeding——

The WITNESS. I do as to scope, but maybe I will have Mr. Elliott discuss that first. I just would inquire to counsel as to the scope of the deposition and the areas that—whether there are new areas or old areas. That's the basic question.

Mr. DOLD. Do you want me to address that now?

Mr. ELLIOTT. You can address it now or I can make my statement.

Mr. DOLD. Why don't you make your statement.

Mr. ELLIOTT. Mr. Dold and Mr. Wilson, Mr. Skibine was deposed here for the better part of 7 hours yesterday. This was hours longer than Mr. Wilson predicted at the beginning of the deposition. The primary burden of the time that was spent here fell on Mr. Skibine and not the rest of us. Other depositions and redepositions have

also taken an inordinately long amount of time. All of the deponents who are or were employees of the Department of the Interior, so far as I am aware, have attended voluntarily.

In my view, the responsibility for the unreasonable burden imposed on these people lies with the Majority counsel. Despite representations by the Chairman and Mr. Wilson to me that redepositions were not to cover the ground covered in prior depositions, Mr. Wilson went over the same ground with both Ms. Deer and Mr. Skibine. Despite representations by Mr. Wilson and Mr. Dold that the litigation brought against the United States was not of interest to the committee, you have repeatedly delved into that litigation, the issues and documents central to it.

The resolution of the committee indicates that the committee is looking into campaign fund-raising and potential violations of law. The questioning of the deponents has been less an attempt to get at the facts of the Hudson Dog Track application. It looks to me more like what used to be called a star-chamber proceeding: an attempt to get to a predetermined view or answer, regardless of the facts and regardless of the testimony of the witnesses in answer to the questions asked.

As you know, Mr. Anderson is also here voluntarily. He has other work to do for the United States of America. The Senate deposition took slightly less than 2 hours. Mr. Anderson and I will be leaving here at 5 p.m. to go back to our offices to do our regular work. We would like to take regular breaks during this deposition for the next 3 hours and some 5 minutes. I think if you attempt to discuss the facts and not speculation or opinions of the attitudes or opinions of others, we will get the facts out within the time allotted. If you stay out of the litigation, if you stay away from ground that has already been covered, if you stay away from opinions and facts of others, we can proceed with this deposition and get it done in a timely fashion instead of spending the inordinate amounts of time we have spent with the other deponents.

I resent the intrusion that you have taken on the times of these individuals to get to what appears to be a predetermined view. I think it is unfair to them, I think it is unfair to the committee, and I think it is unfair to the United States taxpayers. That's my statement.

Mr. DOLD. Mr. Ballen?

Mr. BALLEN. Well, I think that Mr. Elliott made some very cogent points in his statement, and it does seem the Majority has predetermined an outcome that it wishes to get to in this case, rather than examining the facts as they actually occurred.

As to the mandate of this committee, it is to look into campaign finance violations and improprieties and possible violations of law, not to reexamine the entire Department of Interior. Unless the scope for the depositions have changed since the resolution, that is Minority's understanding of why depositions are being conducted in this investigation.

Mr. DOLD. Mr. Anderson, I would like to, on behalf of the Majority, thank you for coming, and I do sincerely hope that we will be done by 5 o'clock. It is going to be my every effort to make sure that that is done so that you can get back to the office at that time.

By all means, I do not—and I hope it is not your understanding at the end of this deposition that I was anything but fair in my questioning of you. Unfortunately, due to the fact that we have received, to say it mildly, boxes of documents, new material from the Department of Interior since you were deposed last, we felt it was necessary to bring you back to ask you some questions.

In saying that, asking questions in a vacuum is very difficult to do, and I understand that there will be some questions that will probably be covering some of the stuff that you already testified to in the Senate, and it is my intention to minimize that greatly as much as possible.

But as far as the scope of the matters concerned, it is dealing with the Hudson Dog Track proposal. The Hudson Dog Track I will use throughout the deposition as a shorthand for the fee to trust application taken by the three tribes in Wisconsin to take land into trust in Hudson, Wisconsin.

The WITNESS. Okay. Well, I expressed—or I appreciate the commitment on fairness. I may want to consult with Mr. Elliott regularly as to the scope of the questions, but I certainly appreciate that commitment made.

Mr. DOLD. As you have entirely the right to do.

Before we begin the actual beginning of the questions, is it your understanding that Mr. Elliott is here representing you in a personal capacity?

The WITNESS. He is representing me in my official capacity as officially with the Department of the Interior. He is also representing the interests of the Department of the Interior, is my understanding.

EXAMINATION BY MR. DOLD:

Question. Mr. Anderson, will you please just state your name for the record for us?

Answer. Michael John Anderson.

Question. And can you give—did you attend college?

Answer. Yes, I did.

Question. And where did you attend college?

Answer. The University of Oklahoma.

Question. Did you obtain any graduate degrees after the University of Oklahoma?

Answer. Yes. Juris doctorate from Georgetown University Law Center.

Question. Can you give me a brief, when I say brief, I want to emphasize brief again, employment history from college forward?

Answer. Do you want to include summer jobs in college?

Question. No. I am trying to get an idea of what positions you held.

Answer. Let me start first job after law school.

Question. Okay.

Answer. I was employed from 1984 to 1985 with the law firm of Cralking, Kramer, Grimshaw and Harring in Denver, Colorado, from 1984 to 1985. From 1985 to 1987, I was employed with the law firm called Reed, Smith, Shaw and McClay, here in Washington, D.C. From 1987 to 1992, I was employed by the law firm, McKenna and Cuneo. Within that time frame I had a one year leave of absence in 1990, first as associate counsel and then later general counsel, at the Special Committee on Investigations for the Senate Indian Affairs Committee.

From 1992 to 1993, I served as executive director of the National Congress of American Indians. In May of 1993, I began employment with the Department of Interior as a consultant to the solicitor from May to August 1993, and then in August of '93 as the associate solicitor for Indian Affairs, from August 1993 through April 1995. Since April 1995, I have been employed as a Deputy Assistant Secretary for Indian Affairs in the Department of the Interior.

Question. How long has that been, I'm sorry, for that?

Answer. April of 1995.

Question. If I may just go back and ask a follow-up on the National Congress of American Indians, you say you were the executive director of that organization from 1992 to 1993?

Answer. That is correct.

Question. Who would you work for? Who was your boss when you were the executive director?

Answer. I reported to a board of directors. The President was Gaiashkibos, the chairman of the Lac Courte Orielles tribe, and there was a board of directors of 11 other directors, and the primary reporting was to the 4 executive officers of the organization, the president, vice president, secretary, and treasurer.

Question. Mr. Anderson, have you discussed this deposition with anyone, besides your counsel?

Answer. I discussed timing of the deposition with Mr. Ballen and I believe Mr. Yeager, and also I discussed, as Ms. Manuel came back to the office, I think it was Monday or Tuesday, how long it took. Mr. Skibine came back to the office today and I asked him not to discuss his deposition with me.

Question. Have you discussed the substance of any other depositions that this committee has taken with anyone?

Answer. No.

Question. Have you given documents regarding the Hudson Dog Track to the Department of Justice?

Answer. I submitted an affidavit in the Wisconsin litigation to the solicitor's office, who, in turn, I believe provided it to the Department of Justice in Madison, Wisconsin.

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. Yes. I have spoken to the Assistant U.S. Attorney, David Jones, about the matter.

Question. Did you speak with anyone from the campaign finance task force?

Answer. No.

Question. Apart from this deposition, and arranging for the logistics of this deposition, have you spoken with any congressional personnel on matters regarding the Hudson Dog Track?

Answer. No.

Question. And when I say that I'm also speaking about prior to the decision?

Answer. Right.

Question. Do you have any documents pertaining to the Hudson Dog Track in your personal possession?

Answer. I have press clippings from the matter. I believe that's the extent of my documents.

Question. Mr. Anderson, perhaps you can give me a better understanding of the sections that the Department of Interior looks at when they are going to take land into trust. I know in my previous depositions we have talked about section 465; we have talked about 151 determinations; we have also talked about section 20 of IGRA. Can you give me kind of a run-down, very quickly, very brief, of when it would be appropriate to make a 465, when it would be time for a section 20, and when would be a 151?

Answer. Section 465 is the Secretary's general authority to take land into trust, and for nongaming purposes, that would be the basic mechanism we use for acquisitions.

Section 20 only applies to gaming acquisitions, and it requires—it only applies to acquisitions off the reservation. So if it is not contiguous to the reservation, then section 20 requires a two-part determination from the Department initially on detriment to the local community, surrounding communities, and also whether it is in the best interests of the tribe, and then more process on concurrence from the Governor. Sometimes, if the land is already into trust, then obviously there is no 465 application. The section 20 determination will come into play.

In cases where there's neither land into trust and there is no gaming going on, then there has to be—both parts of the statute would apply then.

Question. Both 465 and section 20?

Answer. Right.

Question. Is there an order, a specific order that goes through, or can you apply either?

Answer. There's not a specific order. One could make a finding independently on either ground that one did not want to take land into trust either for 465, because it didn't meet the standards of 465, but particularly if there's environmental problems, or if there's detriment to the community, and back to 465, that really goes to tax impacts to the community; 465 deals more specifically with the support or nonsupport for the community, what kind of effects it might have on jurisdictional land use conflicts, that kind of analysis.

Question. So 465 is more general?

Answer. Yes.

Question. Could the Secretary take land into trust for gaming purposes and not implement a section 20, or not use a section 20 analysis?

Mr. BALLEN. Are you talking about off reservation?

Mr. DOLD. Off reservation. Because I think you testified earlier that the only time you would use section 20 is for off reservation; is that right?

The WITNESS. No. You would have to go through section 20 in order to do off-reservation gaming. If you wanted to do gaming, yes, you would have to go through section 20.

EXAMINATION BY MR. DOLD:

Question. So 465, if the Secretary wanted to take land into trust off reservation, if the tribe wanted to do gaming on it, the Department of Interior would have to use a section 20?

Answer. That's right.

Mr. BALLEN. Does the converse hold true, that if you make a determination under 465 not to take the land into trust, you have to look at section 20 as well?

The WITNESS. No. They are an independent analysis. You can reject on either basis.

EXAMINATION BY MR. DOLD:

Question. Do you know if there has ever been a section 465 analysis used to deny an application to take land into trust for off-reservation gaming purposes, if that's ever been done before, exclusively 465?

Answer. I don't know the answer. Could you restate that? I'm not sure if I understood the question.

Mr. DOLD. Can you read it back? I'm not sure I can even recall.

The WITNESS. Are you saying in the history of the Department have we rejected an off-reservation gaming activity?

Mr. DOLD. I remember.

EXAMINATION BY MR. DOLL:

Question. It was based solely on 465? And let me say I don't know of one, I'm just asking if you do.

Answer. Well, frequently, tribes make applications for acquisition at the area office. It's certainly conceivable that the area return packages or decline to recommend to our office, and that's where I would become aware of it, that the application didn't make—wasn't acceptable for environmental problems or an environmental assessment wasn't done. So it's certainly, you know, conceivable that some were rejected for that reason.

Question. Fair enough. Would it be fair to say that you don't know of any that came to the central office, that you just don't know offhand?

Answer. I would have to review my records. There may have been. I just don't recall at the moment whether there were any.

Question. Do you know of anyone ever articulating any problems with the standards set in section 20 of IGRA during your tenure at the Department of the Interior?

Answer. There's certainly discussion of the interpretation of it, of the terms, best interest of the tribe, what did that mean, what did the term detriment mean. And so along the course of my tenure there, there has been discussion of what the meaning—of what Congress meant by those terms.

Question. Were they ever resolved, or were you ever given any directive as to what they meant?

Answer. Well, the gaming office had a checklist of review of the 151 applications. On section 20, typically, if there was a rejection based on section 20, there would be a letter sent by the Department that laid out the rationale for why there was a rejection. There may have been in those documents some expression that could have illuminated the terms "best interest" or "detriment."

Question. So did you—what was your—let me step back.

Did you have an understanding or an idea of what "best interest" meant?

Answer. In the abstract, no. Where I apply the terms "detriment" or "best interest," were usually to a particular fact situation. It was difficult to say that there would be a standard that would say something was always in the best interest or that there would be a one-size-fits-all standard that was a detriment. So generally, the illumination of the term came through specific fact situations. And so I would answer that yes, I did in a specific fact context. Generally, I couldn't articulate a one-size-fits-all definition.

Question. Were there general guidelines articulated from the Secretary's office or from the Assistant Secretary's office on what things we should look for in best interest or detrimental?

Answer. Yeah. The major one on detrimental would be effect on the planning and land use planning of a local community. Also, environmental considerations, and traffic and other impacts on the land and particularly the surrounding community. That was the primary focus of the analysis on detriment, as well as what kind of information did local communities convey in terms of support or nonsupport for applications.

Question. Mr. Anderson, when did you first hear—let me ask this again.

I know that you have testified in your Senate deposition that the first time you recall having heard this was in April. Is that still your understanding?

Answer. That is correct.

Question. At a meeting that the Secretary went to in Wisconsin?

Answer. Yes.

Question. Did you think it was a good idea that the three tribes were cooperating, that three tribes were cooperating to go into this venture together?

Answer. I don't think I had an opinion on the joint venture nature of that application.

Question. How much do you know, or how much did you know at the time about the three applicant tribes?

Answer. I knew most of the Lac Courte Orielles tribe, because Gaiashkibos was the president. I never visited any of the tribes. In fact, I'm not even sure if I had visited Wisconsin at that point.

Mr. BALLEN. Excuse me. You say you have never visited it ever, or just in the context of this particular——

The WITNESS. To that point, I don't think I had ever visited Wisconsin at any point. I think the first trip was in '96.

I was somewhat familiar with Sokaogon, the Mole Lake tribe and their environmental problems. I have a vague recollection that each tribe had done some casino gaming, that Lac Courte Orielles had a facility, that it was a small, but not profitable facility, that Red Cliff, I really didn't—I don't know if I had much information

about that tribe, other than location. So I would say it was like environmental issues and Lac Courte Orielles gaming.

As far as gaming in Wisconsin and tribes' ability and the compact issues there, I had some understanding of that and some understanding of the treaty rights litigation that some of the tribes were involved in, which would have affected those three tribes as well, particularly Lac Courte Oreilles.

Question. Just to correct something that you just said, you said your first trip might have been in '96, April. Did you mean April of '95?

Answer. Yes.

Question. Did you have any idea of how financially well off the three applicant tribes were?

Answer. I knew that these tribes were tribes that basically were low-income tribes, that they did not have a lot of wealth. They did have ongoing ventures, particularly Lac Courte Orielles. I think they had some tank operations there, and I knew that. I think at that time each of the three tribes had casinos, but I'm not sure what their market was.

Question. Did you have any idea what their per capita income was at the time of the application?

Answer. No.

Mr. BALLEN. But you knew they were low-income tribes.

The WITNESS. Right. I mean, like I didn't know the actual amount of the per capita. I know that most Indian tribes and tribal members are on the low end of the per capita scale. I would assume that probably a large proportion of the tribal members were probably below the poverty line.

EXAMINATION BY MR. DOLD:

Question. When you say "low income," about——

Answer. Probably under $14,000 annual income.

Question. Did this have any weight, or did you accord any weight to this fact that the three tribes were financially poor when you took that——

Mr. ELLIOTT. Let him finish his question.

EXAMINATION BY MR. DOLD:

Question. Did you accord any weight to the fact that the tribes were financially poor in your decision regarding the Hudson Dog Track?

Answer. To understand the question, to the actual decision? I would say no as to the application of the statutory and regulatory test. I was aware of the general, general conditions of Lac Courte Orielles that I expected. I mentioned Mole Lake. And Red Cliff were probably in the same type of situation. But as far as application of the regulatory, no, regulatory standards, no, I didn't accord any weight to the financial conditions.

Question. When you say "regulatory conditions," you are talking about the two-part test?

Answer. And the 151.

Question. And the 151 would be the general, just——

Answer. Yes.

Question. I'm more familiar with section 20.

Answer. The 151 primarily goes to the tax impacts of taking land into trust and off-reservation community, as well as land use conflicts and environmental problems. That's the primary test we use to determine whether to take land into trust for nongaming purposes.

Mr. BALLEN. Mr. Anderson, are you generally aware—what's your view? Does gaming help tribes? If they are poor, is it something that you want to help at the Bureau of Indian Affairs?

The WITNESS. Yes. Well, the Department as always, and has testified in Congress, to its staunch support for Indian gaming as a valid economic development tool. It's almost a given that gaming is in the right circumstance, good for the tribe, if it's in its best interest, if the terms of the economic deal are good for the tribe. As far as placing decision-making weight on that factor, at least the decision letter I signed didn't cite that as a factor.

EXAMINATION BY MR. DOLD:

Question. Did you take into account in your analysis of the Hudson application the financial impact it would have on opposing tribes?

Answer. Yes. Opposing tribe, the St. Croix tribe, one tribe.

Question. So it was just one tribe that you took into account?

Answer. Yes, that's correct.

Question. Do you know what their financial position was at the time that you turned down—at the time the decision was made to turn down the application?

Answer. Yes. At the time, I don't know the specific annual gross revenue of the St. Croix operation, but it was, it was very profitable.

Question. And did they voice an objection or a concern to you?

Answer. Not to me directly. To the staff.

Question. Do you know what that concern was?

Answer. I believe the nature of the concern was that they had developed a market for the casino in that area, and that they felt that there would be a detrimental impact to their market if another casino was located nearby. I believe they also may have provided studies to that effect as well.

Question. So correct me if I'm wrong, it is a valid opposition for an opposing tribe to object on economic grounds?

Answer. Yes, and the letter states that as a factor.

Mr. BALLEN. Does it make a difference where the opposing tribe is located and where the proponent tribe is located in terms of distance from the proposed site?

The WITNESS. Yes. The more compelling case is where a tribe locates away from its homeland directly into another tribe's market area. Typically, the Bureau at that time I think was using a 50-mile radius, and St. Croix was I believe within about 38 miles of the proposed site. If a tribe is going to a location where there is minimal or no effect on another tribe, the concern wouldn't be valid at that point. So we do try to compare, and that's the term, surrounding community, that we try to see what tribes are in the surrounding community where their might be an impact, market impact, economic impact.

Mr. BALLEN. And how far, for the record, were the proponent applicant tribes located from the proposed site?

The WITNESS. They ranged from 188 miles away to within 80 miles; 188 and 88 miles, I believe.

Mr. BALLEN. So the closest tribe was actually the St. Croix tribe?

The WITNESS. That's correct.

EXAMINATION BY MR. DOLD:

Question. I don't want to belabor this point, I just want to get this down, if I can, for the record.

You had already testified that economic grounds were sufficient, and we understand that; that's in the letter.

Are those concerns that can be mitigated?

Answer. Yes, they could be mitigated. If the three applicant tribes had entered into a joint venture where there was some type of sharing of the proceeds from a location, that's one way in which it could be mitigated.

Question. Do you know if this was communicated to the three applicant tribes?

Answer. I don't know. I didn't communicate it to them.

Question. Is there somebody that is supposed to communicate with the applicant tribes on problems that are found at the Department of the Interior?

Answer. Yes. The primary vehicle the Department uses to communicate technical expertise, and that's how they use the term, "the Department," is the Indian Gaming Management Staff, and they will sometimes send lawyers, financial analysts and others to tribes who are developing an application to give them technical expertise on how to structure their application. That also occurs at the area office level as well from the BIA, but they will sometimes go out to different locations and provide that kind of assistance. The area where they get most involved is in the area of environmental assessments so that a tribe knows if they have a wetland or something, they will know the standards that they should follow and what kind of studies they should do.

Question. Do you know if anybody from the IGM—I'm sorry, the Indian Gaming Management Staff did that in this case, went out and consulted with the tribes?

Answer. I don't know.

Question. And just to quickly ask a question, I will make it quick, I think Mr. Ballen had brought this to light. Do you think the Hudson Dog Track would have provided economic opportunities for the three tribes?

Answer. It's difficult to say. Clearly—and the reason it is difficult to say is that the financial terms that they had with Gallaxy Gaming, who was going to be a copartner in this operation, was something that caused the Indian Gaming Management Staff, and particularly Tom Hartman, great concern. The terms seemed to lend itself to an open-end lease arrangement on an adjoining parking lot that may have locked the tribes into millions of dollars of payment, even if their compacts expired. And so in the abstract, without having had a final analysis of best interest, it was

difficult to say whether this was—would provided an opportunity or not, or, in fact, may have saddled them with debt they couldn't have repaid.

Question. Did you ever receive any information, or do you remember any information on the impact a casino in Hudson, Wisconsin, may have had on the St. Croix tribe?

Answer. I didn't review specific market information. I was informed by the staff, the Indian Gaming Management Staff, that there was an impact and that was also contained in the letter, the decision letter as well. There may have been discussions about the location and the market area that was developed by St. Croix, but I don't recall any specifics.

Question. Do you recall who on the Indian Gaming Management Staff told you that, or communicated that to you?

Answer. I don't remember who the major staff advisors on the market impact would have been. George Skibine and Tom Hartman.

Question. Did they tell you how much of an impact; do you recall?

Answer. I didn't quantify from them the exact. It was that there would be a detrimental impact to the market, but I don't think I—at least I don't recall at the time if there was dollars discussed.

Question. Let me show you a document here. This might refresh your recollection, and it might not.

Mr. DOLD. I will mark it as MA–1.

[Anderson Deposition Exhibit No. MA–1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

Mr. DOLD. I'm showing Mr. Anderson what has been marked as MA–1. It is what I will call the Hartman memo. It is the June 8th memo to the Indian Gaming Management Staff director from what is marked Indian Gaming Management Staff signed by Tom Hartman. It is also marked "Draft" at the bottom and throughout the pages here. I have some very specific questions, so if you would like to review, you certainly can. I will give you that opportunity.

The WITNESS. Okay.

EXAMINATION BY MR. DOLD:

Question. First of all, have you ever seen this document?

Answer. Yes.

Question. Do you recall seeing this document back around the time that you were reviewing the Hudson Dog Track application?

Answer. No. The first time I recall seeing this document was in a Senate Governmental Affairs Committee deposition, I think in October.

Question. Was this position ever communicated to you when you were at the Department of the Interior?

Answer. The contents of this memo were not communicated. I have some recollection of Tom's views on the market impacts of other—on other tribes, and we did participate in a meeting with the Oneida tribe on May 23rd where he expressed those views, and Mr. Skibine may have characterized those views as well.

Question. What were those views, if you recall?

Answer. Tom, as I recall from the May meeting, basically had a free market approach to Indian gaming, that the Department should not protect the market areas of other tribes. I didn't explore with him whether this applied to the markets of adjoining tribes or whether it applied in any case where a tribe developed a market, but I understood that he basically had a premarket approach.

Question. If I can direct your attention to page 4 of the Hartman memo, the line just above section C, it refers to Sandra Berg, a longtime Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from the opposing Indian tribes.

Have you ever heard that allegation before?

Answer. The Senate investigators asked this question about people lobbying the towns. That's the first I had heard about it.

Question. And would that have an effect upon the decision-making process as far as taking weight, or putting weight in the local opposition?

Answer. It's difficult to answer that in the abstract.

Mr. ELLIOTT. I'm going to object to this question. I mean, would what have an effect, the fact that somebody said it, or the fact that it actually happened? Because there is nothing in the record to say that it actually happened.

Mr. DOLD. Fair enough, and I don't want to—I would like to go over both.

EXAMINATION BY MR. DOLD:

Question. If it were true that that happened, would that have an effect upon the weight granted local opposition?

Mr. BALLEN. Can I ask this, just to break down that question. If it were true what, if it were lobbying or paying for the lobbying?

Mr. DOLD. If it were true that—just as the sentence says, let me look for it again, because I don't want to mischaracterize it.

EXAMINATION BY MR. DOLD:

Question. If it were true, and I'm not making a representation that it is, that opposition to the acquisition is receiving money from the opposing Indian tribes, would that have an effect, or would that carry a different weight with regard to local opposition?

Answer. Can I—who would be getting the money in this? The council, town council? I mean, if it's the town council receiving money, bribes, that would have an impact. I mean, because I think that's—I'm not sure if it would have an impact on this decision, it would have an impact on the criminal law.

Question. Let me just state I am not in any way saying that people are getting bribes; I am just saying if the opposing tribes are tribes that oppose the Hudson casino, started funneling money into Hudson in an effort to drum up local support, and I don't want to belabor this, would that have an effect?

Answer. Into Hudson, you mean?

Question. The Hudson area, people trying to drum up support?

Answer. No. I think that frequently people do campaigns, through funds to local governments, and I think if it's just building public opinion, it wouldn't.

Mr. BALLEN. In other words, if a local tribe ran an ad in the newspaper, that's their First Amendment right?

The WITNESS. Right.

EXAMINATION BY MR. DOLD:

Question. Directing your attention to page 8, are you—and I will just let you take a look at it, at the top, the first full paragraph, just talking about the Mystic Lake casino was estimated to have had $96.8 million net profit in 1993. A reduction of $8 million would be about 8 percent, assuming that net revenue decreased the full amount of the gross revenue reduction.

Mr. BALLEN. I'm sorry, where are you?

Mr. DOLD. Right here, talking about Mystic Lake casino.

Mr. BALLEN. Thank you.

EXAMINATION BY MR. DOLD:

Question. Actually, I will read just a little bit before that, and I apologize: "Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction $8 million would be about 8 percent, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact tribal expenditures on programs under IGRA section 11."

Having given that winded rendition of this, was this ever discussed at the Department of Interior with you.

Answer. I don't recall ever having this discussed. My focus was on the St. Croix tribes. I do have a vague recollection of some kind of Peat Marwick study that was floated around the department, but I don't remember the details of who was considered in that study.

Mr. BALLEN. These particular facts did not have an impact on your decision.

The WITNESS. That is correct. The only market analysis I relied on was the St. Croix tribes impact.

EXAMINATION BY MR. DOLD:

Question. When you say floated around, when you say the Peat Marwick study floated around the department, where would it have come from, who would normally have seen a study like that?

Answer. The Indian Gaming Management Staff, and Tom Hartman, as a financial analyst, would have been the person to receive that. Whether he circulated it within

his staff is something I don't know, but that is where it would have been is with Mr. Hartman. I could be confusing that with a Peat Marwick study done in Minnesota about the benefits of Indian gaming in Minnesota, too. I remember some study to that effect as well.

Question. I know we discussed Mr. Hartman had mentioned his belief on competition and those types of things. Did you disagree with Mr. Hartman's findings as he articulated them to you, because you said before you hadn't seen this?

Answer. I heard, in the conversation we had about the Oneida Tribe I don't think he was articulating any findings as to the dog track application. It was talking about detriment generally. So I don't recall, and I don't think I ever had a discussion with Tom on the specific market analysis here. I think I really relied on Mr. Skibine and the letter itself for the conclusions that there was a detrimental impact to St. Croix.

Mr. BALLEN. Mr. Anderson, would it be fair to say you were concerned about St. Croix because they were in fact one of the closest to the proposed site?

The WITNESS. That is right.

Mr. BALLEN. Significantly closer than the three applicants?

The WITNESS. That is correct.

Mr. BALLEN. Would your analysis have been different if this were an on reservation or continuous gaming proposal by the three applicant tribes, as opposed to an off reservation?

The WITNESS. Yes, because, one, section 20 doesn't apply in those circumstances, and my own view is that the tribes' case is more compelling adjacent to the reservation or even a mile or two or ten miles within the reservation, that the market impact of another tribe, since the tribes are all next door to each other, requires a different analysis than when you go far away.

EXAMINATION BY MR. DOLD:

Question. The impact on the St. Croix Tribe, we have discussed, you felt was at least part of the reason for denying the application. Did you know that they were initially contacted about becoming partners in this venture?

Answer. No.

[Anderson Deposition Exhibit No. MA–2 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Mr. Anderson what has been marked as MA–2. It is the July 14, 1995, rejection letter to Rose M. Gurnoe, the Honorable Alfred Trepania and Arlyn Ackley, Sr. Are you refreshed on this document?

Answer. Yes.

Mr. ELLIOTT. You have seen this before?

The WITNESS. Yes.

Mr. BALLEN. In your Senate deposition, right?

The WITNESS. Yes, I hope that is my signature.

EXAMINATION BY MR. DOLD:

Question. Was this your recommendation?

Answer. Yes. I guess it was not only my recommendation, it was my decision.

Question. Could you have decided when all the information came to you that, well, I decided I want to take land into trust and change the letter signed the trust approved?

Answer. Based on these facts, I don't believe I could have supported a decision that would have accepted the application.

Question. What I am trying to get at is the decision is entirely yours?

Answer. That is correct, the decision is entirely mine. I base decisions on advice from career, and legal advice from the Solicitor's Office and policy advice from the Secretary's Office.

Question. And who gave you advice on this matter?

Answer. The primary adviser to me was George Skibine in the Indian Gaming Management Staff. From the Solicitor's Office the person I probably, if not discussed, was in discussions with the most was Troy Woodward and Kevin Meisner of the Solicitor's Office, and from the Secretary's Office John Duffy was the primary policy adviser.

Question. It is my understanding that John Duffy was the lead on Indian gaming issues, land issues and water issues, is that correct?

Answer. The way I would characterize John's role is he had lead in terms of policy. The lead on gaming matters, legal matters, through the Solicitor's Office was John Leshy. The lead in terms of Indian affairs policy advice would be with myself

and with Ada Deer as Assistant Secretary. So I think there is probably a division of responsibilities in the office. Certainly he would be seen as a major policy adviser.

Question. Was it your understanding that he was quote, unquote the lead on gaming for the Department of Interior?

Answer. Again, in legal matters he was not the lead. If it was communications with Congress and the public, then John would have been the lead there.

Mr. BALLEN. Just to be clear, Mr. Anderson, you mentioned Ada Deer was involved in being the lead on these matters, but not in regard to this matter?

The WITNESS. That is correct.

Mr. BALLEN. You were the decision maker here?

The WITNESS. That is correct.

Mr. BALLEN. You were just testifying in general, is that correct?

The WITNESS. That is right.

EXAMINATION BY MR. DOLD:

Question. And so you said you made this decision based upon discussions you had, information you received from people like George Skibine, Kevin Meisner and Troy Woodward, John Duffy, and the Solicitor's Office—I'm sorry, the Secretary's Office?

Answer. I mean, those were the primary advisors on the decision. I also conducted my own analysis of these facts, primarily based on the geography of the tribes and also my interpretation of the section 20 regulations and also the 151 standards, so I guess I would characterize my view as an independent review of the law and regulations informed by the recommendation of the career staff and others.

Question. A couple things. In your own analysis, under, you said, both under 151 and section 20, under your section 20 analysis, what did you factor in as detriment?

Answer. The primary——

Question. And let me just, so we don't have to go back. I know we talked about tribes, the tribe's economy would be one of them, location would be a second. What besides those?

Answer. The other statements are contained in, I guess, page 2 of this document, in the fourth paragraph. There was discussion, including in the letter, discussion of the traffic congestion, and also the adverse effect on the communities' development plans, both residential, industrial and commercial. The other primary rationale is stated in the same paragraph about the local governmental resolutions expressing opposition, and the rest, too. I mean the St. Croix Scenic National Riverway.

Mr. BALLEN. That would be an environmental concern?

The WITNESS. That is correct.

EXAMINATION BY MR. DOLD:

Question. What was your concern on the riverway? What environmental problems were your concern?

Answer. It was a national riverway that would only be a half mile from the casino. I think the concern, as I recall, is that the documents, the environmental assessment of that area was insufficient.

Question. So the documents weren't sufficient and that was the environmental problem?

Answer. Right. Generally, if you are going to do a proper assessment of environmental impact, you generally need to show there is not going to be an impact or, if there is going to be an impact, that it can be mitigated in some way. My understanding I believe from the discussion we had on May 17 was that the assessment of information wasn't complete.

Question. Did the local area office conduct a FONZI?

Answer. I don't know.

Question. Were the tribes going to build a casino on the site?

Answer. They were going to try to convert the existing facility dog track into casino, which would have meant constructing a casino facility and also I believe expanded parking. So my understanding is there would be new construction in the area.

Question. External construction or internal construction, if you know.

Answer. I am trying to remember if I remember, but I don't recall the details of the construction plan.

Question. Would that have made a difference in an environmental impact?

Answer. The scope of the construction would have certainly affected the environmental assessment, yes.

Mr. BALLEN. Was there an environmentalist on the Indian Gaming Management Staff who would review these documents?

The WITNESS. I don't know if he reviewed the documents. There is a person assigned in the Indian Gaming Management Staff to review environmental assessments, and the Solicitor's Office also reviews environmental assessments as well.

Mr. BALLEN. So if you received a report from that person or from Mr. Skibine as that person's supervisor that there was a problem with the environmental issues here, you would not necessarily go behind that?

The WITNESS. Right. I typically rely on the career staff or the people with expertise in the area to give me correct information, and I rarely, if ever, have gone underneath original documents.

EXAMINATION BY MR. DOLD:

Question. Did you receive an environmental assessment from anyone at the Indian Gaming Management Staff on the Hudson Dog Track proposal?

Answer. I think the only recollection I would have is if it was maybe discussed at the May 17th meeting. Certainly I was aware that Mr. Skibine concurred in this paragraph, so I basically relied on Mr. Skibine to be accurate in his representation.

Question. The May 17 meeting, what meeting was that, which one are you referring to?

Answer. From my travel records, I am just trying to place the meeting that I attended on this, and I think it was only one, it may have been two, but I think that is from documents where—other documents I have seen where it said BIA staff met, I think that is the meeting I was at, so it was in Mr. Duffy's office, and I think that is where we had a discussion on these issues.

Question. And who attended that meeting?

Answer. My recollection is Mr. Duffy, Mr. Skibine, Troy Woodward, Kevin Meisner, and myself, there may have been others,.

Question. Was Heather Sibbison there?

Answer. I don't recall.

Question. Was any documentation provided to you on environmental or economic or any impacts?

Answer. I had a vague recollection of Mr. Skibine having letters. It may have been people opposing it from the local community. I think he had some files with him. So I don't recall if anything was circulated when we reviewed them.

Question. Do you recall what the count was, as far as letters or input from the local community was?

Answer. Yes, it seemed that, I believe by that time, I was aware the towns had opposed—the individual towns affected opposed the acquisition, but I believe there are also letters from individual citizens and citizen groups that opposed as well, and I seem to recall George Skibine having some stack of letters from individuals.

Question. When did you know that you would be making the decision?

Answer. I think sometime in June, and in my deposition with the Senate committee, my best recollection then was early June. I think I also submitted an affidavit in the District Court that said early June. I know that sometime prior to Mr. Trepania being elected as the chairman of Lac Courte, when Mr. Gaiashkibos was still chairman, Ada Deer had recused herself. I knew as the deputy, and probably the person in our office most familiar with gaming issues, I knew I would be on the surname list at a minimum, and that is the department's means of having people check off their agreement with the position. So I knew I would be involved in the final decision, whether it was signing or having Ada sign.

Question. Can you describe for me, very briefly, what the surname checklist would look like?

Answer. When the department makes decisions, there is not an exact science to it, but generally we have the career, in this case, the Indian Gaming Management Staff, sign a letter for signature of the person who is going to sign the letter, to the Solicitor's Office, and gaming matters they circulated through the Secretary's Office, and then they would go to, in our case, Assistant Secretary's Office for final signature. Basically that is the chain of command.

Question. Would it be like a memo and they just check off on the top to all these people?

Answer. Yes, there would be the original for signature, there would be a yellow carbon copy, and then a list of signatures that people would then sign.

Question. Is that a surname?

Answer. Yes, that looks like it.

[Anderson Deposition Exhibit No. MA–3 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I will put this in and let you take a look at it. Showing Mr. Anderson what has been marked MA–3, and it has been explained to us that this is a form—it is the surnaming process?

Answer. Yes.

Question. On the subject of the Hudson Dog Track letter. And it lists down there for comments the acting director of Indian gaming management staff, Heather Sibbison, Michael Chapman, and then it says Deputy Assistant Secretary for signature, and Heather for copies. Would that be Heather Sibbison again?

Answer. Yes.

Question. Okay. Why don't you take a look at that.

Answer. Okay.

Question. Have you ever seen this document before?

Answer. I saw this document about 4 weeks ago, I believe, somewhere among the document productions.

Question. But not during the time of the Hudson Dog Track?

Answer. I don't recall that. It may have been on the jacket of the letter I signed. I don't recall whether I had just the letter itself or whether it was a part of a file.

Question. Up under Acting Director, do you know whose initials those are?

Answer. No.

Question. Who was the Acting Director of the Indian Gaming Management Staff at the time? I mean, let me say, I am not trying to be coy with you. My understanding is George Skibine was the head of the Indian Gaming Management Staff?

Answer. If George was out of town or not available, they would have an acting person sign for him on his behalf.

Mr. ELLIOTT. And that would have been somebody else from the staff?

The WITNESS. Right.

EXAMINATION BY MR. DOLD:

Question. And let me ask you, it also says down here in the handwritten areas here, I also know Mike Anderson is out, and I know from previous depositions that Mr. Skibine said he was out just prior to the date here at 7/8/95, up at the top right corner, he said he was out as well. Do you know where you were just before this, just before 7/8 or right around that time?

Answer. Yes, I was in Denver with Mr. Skibine at a negotiated rule making session on another matter.

Question. I know you have gone over that, so we are not going to get into that right now.

I am interested, though, it says in the handwritten notes down here, "Also I know Mike Anderson is out, so we will need to have it signed by whoever is acting for him."

Answer. Yes.

Question. "Please call me if you have any questions, Heather."

What was the urgency to have it go out? If you were going to be the person signing this, why not just wait until you got back?

Answer. Well, one, we actually got a copy faxed to us in Denver—the answer is I don't know the urgency, other than that people who wanted the decision and were calling the offices. But a version of this letter was faxed to George and myself out in Denver and, if we approved it, it certainly could have been signed by somebody acting for me.

Mr. BALLEN. Is that what happened?

The WITNESS. No, I signed the letter as I returned, but the letter was faxed to us.

Could I take one break, please?

Mr. DOLD. Sure.

[Recess.]

Mr. ELLIOTT. Mr. Anderson and I had a conversation at the break, obviously, and I don't recall the question, and it was early in the deposition, about contacts or discussions he may have had with people in Congress or congressional staff. And my problem is I didn't recall the breadth of the question or the exact question, but he and I had a discussion earlier about conversations with Congress people and I think he has a recollection he needs to put on the record to clarify, in case the question was broader than I thought it was.

Mr. DOLD. Just for the record, so I can say, it was for the application period just before—around that, up to date. So by all means, please go ahead.

Mr. BALLEN. I'm sorry, I don't understand, it was for what?

Mr. DOLD. The period of the application.

Mr. ELLIOTT. Prior to the decision?

Mr. DOLD. Prior to his decision, and up to right now, on Hudson, not on other matters.

Mr. ELLIOTT. That was part of the problem I had?

The WITNESS. All right. So the question is on congressional contacts, between which dates? Now I am confused.

Can we go off the record?

Mr. DOLD. We can go off the record, that is fine.

[Discussion off the record.]

Mr. DOLD. Back on the record.

The question was posed to me with regard to a time span that an earlier question posed to Mr. Anderson on whether he had had any contacts with congressional employees, and I would include in that—I should say congressional contacts, that would include Congressmen or congressional staff, or committee staff, on the Hudson Dog Track matter, and the dates that I will put on for the record is when Mr. Anderson came on, in his capacity as the assistant——

Mr. ELLIOTT. Deputy Assistant.

Mr. DOLD. The Deputy Assistant Secretary, until the present, on the Hudson Dog Track matter.

The WITNESS. Okay. I think I understand the question. I had contact with Mr. Ballen and Mr. Yeager, it was a conference call on witnesses, identifying them for the department, who would be testifying, and their rolls in this matter, so when that contact took place in December or January, I don't really remember, I want to make sure that was communicated to you.

EXAMINATION BY MR. DOLD:

Question. And that conversation took place in December or January?

Answer. Right.

Question. Recently?

Answer. Right.

Question. Have there been any other contacts?

Answer. No, not during that time frame.

[Counsel conferring with witness.]

The WITNESS. Oh, I misunderstood. There was a contact in April as well, that is what counsel is reminding me, of I believe last year, from Mr. Ballen on this matter as well. Actually, I didn't know your question encompassed that as well, but I wanted to put that on the record as well, a contact in April. It was a general inquiry about Hudson, and I don't remember the exact nature of the inquiry, I did communicate that. The matter was in litigation in Wisconsin, and the contacts of the department on the matter were Scott Keep in the Solicitor's Office, and I may have mentioned David Jones in the U.S. Attorney's Office, and I believe I also communicated that to the Chief of Staff as well. So those were the two contacts I am aware of.

EXAMINATION BY MR. DOLD:

Question. Do you remember any other contacts you had with—were there any other congressional contacts on this matter?

Answer. No.

Question. When you became involved, or when you first knew you would be the decision maker on this matter, how far along in the process was the Department of the Interior, and more specifically, the Indian Gaming Management Staff, in their recommendation?

Answer. I became most aware that I would have a role in this matter in May, so we were I guess fairly far along in the process at that point.

Question. And when you say fairly far along——

Answer. The essential facts were known at that point, the opposition of the Town of Troy and the City of Hudson were now in, the facts of the location of the applicant tribes were now in. I believe at that point the market impact to St. Croix was known at that time. So in that sense the fundamental facts of the decision were probably known at that point.

Question. What did you do in your capacity as the now decision maker to bring yourself up to speed with the facts of the case?

Answer. I don't recall what documents I read at that time. The main method of communication on the facts at issue were meetings, and the primary meeting, I recall, was the one with Mr. Skibine of the staff and Mr. Duffy obviously, having been Associate Solicitor, who is familiar with section 20 and 151, I would say meetings were the primary means of communication on this matter. There was extensive dis-

cussion about each of these elements, and I was probably involved in almost—in a discussion of almost all these elements, but meetings were the primary form.

Mr. BALLEN. Did you have numerous meetings with Mr. Skibine or numerous discussions with him on that?

The WITNESS. I had a number of discussions, including probably most precisely the discussion out in Denver, as the letter came through, but he was also extensively involved in discussions in May, and that is the one meeting I do recall, where we went through all the facts and the legal principles.

EXAMINATION BY MR. DOLD:

Question. And this is when you first realized you would be the decision maker?

Answer. Well, even at that time, I am not sure if I knew at that time I would be the final decision maker.

Question. But right around that time frame, you testified before late May, early June, that time?

Answer. Right.

Question. You had meetings with Mr. Skibine from that point forward?

Answer. That is right.

Question. Okay.

Mr. BALLEN. And whether or not you knew you were going to be the final decision maker on the matter, you knew in May that you would play a role in the decision, you would probably be surnamed, is that correct, sir?

The WITNESS. That is correct.

EXAMINATION BY MR. DOLD:

Question. Was there a file kept on information received? I know you mentioned before that Mr. Skibine had a bunch of letters with him at one point in time. Was there an overall file where all the information was kept on the application?

Answer. I am going to assume so, in that the repository would be the Indian Gaming Management Staff. I never actually saw the record center for this application, but, yes, there would be a file kept.

Question. Did you ever see the records contained within what would be the record center, did you ever evaluate the file?

Answer. It may have been as the actual decision making document came through that the file may have been—I don't think the entire record, which I understand was 14 volumes, was attached. There may have been a decision making file accompanying the letter, so that would have been the extent of the record. But as far as my own independent review of the record, I did not conduct an independent review of the record.

Question. How many decisions like the one you made in the Hudson Dog Track have you made prior to this decision?

Answer. I had just become Deputy Assistant Secretary officially in April, so this was the first decision like this that would have come through. As Associate Solicitor, I was familiar with at least two or three other section 20 type determinations, primarily the Coushatta Tribe of Louisiana, where some of these same issues were discussed.

Question. When you say the file may have been attached for your review at the time the letter came through, do you recall if anything was attached, any memoranda, anything that would explain in detail the findings and recommendations of the Indian Gaming Management Staff?

Answer. No, I don't. I think that the primary record that I considered would have been the letter itself. Sometimes letters like this, whether they are attached to a surname document, also contain area office recommendations, incoming mail from the tribes, memos, and I don't recall whether that was attached or not.

Question. Did you ever talk or give Denise Homer a call?

Answer. No.

Question. Did you ever give Robert Jaeger a call?

Answer. No.

Question. When did you first know that the application would be rejected?

Answer. Until the letter was actually presented to me for signature, in my view I had the right to change the decision or at least review the findings within a decision. I think by May there was a general consensus that the application was deficient in a number of respects. The town's opposition was clear at that point, and the City Council, the tribes, St. Croix opposition was clear at that point, the geography of the applicant tribes and their removal, far away from their home lands was clear. So I think, in my own mind, an emerging view was probably set sometime in May. But the rationale for the decision was certainly subject to discussion.

Question. And you got this based on discussions and meetings that you had on the issue, is that correct?

Answer. Yes. I mean, somewhere along that time period, I just looked at where the tribes stood and where they wanted to go, and to me that was a strong reason to deny, particularly where the local community is opposed, and there is not a lot of other information that would have changed that result, so by then I think I had probably formed an opinion.

Question. Correct me if I am wrong, and I won't belabor this, the distance of the tribes was a big factor in your mind, and also the local opposition of the town?

Answer. And the——

Question. And the St. Croix Tribe?

Answer. Right, all big factors.

Question. Would there be other factors that you recall off the top of your head?

Answer. The other would be environmental, the traffic problems.

Question. Okay.

Mr. BALLEN. In other words, there was a basis to the local opposition?

The WITNESS. Yes, the traffic, and, indeed, I think I discussed with George at some point the traffic issue, and I think that was the May 17 meeting where we talked about the traffic problem.

EXAMINATION BY MR. DOLD:

Question. Do you know the extent of the local opposition, do you recall?

Answer. The only extent I knew was from the documents that we referenced, the resolutions. I didn't know what the quantification of the populace at large was.

Question. Would it make a difference if the populace at large was generally in favor of the application?

Answer. It is difficult to answer that. The primary gage I would use of the feeling of the populace is the governmental action, resolutions from councils or towns or mayors, and I expect that they represent their community's interests, and so that is the best I can do, is I basically rely on official governmental action rather than on polls or what the local paper might say.

Question. And who would be the most important? Would the mayor be certainly ranking at the top of that bunch?

Answer. It depends on how the community did business, because we have had some examples where the government can only speak as a government because—if the mayor is the representative of the council, that is fine, but it depends on the nature of the government's structure. We have had some, you know, towns that—town councils in support and the mayor opposes and vice versa.

Mr. BALLEN. Did you have that kind of division in this case, to your knowledge?

The WITNESS. To my knowledge, it was the uniform view of these towns and councils that they opposed. I wasn't aware of any division of the mayor or anyone else to the resolutions.

Mr. DOLD. I am showing Mr. Anderson what has been marked as MA–4. It is a letter to the editor written by Secretary Bruce Babbitt. The letter is dated January 2nd, 1998, but the newspaper article ran January 4th of 1998, in the New York Times, and I will give Mr. Anderson an opportunity to read this short passage.

[Anderson Deposition Exhibit No. MA–4 was marked for identification.]

The WITNESS. Okay.

EXAMINATION BY MR. DOLD:

Question. I guess it is the second paragraph here in the middle. It says, "This department does not force off-reservation casinos upon unwilling communities." Is that your understanding as well?

Answer. In the contiguous acquisition context, where it is contiguous to reservation, the standard for acquiring property is different than off reservation, and I guess this does refer to off reservation. In my mind, if it was very, very close to the tribe, the weight might be considered differently from the community. If it said this department does not force off-reservation communities upon unwilling communities that are miles away, then I would agree wholeheartedly, but I would interpret this as applying to that situation.

Question. So you would not take this statement as to be uniform, it would just be—would it be an accurate characterization to take your view of this, to say the department does not force off-reservation—will not enforce an off-reservation casino with Hudson, Wisconsin more specific to that?

Answer. Well, that is the only context this was written in. I think generally the policy of the department is to seek support from communities wherever the casino is going to be located.

Question. Sure?

Answer. Where the community is uniformly opposed, I guess without a specific fact situation, I couldn't apply this. I would draw a distinction between next door, or immediately next door to a community, to a tribe, and far away.

Question. Can you agree with this statement based upon just the words used?

Answer. As a matter of general policy, yes. Generally, yes.

Question. And let me just pick your brain on this for a second. Under unwilling communities, what standard or what level of unwillingness is required, according to you, not according to Secretary Babbitt, unless there is a dictated policy?

Answer. I would look at the expression of opposition from the recognized governmental bodies in the area, the targeted area. Generally, resolutions opposing casinos contain rationale for why they are opposing. I mean, basically saying we are unwilling because we don't like Indians in this area, I don't know , that wouldn't be a legitimate reason to me. If they cite other areas, like effect on the community's economy, et cetera, that is what I would look for.

Question. The example you site that we are not going to allow Indians just because we don't like Indians, would that be an acceptable rationale for anybody at the Department of Interior?

Answer. No, I don't think so.

Mr. BALLEN. Can I ask a follow-up question?

Mr. DOLD. Sure.

Mr. BALLEN. It is kind of a general question, Mr. Anderson. If you have a gaming facility that is located a substantial distance from the three tribes' reservations, as it would have been in this Hudson case, would that necessarily result in employment of Indians in those gaming facilities or might it bring in other people, other than American Indians, who are from those three tribes?

Let me just finish the question and put it in a little more context because there has been some suggestion here that the town's opposition may have been based on racism towards Indians, but it is not clear to me that since there was such a substantial distance between the tribe and the casino that there would have resulted in a lot of employment by these three tribes or bringing in a lot of American Indians into that community.

The WITNESS. The fact that it was so far away probably meant that very few tribal members would be employed. The tribe itself would receive the benefits of the gaming if it had been structured properly, which I don't think Galaxy Gaming had done in this case. But for most reservations, casinos even on the reservation, the basic percentages of employees is non-Indian. So the further you got away from the tribe, the less you would have of your Indian population employed.

EXAMINATION BY MR. DOLD:

Question. Is that a study that happens, is that something you take into account and you evaluate when you are doing these things, how many Indians from the reservation will be employed at the casino?

Answer. In looking at the best interest test, you look at the economic development to the tribe, and employment is certainly something valid to examine in that context.

Question. Was that evaluated in this context, do you know?

Answer. It wasn't in this context because the best interest determination wasn't concluded. Since we relied only on the detriment and the 151 regs, we didn't go to that issue.

Question. Fair enough, we will leave it at that then, no need to follow up.

And to follow up on the unwilling communities aspect of it, I know you said you give greater weight to the elected officials. At what point in time—is it a simple majority of the elected officials would constitute unwilling or is it a third of elected officials being opposed would be unwilling, if you understand my point?

Answer. The greatest weight I would give is to the locality with the jurisdiction over that land, number one. If there are other communities adjacent, like Hudson was, Troy was the one that was actually on the site, if there are others, they are given great weight. I don't look at the majority, I basically accept the resolution of the government as the government's position, so I don't look at the vote count in the council.

Question. Is it your understanding Troy is the one where the casino is actually located?

Answer. Yes, as the town that is closest to the site.

Mr. ELLIOTT. Just a minute.

[Witness and counsel conferring.]

The WITNESS. If I might, I would like to correct the record. The Town of Hudson actually was the primary location of where the casino was being located, and I am trying to remember the map of where the dog track was. I think it is actually within the city itself, and the Town of Troy is adjacent to it, so I wanted to correct the record on that point.

EXAMINATION BY MR. DOLD:

Question. Okay. And I am not sure—you might have answered it and I just don't understand, as far as Department of Interior policy or your understanding about local opposition, with regard to what would be considered opposition, would it be 50 percent or 51 percent of local elected officials, would it be 30 percent of elected officials and some townspeople, what would be local opposition in that?

Answer. It is a balancing test.

Question. Okay?

Answer. It is, in my view, at least, the jurisdiction of the local government that was most affected. Now the Gaming Management Staff had criteria for surrounding communities under the statute and they basically looked at anything within a general radius, you know, 10, 20, 30 miles. But the community most affected would be the one that would be given the highest weight. But if the community supported it in the heart of where the location was going to be and all the other surrounding communities opposed, that would be a fact balancing test.

Question. Is this a policy that was provided by the Secretary's Office?

Answer. I don't recall ever seeing a written policy on this matter.

Question. Bear with me for a second, because if you can understand part of my confusion is that I can imagine there would be opposition to a casino being put in in just about every circumstances, some sort of opposition. Whether it be very extremely minimal or very great, I assume people can find some sort of opposition, and there are some people that oppose it. I am not saying that is the case here. I will represent there was opposition and there was people for it, but I am trying to get a sense of what the policy was.

Mr. BALLEN. Is the premise of the question true? In past cases was there local support for Indian gaming?

The WITNESS. Yes, in many cases. In Coushatta, for example, I think just about every person in the entire mega county area supported, including the district attorney, and I wasn't aware of any opposition.

EXAMINATION BY MR. DOLD:

Question. That is fantastic, there was not one person that was opposed to that?

Answer. Not one was identified. There may have been some who didn't write in, but, I mean, school principals, local church officials, district attorney's office, you know, all supported it, and so, you know, there may have been opposition there that didn't surface, but it was, in my view, virtually unanimous support, and in many cases where the tribe and the community had worked together to foster that spot, then that is basically unanimous and particularly where the unemployment of the town is very high.

Question. Is that the standard, I mean, is that necessary, because we don't want to oppose, or we don't want to force off-reservation casinos on unwilling communities, does that mean we are requiring them to have unanimous support like in this case you talk about?

Answer. It doesn't need to be unanimous. Still, even in those cases, I would go to the expression of official representation of the county or the city or the local community.

Question. And this was an unwritten directive?

Answer. Yes, I think that there wasn't any written policy on this. I think the department had generally been fairly cautious in how it approached off reservation acquisitions, and it certainly would have made it easier if there was the type of support we had in the Coushatta case.

Question. Is it true in the Coushatta case that under the ability of the Secretary under 465, that he could have exercised his authority to reject the application in that case?

Answer. Yes, he can always rely on that, since the land wasn't into trust.

Question. When were the applicants first informed that their application would be denied due to local opposition, or, let me cut that down, when was the first time the applicants were first informed their application would be denied?

Answer. I don't know. My sense of the day it was signed is that our letter was faxed to them, but I don't know the process or who in the BIA informed the tribes.

Question. Would it have been before July 14th, to your knowledge?

Answer. I am not sure whether people in the BIA staff told them or gave them a general sense of where it was going or not.

Question. Is distance from a proposed site part of detriment? Solely distance. I am not talking about the effect on the St. Croix, I am talking distance. Is that part of a section 20 analysis at all?

Answer. No.

Question. That would fall under a 465 type analysis?

Answer. Well, the distance from the casino, or from the tribal home lands, I think may compel a different result on the quality of the detriment that needs to be shown, and the explanation is the further away you get, the less compelling the tribes' needs are and I would accept a lower standard of detriment. You still have to find detriment, but a lower standard than if it was next door.

Question. Do you know if that was ever communicated to the tribes?

Answer. I have no idea if it was or not.

Question. Is that a stated policy or just a belief you have in your position?

Answer. It is not a written policy.

Question. Is that a well-communicated policy?

Answer. The sense that, if you go away from your homeland, that you need more support as you go away I think is something understood by tribal communities. I mentioned earlier that in letters to tribes earlier than this, when we talked about getting through a section 20 application, I think we put in the letters that you need to build local support off reservation, so to the extent that the tribes knew they had to build that support, I think that was well understood. Actual written policies, I am not sure if they knew that or not.

Question. Is it your view that local opposition must articulate a specific or tangible detriment to the community?

Answer. In this case, they did. I am not sure what would have been my decision if they had not. My briefings from the staff is that the town's opposition, communication to us, whether it mentioned specific problems, traffic, and that is the one I remember discussing, and also land use conflicts. If there had been no—you know, no reference whatsoever, given it still that far away, I probably would have accepted it, but I didn't face that issue here. I mean, I had information that there was rationale. I don't know what the answer would be.

Question. Sure. So that it is—for a section 20 analysis, let me be specific on that, must local opposition have an articulated detriment?

Answer. It is certainly preferable that they do. Must they, I would have to talk to the Solicitor's Office about that. I don't have an answer that I could give you in the abstract. I think that it is so far away at a certain point, we would probably accept just the naked, bare opposition only.

Mr. BALLEN. But that was not this case in any event, it is a hypothetical question.

The WITNESS. Right, because in this case, the specific rationale and the problems were communicated.

EXAMINATION BY MR. DOLD:

Question. The problems were communicated to you?

Answer. To me, yes. I mean, I think there is a spectrum of opposition that contains rationales and evidence, bare naked opposition, and then discriminatory type of opposition, where someone might say their town doesn't want a sovereign Indian nation in their area, and where this would fall is, I think on the first part, where they have some rationale.

Mr. BALLEN. This, meaning the Hudson case?

The WITNESS. Right.

EXAMINATION BY MR. DOLD:

Question. I am interested, you mentioned before traffic was an issue. Do you know what specifically at all or can you—it would just be too much traffic?

Answer. Right. We had a discussion with George on traffic, and it may have been the access routes to the casino, and given that casinos have heavy traffic and can draw thousands of people, the backlogs to the city, whether there were stop lights, are all things we may have discussed. So generally casinos do bring heavy—in other cases, the traffic issue has been very big, it has added cost to repair roads, it has led to more police protection being necessary. So traffic is a big deal in these kinds of situations.

Mr. BALLEN. Mr. Anderson, let me ask you this. I mean, is this something, if the locally elected officials and governments in the area represent to you concerns that justify this, is this something that you have the expertise to second guess their concerns about their own traffic problems?

The WITNESS. No, I don't, because generally they know how many traffic police cars they have, and whether they have 24-hour coverage or not, and some towns don't. They have their local official just on emergency calls. So I couldn't be able to begin to delve into what their law enforcement capability would be.

Mr. BALLEN. Do you think it is appropriate for the area office to second guess local communities on their own ability to assess locally.

The WITNESS. I don't think they should second guess. Generally, if it's at an early stage, if one can get more information, that is preferable, but I don't think that the area office has the capability to second guess someone's assessment of their own law enforcement capabilities.

Mr. BALLEN. Or their own traffic problems?

The WITNESS. Yes, the number of lights, the cost necessary to repair roads due to increased traffic.

EXAMINATION BY MR. DOLD:

Question. Is it your testimony local communities don't have the ability to assess that, doesn't have the ability to assess whether the local community is telling them the truth?

Answer. Yes, that's right. If a local community says we have traffic problems because we only have three police cars, I don't think the area office is going to be able to go out and say, no, you actually have the funding capability to do, say, six police cars.

Question. But the town would certainly know, right?

Answer. Yes.

Question. The town would know?

Answer. Yes.

[Anderson Deposition Exhibit No. MA–5 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I am showing Mr. Anderson what has been marked as MA–5, and I am providing him with a highlighted copy and the highlighting is mine, and it partly is a mistake, but it will make it easier for you to at least go to the sections that I want to talk about.

It is a memo from the United States Department of the Interior, Bureau of Indian Affairs, the Minneapolis area office. The date is tough to read at the top, but it is, I will represent to you, November 15, 1994, to Assistant Secretary of Indian Affairs, who at the time was Ada Deer, from the office of Area Director, and a request for off-reservation gaming for land in Hudson, Wisconsin.

Have you seen this before?

Answer. Yes, I was shown this by the Senate investigators in September.

Question. Did you see it at all around the time when you were making the decision?

Answer. No.

Question. Okay. Did anyone let you know that the area office had recommended to take the land into trust?

Answer. I was aware of that fact. In fact, it is in the decision letter.

Question. And turning your attention to number 3, which is on page 6, the highlighted area of your text there.

Mr. BALLEN. Where is it?

Mr. DOLD. Page 6.

EXAMINATION BY MR. DOLD:

Question. Number 3, it is the agreement for government services, and it reads: The three tribes, the City of Hudson, County of St. Croix entered into an agreement for government services on April 18, 1994. Under this agreement, the city and the county will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue, emergency medical protection, road maintenance, et cetera.

Were you aware that the city and the county entered into a contract for government services to provide the casino, if proposed, if it were accepted?

Answer. In April of'94, no.

Mr. BALLEN. I'm sorry, I missed your question and answer.

Mr. DOLD. Was he aware of a contract between the city and the county, and he said not aware in '94.

The WITNESS. I think I was aware—well, I was certainly aware by the time of the decision that the City of Hudson opposed. So any agreement that had taken

place before that would have certainly been moot by that point. But I was not aware of this agreement.

EXAMINATION BY MR. DOLD:

Question. On the next page, it says: The tribes have agreed to initially pay the city and county $1,150,000 for services. Would this have mitigated some of the police concerns you mentioned, the traffic or some of the water or ambulance or things like that?

Answer. No. Because the city opposed the casino, there would have been no agreement. So it would not have mitigated it at all. In fact, it seems that the city would have been responsible for over $1 million of impact itself.

Question. So this would be void, in your opinion?

Answer. Yes. I don't think the city was committing to us that they opposed casino, but if the casino came in, they would agree to this offset of payment for services, and that was not communicated to me.

Mr. BALLEN. Just to follow up on this, agreement for community services was entered into by city authorities to cover themselves in the event the application was approved, it does not necessarily mean it was an expression, in fact you had opposition from the community?

The WITNESS. Yes, I mean, the way I read this document, clearly by April of '95, they opposed the agreement and I assume this agreement would have been moot at that point or void.

Mr. DOLD. If I make a representation to you that the city attorney has written in that it was not moot at that point in time, the agreement was still valid, would that have any affect upon the decision?

The WITNESS. It is hard to answer that question. If the city opposed it and they are saying because there are traffic problems, and the city attorney is saying that that is not a problem because they will have this agreement in place, it would have been more information that would have been helpful to know, but I am not sure if it would have—it sounds like we would have a conflict between the city attorney and the city resolution at that point. I am not sure how to resolve that.

Mr. BALLEN. Were you aware of any conflict at the time?

The WITNESS. No.

Mr. BALLEN. You had a resolution problem with the city council?

The WITNESS. Right.

Mr. BALLEN. Resolution from the neighboring Town of Troy, you also have a letter from the mayor and the alderman?

The WITNESS. At that point, I didn't get any cross signals from the city or the Town of Hudson that there was kind of a split opposition, that they opposed it, but if it went forward they would agree to be reimbursed by the tribe of fee services.

[Anderson Deposition Exhibit No. MA–6 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I am showing Mr. Anderson what has been marked as MA–6. This is a letter from the mayor. I ask you to take a look over it and see if you have ever seen that document?

Answer. No, I haven't seen this document.

Question. Can you tell us what this document is, do you have any idea what it might be?

Answer. No.

Question. This document here is addressed to the United States Department of the Interior from the Bureau of Indian Affairs, attention Robert R. Jaeger, Acting Area Director, from the mayor, Thomas Redner, March 17, 1994, and I will read a little bit from it: This letter is in response to your request for input on whether the gaming establishment on newly acquired land is detrimental to the surrounding community. This is in relation to the application from the Red Cliff, Lac Courte bands of Lake Superior Chippewa Indians and the Sakaogon Chippewa community. I think you will find, as you review the attached material, which I do not have here with us, that the City of Hudson has a strong vision and planning effort for the future and that this proposed casino can apparently be accommodated with minimal overall impact, just as any other development of its size.

Answer. Yes.

Question. Does that appear to be an endorsement from the mayor?

Answer. It certainly seems to suggest by March of '94, a year before the town reversed itself, that the mayor supported it.

Mr. BALLEN. Were you aware of the fact that this mayor would part, I think, because his expressions were recalled by the citizens of the town?

Mr. DOLD. I am going to object and just ask if you have that on record, that it was a result of this matter? I mean, please, if you have something, show me, because that is something I do not know.

Mr. BALLEN. Let me restate the question. Would it make a difference if the mayor was recalled, this particular mayor, and another democratically elected official was in at the time——

The WITNESS. To answer your question, I have read press accounts about the mayor and also a referendum and reversal of the town's position, and I knew that in November, when the area office submitted this, this supportive application, that between then and I think the decision, the local community support had changed. That is from press accounts, and I have read somewhere about the mayor and I have also read about a referendum in the town.

EXAMINATION BY MR. DOLD:

Question. Can you tell me what is wrong, if I can turn back to Exhibit No. 5, what is wrong with this recommendation?

Answer. Without having studied it, I can't begin to tell you.

Question. That is probably an unfair question for me to say without giving you the opportunity to study it, having said that you haven't seen it. I will rephrase that.

Answer. I mean, to answer the question fairly I would actually have to have the Indian Gaming Management Staff review this and give me their conclusion as to why they would not have supported the views of the Area Director.

EXAMINATION BY MR. BALLEN:

Question. Mr. Anderson, in fact, did not the Indian Gaming Staff review the area office's determination at that time?

Answer. Yes, they did, and we do state in our decision letter that we rejected the recommendations of the area office. Now my recollection is that the support for the town had changed dramatically from the time this was—the recommendation had been made to the time the decision had been made.

EXAMINATION BY MR. DOLD:

Question. Do you know what it was based on?

Answer. The opposition of the town?

Question. Yes.

Answer. I didn't look beyond what was provided to us and what was referenced in our letter about the traffic problems and others. I don't know what the dynamic was between the change of the government. I basically accepted the government's stated views in their governmental documents and I didn't go beyond that.

Question. I am just trying to get an essence now of if the tribes have put months, if not years, into an application, they work to get agreement with the city council, they get the mayor's approval on it, they get a FONZI from the area office, they get a recommendation from Ashland and they get a recommendation from Denise Homer at the area office, they are going along, and can that just be stopped by the local opposition? They apparently have addressed matters like police and fire and those things that we have talked about earlier in an agreement with the tribes. I am just trying to get an understanding——

Answer. In certain cases, yes.

Question [continuing]. What switches and what throws that switch, what triggers it?

Answer. The facts of what the area office might perceive as the town, the local community's capability and effects on their jurisdiction has to be reviewed by the town itself, and I would not accept these as binding conclusions. I mean, certainly, if, at this time, the town supported this, that is the context in which these recommendations were made, and that context had changed completely by the time it had come to our office.

EXAMINATION BY MR. BALLEN:

Question. Who, Mr. Anderson, has primary responsibility for deciding these Indian gaming applications, would it be the area office or the central office of the Indian Gaming Staff in Washington?

Answer. For off reservation, final decision and review authority is in the central office in Washington. The primary reviewer within the central office for recommendations by the local BIA is the Indian Gaming Management Staff, and that is why Secretary Lujan instituted this policy that the department carried forward,

is to have an office with a national context review these applications and with expertise, and I am not sure how many area office decisions were made by the area office here, but the Indian Gaming Management Staff had reviewed all of them.

Question. And the articulated decision, or the articulated opposition—I'll withdraw that because I know we talked about it, but the articulated opposition, could it have been mitigated?

Answer. The opposition.

Question. The reason?

Answer. Yes.

Question. Because we already established it cannot be for racism type things, it can't be just that we don't want Indians coming into our town, it has to be for——

Answer. Some rational reason.

Question. And the rational reasons I have been able to come up with are things like traffic?

Answer. Yes.

Question. Environmental impact on the river?

Answer. Sure. Every part of this, if I could finish, could be mitigated. If they resubmitted their application and they had somehow got the support of the local community through their elected officials and the resolutions, they had a new agreement in place with the city, certainly these problems would be mitigated. That would have been the pathway to getting this thing approved.

EXAMINATION BY MR. BALLEN:

Question. To follow up, I'm sorry, this question has been asked in various depositions by Majority counsel about the local opposition, and what is a legitimate or not reason, but if the citizens at the time, hypothetically, and I hate to ask hypothetical questions, had a moral opposition to gambling and did not want gambling in their community and it didn't matter who was running it, whether it was an American Indian tribe or the Pope or the United States Government, they didn't want gambling in their community, isn't this a view that you have to look at if expressed by the will of the locally elected officials? I mean, is it the job of the Federal Government and the Department of Interior and Bureau of Indian Affairs to simply override local opposition?

Answer. It is certainly not the goal to override. If the sole reason was moral opposition, if they were extremely far away, that would carry more weight than if they are nearby. I mean, moral opposition alone, closer to the tribe, would be something we would have to scrutinize a lot more. I would say this, I would be reluctant to rely solely on moral opposition, though, as a grounds.

Mr. ELLIOTT. Can we go off the record?

Mr. DOLD. Sure.

[Discussion off the record.]

EXAMINATION BY MR. DOLD:

Question. Whose job is it at the department to determine whether opposition, local opposition, is valid?

Answer. The primary evaluator of local opposition is the Indian Gaming Management Staff. They are the primary office.

Question. And referring you back, just to the Hartman memo, that was a recommendation by a member of the Indian Gaming Management Staff, but this was a recommendation by Mr. Hartman here to take the land into trust, is that correct?

Answer. No, that is incorrect.

Question. Okay. Please tell me what it is?

Answer. Mr. Hartman's memo addresses the question of detriment, and he does not believe that there is a finding of detriment in this case, but probably most importantly is he preserves the issue of best interest on the last page, Page 16 of his document, let me find that: Staff recommends that the termination of the best interest of tribe and its members be completed.

Mr. Hartman or Mr. Skibine, I am not sure, one of the two, expressed to me that there were strong concerns about the lease adjacent to the casino that were troublesome, so this was not a—in fact, it has been widely misconstrued that Mr. Hartman's memo is an endorsement overall of the trust land application, which it was not.

Mr. BALLEN. I'm sorry, could you just restate your answer or can the court reporter read it back, because I think some of it got lost there.

[The reporter read back as requested.]

The WITNESS. I wanted to make sure I said that this document has been widely misconstrued as an endorsement by Mr. Hartman of accepting this land into trust,

which it was not. There were fundamental problems with the management contract and also with the terms of the deal with the tribe and Galaxy.

EXAMINATION BY MR. DOLD:

Question. But it is an endorsement that it is not—or it is his recommendation or position stating that it is not detrimental?

Answer. Yes.

EXAMINATION BY MR. BALLEN:

Question. Under section 20?

Answer. Under section 20.

Question. Did he reach that issue under Section 465?

Answer. No, he didn't address the trust land issue, I don't believe.

EXAMINATION BY MR. DOLD:

Question. Do you know who in the Indian Gaming Management Staff did the determination whether the opposition was valid, who specifically in the Indian Gaming Management Staff?

Answer. Mr. Skibine certainly was involved in that determination. I am not sure who else on the staff worked on that issue.

[Anderson Deposition Exhibit No. MA–7 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. Showing Mr. Anderson what has been marked as MA–7, it is a memo to the Assistant Secretary of Indian Affairs through the deputy commissioner of Indian Affairs. I believe at that time it was Hilda Manuel?

Answer. That's correct.

Question. From George T. Skibine, and the subject is the Hudson Dog Track. I will give you a second to look over that.

Have you ever seen this document before?

Answer. No.

Question. If we could just turn to page 4, if I can direct your attention to page 4, down at the last paragraph there, the first line, first, the signatories cite the removal of land from the local property tax rolls as one of the things that they were against. And we talked before that the tax rolls and taking land off the tax rolls was certainly a valid argument for detriment; is that correct?

Answer. Yes.

Question. The next page—this, by the way, is a letter sent by Sheila Harsdorf expressing opposition. The second thing that is stated in the Harsdorf letter is, Second, the representatives assert that the expansion of gambling is contrary to the public will in Wisconsin.

Is that—I think we've gone over this area a little bit with you with regard to just naked opposition to gambling. Are you following me there?

Answer. I was looking for that Wisconsin reference.

Question. The "will in Wisconsin," up here. The second line from the top.

Answer. Oh, okay, yes.

Question. Is it—and we talked before that just opposition to gambling would not, in your mind, be valid as an opposition?

Answer. That's right.

Question. Third, the letter states that off-reservation gambling may not foster economic development within the tribal nations. Was this your understanding or belief?

Answer. No.

Question. Again, this is a document, and it is undated, but under the consultation with the city and town, it reads, "The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the city of Hudson. Thomas H. Redner, mayor of the city of Hudson, has a strong vision and planning effort for the future that this proposed casino can apparently be accommodated with minimal overall impact, just as other development of this size.

Do you have any idea when this document was written or drafted?

Answer. No.

Question. I know we talked before, you had mentioned before about the possibility of a cure. Was it your understanding that the way that the tribes would be able to cure this was to accept a rejection letter and start the process from ground zero?

Answer. I mean, that certainly was one option. I mean if they had, before final decision-making had been made, brought in new information that the town now sup-

ported it or the traffic problem had been solved, then that was an option, too. But one option was just to have the decision letter go out, and then resubmit it.

Question. Is there a policy to consult the tribes at the Department of Interior?

Answer. Yes.

Question. Do you know if that policy was followed in this case?

Answer. I believe there was extensive meetings with the tribes and tribal representatives during this process. That was, again, a function of the area office initially, and then the Indian Gaming Management Staff later.

Question. Were they ever told that their application was on a crash course for disaster, unless something got changed or altered?

Answer. I don't know what the communications were between the two. I wasn't involved in those.

Question. You said that that was one of the abilities, was to refile. What would be another one?

Answer. Well, they could file a lawsuit challenging our standards, which is what they did. That's another option.

Question. Is that the most advisable option?

Answer. No, the most advisable option is to resubmit an application and cure the problems in a decision letter. Do an environmental assessment of the scenic riverway to get support of the local opposition, to get the support of the St. Croix or show that their information is invalid. There are certain fundamental facts that couldn't change. The location is not one they could change. They could certainly move to another area.

Mr. BALLEN. Well, couldn't they change the location? Couldn't these tribes find a different location? They didn't have to location in Hudson; did they?

The WITNESS. These three tribes already had casinos on their reservations, but they certainly could have found other locations, or at least looked for other locations, where a town supported them their application.

EXAMINATION BY MR. DOLD:

Question. You said before you were aware of a referendum done by the town, the city of Hudson?

Answer. I have a recollection of the referendum; I don't remember if it's because I read it or because it was discussed at the time. I may have learned at the time that there had been a switch in the support. I don't remember at this time.

Question. I'm just going to direct your attention to page 6 of the Skibine memo. Down near the bottom——

Mr. BALLEN. I'm sorry, just, because you are referring to the Skibine memo, do you know whether this was a memo that was written by Mr. Skibine?

The WITNESS. I don't have any information on this memo at all. I don't know who wrote it.

Mr. BALLEN. I want to note for the record it says "Draft." Were the views that were asked, that Mr. Dold is asking about in this letter, were these views that Mr. Skibine expressed to you orally during the decision-making process?

The WITNESS. No. It wasn't expressed to me at all. It seemed, indeed, that his views are all the opposite of this.

Mr. BALLEN. His views are the opposite of this?

The WITNESS. Yes, because here it says that the mayor supports it, and my information was that the town opposed this application. So the information Mr. Skibine was providing me and discussed in the letter was not that there was support.

Mr. BALLEN. In fact, he sent you a memorandum or a draft in the latter part of June; is that not correct? Do you recall that?

The WITNESS. I don't recall a draft from Mr. Skibine of the draft letter. I recall a letter in Denver the week of——

EXAMINATION BY MR. DOLD:

Question. The letter in Denver the week of, was that the first letter you had seen?

Answer. Yes, I believe so.

Question. If I can direct your attention just above letter C here, it says, "Several thousand cards, letters, and petition signatures have been received in support of an Indian casino at the Hudson Dog Track."

Do you know this to be true?

Answer. No.

Question. If the problem with the casino, if the problem with the Hudson casino was one of police or traffic that could be mitigated, would it not be easier just to let the tribes know, we need to mitigate the police and traffic problem before we can approve this application?

Answer. Yeah, in the context of getting the town's support, yes. That certainly should have been communicated that you need the town's support for this application, and right now you don't have it, so please get it turned around.

Mr. BALLEN. Curing local opposition, though, is not something that can be done by a simple—it's not something that you can determine; it's something that has to be worked on. I mean this is a serious thing, local opposition.

The WITNESS. What I would have asked for is updated, current resolutions that seem to be valid and not the work of one or two people on a council that basically says our council has changed our mind and here is our letter in support of this application, or resolution in support of it.

EXAMINATION BY MR. DOLD:

Question. But they had to have articulated reasons?

Answer. In this case we had articulated reasons. Whether in every case we would have needed it is something I would have to look at the facts of the case to see. It's kind of a question I would have asked the solicitor's office probably, and Indian Gaming Management Staff, whether opposition without any rationale is something that would meet their standard of detriment.

Question. Would it have met yours, in your opinion?

Answer. Well, if it's far away, it most likely would have. If it's real far away, 100 miles, 200 miles, I would probably accept that.

Question. Would you consider this real far away?

Answer. Yes. This was the farthest one that I had been aware of. Coushatta was, it was close enough where eventually the tribe just bought the land between their off-reservation site and where they eventually located. Here, it's the furthest one I have encountered.

[Anderson Deposition Exhibit No. MA–8 was marked for identification.]

Mr. DOLD. Showing Mr. Anderson what has been marked as MA–8, it is a memorandum from I believe the President of the United States, and it's a memorandum for the heads of the executive departments and agencies, and it's dated April 29, 1994.

EXAMINATION BY MR. ANDERSON:

Question. Are you familiar with this directive?

Answer. Yes.

Question. Directing your attention down to paragraph B, it reads, "Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals."

Answer. Yes.

Question. Do you know if this was done in this case?

Answer. I expect it was.

Question. Do you know if the tribes were given an opportunity or consulted about the matter in a fashion that would allow them to cure an application?

Answer. Yes. I would expect that the tribe knew that they needed support of the local communities, and I expect that the Indian Gaming Management Staff communicated that to them.

Question. And assuming they did have the support of the local community, that would be okay? That would have been enough to change your decision?

Answer. No. The other factors are the St. Croix tribe opposing would have been another barrier to that, as well as the environmental problem, the environmental assessment.

Question. The St. Croix was one that we discussed that could have been mitigated, though, if they were brought in or given money?

Answer. Yes, if they became a joint partner or move their opposition, yes.

Mr. BALLEN. But these are hypothetical questions we are asking with 20/20 hindsight. At the time these were not——

The WITNESS. Yes. As I understand it, it is possible in making a deal work here, yes. If the St. Croix tribe removed their opposition or supported it, if the town councils did, if the environmental assessment showed there is no environmental problems, yes, this could have worked.

EXAMINATION BY MR. DOLD:

Question. Was it communicated that there was an environmental problem, that the St. Croix would be a barrier that they could not overcome, was that commu-

nicated to these tribes? I mean that's my basic gist. Was it communicated that, you know, unless you get the St. Croix tribe to come on board with you, we are not going to approve your application?

Answer. I don't know the answer to that. I expect that the fact that it was known that we were communicating and the gaming management staff would talk to surrounding communities, including the St. Croix tribe, that that opposition or the view of another tribe would be given weight. I expect that was communicated to the three applicant tribes.

Mr. BALLEN. But in addition, since we are having a parade of hypotheticals here, I mean the other factor that would have——

Mr. DOLD. I don't want to say—that wasn't a hypothetical, whether they were told——

Mr. BALLEN. Well, my questions were hypothetical.

Mr. DOLD. Okay.

Mr. BALLEN. So, if we are having a parade of hypotheticals, you would also have to consider the best interest test as well under section 20, which some of the staff, whether this particular deal was in the best interests of the three applicant tribes.

The WITNESS. That's correct. And also, just 151, taking the trust, land into trust is the other ultimate hurdle, yes. There are a number of barriers. NIGC approval of the gaming management contract; I mean there is an elaborate process to make this work.

EXAMINATION BY MR. DOLD:

Question. And just so I'm clear on this thing, there is a two-pronged test, and I'm fully aware of that, that goes on the local opposition—or the detriment to the community?

Answer. That's right.

Question. And the best interest of the tribe. And then from there, if that were to be accepted, then it would be the 151 hurdle, which would be the Secretary saying, okay, I think I want to do this, and it's okay to take the land into trust?

Answer. Right.

Question. And then once that decision was made, then they would send it to the Governor for the Governor's approval?

Answer. Yes, under section 20, right. We could have sent the—if we made a positive determination on section 20, that could have gone to the Governor, independent of the trust land acquisition. He could just concur that there is no detriment and it's in the best interest, but you have got the trust land application that's separate.

Question. Is it normally section 20 determination, and then to the Governor, and then back to 151, or how is it normally done? And if you don't know, that's okay.

Answer. It's usually concurrently, but there's a variety.

Mr. BALLEN. Mr. Anderson, you mentioned the National Indian Gaming Commission. Did they have a view on this particular contract that you know of?

The WITNESS. At the time I didn't know. All I knew from discussions from either Mr. Skibine or Mr. Hartman was that there were problems with the lease. I knew that the ga ning commission would have to—would authorize that. If it was found to violate IGRA in the statutory standards for shares of gross proceeds, that would have caused a rejection of the lease. I'm not sure at that time I knew whether the NIGC would have found that troublesome. I expect that they would have.

EXAMINATION BY MR. DOLD:

Question. In an earlier exhibit, I had shown you The New York Times article letter written to the editor from Secretary Babbitt, and in it it mentions that the Republican Governor of Wisconsin opposed the casino. Is that a correct statement?

Answer. I don't know.

Question. Were you aware when you were making the decision that the Republican Governor of Wisconsin, who I believe at the time was Tommy Thompson, was opposed to the casino?

Answer. I don't remember if I knew his view at all. I mean I don't know.

Question. Would it be anywhere in the record?

Answer. Because his role wouldn't actually come in the place until we recommended something to him. I'm not sure whether the gaming management staff sent a letter, saying, you know, coming your way is a section 20 application; please preview it. So I just don't know.

Question. You're not aware of any communication?

Answer. No.

Question. Okay.

Answer. The—I mean the Governor and the tribes have been involved in discussions about gaming issues. It may have been that he was discussing this issue in the press and other people read the press accounts of where the Governor stood. I don't recall if I ever knew where the Governor stood on this.

Question. Were you aware of any requests made to the Secretary's office for information regarding the proposal?

Answer. No. You mean written requests, or?

Question. Or telephone conversations asking about——

Answer. No, no telephone. I was aware that Mr. Duffy had met with the Minnesota delegation. And also that the Secretary had met with the tribes in Wisconsin in April.

Question. Right. That was the April 8th meeting, on or about?

Answer. Yes.

Question. Do you know if the Secretary's office always provides correct information?

Answer. They endeavor to supply correct information.

Question. Fair enough.

[Anderson Deposition Exhibit No. MA–9 was marked for identification.]

Mr. DOLD. I'm showing Mr. Anderson what has been marked as MA–9, and it is a letter to Secretary Babbitt dated April 28, '95, from Representative Steve Gunderson, and I would just give you an opportunity to peruse that.

EXAMINATION BY MR. DOLD:

Question. Have you ever seen this letter?

Answer. No, I don't recall ever seeing this.

Question. I have a specific question. I will allow you the time to read it if you choose, but I'm just focusing on one specific area down in the third paragraph.

It reads: "According to your office, since Congress passed the IGRA in 1988, the Secretary of Interior has never approved the acquisition of off-reservation land to be used for casino gambling."

Is that an accurate statement by, it would be Congressman Gunderson?

Answer. No. I believe we had approved at that point, at least the Celest acquisition and the Sault Ste. Marie acquisition, and also the Potawatomie in Milwaukee.

Question. Were you aware of any tribes that opposed the Hudson Dog Track? First, do you know which tribes opposed the Hudson Dog Track application?

Answer. I know generally. The St. Croix certainly, the Oneida of Wisconsin, and I know there are Minnesota tribes opposed to it; I'm not sure which ones. I assume the Mille Lacs was probably the tribe that was opposed.

Question. Why is that, just proximity wise?

Answer. Just because they are well-known in the Minnesota delegation, to the delegation. They have a large facility. I'm not sure if it's central Minnesota somewhere.

Question. Are you aware of any tribes that opposed the application at Hudson? Are you aware that they made any political contributions?

Answer. Have they ever made?

Question. I will limit it to 1996, unless you want to go back a little further, but 1996 is all I'm looking for.

Answer. I'm aware that Oneida made contributions to the party in 1992, and I expect they made it in '96 as well.

Question. Do you have any idea of the amount?

Answer. No. I mean in 1992 I know the tribes gave, you know, thousands of dollars, and I suspect that they gave thousands of dollars later as well.

Mr. BALLEN. You say you suspect. Do you know one way or the other?

The WITNESS. No. I don't know whether they gave anything, frankly.

Mr. BALLEN. Okay.

EXAMINATION BY MR. DOLD:

Question. Do you know if MIGA, Minnesota Indian Gaming Association, made contributions?

Answer. No. I thought that—it's MIGA, was a trade association. I didn't know they were a PAC.

Mr. BALLEN. Your answer to that question is no?

The WITNESS. I thought that MIGA was a trade organization; I didn't know it was a political action committee.

EXAMINATION BY MR. DOLD:

Question. Do you know Marge Anderson?

Answer. Yes.

Question. Are you aware of any contributions that she would have made on behalf of her tribe?

Answer. In what time frame?

Question. '96.

Answer. In '96, yes. I was aware that Mille Lacs and tribes across the country were donating very heavily to campaigns.

Question. Were you aware in 1995 for the 1996 election cycle, I guess I should recharacterize that?

Answer. By '95, I don't think I was aware of any contributions. It is conceivable that somebody was on a way to a coffee or a gala or some event and I was informed of it, but nothing registers of any contributions at that time.

Question. Do you know if Marge Anderson ever went to a coffee?

Answer. I believe she may have gone to a coffee in the spring of '96.

Question. How about Debbie Doxtator? Do you know Debbie Doxtator?

Answer. Yes.

Question. Do you know if she ever attended any political coffees at the White House?

Answer. I don't know if she went to coffees, but in press accounts and in preparation for others, I have seen that she has——

Question. But not in your personal knowledge?

Answer. Like I said, she may have. They may have that summer gone and said we are on our way to a coffee, but nothing registers.

Question. And when we say "coffees," we are talking about the much publicized coffees at the White House?

Answer. Right.

Mr. BALLEN. Prior to July 14th, 1995, when you made this decision, were you aware of the specific contributions of any of the tribes opposed to this matter?

The WITNESS. No. In fact, at that time I didn't think that Clinton-Gore had even organized as a committee at that point.

EXAMINATION BY MR. DOLD:

Question. Were you aware of any communications between the Department of the Interior and the White House?

Answer. No.

Question. Between the Department of the Interior——

Answer. Between this time and——

Question. Only, I'm talking—again, thank you. It's great when you are deposing a lawyer, because they know exactly what the question is.

Time frame wise, the area of the decision time frame, meaning in 1995, April, and I will go even a little bit afterwards, did you know of any communications between the White House and the Department of the Interior on the Hudson Dog Track matter?

Answer. No.

Question. Do you know of any communications in the same time frame between the Department—the Democratic National Committee and the Department of the Interior?

Answer. No.

Mr. ELLIOTT. On the dog track.

Mr. DOLD. On the dog track.

The WITNESS. No. I learned of those through the pleadings.

EXAMINATION BY MR. DOLD:

Question. There's been—let me back up. How long have you been with the Department of the Interior?

Answer. Um, 5 years.

Question. Okay. The Secretary has said that the decision has been made by a career civil servant in the Department of the Interior who has been there 18 years, and saying that the name that has been mentioned is George Skibine has made the decision. Do you know if this decision that Mr. Skibine ever made, was it ever put in writing? And I assume when he is saying "decision," I assume he is talking about recommendation, because you are the one with the ultimate decision-making power, correct?

Answer. Yes. His recommendation would have been in the form of a proposed letter that would have went around and we would have went through the surname process and the solicitors and everyone would have reviewed it. I guess that's how

his final recommendation would have been made. He could have made an oral recommendation as well.

Question. Did he make an oral recommendation to you?

Answer. He may have. I mean it seemed to me by May we had at least a fairly good consensus that it was—that the application was not going to be approved. We still had discussions about the rationale, but I think by that point I felt that we were going to deny it.

Mr. ELLIOTT. And you had conversations when you were in Denver?

The WITNESS. Yes. I guess on my own I had decided this sort of looked pretty bleak from the first time I encountered the facts.

EXAMINATION BY MR. DOLD:

Question. When you jumped into the role of the decision maker in this case, what was your understanding of the positions taken by the Ashland office and the Minneapolis area office, if any?

Answer. The Minnesota office I knew had made a recommendation to approve this as of November of 1994. I don't recall any of the other offices' recommendations.

Question. Did anybody communicate with Denise Homer?

Answer. I don't know.

Question. Did anybody communicate with you the reasons why her proposals would take the land into trust would be not accepted by the Secretary's office, or the Department of Interior?

Answer. I did not.

Question. What role did John Duffy play in this decision?

Answer. John is primarily the policy advisor to the Secretary on gaming issues. He also provided gaming advice to my office as well. He served as a coordinator to Congress and to, sometimes to the public as well, occasionally gave press interviews on gaming issues. So primarily I would see John's role as a key policy advisor on these matters.

Question. How often did you meet with him in the time frame of—on this matter, on this matter?

Answer. I think I met with him once on this matter. May 17 is the one I may recall.

Question. Did you hold regular staff meetings?

Answer. On my own? Yes. Our office conducts weekly staff meetings.

Question. And would the Hudson casino proposal be addressed at those?

Answer. I don't think that they were. They are primarily update meetings, and it's conceivable that someone said something about the matter, but it would be in the context of a minute or two.

[Anderson Deposition Exhibit No. MA–10 was marked for identification.]

Mr. DOLD. I'm showing Mr. Anderson what has been marked as MA–10. It is an April 20, 1995, memorandum to the Assistant Secretary of Indian Affairs from the office of the area director regarding the trust acquisition request, St. Croix Meadows Dog Track property.

Mr. BALLEN. Can we go off the record for a minute?

[Discussion off the record.]

EXAMINATION BY MR. DOLD:

Question. The document I have put in front of you is an April 20, 1995, memorandum. Citing down at the bottom of the first page, "We have also attached the following material in support of the trust acquisition," and before I go any further, have you ever seen this document?

Answer. No, I don't recall ever seeing this.

Question. Do you ever recall seeing any, the title insurance commitment?

Answer. No.

Question. The Level I hazardous waste survey?

Answer. No.

Question. The finding of no significant impact?

Answer. No.

Question. Maps of the property?

Answer. No.

Question. Tribal resolutions requesting land be placed into trust?

Answer. No.

Question. Or the notification addressed to the local units of State government?

Answer. No.

Question. Do you have any reason to doubt that this was all done and submitted to you—submitted to the Department?

Answer. No, I don't know if it was submitted.

Question. Do you know what was wrong with the Level I hazardous waste survey, if there was anything wrong?

Answer. No.

Question. Does the document indicate any flaws on its face that would prevent——

Answer. This document?

Question. This document, that would prevent—or anything that would jump out at you as saying they didn't do X, Y or Z for the application?

Answer. The primary thing is it seems to be out of date. It doesn't look like the area office updated their information from November, because it mentions the agreement for Government services on page 5 in the first paragraph; it talks about city of Hudson, and paragraph 3, if there's sufficient land in the city, and this seems to be contrary to the information that we had in hand, or at least the Indian Gaming Management Staff had in hand by July when a decision was issued, so I guess the primary flaw that I see in glancing at this is it seems to be out of date.

Question. What information are you referring to specifically that the Indian Gaming Management Staff had in their hands?

Answer. The expressions of opposition from the town of Hudson and Troy aren't referenced in this document.

Question. And that the only thing that you can see?

Answer. Well, I don't see any discussion of the scenic riverway that was—and an assessment of how those documents are now sufficient. I'm not sure if there is an analysis of concern from the St. Croix tribe in here, either.

Question. Do you know if those problems were ever given back to the area office saying——

Answer. I don't know.

Question. Who would be in charge of communicating that information back to the area office?

Answer. Communications between area and the recommendations were done between Indian Gaming Management Staff and the area office.

Question. Would George Skibine as the head of the Indian Gaming Management Staff be in charge of that, or would that be——

Answer. He would be in charge of that. Whether day-to-day communications would have been from someone on his staff, or it may be from George as well.

Question. Page 3, if I can ask you to turn to page 3 of the memo, at the very, very bottom, it says, "The tribes must expand its gaming operations beyond the existing facilities."

Do you agree with that statement? Or obviously—I shouldn't say obviously. Do you agree with that statement?

Answer. I'd have to study the document. I don't know whether I would agree or not.

Question. Did someone ever communicate with Denise Homer or anyone at the area office that their recommendations were flawed so that they might be able to correct them in the future?

Mr. ELLIOTT. He has testified to that several times, Bob.

The WITNESS. I'm sorry. I don't know if anyone else did.

Mr. BALLEN. In the interest of time, he has been asked this a number of times.

EXAMINATION BY MR. DOLD:

Question. The Skibine memo that we put before you, and the reason we say Skibine is because it's marked "Skibine" at the top. I just want to make sure that you had not seen that memo before; is that correct?

Answer. That's correct.

Question. Okay.

Mr. BALLEN. For the record, what exhibit number is it?

Mr. DOLD. That's Exhibit Number 7.

EXAMINATION BY MR. DOLD:

Question. Would that have been routed through you?

Answer. If it had been—if it had been signed by George and it had been signed by the deputy commissioner, because it is true, then it would have been routed to the Assistant Secretary, and since she was recused, yes, it would have ultimately reached me. The draft would not have been.

Question. But drafts aren't signed?

Answer. Right.

Question. Normally.

Answer. Right.

[Anderson Deposition Exhibit No. MA–11 was marked for identification.]

[Deposition Exhibit No. MA–11 marked for identification].

Mr. DOLD. I'm showing the witness what has been marked as MA–11. It is an e-mail. The area that I am interested in here is the second portion. The author would be George Skibine. It's in regards to the Hudson Dog Track.

EXAMINATION BY MR. DOLD:

Question. Directing your attention down to the bottom half, the second paragraph——

Mr. ELLIOTT. Mr. Dold, I'm going to objection to any questions relating to this document, that portion at least, since that goes to the litigation. You all have said you are not interested in asking questions about the litigation. This goes to a question involving a potential meeting to discuss settlement terms in the litigation.

Mr. DOLD. I'm not interested in settlement terms, and I will again represent to you that I am not interested in the litigation going on, but I am interested in the notion of make naked political opposition, and whether that was fair and whether that would be a fair question, so I'm not interested in anything on the litigation, but as far as a reference to the naked political opposition, I think that's a fair question to ask.

Mr. BALLEN. Mr. Dold, I believe you have asked that question already about naked political opposition to Mr. Anderson earlier in the deposition, and I just wanted to note the date on this is March 17, 1997, the date on this document under consideration.

EXAMINATION BY MR. DOLD:

Question. The question that I have for you is, in this paragraph, Mr. Skibine is talking about the question that the tribes—or the question that is pending is whether their decision to resubmit an application, meaning the tribe's decision to resubmit an application, is whether the Department will again stand by its' position that naked political opposition of the surrounding communities, without factual support, is enough for the Secretary to refuse to make a finding that the proposed acquisition is not detrimental to the surrounding community.

Down further it says—well, let me just stop there. I will go on. The very last line, the second thing says, I think that it is a fair question for plaintiffs to ask.

Mr. ELLIOTT. That's—what is your question?

Mr. DOLD. My question is, is that—was naked political opposition of the surrounding communities, without factual support, as is noted in this, was that naked political opposition the reason for turning down the application, or one of the strong reasons to turn down the application?

The WITNESS. Could I confer with—I just want to—on the litigation aspects.

Mr. DOLD. Sure.

The WITNESS. Because I am prepared to answer, but I want to confer with my counsel for a minute.

Mr. DOLD. Of course.

The WITNESS. Could you restate the question?

Mr. DOLD. Can you repeat the question for us, please?

[The reporter read back as requested.]

The WITNESS. I don't believe that naked political opposition was the standard we used in the Hudson Dog Track matter. The way I read this e-mail, the plaintiffs phrase it that way. I think that in the decision letter, by referencing the traffic and the land use conflicts, that that was not the standard that we used. So I wouldn't say the questions will stand by its position, that's not the position that we took. We took the position that political opposition, coupled with evidence, was sufficient to show detriment.

As to the other questions about its rebuttal, I just don't have an answer on that point.

EXAMINATION BY MR. DOLD:

Question. Would this be a fair question? Mr. Skibine thinks its a fair question.

Answer. Yes, it's certainly a fair question for plaintiffs to ask.

[Anderson Deposition Exhibit No. MA–12 was marked for identification.]

Mr. DOLD. I'm showing Mr. Anderson what has been marked as MA–12. This is an e-mail from George Skibine dated July 8, 1995, at 5:36 p.m., and it's addressed to Miltona R. Wilkins, Tom Hartman, Paula L. Hart, and Tina LaRocque, regarding the Hudson Dog Track. And it states, "I have left on Tona's desk the redrafted version of the Hudson letter, per Duffy and Heather's instructions, along with the disk

I used. Please make sure it is put in final form, and brought up to Heather first thing on Monday. Please have copies made for Bob Anderson, Kevin, Troy, and Hilda. The Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes area. Also, give Larry a copy of this message," da da da. We will leave it at that.

Do you know why you, as the decision maker in this case, at the timing of July 8th of '95, you were not put on a list of at least who to receive a copy for?

Answer. No, but I would be signing the document, so that may have been the reason.

Question. Can you explain——

Answer. I mean I would have the opportunity, as the final decision maker in this case, to review and make the final decision. So if others were circulating documents in advance of that, I certainly would get the one, the final cut on it. So it doesn't concern me that this be circulated to the assistant's office and the Indian Gaming Management Staff. It may have been preferable that I received a copy in advance, but I would get the last cut at it.

Question. Do you have any knowledge as to why the Secretary wanted this to go out ASAP because of Ada's impending visit?

Answer. No. It—this was during the budget battle when the Congress was cutting the Indian budget, and Ada was, in fact, going to Wisconsin, in fact, to Lac Courte Oreilles. That had been known for a couple of months widely because of the press offensive that was done by the department, so it certainly was widely known she was going there, but I don't know the reason why that statement was in there.

Question. Do you know in instructions, Duffy or Heather, there I assume is Heather Sibbison; is that your understanding?

Answer. Yes, I would assume so.

Question. Per Duffy and Heather's instructions, do you know—did Mr. Skibine ever tell you what instructions?

Answer. No.

Mr. BALLEN. Were any such instructions given to you?

The WITNESS. No.

Mr. ELLIOTT. Isn't it true you were going to be in Denver the following Monday with Mr. Skibine? The 8th? I will represent to you the 8th of July is a Saturday.

The WITNESS. Yes. I left Sunday for Denver.

[Anderson Deposition Exhibit No. MA–13 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I'm showing Mr. Anderson what has been marked as MA–13. It is a draft letter to the three tribal chairmen drafted on June 29th, '95, and I believe we know at this time that this was drafted by Mr. Skibine. I will ask you to take a quick look at it.

Answer. Okay.

Question. Have you ever seen this document?

Answer. Yes. It was shown to me by the Senate investigators in September.

Question. But you had not seen it prior to that?

Answer. I don't recall ever seeing this version before September of '97.

Question. Turning your attention to page 2, it says, "The communities' objections are based on a variety of factors, including the following: increased law enforcement expenses due to potential exponential growth in crime and traffic congestion; testing wastewater treatment facilities up to remaining operating capacity; problems with solid waste; adverse effect on the communities' future residential, industrial and commercial development plans, and difficulties for the current Hudson businesses to find and retain employees."

Is that an accurate rendition of the community's opposition?

Answer. That seems to be the reasons that I'm aware of, yes.

Mr. BALLEN. Is it complete?

The WITNESS. I'd have to compare the final decision letter and this. I'm not sure if I see the scenic riverway in here.

Mr. DOLD. I think it's on page 3.

Mr. ELLIOTT. I may interject we are now at 5 o'clock, and I know Mr. Anderson has an—has represented to us earlier that he has an appointment at the Department of Justice at 5:30, and Mr.—the Minority does have a short period of questions that we would like to have an opportunity to ask. I don't know how much you have left.

Mr. DOLD. I——

The WITNESS. Could we go off the record for a moment?

Mr. DOLD. Sure.

[Discussion off the record.]

EXAMINATION BY MR. DOLD:

Question. My question to you on the exhibit you have before you, which has been marked MA–13, that was drafted by Mr. Skibine, do you know why at such a late date, June 29th, just two weeks before the decision, the letter was drafted for Ada Deer, or—and also, the Deputy Commissioner for Indian Affairs, Hilda Manuel?

Answer. I don't know as to Ada Deer, whether she communicated her recusal at that point. Gaiashkibos is still listed as the tribal chair. I think by this date he had not been—I think he had been moved out of office. Why it's on the two, either Ada Deer's or Hilda Manuel's, I think it goes to the appeal rights, whether it appeals to the BIA, or whether it appeals to the Secretary. So who signs the letter and whether it is for the Secretary's office or for the BIA triggers different appeal procedures, and so that's why I suspected it was written for either.

Question. But so at this point in time, June 29th, 1995, Mr. Skibine did not know that you were going to be the final decision maker?

Answer. I don't suspect that he did

[Anderson Deposition Exhibit No. MA–14 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I'm showing Mr. Anderson what has been marked MA–14. It is a statement from Secretary Bruce Babbitt before the Senate Committee on Governmental Affairs dated October 30, 1997. I will allow you to take a look over it even though I only have one specific question on one line.

Answer. Okay.

Question. Directing your attention to page 2, at the top of the page, it says "Fourth, the Department based its decision solely on the criteria set forth in section 20 of the Indian Gaming Regulatory Act."

Is that a true statement?

Answer. It's not an accurate statement, because it's based on section 20 and 465, so the decision letter clearly states both criteria. I would note that independently section 20 was sufficient grounds, but certainly the letter discussed both

[Anderson Deposition Exhibit No. MA–15 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I'm showing Mr. Anderson what has been marked MA–15 and I will ask you to look it over, even though I don't have any questions on the substance of the e-mail. It is an e-mail from Mr. Keep marked "priority urgent" to John Leshy, Heather Sibbison, George Skibine, Tom Hartman, Michael Anderson, Hilda Manuel, Troy Woodward, and a couple of others.

My question to you is on the handwritten note at the bottom. It's not quite as legible as we would like, but I believe it reads, "Notify White House Counsel Office" with a circle around it. First of all, have you ever seen the document?

Answer. Yes, I saw it probably when it went through the e-mail.

Question. Just for the record it's dated 3-21-97?

Answer. Yes. Since I'm on the list, I would have read the document.

Question. Do you recognize the handwriting?

Answer. It's not mine, but no, I don't recognize it.

Question. Do you know why you would want to notify the White House Counsel's Office on this matter?

Answer. No.

Question. Mr. Anderson, do you know Tom Collier?

Answer. Yes.

Question. Do you know John Duffy?

Answer. Yes.

Question. Have you had any contacts with them since they have left the Department of the Interior?

Answer. I have seen both John and Tom since they have left the department, yes.

Question. In a social capacity or in a business capacity?

Answer. In a business capacity with Mr. Duffy, and social for Mr. Collier.

Question. What business did you conduct with Mr. Duffy?

Answer. Mr. Duffy is a lobbyist for the—a representative of the Shakopee Tribe and he has been in on behalf of the tribe to my office.

Question. The Shakopee Tribe are a Minnesota tribe?

Answer. Yes, that's correct.

Question. And they were opposed to the Hudson casino, is that correct?

Answer. That's what I understand.

Mr. BALLEN. Did you know that at that time?

The WITNESS. No, the only one I was aware of at the time was Mille Lacs. I wasn't aware of Shakopee's opposition.

Mr. BALLEN. Just to be precise, at the time of the Hudson Dog Track matter?

The WITNESS. Right.

Mr. BALLEN. Between April and July of 1995?

The WITNESS. That's correct.

EXAMINATION BY MR. DOLD:

Question. Has anyone ever discussed with you the political affiliation of the tribal representative, of any tribal representative in favor of the Hudson Dog Track?

Answer. Political affiliation?

Question. Yes.

Answer. No. I mean I knew—no one discussed. I knew that Gaiashkibos was a Republican. I knew that when I was an NCAI director. I knew that Debbie Doxtator was a Democrat, but no one discussed those affiliations.

Question. Has anyone ever discussed with you that the Minnesota tribes have been strong Democratic supporters?

Answer. No, no one's discussed that with me. I know that. I knew that for a fact in 1992.

Mr. DOLD. Why don't at this time, I guess we are talking four questions, so why don't I turn it over to you, unless you want me to try to——

Mr. BALLEN. If you have four questions left, I think——

Mr. DOLD. I'm just trying to think through them a little bit.

Mr. ELLIOTT. Do you want time to think through while he asks his?

Mr. DOLD. That's what I was going to propose.

Mr. ELLIOTT. Go ahead.

Mr. BALLEN. All right.

EXAMINATION BY MR. BALLEN:

Question. Mr. Anderson, first of all, on behalf of the Minority we would like to thank you for coming here today and taking time from your busy schedule. Are you an American Indian background?

Answer. Yes.

Question. And you testified a little bit to this, but how long have you worked on American Indian issues in a variety of capacities?

Answer. I first worked for Indian tribes in 1978, and I have worked in—on behalf of tribes most recently in the private sector as the Director of the National Congress of American Indians, and then of course my work at the Department of the Interior.

Question. And just so we understand, the National Congress of American Indians is in fact a leading——

Answer. Intertribal advocacy group.

Question. An intertribal advocacy group in the country for American Indians?

Answer. That's correct.

Question. So you are committed to helping American Indians; would that be a fair statement?

Answer. Yes.

Question. In fact, you know, in the discussion about Gaiashkibos, chairman of one of the tribes, you knew him from your time at NCAI, is that not a fact?

Answer. Yes.

Question. And if you could in this matter, the Hudson matter, you would want to help applicant tribes?

Answer. Yes. Our goal was to create economic development for tribes.

Question. And were you sympathetic to Mr. Gaiashkibos and these three applicant tribes?

Answer. Yes.

Question. If there were a way under the law and the facts as presented for you that you could have approved this application, would you have?

Answer. Absolutely.

Question. In all your years, sir, both as an attorney and working on Indian issues, has anyone ever questioned your professional integrity?

Answer. No.

Question. Have you always done what you feel to be right?

Answer. Yes.

Question. On these issues?

Answer. Yes, I have.

Question. And you also believe that one of your roles in the BIA was to try to aid in the economic development of Indian tribes?

Answer. That's correct.

Question. Can gaming do that, sir?

Answer. Yes.

Question. In your experience at the Bureau of Indian Affairs, do the Bureau of Indian Affairs area offices support most, if not all, tribal applications that are forwarded to Washington?

Answer. They seem to generally. I think because they, particularly if it's a difficult decision, if they want to preserve the right of review, they will send it forward, and they also sometimes don't want to take the heat for decisions at the local level, so they typically forward things for decision to the Washington level.

Question. And does the central office in Washington always agree with the area recommendations?

Answer. No.

Question. So it's not unusual for the central office to deny an application, even though it is supported by the BIA area office?

Answer. I don't know the exact record of disagreements. I know that those disagreements do take place.

Question. But in the Hudson Dog Track matter, it was the Washington office that had the final decision on this application?

Answer. That's correct.

Question. And that was consistent with the directive issued by Secretary Lujan under the Bush administration?

Answer. Yes.

Question. When you made this decision, sir, did you rely on the expertise of your career civil service staff to make your recommendation?

Answer. Yes.

Question. And that would be Mr. George Skibine and the Indian Gaming Management Staff?

Answer. Right. I saw him as the primary repository of expertise in the government.

Question. In relying on the Indian Gaming Management Staff, did anyone on that staff suggest to you or did Mr. Skibine suggest to you that there was support for approving this application of the three applicant tribes?

Answer. No. No, I never received recommendation from anyone in the Department at the Washington level for outright approval.

Question. And to your knowledge, the discussions and disagreements you have been asked about today within the Indian Gaming Management Staff centered on reasons for denying the application, denying the application; is that correct?

Answer. That's correct.

Question. So to the best of your knowledge, the career staff concurred in the final decision that you made?

Answer. Yes.

Question. In fact, they recommended it to you?

Answer. Yes. The career director made the final recommendation to me.

Question. So any suggestion that's made the decision was made against the recommendation and over the objection of the career staff is false?

Answer. That's correct, false.

Question. Is it correct to say that the Hudson application was denied under section 20 of the Indian Gaming Regulatory Act?

Answer. Among the reasons, yes, section 20.

Question. And also, that it was denied under the Indian Reorganization Act, codified now as section 465?

Answer. Yes.

Question. And it's correct to say that some involved in the review of the application believed that the record did not support a finding of detriment to the community under section 20, some staff people?

Answer. There was discussion about the level of detriment. There may—I'm not aware of anybody disagreeing with the final conclusion.

Question. And you formed this belief based on the facts in the case?

Answer. Yes.

Question. Your opinion was not based on any improper interference by lobbyists?

Answer. No.

Question. White House officials?

Answer. No.

Question. DNC officials?

Answer. No.

Question. Any knowledge of campaign contributions made by opponents of the casino project?

Answer. No.

Question. And you believe there was a sufficient showing under section 465?

Answer. Yes.

Question. That that standard was met?

Answer. Yes.

Question. In fact, your belief was that this application could be denied under section 465 and/or section 20?

Answer. Yes.

Question. Sir, just to run through this with you, the application was denied in part because of the documented and substantiated opposition from the local community, including local government officials; is that correct?

Answer. It included that reason, yes.

Question. Did the Hudson city council, to your knowledge, pass a resolution opposing the casino?

Answer. Yes.

Question. And did you not also receive a letter dated April 25, 1995, signed by the mayor of Hudson and the 4th district alderman, who said that the casino would be detrimental to the City of Hudson?

Answer. I don't recall any letter.

Question. Did the local officials have concern as to actual detriment to the best of your recollection, including law enforcement, wastewater treatment, and problems with solid waste?

Answer. The reasons contained in the letter dealing with traffic and land use conflicts were communicated to me.

Question. Did the neighboring Town of Troy also pass a resolution opposing the casino?

Answer. Yes.

Question. And the record also included, or did it, to the best of your recollection, letters from local elected representatives, including Representative Sheila Harsdorf of the assembly, who opposed it?

Answer. I'm not aware of those letters.

Question. Was it your position, sir, to give defense to the stated official views of democratically elected local officials?

Answer. Yes. I believe those were the best expression of the surrounding communities' views on the application.

Question. Did you think it was your responsibility to question the motives of these officials?

Answer. No.

Question. Did you believe it was your job to substitute your own opinion for that of the local democratically elected officials of the towns concerned?

Answer. In this context, where there was a rationale behind the resolution, no, I didn't feel I could substitute my judgment.

Question. Are you elected by the citizens of Hudson to represent them?

Answer. No.

Question. Are you elected by the citizens of Troy to represent them?

Answer. No.

Question. We could go through, there are letters from the local business community and the other tribes in the area, but I believe you testified to that, and answered the record in that regard; is that correct?

Answer. Yes, I have testified.

Mr. DOLD. With regard to what? I'm sorry.

Mr. BALLEN. Other expressions of local support and opposition.

EXAMINATION BY MR. BALLEN:

Question. Sir, were both sides in this matter, to your knowledge, supporters and opponents of the casino free to send their views into the department until a final decision was made?

Answer. Yes. It was my understanding that, given our practice was to receive information and to meet with basically whoever wanted to.

Question. Was this a formal rulemaking process with defined comment periods that closed, or was this an informal process where people were free to submit their views?

Answer. No. This was generally informal, and really up to and including the day of the decision. If someone brought information that changed the decision, we would certainly look at it.

Mr. DOLD. Was there an official comment period, though, set by the area office on this matter?

The WITNESS. There was certainly a deadline set for consultation. I'm not sure I would state that as a formal comment period or not. I don't—I imagine the practice expected was—the practice of the Gaming Management Staff was that if it came in after the deadline they would still review it.

EXAMINATION BY MR. BALLEN:

Question. In fact, didn't the applicant tribes get an opportunity to make their case to the central office people, to the best of your knowledge?

Answer. To the best of my knowledge, the Gaming Management Staff met with persons involved in this matter.

Question. And in fact, how about lobbyists for the applicant tribes? Were they afforded an opportunity to meet with Interior officials, to the best of your knowledge?

Answer. They certainly were not banned, and I expect those meetings took place.

Question. To just go through this so you can state your point of view clearly and in one spot, did the fact that the proposed casino was not on or contiguous to the applicant tribes' reservations factor into your decision?

Answer. Yes. It was a key factor.

Question. Why was it a key factor?

Answer. Because the tests for detrimental impact is certainly swayed by location of where the casino is going to be located. The further away you get, the less compelling the rationale for locating the tribes' casino on a faraway location.

Question. And this was, in fact, quite far from the three applicant tribes?

Answer. Right. Eighty to 188 miles, depending on the tribe.

Mr. DOLD. Was this the furthest application that you had seen.

The WITNESS. The one that I had seen, the City of Milwaukee had accepted and the governor had concurred in an application to take one for Potawatomie which was 250 miles away. In that case, the city supported the application, but yes, as far as the Babbitt administration, I think it's the farthest one.

EXAMINATION BY MR. BALLEN:

Question. Sir, we covered this earlier. Did environmental concerns factor into your decision to reject this application?

Answer. Yes.

Question. Specifically, threats to the St. Croix National Scenic Riverway?

Answer. That's correct.

Question. And in making that determination, there is an environmental——

Answer. If I might add that I think it was—there needed to be a sufficient environmental assessment of that problem, I'm not sure if the actual threat was identified.

Question. Right. In coming to that conclusion, there is an environmental specialist on the staff of the Indian Gaming Management group?

Answer. Yes.

Question. Is that correct?

Answer. That's correct.

Question. And you relied on the expertise of your staff, or the staff of the Indian Gaming Management, to come to that conclusion, is that correct, the environmentalist who was specifically assigned to that responsibility?

Answer. Yes, right.

Question. Was there also substantial—was there also—strike that, please. was there also concern expressed by staff members as to whether or not this particular contract would have been in the best interests of the applicant tribes?

Answer. Yes. I was informed by Mr. Skibine and Mr. Hartman, one of the two, that there were significant problems under the Indian Gaming Regulatory Act as to the terms of the side lease agreement on a parking lot and whether that would have violated IGRA was—it was presented to the department.

Question. To the best of your recollection, what was that side agreement that you recall about the parking lot?

Answer. The tribes would have paid Gallaxy Gaming Company, at the time I thought it was $1.5 million, I understand it may be millions more, for renting their parking lot, which was far above the market value of the parking lot. We, in the gaming area, guard and watch for those situations and the gaming commission does as well, because oftentimes, in order to make a deal more attractive, gaming management companies will go outside strict revenue processes, and they will add on side agreements that technically violate IGRA. The General Accounting Office has criticized the department for not scrutinizing those deals more carefully. So cer-

tainly by that time we were alert to the problems that those kind of agreements caused.

Mr. DOLD. Does the gaming, the other gaming affiliation that you had said, the one that reviews the management contracts, what's that one?

The WITNESS. The National Indian Gaming Commission.

Mr. DOLD. The National Indian Gaming Commission, it's their job to review the management type contracts like the ones you are referring to?

The WITNESS. Yes.

Mr. BALLEN. But it's also your job as well?

The WITNESS. It is our job to make the best interest determination, but it is their job to do the background checks of the individuals involved in the contract.

Mr. DOLD. Do you know if the contract that they had entered into was indeed one that the management staff—not the management staff, the——

Mr. ELLIOTT. Gaming Commission.

Mr. DOLD. The Gaming Commission was not going to approve, and therefore it would not have gone through without their approval?

The WITNESS. At the time I didn't know what the analysis would be from the gaming commission, but that it's not likely, and I'm basing this on what I know now, I know now that they would not approve, but at the time, with a $1.5 million lease, my best judgment is they would not have approved it.

EXAMINATION BY MR. BALLEN:

Question. How do you know now that they would not have approved it?

Answer. Well, since then I have learned from Mr. Hartman more of the terms of the best interest analysis that he was going to use, and also the terms of the lease, and the lease in fact would have cost the tribes millions of dollars and extended it for 25 years, notwithstanding whether the gaming took place on the reservation or not, or on the casino land or not, so they were basically locked into a 25-year deal with no chance to guarantee that they would be paid.

Question. And what did you learn specifically about the National Indian Gaming Commission?

Answer. Well, they had sent back the application after their review, and I believe that was presumptive denial of the application.

Question. Sir, is there any reason why the three applicant tribes could not have chosen another location for a fee to trust application close to a large market that could have provided to them the same, or perhaps better, economic benefits?

Answer. That was certainly a possibility. I don't know whether they had explored every alternative.

Question. Hudson was not in their reservation area, was it?

Answer. Right.

Question. They did not have to locate the gaming there?

Answer. Right. The opportunities could have been—would have been best if they had been closer to their homelands.

Question. Or perhaps found another community that was not close, that would concur?

Answer. That would have been another option for them as well.

Question. Are you aware of any involvement in this decision by Secretary Babbitt apart from the participation in the tribal dialogue in April of '95?

Answer. No. I don't recall Secretary Babbitt's view being expressed in any way throughout this process. Mr. Duffy was located in the Secretary's Office, but I never recall him stating Secretary Babbitt has this view or he wants this done.

Question. Are you aware of any contacts with the White House at the time concerning—with the Department of Interior concerning the Hudson casino matter?

Answer. No. I learned about the White House contacts in the pleadings filed by the plaintiffs.

Question. Did the White House influence your decision to reject the Hudson application?

Answer. No. I had no contact with the White House.

Question. Was there any political interference whatsoever in your decision?

Answer. None.

Question. Were you ever contacted by the Democratic National Committee about Hudson?

Answer. No.

Question. Were you ever contacted by Clinton-Gore or any other campaign committee about Hudson?

Answer. No.

Question. You based your decision on the merits in the matter?

Answer. That's correct.

Question. You based your decision on the recommendation of career civil servants?

Answer. Yes.

Question. You based your decision on the facts as you determined them and in trying to do your job?

Answer. Yes.

Question. Were you pressured in any way whatsoever to reach a particular result in this, by anyone?

Answer. No.

Question. Were you pressured to reach a decision by a certain date?

Answer. There was certainly—no as to pressure. There was certainly an interest that I had, as well as the department had, in getting timely decisions out, and on the particular day that the decision went out, I was asked that it go, that I sign it that day by Mr. Chapman, and as I have testified in my Senate deposition. So there was certainly, because of the interest in this decision, I wanted to get it out timely.

Question. But that didn't effect the merits of the decision one way or another?

Answer. No. I had reached an internal view of the merits long before that.

Mr. BALLEN. Thank you. I have nothing further.

EXAMINATION BY MR. DOLD:

Question. The lease that we talked about just moments ago, with the parking lot, was that a curable problem?

Answer. If they had omitted the terms completely, yes, curable.

Question. Did you ever have a discussion with the environmental policy specialist in the Indian Gaming Management Staff?

Answer. No.

Question. Did you ever review a memorandum produced by the environmental policy specialist?

Answer. No.

Mr. BALLEN. But you did have discussions with Mr. Skibine that reflected environmental policy staff persons' point of view?

The WITNESS. Yes.

EXAMINATION BY MR. DOLD:

Question. So on it was all oral?

Answer. Yes.

Mr. BALLEN. You were in the middle of an answer, sir.

Mr. DOLD. I'm sorry.

The WITNESS. The only person that would have provided Mr. Skibine central office expertise would have been his own environmental person, so that's who I expected he was talking to.

EXAMINATION BY MR. DOLD:

Question. If the Department of the Interior, and correct me if I'm wrong, the Department of the Interior's policy is that they always take in information; no matter who sends stuff in on an application, they will keep taking it in and reviewing it?

Answer. In an informal process, yes.

Question. Would there ever be a need to extend a comment period or to reopen anything if it wasn't——

Answer. The only, the only need would be to have a time certain so as not seen as an open-ended time. I mean if we are going to try to reach a conclusion, it's best to give someone a target to shoot at. If they missed it by a few days or they had dramatic information, we would look at it.

Question. But there would be no need, because the Department of Interior will accept and review comments on issues; there's no need to reopen a comment period; is that correct?

Answer. Could you repeat that question?

Mr. BALLEN. Was there a comment period to be reopened here, officially?

The WITNESS. There was not an official. We certainly had—actually, I wasn't part of those discussions. I know that Mr. Skibine and Mr. Duffy had asked that comments be submitted by a certain date, but I think it's stating more than may be there to say that there was a comment period that closed and that we would not accept things beyond that, and it is much more informal than that.

EXAMINATION BY MR. DOLD:

Question. So the comment period, if somebody wanted to send something in, they could also do so before the decision?

Answer. Yes. Now the risk in doing that is that we would reach a conclusion by the time they sent in their documents, so they are going to be much safer in sending it in by, in this case, the April 30 deadline.

Question. Do you know if anybody visited Hudson, Wisconsin at the central office?

Answer. I don't know.

Question. There was nobody assigned to go out there and visit the site?

Answer. I don't know whether the Indian Gaming Management Staff went there or not.

Question. Do you know what environmental studies the environmental specialists would have reviewed to make their determination?

Answer. Um, the studies would have been the environmental assessment prepared by the BIA area office, and that I assume would be the primary source of the documents. Whether, because it was a scenic national riverway, other, other offices of the department would have had information, the Fish and Wildlife Service or others, I don't know.

Question. Did you take the letters people would send in on face value?

Answer. From whom?

Question. From local opposition or from those people that were in support?

Answer. Not individual letters, no.

Question. Would only letters by local officials?

Answer. That would carry weight, because we expect governments are making correct governmental conclusions.

Question. And was there any attempt to verify letters or information contained in letters?

Answer. If a town sent a resolution that said they opposed, we didn't go back to look at the vote to see if they truly did or not.

Question. Barring that?

Answer. No, there was no independent review.

Mr. BALLEN. Of the local governmental decision-making process.

The WITNESS. Right. There is certainly a review of the economic or the environmental impacts.

EXAMINATION BY MR. DOLD:

Question. Is the area office simply a rubber stamp for proposals that Indian tribes make?

Answer. No. The area office serves as a very valuable source of expertise in the government. It's not a final source of decision-making, but certainly as the initial stop for review, it's a very valuable place. One of the problems of relying, of relying solely on the area office is that they don't always have the most current information. By the time it reaches the central office in Washington, and the information is more up-to-date at that point, and that's when decisions are sometimes made at that point. So that's one of the deficiencies of relying solely on the area office.

Question. When the application goes from the area office to the central office, do communique from the Indian tribes go directly from the tribes then to the central office, or do they go through the area office?

Answer. They generally go straight to the central office at that point.

Question. Do you think the requirements under section 20 of IGRA were adequately addressed in this matter?

Answer. Yes.

Mr. DOLD. Mr. Anderson, on behalf of members of the committee, at least on the Majority side, we want to thank you very much for coming in today, and on behalf of myself, I sincerely appreciate you coming in voluntarily.

The WITNESS. Thank you.

Mr. ELLIOTT. Thank you.

The WITNESS. Can I ask a question off the record?

[Discussion off the record.]

[Whereupon, at 5:40 p.m., the deposition was concluded.]

[The exhibits referred to follow:]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Indian Gaming-Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles BAnd, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

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[1] References are to the application documents submitted by the Minneapolis Area Office.

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Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

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The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

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Hudson Dog Track Application

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

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County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

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Hudson Dog Track Application

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1¼% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

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The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin
In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes
On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

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Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million) Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

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Hudson Dog Track Application

Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers
The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime
Hudson Police Dept. Crime & Arrests. (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

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3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level
The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns
One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values
An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase
Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

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2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities
St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning
According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water
The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage
The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads
The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

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The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis
The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

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Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

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St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

DRAFT

Hudson Dog Track Application

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 – a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

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are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

DRAFT

Hudson Dog Track Application

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 14 1995

Honorable Rose M. Gurnoe
Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Bayfield, Wisconsin 54814

Honorable Alfred Trepania
Tribal Chairperson
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
Route 2, Box 2700
Hayward, Wisconsin 54843

Honorable Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520

Dear Ms. Gurnoe and Messrs. Trepania and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes. Following receipt of this recommendation and at the request of nearby Indian tribes, the Secretary extended the period for the submission of comments concerning the impact of this proposed trust acquisition to April 30, 1995.

The property, located in a commercial area in the southeast corner of the City of Hudson, Wisconsin, is approximately 85 miles from the boundaries of the Lac Courte Oreilles Reservation, 165 miles from the boundaries of the Red Cliff Reservation, and 188 miles from the boundaries of the Sokaogon Reservation. The St. Croix Band of Chippewa Indians, one of the eight Wisconsin tribes (not including the three applicant tribes), is located on a reservation within the 50-mile radius used by the Minneapolis Area Director to determine which tribes can be considered "nearby" Indian tribes within the meaning of Section 20 of the Indian Gaming Regulatory Act (IGRA).

Finally, even if the factors discussed above were insufficient to support our determination under Section 20(b)(1)(A) of the IGRA, the Secretary would still rely on these factors, including the opposition of the local communities, state elected officials and nearby Indian tribes, to decline to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465, to acquire title to this property in Hudson, Wisconsin, in trust for the Tribes. This decision is final for the Department.

Sincerely,

Michael J. Anderson

Michael J. Anderson
Deputy Assistant Secretary - Indian Affairs

cc: Minneapolis Area Director
National Indian Gaming Commission

Form 5-1502

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

CENTRAL OFFICE ROUTING SLIP

SUBJECT: Hudson Dog Track Letter 0214 FILE REFERENCE

FROM: (Name and Office) George T. Skibine
Director, Indian Gaming Management Staff

PHONE: [redacted]

DATE ROUTED: 7/8/95

Mail Stop	Bldg.	Route to Code	Released Initial	Released Date	COMMENTS
2070	MIB	130	[illegible]	7/10	Acting Dir., Indian Gaming Mgmt. Staff
6140	MIB	IOS	[illegible]	7/10	Heather Sibbison - review w/ changes in red
4160	MIB	AS-IA	MA	7/14	Mike Chapman - review
4160	MIB	DAS-IA			Dep. Asst. Secy - signature
6140	MIB	IOS			Heather for copies
2070	MIB	130			Indian Gaming for mailing

Document provided pursuant to Congressional subpoena

ADDITIONAL COMMENTS

7/10 - Tona: please let me know as soon as the letters are signed. They should be faxed out to the tribes, so that they will have some time to digest the information before Ada arrives later in the week. Also, I know Mike Anderson is out, but he so we'll need to have it signed by whoever is acting for him. Please call me if you have any questions. Thanks, Heather

Please Call Tona at [redacted] with any questions.

THANK YOU.

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No Casino Favoritism

To the Editor:

William Safire (column, Dec. 31) jumps to erroneous conclusions as to why the Interior Department denied the application by three Wisconsin tribes to establish a casino 85 to 188 miles from their reservation.

It was the right decision, made for the right reasons, and I have told the truth about it. This department does not force off-reservation casinos upon unwilling communities. City councils of the towns of Hudson and Troy, as well as three senators from both political parties, seven Minnesota members of Congress, the Republican Governor of Wisconsin and many others opposed the casino.

Mr. Safire opines that Harold M. Ickes "caused heat to be put on" me to deny the application. The facts, spread across a voluminous record, prove otherwise. I did not participate in the decision, and as I have said in sworn testimony, I have never spoken to Mr. Ickes — nor to anyone else at the White House or the Democratic National Committee — about this matter.

Mr. Safire falsely asserts that a "staff recommendation" approving the casino was changed for political reasons. In fact, the draft memorandum cites only the criteria to be considered in determining local opposition, not whether the casino should be approved. The decision to deny was based on the recommendation of the senior civil servant in the gaming office and supported by his staff. They testified they were unaware of any contributions by interested tribes or of any [illegible] between the tribes and the White House or the DNC

BRUCE BABBITT
Secretary of Interior
Washington, Jan. 2, 1998

EXHIBIT
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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

MINNEAPOLIS AREA OFFICE
331 SOUTH 2ND AVENUE
MINNEAPOLIS, MINNESOTA 55401-2241

IN REPLY REFER TO

Tribal Operations

1994

MEMORANDUM

TO: Assistant Secretary - Indian Affairs

FROM: Office of the Area Director

SUBJECT: Request for Off-Reservation Gaming for Land in Hudson, Wisconsin

On March 4, 1994, the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes"), together, pursuant to Section 2719(b) of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988), filed an application with the Minneapolis Area Director requesting that the United States take a certain parcel of real property located in Hudson, Wisconsin, into trust for the benefit of the Tribes for gaming purposes. The Tribes do not currently own the property, but they have an agreement to purchase the land if and when the Secretary of the Interior makes the findings necessary under Section 2719, the Governor concurs in the Secretary's findings, the steps necessary to place the land into trust have been completed, the National Indian Gaming Commission approves the management contract and collateral agreements and the Tribes have amended their gaming compacts of 1991 to permit the operation of pari-mutuel greyhound racing.

This memorandum outlines the Minneapolis Area Office's review and analysis of the Tribe's application and transmits; (1) the Area Director's Findings and Recommendations, (2) the comments of the Field Solicitor, Twin Cities, and (3) the Documentary Support required for the Secretary's Determination concerning the request for off-reservation gaming on proposed Trust Acquisition of the Tribes.

I. APPLICATION INFORMATION

A. Sokaogon Tribe: The Sokaogon Chippewa Community of Wisconsin occupy a small reservation in Forest County, Wisconsin with the central community in Mole Lake. There

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are 1,528 persons enrolled in the Tribe. 512 members live on or near the reservation. According to figures provided by the Tribe, 42% are unemployed and actively seeking employment.

The Sokaogon Chippewa Community Tribal Council is authorized by Article VII, Section (e), to manage all economic affairs and enterprises of the Community. The Sokaogon Chippewa Community Tribal Council included two resolutions as part of the Tribes application package. Resolution No. 9-11A-93 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 2-4A-94 approved the St. Croix Meadows-Joint Operating Agreement and authorized the Tribal Chairman to sign the agreement.

B. Lac Courte Oreilles Tribe: The Lac Courte Oreilles Band of Lake Superior Chippewa had a reported enrollment of 5,431 people in 1991. In 1991, 1,923 of these people lived on the reservation and another 1,126 lived within 150 miles of the reservation.

The Lac Courte Oreilles Tribal Governing Board is empowered by Article V, Section 1(f) of the Lac Courte Oreilles Constitution to purchase lands within or without the boundary of the Tribe's reservation. The Tribal Governing Board is empowered by Article V, section 1(h) to engage in any business that will further the social or economic well-being of members of the Band. The Lac Courte Oreilles Governing Board submitted three resolutions as part of the Tribes application package. Resolution No. 93-82 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 94-08 approved the Joint Operating Agreement and directed the Tribal Chairman to execute the agreement on behalf of the Lac Courte Oreilles Band of Lake Superior Chippewa. Resolution 94-09 created the Lac Courte Oreilles Economic Development Commission to act on behalf of Lac Courte Oreilles.

C. Red Cliff Tribe: The Red Cliff Band of Lake Superior Chippewa occupy a small reservation in Bayfield County, Wisconsin, on the shores of Lake Superior. There are 3,180 persons enrolled in the band. 1,651 members live on or near the reservation.

The Red Cliff Tribal Council is authorized by the Red Cliff Constitution Article VI, Section 1(e) to manage all economic affairs and enterprises of the Tribe. The Red Cliff Tribal Council included two resolutions as part of the Tribes application package. Resolution 9/23/93C requests the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust. Resolution 2/7/94A authorized the Tribal Chairperson to sign the Joint Operating Agreement on behalf of the Red Cliff Band of Lake Superior Chippewa and also authorized the Chairperson to take such other actions necessary to effectuate the agreement.

These Tribes continue to have high rates of unemployment and poverty in spite of having developed gaming facilities on their reservations. We agree with the Tribes determination that this is true largely because they are located at great distances away from urban markets.

Each of these Tribes also have relatively small populations and land holdings. The Hudson location will provide the tribes with access to an urban market for the gaming facility. However, since it is unlikely that many of the residents of these three communities will chose to relocate to be employed at this location, the benefits which will accrue to each of these communities will come not from direct employment in the gaming facility, but, rather, from employment and the goods and services which would be generated by the spending of each community's share of the net income.

The average amount estimated to be received by each of the three Tribes over the next five years from the operation of the Hudson Gaming Facility is approximately $10 million per year. This money would be used by the Tribes to improve health care facilities on their reservations, purchase land, improve housing facilities, improve community and elderly programs, improve educational facilities and as educational grants, and to invest in economic development in the communities.

1. Description of Land:

The Tribes have requested that land located in the City of Hudson, County of St. Croix and State of Wisconsin, be taken into trust pursuant to 25 C.F.R. Parts 151 and 25 U.S.C. § 465 and § 2719. The land is currently owned by Croixland Properties Limited Partnership.

This request is for a parcel of land located in the fractional NE¼ of the NE¼, and SE¼ of the NE¼, Section 6, T28N, R19W, City of Hudson, Saint Croix County, Wisconsin, described as follows:

The fractional NE¼ of the NE¼ of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional NE¼ of the NE¼ of said Section 6.

ALSO, that part of the SE¼ of the NE¼ of said Section 6 described as follows: Commencing at the NE corner of said Section 6: thence S02°49'01"W 1,891.74 feet along the East line of the fractional NE¼ of said Section 6 to the NE corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the SE¼ of the NE¼ of said Section 6; thence N02°48'30"E along the west line of said SE¼ of the NE¼ to the NW corner thereof; thence Easterly along the North line of said SE¼ of the NE¼ to the NE corner thereof; thence S02°49'01"W, along the East line of said SE¼ of the NE¼ to the point of beginning.

The properties listed above encompass an area of approximately 55.82 acres currently consisting of the St. Croix Meadows Greyhound Racing Facility. The site is served by all necessary utilities and a highway system which includes Interstate Highway 94.

2. Third Parties:

The Tribes have entered into a Joint Operating Agreement with Galaxy Gaming and Racing Limited Partnership, an affiliate of Croixland, in order to provide management of the proposed gaming facility. We have informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Association. The National Indian Gaming Commission concurred in our determination and the Tribes have requested their approval.

II. GOVERNMENTAL ACTIONS REQUIRED

The process of taking Off-Reservation land into trust requires a tribal applicant to meet the requirements of 25 C.F.R. Part 151 - Land Acquisition, and Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988). Section 2719(b)(1)(A)requires the following two part determination:

> "The Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's Determination;"

This report does not contain information written specifically to meet the requirements of 25 C.F.R. Part 151, Land Acquisition. This report only outlines the Minneapolis Area Office's review and analysis of the Tribe's proposal to meet the two part determination required by the Indian Gaming Regulatory Act. 25 C.F.R. Part 151 requires specific actions within real estate services that exceeds Section 2719 action under the Indian Gaming Regulatory Act. If and when it becomes necessary, the requirements of 25 C.F.R. Part 151 will be addressed by the Area Office in a separate document.

The Indian Gaming Regulatory Act has several requirements that have been met by the Tribes; first, all three Tribes have successfully negotiated Class III Gaming Compacts with the State of Wisconsin as required by Section 2710(d)(1)(C) of the Indian Gaming Regulatory Act and the Secretary of Interior published the Approval Notice of the Gaming Compacts in the Federal Register; second, in accordance with 2710(d)(1)(A), each Tribe has adopted tribal gaming ordinances that have been approved by the Chairman of the National Indian Gaming Commission.

II. CONSULTATION PROCESS

The Bureau of Indian Affairs consultations with the City of Hudson, Local Officials, and Tribal Officials are described in detail in the Recommended Findings of Fact and

Conclusions. As the Recommended Findings of Fact and Conclusions indicate, the Tribes' application has received mixed support from the Community and nearby Tribes.

IV. DOCUMENTARY RECORD

The Minneapolis Area Office has prepared four volumes of documentary support required for the Secretary's determination. The documentary support consists of documents the Tribes have submitted in support of their application and documents the Area Office has compiled during the course of the review and analysis of this application. The documentary record contains a complete index of documents.

Volume I contains proprietary information that is privileged commercial and financial information, which is confidential and exempt from disclosure pursuant to 5 U.S.C. 552 (b)4.

V. RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the documentary support that was prepared during the course of the review and analysis of the Tribes' Application, the Area Office has prepared the attached Recommended Findings of Fact and Conclusions.

Based upon the Tribes' application, the documentary support and the consultations between the Great Lakes Agency Superintendent, the City of Hudson, St. Croix County, and other federally acknowledged Indian Tribes located in Wisconsin and Minnesota, the Recommended Findings of Fact and Conclusions conclude that allowing gaming on the proposed trust property is in the best interests of the Tribe and its members and would not be detrimental to the surrounding community.

VI. RECOMMENDATION

Because the establishment of a gaming facility on the proposed trust land is in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, I recommend that the Secretary determine that the proposed trust property be acquired by the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes for Gaming purposes.

Area Director

Attachments

MINNEAPOLIS AREA OFFICE'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

November 15, 1994

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RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

INTRODUCTION:

The Sokaogon Chippewa Community of Wisconsin, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (Collectively referred to as the "Tribes") have entered into an agreement with the current owners (Croixland Properties Limited Partnership or "Croixland") of the St. Croix Meadow Greyhound Park located in the City of Hudson, Wisconsin, to purchase the assets of the pari-mutual dog track. The Tribes have requested that the land currently comprising St. Croix Meadows, as well as land immediately surrounding the dog track (totaling approximately 55 acres), be placed into trust. The stated purpose of the acquisition is to begin Class III gaming at the facility with the introduction of 1,500 - 2,000 slot machines and 30 - 40 blackjack tables.

Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988) states, in part, that lands can be acquired for gaming only if "the Secretary, after consultation with the Indian Tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a Gaming Establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community..." 25 U.S.C. § 2719 (b)(1)(A). The following is the Minneapolis Area Office's analysis and recommendations of the Tribes application under this section.

I. BEST INTEREST OF THE TRIBES

A. GROSS AND NET INCOME TO THE TRIBES:

Two separate market studies were prepared regarding this proposal. One by Arthur Andersen & Co. (AA)(Tab 3)[1] which used the "comparative market analysis approach" to estimate the Hudson market potential, and one by James M. Murray, PhD. (Tab 4) which used the gravity model and Reilly's Law of Retail Gravitation to establish the sphere of influence of the Hudson facility both currently and as projected. Although the specific findings of the two reports do differ significantly in some respects, we will incorporate both reports into our analysis.

The AA Study estimates the total market gaming revenues in the primary market of Minneapolis/St. Paul to be between $550 - $630

[1] Unless otherwise stated, the tabs are located in Volume I.

million, with the proposed Hudson Casino share projected to be $80 million (excluding the dog track) (Tab 3, pages 21 & 22). AA projects Total Revenues for the first year to be $88,367,000. The Net Income is projected to be $30,910,000 in the first year of operation. Pursuant to the Joint Operating Agreement (Tab 7D, page 8) each tribe would receive 25% of the net revenue. Thus, under this study, each tribe is projected to receive $7,727,000 in the first year of operation and $11,506,000 by the fifth year (V-I, Tab 3, page 30).

Dr. Murphy estimates the total gaming revenues in the primary market to be currently at $406,906,108 a year (Tab 4, page 15). He estimates the proposed Hudson Casino take (including income from the dog track) would be $104.1 million in the first year of operation and $131.4 million by the fifth year (Tab 4, page 18). He projects Net Revenues to be $31.1 million in the first year and 48.8 million by the fifth year (Tab 5, page 1). Dr. Murphy did not provide an estimate of the total market gaming revenues. However, we note that his estimate of total revenues of $511,124,739 (Tab 4, page 15) is consistent with the estimate made by the Arthur Andersen study.

The two reports differ notably in amount of gross income projected and the total amount of expenses expected to be incurred by the Hudson Venture in the first year (See Table 1 of this report). As a result, we combined the two reports to calculate a best case scenario and a worst case scenario.

Dr. Murphy does not give a breakdown of the expected expenses since his report focuses more on the overall impact to the Tribes and surrounding community from the spending of the net proceeds. Nevertheless, we feel it is important to include this information since it substantiates the Tribes position.

If you combine Dr. Murphy's total expenses ($73 million) with AA's estimated Total Revenues ($88,367,000), the Tribes would net approximately $3.84 million each (15,367,00 multiplied by 25%). This number represents the worst case scenario under a combination of the two studies.

The best case scenario under a combination of the two studies is a Net Revenue of approximately $46.6 million ($104.10 million in Gross Revenue under Dr. Murphy's study minus $57.45 million in total expenses in AA's study) to be divided equally among the three Tribes and current owner. Under this scenario each Tribe would receive $11.65 million in the first year of operation.

We find that due to the sheer size of the market of the urban area, the Tribes would enjoy a financial benefit well beyond any financial benefits generated from reservation located casinos. Also, an urban location would be more likely to produce a relatively stable annual cash flow for the Tribes. It would also

Table 1

COMPARISON OF THE MARKET STUDIES FOR THE FIRST YEAR OF OPERATION

Revenues:	Arthur Andersen:	Dr. James Murray:
Casino	$70,000,000	
Dog Track	11,367,000	
Food & Beverage	7,000,000	
Total Gross Revenues:	88,367,000	104,100,000
Expenses:		
Casino	20,300,000	
Dog Track	7,131,000	
Food & Beverage	5,600,000	
G&A, Marketing, Sec, Property	17,673,000	
Operating Expenses		60,000,000
Depreciation	3,111,000	
Interest	3,641,000	
Debt Service per Year		13,000,000
Total Expenses:	57,456,000	73,000,000
PROJECTED NET INCOME:	*$30,911,000*	*$31,100,000*

provide each Tribe a source of income which it can use to further Self-Determination and economic independence.

B. PROJECTIONS OF MANAGEMENT AND TRIBAL EXPENSES:

For the first five to seven years the Hudson Venture will be operated by the three Tribal Economic Development Commissions and Galaxy Gaming pursuant to the terms of the Joint Operating Agreement (Tab 7D, page 11, § 3.1). We informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Commission. The National Indian Gaming Commission concurred verbally in our determination. The Tribes have submitted the Joint Operating Agreement and the collateral agreements to NIGC for approval.

Under the Joint Operating Agreement, the "Business Board" will have general oversight and authority over the operation. It will be composed of eight persons: two Galaxy Gaming representatives and two representatives from each of the three Tribes (Tab 7D, page 4, § 2.7). The primary management officials include any person with the authority to hire and fire employees and any person with the authority to set working policy (Tab 7D, page 10, § 2.31). The Business Board will unanimously select four of the primary management officials. They include the Chief Executive Officer, General Manager, Chief Financial Officer and the Human Resource Director Id.

The Chief Executive Officer will be a member of the Business Board. This position will be unanimously selected by the Business Board and will be granted the power and authority to oversee the daily business affairs and operations of the Enterprise (Tab 7D, page 5, § 2.9). The CEO is required to report to the Business Board and under the Joint Operating Agreement, will not be able to undermine the Boards authority. Thus, even though the CEO must be a Galaxy Gaming Representative as long as the Financing Debt remains outstanding, the three Tribes will have substantial control of the operation (Tab 7D, page 16, § 5.1).

Each Tribe will also select their own Tribal Inspector. The three Tribal Inspectors will have full access to all aspects of the Enterprise (Tab 7D, page 20, § 5.6.3).

Under the Joint Operating Agreement, each Tribe is guaranteed a minimum monthly payment of $66,667.67 from the net revenues. Galaxy Gaming will then receive the next $66,667.67 for that month. Anything over $266,667.67 for any particular month will be distributed equally between the three Tribes and Galaxy Gaming (Tab 7D, § 2.26 and § 7.1). Galaxy will be entitled to a 25% share in the net revenues for the first seven years of operation with the Tribes maintaining the authority to "buy-out" all of Galaxy's rights in the agreement after the completion of the

fifth full year of the operation (Tab 7D, page 41, § 24).

The Joint Operating Agreement requires Galaxy to loan[3] the Enterprise the amount necessary to fully pay the Tribe for any yearly shortfall of the guaranteed payments (Tab 7D, page 8, § 2.26). However, the market studies indicate that loans will not be necessary to fulfill this minimum monthly obligation.

1. **Assumed Liabilities and Nonrecourse Liability:**

The Economic Development Commissions (EDCs) of the Tribes have agreed to purchase the St. Croix Meadows real property for $10.00. The assets necessary to run the operation (the building and improvements constructed on the land) will also be transferred to the EDCs subject to certain obligations of the seller. Under the Asset Purchase Agreement, the obligations will be paid as operating expenses and are referred to as the "Nonrecourse Liability" (Tab 7, pages 6 & 7). They include the debt owed to First Union National Bank of Florida (principal of $37,900,000 plus certain accrued interest arrearage which has been or will be capitalized) and the debt owed to the First National Bank of Hudson (Principal in the amount of $1,230,000). Although the agreement provides no limitation on the amount of interest that the Tribes will eventually pay, it does state that "in no event shall the aggregate principal amount of the Nonrecourse Liability exceed $39,200,000" (Tab 7, page 7).

The EDCs have also agreed to take the assets subject to certain "Assumed Liabilities" (Tab 7, pages 7 & 8). They include the following:

(a) Real property lease obligations;
(b) Personal property lease obligations;
(c) Obligations under contracts and licenses;
(d) Deposits held by seller under the real property and personal property leases.

The Tribes have not provided the dollar amount of the obligations these assumed liabilities will total. However, we do note the Tribes have estimated a yearly total expenditure in both market studies which includes these expenses.

Croixland will continue to own and pay taxes only on 6.96 acres of land next to the Hudson proposal (Tab 7B). The remaining land will be transferred to the Land Venture and leased to the Tribe's EDCs (Tab 7E). The EDCs will pay all taxes, assessments, water and sewer rents, rates and charges, charges for public utilities,

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[3] The interest rate on this loan is equal to the prime commercial lending rate of First Union plus 1% (Tab 7D, page 9, § 2.27).

and maintenance of the Parking Lot Land (Tab 7E, page 7, Article 4).

2. **Joint Venture Agreement of Meadows Parking Lot Joint Venture:**

Croixland and the Tribes have also agreed to form a joint venture partnership (Tab 7F). It will be called the Meadows Parking Lot Joint Venture and is not scheduled to terminate until December 31, 2045 (Tab 7F, page 6, Article 3). The purpose of this agreement is to transfer ownership of the parking lot to the partnership. To accomplish this, Croixland has agreed to sell the parking lot land to the Joint Venture at closing (Tab 7, page 27, § 9.03(g)). The property shall be deemed to be owned by the Venture as an entity and no Venturer will own the parking lot individually (Tab 7F, page 6, Article 2).

Under the Asset Purchase Agreement, Croixland will transfer the parking lot land to the venture for $10.00 and the portion of the First Union Debt equal to the fair market value of the parking lot land (Tab 7, page 11, Article III). The venture will then lease the parking lot to the Tribe's EDCs. Thus, the Meadows Parking Lot Joint Venture will be the landlord and the Tribal EDCs will be the tenants under terms of the Parking Lot Lease (Tab 7E). Rent payable by the EDCs under the Net Lease will initially be "a sum equal to 110 percent of the aggregate of the monthly debt service payable over the initial Lease Year with respect to the portion of the... (First Union Debt) allocable to the Demised Premises" (Tab 7E, page 4, Article 3). The annual base rent after the initial lease year will be determined by multiplying the annual base rent for the preceding year by a fraction (adjustment level divided by the base level) Id. The lease is to terminate in the year 2018 (Tab 7E, page 2).

We have advised the Tribes of the troublesome aspects of this arrangement. Specifically, we informed the Tribes that the ownership arrangement does not appear to be beneficial to the Tribes and seems likely to cause friction in the future. However, it is our determination that this arrangement, by itself, is not a basis to reject the application.

3. **Agreement for Government Services:**

The three Tribes, City of Hudson and the County of St. Croix entered into an *Agreement for Government Services* on April 18, 1994 (Tab 9). Under this agreement, the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other services that are under the control of the City or County or are

customarily provided to other commercial properties within the City or County (Tab 9, page 2).

The Tribes have agreed to initially pay the City and County $1,150,000 for the services Id. The payments will be paid on a semi-annual basis beginning on January 31, 1995. The first payment will be pro-rated from the date the land is actually accepted into trust.

Beginning in 1999, the Tribes will begin paying the City and County an amount equal to the allocable amount for the preceding year ($1,150,000 in 1998 with no adjustments) multiplied by 1.05 (Tab 9, page 3). The following table provides a comparison of the amount the Tribes will initially pay the city and county and the future value of $1,150,000:

ALLOCABLE AMOUNT PROJECTIONS ASSUMING NO ADJUSTMENT

Year:	Actual Amount Owed:	Future Value of 1,150,000:[3] A	B
1999	1,207,500	1,240,850	1,195,425
2000	1,267,875	1,338,877	1,242,644
2001	1,331,269	1,444,649	1,291,729
2002	1,397,832	1,558,776	1,342,752
2003	1,467,724	1,681,919	1,395,791
2004	1,541,110	1,814,791	1,450,925
2005	1,618,166	1,958,159	1,508,236
2006	1,699,074	2,112,854	1,567,811
2007	1,784,028	2,279,769	1,629,740
2008	1,873,229	2,459,871	1,694,115
10 YEAR TOTALS	15,187,807	17,890,515	14,319,168
2025	4,293,477	8,959,357	3,273,099

As the above chart indicates, the yearly 1.05 increase in the payment by the Tribes to the City and County for services is reasonable. The Office of the Field Solicitor, Twin Cities, has also indicated the Government Services Agreement is an agreement in which the Tribes may participate (Volume II, Tab 2, page 3). Thus, we find this agreement acceptable.

The Agreement for Government Services states that "any real estate taxes and assessments and personal property taxes paid with respect to the Non-Trust Property with respect to any calendar year shall be treated as a credit against the payment by the Tribes of the Allocable Amount (as adjusted) for such

[3] Formula Used to determine the future value:
For Column A: Annual Interest Rate is 7.9% for 1 period a year.
For Column B: Annual Interest Rate is 7.9% for 2 periods a year.

calendar year" (Tab 9, page 4). However, this does not apply to taxes paid by Croixland for improvements or special assessments Id. The Tribes will also receive a total reimbursement from Galaxy Gaming and Racing Limited Partnership in the amount of $297,500 in years 1995, 1996 and 1997 (Tab 9, page 18). This amount represents the difference in the Tribes proposal and the City's proposal for payment of government services.

The Agreement for Government Services states that the Tribes will cause Croixland to pay the delinquent and overdue real estate taxes and assessments and personal property taxes due through 1993 (Tab 9, page 4). Thus, all encumbrances on the land will be removed prior to placing the land into trust. However, to verify this, we have requested the Tribes submit title evidence prior to beginning the 25 C.F.R. Part 151 process. The Tribes responded by providing a copy of the Title Insurance Commitment (Tab 10). Also see the Tribe's letter to the Minneapolis Area Office dated October 14, 1994 (Volume II, Tab 4).

4. Ground Lease:

This lease agreement is between Croixland Properties Limited Partnership and the Tribe's EDCs. The Asset Purchase Agreement provides that the land will be leased to the Tribe's EDCs at the same time the conveyance of the Assets[4] takes place and immediately prior to the conveyance of the land (Tab 7, page 3 § 1.01(a)). The Asset Purchase Agreement then calls for the land and the Croixland's interest in the Ground Lease to be conveyed to the Tribes Id. Thus, the Tribes will become the landlord and the EDC's the tenants under the terms of the Ground Lease.

Initially, we had concern over the language in Article I, Section 1.03(d) of the Ground Lease and Article II, Section 2.01 of Asset Purchase Agreement since it appeared as if these agreements required the United States to become the landlord and a party to the Ground Lease. We informed the Tribes that this type of arrangement is not acceptable. As a result, the Tribes and Croixland amended the requisite sections to make clear that the United States, as trustee for the Tribes, will not be assigned or conveyed the landlord's interest in the Ground Lease or have any obligations or responsibilities under its terms (Tab 7, Amendments). We are satisfied that the Ground Lease is now only between the Tribes (as the assignee of the Seller), as landlord, and the EDCs, as tenant.

The Ground Lease is for 25 years and may be extended by the EDCs for an additional 25 year term (Tab 7C, page 1). All rent is payable directly to the Tribes. The EDCs will be required to pay

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[4] We note that the land is not defined as an "Asset" in any of the agreements.

rent of $12 a year and all costs expenses and other payments which the EDCs assume or agree to pay. The EDCs will also be required to pay to the Tribes rent from the net revenue pursuant to the terms of the Joint Operating Agreement. The EDCs also agree to pay all real estate taxes, assessments, water and sewer rents, and other governmental charges imposed against the facility, or imposed against any personal property or any Rent or Additional Rent (Tab 7C, page 4, Article 3).

The tenant may construct any building on the land after obtaining approval of the Landlord (Tab 7C, Article 4). The tenant is obligated to provide indemnification for any work on the facility, any use, non-use, possession, occupation, condition, operation, maintenance or management of the facility, any negligence on the part of the Tenant or their agents, contractors, employees, invitee or tenants, and any injury or death to any person or damage to or loss of property occurring in, on or about the facility. Galaxy Gaming is not required to provide any indemnification. The tenant is also required to provide insurance, Galaxy is not required to pay for any of it (Tab 7C, Articles 7 & 8).

5. Activities Loan:

The Joint Operating Agreement is between the Tribe's EDCs and Galaxy Gaming and Racing Limited Partnership. This agreement also provides that Galaxy Gaming will assist the Business Board in securing financing to the EDCs for the funds necessary to renovate and remodel the existing dog track facility and to begin operation. Galaxy guarantees the obtainment of this financing (Tab 7D, page 2, § 1.6).

To fund renovation of the third floor of the existing building, an "Activities Loan" (Tab 7D, page 3, § 2.1) will be made by a third-party lender to the EDCs and Galaxy Gaming and Racing Limited Partnership in an amount of up to $10,000,000 (any amount over $5,000,000 must be approved unanimously by the Business Board). This money will be used for costs, expenses and expenditures set forth in the Renovation Budget, for initial working capital as needed and for payments of expenditures necessary to "protect and keep perfected the Activities Loan."

C. BASIS FOR PROJECTIONS AND COMPARISONS:

The Proposed facility will be located at 2200 Carmichael Road in Hudson, Wisconsin. The site is approximately one mile south of the Carmichael Road/Interstate 94 interchange in a rural area in the southeast corner of Hudson. The existing grandstand building of the greyhound track has three floors with over 160,000 square feet of space. The property includes parking for approximately 4,000 vehicles.

The Las Vegas office of Arthur Andersen & Co., an international "Big 6" accounting firm performed a market demand and feasibility study. Dr. James M. Murray, PhD. performed an analysis of the market for the addition of casino games to the existing greyhound track and an analysis of the economic impact of the proposed Venture on the Tribal Reservations and the communities where the proposed facility would be located. We relied heavily on both studies to reach our recommendations and findings.

Our review of the market studies indicates that there was a substantial amount of time involved in accumulating the data in the studies. We find the sources of data to be reliable. The Arthur Andersen & Co. study contains pro forma financials which were reviewed and found to be acceptable by the Minneapolis Area Branch of Credit (Volume II, Tab 5).

D. PROJECTED TRIBAL EMPLOYMENT:

The Tribes have stated they plan to "actively recruit Native American candidates for positions at all levels." For employees at the Hudson Venture, a hiring preference will be given in the following manner: first, to members of the three Tribes and their spouses and children, second, to other Tribal members and third, to local residents from communities surrounding Hudson (Tab 7D, page 22).

Each of the three Tribes have stated that due to the location of their reservations, they do not anticipate many Tribal members who are currently living on the reservations to move to Hudson for employment in the casino (Tab 1, page 4). Since the Lac Courte Oreilles Reservation is located approximately 117 road miles from Hudson, the Red Cliff Reservation is located approximately 221 road miles away and the Sokaogon Reservation is located approximately 290 road miles away from Hudson, we have no reason to dispute the Band's assessment. The Tribes do anticipate 10 - 20 percent of the 1,600 positions at the Hudson Venture to be filled by Tribal members already living near the Hudson, Wisconsin area (Tab 1, page 5).

The three Tribes expect to receive an average of $10 million annually over the next five years as their share of the profits (Tab 5, S-1). They have identified areas of "high priority"[5] for which this money will be spent at each reservation. We have advised each Tribe that if they are going to provide a per capita payment from their gaming proceed, a Revenue Allocation Plan must be submitted and approved under the December 21, 1992, Guidelines

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[5] Activities Identified as High Priorities by all three Bands: improved health care facilities, educational facilities and grants, housing, economic and community development, programs for the elderly, land purchases and community programs.

to Govern the Review and Approval of Per Capita Distribution Plans and Section 2710 of the Indian Gaming Regulatory Act. Currently, only the Sokaogon Community has indicated that per capita payments will be made. The Sokaogon Community did submit a Revenue Allocation Plan. We returned the plan to the Community and recommended minor changes. We expect to approve the plan when these changes are made.

Each Band anticipates increased employment on the reservations due directly to the spending of their share of the net income generated by the Hudson Venture. In his analysis of the economic impact of the proposed Hudson Gaming Facility on the three Tribes, Dr. Murray estimates the creation of 150 new jobs on each reservation over the next five years (Tab 5, S-1). Although the Tribes may have to recruit non-Indians to fill many of the new positions due to a lack of training, the Tribes anticipate that the majority of these jobs will eventually be held by Tribal members.

E. BASIS FOR PROJECTING THE INCREASE IN TRIBAL EMPLOYMENT:

When we assume the figures provided by Dr. Murphy are accurate, the impact of a total of 450 new jobs on the reservations will have a substantial beneficial impact on tribal unemployment. The following figures provided by the three Tribes bolster this contention (Tab 5):

TRIBE	TOTAL ENROLLMENT:	NUMBER LIVING ON THE RESERVATION:	LABOR FORCE:	UNEMPLOYMENT RATE:
Red Cliff:	3,180	1,651	821	39% (321)
Lac Courte Oreilles:	5,431	1,923	1,362	58% (800)
Sokaogon:	1,528	512	198	42% (83)

Since each Tribe has a high unemployment rate, the jobs created on the reservation will provide incentive to Tribal members to work on the reservation rather than moving to Hudson for employment. Tribal members living off the reservation would also have incentive to move back.

F. PROJECTED BENEFITS FROM TOURISM:

As with any project of this nature, the success of the Tribe's proposed facility will depend on the volume of people/visitors who come to gamble at the Tribe's proposed facility. Based on the Market Analysis prepared by Dr. Murray, the Tribes estimates that 3,184,330 people will visit the facility annually (Tab 4,

page 15). Of that number, 95% are expected to come from the Twin Cities area and are expected to drop $199,399,166; 5% of the visitors will come from outside the Twin Cities Area and are expected to add $5 million to the net profit of the facility Id.

G. PROJECTED TRAINING BENEFITS:

In their cover letter, the three Tribes stated that the Hudson Venture will "provide both jobs and training at the supervisory and managerial levels for our people" (Tab 1, page 5). They plan to implement a cross training internship program to accomplish this goal. The Tribe's representative has stated that the internship program will last one year and will obligate the trainee to stay on an additional year to help train other employees.

Under the Joint Operating Agreement (Tab 7D, § 5.8.2) as positions in the facility become available, preference in recruiting, training, and employment in all job categories of the Enterprise, including management positions, shall be given first to qualified members of the Tribes and their spouses and children; second to qualified members of other Tribes and their spouses and children; third, to residents of the City of Hudson; fourth, to residents of the Township of Troy; fifth, to residents of the County of St. Croix.

H. PROJECTED BENEFITS TO THE TRIBAL COMMUNITIES FROM THE INCREASE IN TRIBAL INCOME:

The Tribes contend that substantial benefits would accrue to their Tribal members and surrounding communities. Specifically, they show the following benefits will result (Tab 1, page 7):

- The creation of approximately 150 new jobs on each reservation.
- The employment will generate an annual average of about $3 million per Tribe in added earnings for these employees.
- A total of over $11 million in additional earnings and 600 additional jobs will be created as a recirculation of the gaming revenue.
- The proceeds will be applied to health, education, scholarship funds, housing, elderly care, early child care, land purchases and other community support services and as per-capita payments. The Tribes expect that a substantial increase in the quality of life will be directly experienced by all members.

Our data indicates that the three Tribes have high rates of unemployment and poverty in spite of having developed local

tribal gaming facilities. This is true in part because they are located farther away from urban markets than other tribes in Wisconsin and Minnesota. The Hudson proposal will help remedy this problem by providing these Tribes with access to a urban market for gaming.

As we have already indicated, the Tribes have relatively small populations and land holdings. Thus, the proposal is expected to have a significant positive impact. However, the positive impact is not expected to be employment in the proposed facility, but from the spending of the income by the Tribes on their respective reservations.

I. PROJECTED BENEFITS TO THE RELATIONSHIP BETWEEN THE TRIBES AND SURROUNDING COMMUNITY:

The Tribes anticipate that between 80 and 90 percent of the 1600 employees will be from the non-Indian surrounding community (Tab 5, Page S-2). The Tribes are also committed to providing funding for the increased infrastructure costs to the City of Hudson (Tab 1, page 12). This indicates the Tribes willingness to cooperate with the surrounding community as well as the local governments. Once the Casino goes into operation and begins generating income for the community, we anticipate an improvement in the relationship between those persons now opposed to the Hudson Venture, casino management, and the three Tribes.

J. POSSIBLE ADVERSE IMPACTS ON THE TRIBES AND PLANS FOR DEALING WITH THOSE IMPACTS:

The Tribes have stated that they do not anticipate any adverse impacts as a result of this proposal.

The Minneapolis Area Office recognizes possible conflict between some members of the local community and the proposed management of the Hudson Venture. In fact, a member of the local Hudson community has formed her own activist group to oppose the Casino. The group has submitted a petition in opposition to the Venture and claims to have collected over 3,000 signatures. Please note, the petition was submitted after the City of Hudson, County of St. Croix and the School District of Hudson, held public hearings, made findings and submitted their own comments on the proposal. Thus, we have only provided cursory review of the petition. We have not determined whether all the people who signed the petition are registered voters in the State of Wisconsin or Minnesota. Since the group has not provided any additional specific substantive reasons as to why the Hudson Venture should not be approved, other than those already addressed, we have informed the local activist group that the petitions should be directed to the Governor of Wisconsin.

Nevertheless, we do not regard the possibility of friction

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between some members of the local community and the three Tribes or the management of the proposed Venture, as grounds to reject the proposal.

II. NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

A. CONSULTATION:

To satisfy the consultation required by Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. $ 2719 (1988), the Bureau of Indian Affairs, Minneapolis Area Office, consulted with State and local government officials and nearby tribes on the impacts of the gaming operation to the surrounding community (Volume III). The Bureau's consultation process consisted of letters to local government officials, including the applicant Tribe, seeking responses to several suggested areas of discussion for an analysis of the "best interest of the tribe and its members" and "not detrimental to the surrounding community" determination Id.

1. Consultation with the Governor of the State of Wisconsin:

There has been no consultation with the Governor of Wisconsin by the Minneapolis Area Office or the Great Lakes Agency since it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings.

2. Consultation with the City of Hudson:

(a) Mayor: The Mayor of the City of Hudson, Thomas H. Redner, responded to our request for input by providing detailed material addressing possible impacts on the environmental, social structure, infrastructure, land use patterns, income and employment, the possible need for additional services and compulsive gamblers programs. The Mayor stated in his cover letter, that "the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size" (Volume III, Tab 1).

(b) Common Council: The Common Council of the City of Hudson adopted a resolution with a stated purpose of protecting the "city's interest in the event the transfer takes place." The Council only sought to protect the City's financial interest and did not take a position on the proposal (Volume III, Tab 1, page 12).

(c) School District: The School District of Hudson provided considerable correspondence on the proposal (Volume III, Tab 4). Their primary concern was insuring that the tax revenue that would be lost after the land was placed into trust be replaced. To accomplish this, the School District passed a resolution to protect their financial interests (Volume III, Tab 4). However, the resolution did not approve or disapprove the purpose of the proposal. An agreement between the City, County and Tribes was

eventually finalized (Volume I, Tab 9). It provides for a distribution formula for services to be paid by the Tribes. The School District approved the distribution formula in an intergovernmental agreement with the County on April 12, 1994. The particular financial aspects of the agreement are discussed in Part I of this report. The School District then wrote to the Governor of the State of Wisconsin calling for in-depth investigations regarding the impact on education (Volume III, Tab 4, page 7). They expressed their desire for additional funding, earlier growth escalators and the possible need for a reversionary clause in the deed. This indicates weak support for the current proposal.

3. Consultation with the County of St. Croix:

The County Board Office of St. Croix County, Wisconsin also provided correspondence on the proposal (Volume III, Tab 2). On March 13, 1994, prior to the signing of the "Agreement for Government Services", they wrote to the Governor to advise him that significant back real estate taxes are owed on St. Croix Meadows (Volume III, Tab 2, page 8). The Board requested that the Governor not approve any agreement in relation to the proposal until the county has received payment of all real estate taxes, penalties, and interest due and unpaid on the St. Croix Meadows dog track property. They also noted strong public opposition to the proposal. However, after the signing of the agreement, the Board showed their support of the proposal by criticizing the Hudson School District in their call for in-depth investigations by the Governor (Volume III, Tab 2, page 10). No mention was made of the public opposition. This indicates that the Board fully supports the proposal.

The St. Croix County Board Office also prepared an "Impact Assessment" of the proposed gaming establishment (Volume III, Tab 2, page 1). It focused on the impact of the proposal to the County as a whole, including the City specifically. The assessment was prepared by the County Planning Department Staff and reviewed by the Chairman, Richard Peterson. Although each of the seven subject matters were addressed, Mr. Peterson stated in the cover letter that the County could not conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. We note that this assessment was completed prior to the signing of the *Agreement for Government Services*.

4. Consultation with the Town of Troy:

The Town of Troy provided their response to our consultation letter on March 14, 1994 (Volume III, Tab 3). The town had several areas of concern dealing with, increased traffic, lowered standard of living, limited housing, and the possible additional cost services.

The town's concern over increased traffic is addressed in the Finding of No Significant Impact. The concern over a lower standard of living as an argument against the proposal is without merit since the Tribes have indicated that the proposed gaming facility will require many supervisory and managerial positions as well as training programs. Additionally, Dr. James M. Murray estimates that 85 percent of the employment and payroll in the expanded operation will accrue to Wisconsin residents and that 90 percent of the spending at the proposed gaming facility will originate from outside the state of Wisconsin (Volume I, Tab 5, page 12). The concern of limited housing does have merit. However, we find that any growth to the community as a result of gaming facility would not have a detrimental affect on Hudson. The towns concern over additional cost of services has been addressed in the Agreement for Government Services.

5. **General Public Response:**

(a) Public Opposition: Approximately 76 letters[6], written by people in the Hudson community, were sent to the Department of the Interior expressing opposition to the proposal. Their arguments against approval of this proposal are based primarily on social concerns, i.e. concern over increased crime; concern over the impact of gaming on the children in the area; concern over the projected increased traffic; concern over a possible increased cost to the city; possible increased cost to the social programs that problem gamblers would cause; concern over organized crime; and general concern over the diminishment of the aesthetical values to the city. The people against this proposal also cited the referendum of April 1993, to show that a majority of people were against the expansion of gambling in Wisconsin. Many stated that the market is already saturated and that the dog track was a failure so the Casino will be too. As a result, it is only serving as a "bailout" for the current owners of the St. Croix Meadows. Many people stated that Hudson is fine economically without the casino and does not need the low paying jobs that would be created. A few people were morally opposed to the idea of gambling.

Approximately 3,100 people signed a petition expressing opposition to the proposal. We have not verified the legitimacy of the signatures. Nor have we determined how may people who signed the petition are registered voters in Hudson. It is our determination that these petitions should be directed to the Governor of the State of Wisconsin.

A thorough report was sent in by one member of the Hudson community to provide evidence to form a basis to reject the application. However, each of the issues raised in the report

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[6] These letters are attached.

have been addressed by the Tribe's application, in the Finding of No Significant Impact, by the local governments of Hudson, or in other areas of our findings. Many of the arguments advanced by people opposed to the proposal are also political in nature and raise policy issues for the Department of the Interior. It is our determination that none of these issues form a basis to reject the proposal.

(b) Public Support: One letter, written by Wisconsin State Legislature, Doni Burns, was sent expressing support for the proposal. He stated that the majority of people in Hudson were in support of this proposal. To support his position he referred to a referendum passed in 1992 in regard to the possibility of a casino at St. Croix Meadows.

The referendum voted on in 1992 asked the following question:[7]

> *Do you support the Transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?*

Results: 1,351 people voted "yes", (51.2%);
1,288 voted "no" (48.8%)

The survey results were provided by the City of Hudson and referred to in a number of the responses by people in favor as well as people opposed to the casino.

This referendum differs from the April 1993 statewide referendum in that it is site specific. The 1993 statewide referendum (Volume II, Tab 8) which has been cited by people opposed to the proposal, asked:

> *"Do you favor a constitutional amendment that would restrict gambling casinos in this state?"*

St. Croix County results: 6,328 voted "yes" (65.4%)
3,352 voted "no" (34.6%)

While the Hudson Proposal may be an expansion of a type of gaming in Hudson, it will not be an expansion of a gaming facility. Additionally, since the Tribes have agreed to a limited number of Class III facilities with the State of Wisconsin, it will also not be an expansion of gaming in Wisconsin. It may also be argued (indeed, the Tribes have done so) that this is not an expansion of gaming even in Hudson since the building is already

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[7] The question and results where obtained from the City of Hudson (Volume III, Tab 1, page 11).

in place and the dog track is currently in operation. At any rate, it is our determination that the 1993 referendum, standing alone, does not preclude the Secretary of the Interior from making a determination the Hudson proposal would not be detrimental to the surrounding community.

Approximately 800 people signed a petition supporting the Hudson proposal. They did not provide any supporting reasons. No evidence has been provided to show that these signatures are not legitimate. However, we have not verified the residency of these supporters or determined whether or not they are registered voters in the State of Wisconsin or elsewhere.

6. **Consultation with Neighboring Tribes:**

18 Tribes in the State of Minnesota and Wisconsin were informed of the proposal (Volume III, Tabs 5 - 16). We requested that these Tribes provide input on the impact the proposal would have on their respective reservations by letter, all dated December 30, 1993. Nine of the eleven responses that we received were emphatically against the proposed Hudson project. However, none of the Tribes that responded provided reliable or scientific data to support their views. The following are the Tribes and Tribal Organizations that responded as a result of our inquires and a summation of their comments and our response:

(a) St. Croix Band of Chippewa Indians of Wisconsin: St. Croix is strongly opposed to the project (Volume III, Tab 12). They stated, "the proposed Hudson fee to trust acquisition will have an extreme detrimental and crippling impact on the St. Croix Casino located in Turtle Lake, Wisconsin." They supported this position by providing a detailed response to the seven questions and an *Impact Statement*. This material focused heavily on the probable loss of revenue at the Tribe's Turtle Lake Casino. The St. Croix Tribe stated that the Hudson proposal would cut into the revenue generated at their Turtle Lake Casino because the Hudson proposal is larger, in a better location and has a better highway system. St. Croix also stated that the gaming market is already saturated and as a result, they would have to increase marketing expenditures just to survive and would lose current qualified employees to the Hudson project. The Tribe did not provide any data to support their position.

St. Croix provided a casino density illustration to show that "the market is becoming saturated". However, they did not provide any financial studies to back up this or any other claim dealing with a loss of income.

We question St. Croix's opposition to this project since initially, they were the first Tribe to consider purchasing the St. Croix Meadows Dog Track for gaming purposes. We also find that their economic position is overstated since they have two

casinos currently in operation and may also be working to purchase the Lake Geneva Dog Track to add a casino.

(b) Wisconsin Winnebago Nation: The Wisconsin Winnebago Business Committee responded by stating that they do not want this proposal to even be considered until the State of Wisconsin has fulfilled its commitment under the Tribal/State Compact to agree to a fourth Class III gaming site for the Wisconsin Winnebago Nation (Volume III, Tab 13).

We find that the conflict over the Gaming Compact between the Wisconsin Winnebago Nation and the State of Wisconsin provides no legal basis to reject the Hudson's proposal.

(c) Leech Lake Band of Chippewa Indians: The Leech Lake Tribal Council passed a resolution against the proposal (Volume III, Tab 6). They stated that numerous problems will arise for the State and the gaming Tribes in Minnesota if gaming is expanded to off-reservation locations. According to the Tribe, the problems would not only be a monetary loss to the surrounding Tribes but also political in nature due to the unfair use of the "special trust and tax status" of the Tribes. However, they did not elaborate as to what the political ramifications would be. Nor did the Leech Lake Band provide any justification for limiting the expansion of gaming to "off-reservation" locations.

(d) Shakopee Mdewakanton Sioux Community: The Shakopee Mdewakanton Sioux Community's Business Council passed a resolution stating their opposition to the proposed Hudson Venture (Volume III, Tab 11, page 3). Their objections were based on loss of income for the surrounding gaming Tribes and the political ramifications. Specifically, the Business Council stated the proposed casino would have a "detrimental political impact in Minnesota since Minnesota Tribes have agreed by formal tribal/state compacts to not expand Tribal gaming off-reservation..."

The Community also argued that the proposed area is actually Mdewakanton Sioux territory Id. As a result, they feel that approval of an off-reservation gaming facility in Hudson should be reserved for the Mdewakanton Sioux Tribe. We have found no legal basis for this argument. Our Fee to Trust review under 25 C.F.R. Part 151 will identify any interest this Tribe may hold in the land at Hudson.

The Chairman and CEO of the Little Six, Inc., also responded on behalf of the Mdewakanton Dakota Community (Volume III, Tab ii, pages 8 - 11) . He stated that the Community "vehemently opposes" the proposal for the following reasons:

1) This is only an off-reservation gaming experiment which could have devastating impacts on the negotiation process

among the National Indian Gaming Association, Congress, State Governors, and Attorneys General.

2) This proposal could damage the national efforts to protect gaming and could have severe political ramifications in Minnesota. They did not elaborate or provide any scientific information to support this claim.

3) The proposal could cause the State of Minnesota to open up gaming around the State thereby diminishing the beneficial economic impact of Indian Gaming. The Tribe has not provided any legal justification to show why gaming should not be expanded by Wisconsin Tribes in Wisconsin.

4) The market is at or very near the saturation point and cannot absorb another casino in the Twin Cities area without having a negative impact on jobs. A market study has not been provided by the Shakopee Mdewakanton.

5) The proposal could damage the current cooperative government to government relationship between the State of Minnesota and the Tribes. The Tribe has yet to explain how this will happen.

(e) Prairie Island Dakota Community: The Prairie Island Dakota Community passed a resolution voicing their opposition to the proposal (Volume III, Tab 10). They stated that the Hudson Casino would "saturate the already extremely competitive Minneapolis-St. Paul market area." In addition, the Tribe contends that they would not be able to compete due to the advantages the Hudson site offers. Specifically, the Tribe stated that they would suffer a severe loss of revenue (they estimate a 30%-50% reduction in customers) due to the following reasons: the proximity of Hudson to the metro area, the proximity of the proposed casino to an interstate highway and because the dog track is already an existing "first-class facility".

(f) Lower Sioux Community: The Lower Sioux Community did not pass a resolution opposing the proposal. However, the Chairman did write a letter indicating his opposition (Volume III, Tab 7). He stated that the Lower Sioux Community would be severely and unfairly damaged economically. He also indicated that the Community would be damaged politically since all of the Minnesota Tribes have not sought to locate a gaming establishment away from the reservations and to do so would cause a region-wide and probably a nation-wide race by other Tribes to do the same. No data was provided to validate his arguments.

(g) Minnesota Chippewa Tribe: The Minnesota Chippewa Tribe passed a resolution opposing the Hudson Project (Volume III, Tab 14). They stated this proposal could set a dangerous precedent by creating an open market for expansion by other Tribes.

(h) Mille Lacs Band of Chippewa Indians: Although the Mille Lacs Band did not pass a resolution to declare their opposition to the proposal, the Chief Executive did write a letter stating the Tribe's opposition and referred to letters written by the Minnesota Indian Gaming Association (Volume III, Tab 8). She also asserted that the Indian Gaming Regulatory Act was designed to act as a reservation based economic development tool and that the Hudson proposal is inconsistent with that intent. She said that reservation based gaming has allowed Mille Lacs to take a 45% unemployment rate to "effectively zero". She feels this number would increase should the proposal go through. No studies or data was provided to support these claims.

(i) Minnesota Indian Gaming Association: The Minnesota Indian Gaming Association passed a resolution and wrote a number of letters expressing their opposition to the Hudson Proposal (Volume III, Tab 15). They stated that since Minnesota Tribes oppose off-reservation gaming activity and have promised not to expand tribal gaming off-reservation, the Hudson proposal is an infringement upon their own inherent sovereign rights. In addition, the following reasons were given for their opposition:

1) Other gaming Tribes would suffer economically due to the Hudson proposal's close proximity to the metro area. In particular, the more remote casinos would be hurt.

2) The St. Croix area has historically been considered to be Dakota land. Findings: This issue will be addressed in the actual transferring of the land into trust pursuant to 25 C.F.R. Part 151. The objections identified in the Preliminary Title Opinion, if any, will have to be satisfied before the land may be transferred.

3) An off-reservation expansion of this magnitude would create huge political problems for Minnesota Tribes. The Minnesota Indian Gaming Association stated that State Legislators have been under political pressure from private businesses who want to expand gaming by placing video games in bars among other things. They also stated that they have fought hard to keep this from happening and the this proposal would jeopardize what they have fought to maintain.

MIGA also argues that the National Governors Association and other adversaries have been stating that tribes would expand gaming off-reservation into major cities in direct competition with non-Indian businesses. MIGA does not want them to be proven right.

(j) Lac du Flambeau Band of Lake Superior Chippewa Indians: The Lac du Flambeau Band stated that they do not oppose the Hudson project (Volume III, Tab 1). They also stated that their experience in gaming indicates that there would be a beneficial

impact.

(k) Oneida Tribe of Indians of Wisconsin: The Oneida Tribe stated that since they are located 250 miles away from Hudson, Wisconsin, they are not in a position to offer detailed comments or analysis on the impacts of the proposal (Volume III, Tab 9). They did state that they do not perceive that there would be any serious detrimental impacts on their reservation or gaming operations.

B. IMPACT ON NEARBY TRIBES:

1. Economic:

None of the Tribes who have written to our office to protest this proposal has provided us with any figures to back up their claim that the Hudson Venture would be "devastating economically" to the other casinos in the area. As a result, we must rely heavily on the study prepared by Arthur Andersen and Dr. Murphy to estimate the impact on the other Tribes economically.

Arthur Anderson's study estimates current market revenue for the six existing casinos in the Minneapolis/St. Paul area to be $510 million with a total estimated market revenue between $550 and $630 million[8] (Volume I, Tab 3, page 21).

Since the Hudson Venture's share of the market is estimated to be $80 Million, AA has found that even though the existing casinos would suffer some economic loss, the "proposed Hudson casino should not significantly impact aggregate revenues of the existing casinos" Id. We have particular concern over the economic impact of those casinos located within 55 road miles from Hudson. They include the Mystic Lake Casino, Turtle Lake Casino and Treasure Island Casino. Each of the Tribes operating these casinos have voiced strong opposition to the Hudson Proposal based on economic reasons. However, none of these Tribes have provided our office with any hard figures to back up their claims.

On August 12, 1994, we requested the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes provide an analysis which focuses on the particular economic impact of the proposed casino on the

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[8] The market was estimated by Arthur Andersen & Co. using the following figures:.

Population within 100 miles.... 3,800,000
MULTIPLIED BY: Estimated per capita gaming revenue.... $145 - $165

We also note that the Hole in the Wall Casino in Danbury, Wisconsin, was not included in figuring the total estimated market revenue.

Mystic Lake, Turtle Lake and Treasure Island Casinos. The Tribes did not respond in writing. Their representative, Bill Cadotte, did state that there is no legal basis to reject the proposal based on what the potential political ramifications "might" be. We concur. Specifically, we find that additional market studies cannot be completed by the three Tribes without financial data supplied by the three casinos in question.

2. **Political:**

A number of Tribes and commentators have indicated that expansion of off-reservation gaming erodes their political power and will eventually undermine their ability to limit States from expanding gaming. However, it can be argued that each new gaming operation, whether or not on land placed into trust prior to October 17, 1988, erodes Tribal political power to protect the gaming industry. We find that the Tribal Sovereignty of the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes is far more important than limiting the expansion of Tribal Gaming. In fact, each Tribe currently operating gaming facilities went into the industry knowing that expansion into major metropolitan areas was a possibility and maybe even likely. We find that it is up to each individual Tribe to operate within the limits of the Indian Gaming Regulatory Act, their Class III Gaming Compacts and their existing governing documents. The Minneapolis Area Office will not restrict Lac Courte Oreilles's, Red Cliff's, Sokaogon's or any other Tribe from operating within these limits and find that any negative political ramifications from this proposal would be minimal.

C. **EVIDENCE OF ENVIRONMENTAL IMPACTS AND PLANS FOR REDUCING ANY ADVERSE IMPACTS:**

The Lac Courte Oreilles and Red Cliff Bands Lake Superior Chippewa Indians and the Sokaogon Chippewa Community propose to purchase, and place into federal trust 55.82 acres of land. The proposed trust site consists of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building, for the purpose of operating a Class III gaming facility in addition to the existing pari-mutuel dog track operation. The main parking lot west of the grandstand building is not intended for trust acquisition.

The existing grandstand would be remodeled to accommodate gaming activities, however, most support facilities (kitchen, washrooms, office space, etc.) would be maintained.

1. **Environmental Considerations:**

An "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" was prepared by

Mid-State Associates, Inc., in accordance with the requirements of the Wisconsin Racing Board Application for License (Volume IV, Tab 4). An addendum to the Environmental Assessment was prepared by Bischof & Vasseur for the proposed trust acquisition (Volume IV, Tab 3). Based on the findings of the EA and the Addendum, the Superintendent, Great Lakes Agency, found that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary. The *Finding of No Significant Impact* was issued on September 14, 1994 (Volume IV, Tab 1).

A Level I Hazardous Waste Survey has not yet been completed. However, we do note that a Phase I Environmental Property Assessment has been prepared by Braun Intertec for the Tribes. It indicates that there are no documented or observable environmental concerns associated with asbestos containing building materials or underground storage tanks. It also states that there is no documented evidence indicating any past or current land-use activities that have had an adverse environmental impact on the site. We also note that prior to the United States taking the land into trust, a Level I Hazardous Waste Survey must be completed and approved at the Area Office. We will satisfy this requirement under the 25 C.F.R. Part 151 process.

2. **Natural and Cultural Resources:**

The addendum to the Environmental Assessment states that the proposed facility will have no new significant short-term, long-term, or cumulative impacts on the regional geology, including bedrock and soils, ground water/water quality, or climate (Volume IV, Tab 3).

The Addendum also states that the facility is not expected to impact any natural areas such as native trees or wildlife habitat. Additionally, there are no anticipated impacts from the planned action on wetlands or other surface waters in the area. According to the National Wetlands Inventory Map for the site, there are no designated wetland areas located on the site. No rare plant or animal species or other significant natural feature will be adversely impacted.

(a) Land Resources: The topography of St. Croix County ranges from gently rolling to hilly and rough (Volume IV, Tab 4, pages 3 & 4). All of the county has been covered by continental glaciation. The St. Croix River has also had a major impact on the topography of the area. The St. Croix River is bounded by 100' - 200' bluffs along its eastern shore. The Hudson Casino Venture would be located on the plateau above these river bluffs.

The site where the proposed facility would be located and the

immediate area surrounding the site is "mostly gently rolling with an average elevation of 840 feet" Id.

The site surrounding the facility is a combination of many soils. Pillot silt loam is the most common Id. The slope of this soil is 0 to 3 percent so runoff is slow and there is slight hazard of erosion. Most of the remaining soil at the site is Burkhardt-Sattre complex of differing slopes. Since most areas of the Burkhardt-Sattre complex are cultivated, there is no identified erosion or soil blowing problem.

Since the planned action will utilize the existing racetrack facilities, there will be no significant impact on prime or unique farmlands in the Farmland Protection Policy Act (Volume IV, Tab 3, page 3).

(b) Water Resources: The Hudson area has an abundance of groundwater. All potable water used in St. Croix County is groundwater. The supply of water is presently determined by the ability to pump it out of the ground. The source of the groundwater is precipitation (Volume IV, Tab 4, page 3).

The Hudson area surface waters occupy two major drainage systems. The St. Croix River drains the western two-thirds of St. Croix County. The balance of the county is mostly drained by the Chippewa River which flows into the Mississippi River Id.

The St. Croix River is located approximately 4800 feet to the west of the proposed facility. There are no other existing surface water bodies in the EA study area Id.

(c) Air Quality: Both the City of Hudson and St. Croix County have stated that the projected traffic increase will not cause the air quality to exceed applicable standards (Volume III, Tab 1, page 1 and Volume III, Tab 2, page 2). Air monitoring stations are currently in place at the track exit and the southeast corner of the Carmichael Interchange to detect any change in the air quality which could be harmful to the area Id.

(d) Threatened and Endangered Species: St. Croix County is listed as a habitat for the following three endangered or threatened species (Volume IV, Tab 4, page 4):

(1) Peregrine Falcon - Potential breeding habitat; Endangered.
(2) Bald Eagle - Breeding and wintering habitat; Threatened.
(3) Higgins' Eye Pearly Mussel - River habitat; Endangered.

According to the EA, site visits in 1988 to the area around the proposed facility did not detect any of these species Id. The development site may serve as a habitat for the Peregrine Falcon and Bald Eagle. However, none have yet been located. Additionally, there is no habitat for the Higgins' Eye Pearly

Mussel at the site. At any rate, the natural area consisting of vegetation or wildlife habitat will not be impacted by the internal construction or additional traffic flow Id.

(e) Cultural Resources: No specific cultural resources or structures are known to exist on the site.

The State Historical Society of Wisconsin has stated that there are no buildings in the study area that are listed in the National Register of Historic places (Volume IV, Tab 2, page 2).

The Mississippi Valley Archaeology Center, Inc., stated that there are no known archeological sites in the proposed project area (Volume IV, Tab 2, page 3).

D. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY:

Concern over an increase in crime has been expressed by most of those people who wrote to oppose the Hudson Venture. However, none of the letters contained any scientific or statistical evidence to back up this claim. The City of Hudson has stated that similar predictions were made in regard to the St. Croix Meadows dog track before it went into operation in 1990. The City stated, to date, "none of the earlier negative predictions concerning increased crime, etc., have come true..." (Volume III, Tab 1, page 2). To prevent any crime escalation in the City of Hudson, and to help offset any fear among the community, the City has stated that they will hire an additional Investigator Crime Prevention Office in the year the Casino is opened (Volume III, Tab 1, page 4). The City also expects the Police Department to expand the police force by five officers and one clerical employee within the next five years Id. Additionally, the Tribes have stated that they are committed to paying for the reasonable costs of these services (Volume I, Tab 1, page 12).

The City stated that the residents of the community have come to accept the dog track's existence and that there is no overwhelming majority of citizens either in favor of or opposed to the casino (Volume III, Tab 1, page 2). Nevertheless, the city is prepared to handle any negative reaction by the community over the casino.

E. IMPACT ON THE INFRASTRUCTURE:

1. Utilities:

The current facility is supplied by existing public water, sanitary sewer, electric, and telephone utilities. No additional infrastructure is scheduled to be constructed as part of the proposed action.

2. **Zoning:**

According to the City of Hudson, most of the proposed trust site is zoned general commercial district (B-2) for the principal structure and ancillary track, kennel and parking facilities (Volume III, Tab 1, page 4). Six acres of the proposed trust site are currently zoned single family residence Id. The east, south and westerly perimeters are classified as on-family residential districts (R-1) and serve as a buffer area between the track operation and other surrounding land uses Id.

3. **Water:**

The City of Hudson stated that the water trunk mains and storage facilities are adequate for providing water service to the proposed casino and "ancillary development south of I-94" (Volume III, Tab 1, page 3).

4. **Sewer and Storm Drainage:**

According to the Impact Assessment of the Proposed Casino on St. Croix County which was prepared by the County, St. Croix County anticipates an increase in waste generation from the proposed casino (Volume III, Tab 2, page 1). Currently, the St. Croix Meadows generates .5 pounds per person Id. This equals approximately 104 tons of waste per year. Based on the anticipated average daily attendance of 7,000 people, the proposed casino would result in a production of 639 tons of waste per year, an increase of 535 tons. The County has stated that the waste-to-energy facility that services St. Croix County has adequate capacity to handle the increase Id. To verify the figures, the County compared their estimates to the St. Croix Bingo and Casino gaming facility in Turtle Lake, Wisconsin. That facility averages .53 pounds per person or 677 tons per years.

An existing storm water collection system collects storm water runoff and directs it towards a retention pond located near the southwest corner of the parking area. From there, collected storm water is allowed to evaporate, percolate into site sils, or slowly flow along a regional storm water control system towards the St. Croix River (Volume IV, Tab 4, pages 7 & 8). According to Hudson officials, the existing storm water control system is adequate to handle storm water runoff from the site (Volume III, Tab 1, page 3).

5. **Lighting:**

The County has stated that although the City of Hudson has jurisdiction to control and monitor the lighting, the County has a responsibility to surrounding neighbors in other jurisdictions (Volume III, Tab 2, page 2). As a result, the County expressed that any changes made to the current lighting system take into

consideration the larger community which may be affected. They did not express any dissatisfaction with the current system.

The City of Hudson stated that this concern was addressed at the time St. Croix Meadows was constructed. Specifically, a lighting system is already in place which reduces the light spillage at the property lines "to an amount equivalent to residential streets" (Volume III, Tab 1, pages 1 & 2). The City also acknowledged that the lights may be on for extended periods of time because the casino operation is likely to be open until 2:00 a.m. or 24 hours per day Id.

6. Roads:

(a) Access: The City of Hudson stated that the current street system is sufficient enough to accommodate projected traffic needs based on 40,000 average daily trips (Volume III, Tab 1, page 4). However, development on Carmichael Road north of the proposed casino may be necessary. Specifically, traffic regulatory signals will likely be needed at the interchange of Carmichael Road and Hanley Road.

St. Croix County expressed particular concern with increases in traffic on USH 12, CTH UU, CTH A, and Carmichael Road (Volume III, Tab 2, pages 2 & 3). The County stated that even minimal traffic increases will have a negative impact on these roadways since they are already at capacity. However, information gathered from the Wisconsin Department of Transportation indicates that any negative impact from additional traffic will be minimal (Volume IV, Tab 3, pages 38 & 39).

(b) Traffic Impact Analysis: A traffic study was completed and is contained in the 1988 Environmental Assessment for the St. Croix Meadows dog track (Volume IV, Tab 2, page 18). It is based on traffic projections in the year 2011. Peak traffic estimates were provided to the Wisconsin Department of Transportation regarding the proposed Hudson Casino Venture. No significant problems were identified regarding the proposed traffic increase on the Interstate 94/Carmichael Road Interchange.

The *Finding of No Significant Impact* (Volume IV, Tab 1) also indicates that although no transportation system is likely to be developed in Hudson that would assure there will be no slow-down or delays during peak traffic periods, various methods would be utilized to manage delays should they occur. These methods include varying dog track racing times so as not to coincide with peak casino attendance times, elimination of parking fees and gates for easy parking lot entry, use of shuttle buses and remote parking areas, possible adjustment of time delays on traffic lights during peak attendance times, and installation of traffic lights.

F. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY:

The City has stated that approximately 25 acres of the site is developed. The six acres that are zoned as single family residence have limited development potential; 18.5 acres are located in an area of the bluff east of the track and are generally not suited for development, although there may be some potential; 5.5 acres are suitable for development (Volume III, Tab 1, page 4).

The City of Hudson has stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses Id.

G. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY:

Total employment at the proposed facility is expected to be between 1,500 and 1,600 positions. Current employment figures at St. Croix meadows is approximately 175 full-time positions and 225 part-time positions (Volume III, Tab 2, page 4). All existing employees would be offered re-employment at their current wage rates. Thus, between 1,100 and 1,200 new positions are expected to be generated Id.

Even though the three Tribes will give hiring preference to their own tribal members, 80-90% of the new positions are expected to be filled by non-Tribal members already living in the Hudson area Id. Wage rates for these jobs are estimated at between $5 and $10 per hour, not including salaried positions Id.

According to statistics provided by the St. Croix County, the service industry accounts for 20 percent of the County's 1993 total labor force of 28,300 people. Since the casino is expected to pull some employment from existing service jobs within the county, County officials estimate that approximately 175 service positions will be filled by currently unemployed County residents either through direct employment at the casino or by other service jobs Id.

The remaining 900-1025 positions are expected to be filled by people from the nearby Wisconsin counties.

According the Economic Impact Report by Dr. James Murray, over 90 percent of the spending at the proposed Hudson Gaming Facility is expected to originate from outside the state (Volume I, Tab 5, page S-2). Dr. Murray estimates the total impact of the gaming facility would be to support 2,691 jobs and generate over $56 million in annual earnings for residents of Wisconsin (Volume I, Tab 5, page 12).

H. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO:

Additional services will be needed in the City of Hudson, County of St. Croix and at the site of the Hudson Project. To assure that all necessary services are provided, the three Tribes, County of St. Croix and the City of Hudson have entered into an *Agreement for Government Services* (Volume I, Tab 9). In the agreement, the Tribes, through their EDC's, will pay the City and County for general government services, including, but not limited to, the following services: police, fire, water, sewer, ambulance, rescue, emergency medical and education. These services will be provided in the same manner and at the same level of the services provided to residents of the City and County and other commercial entities located in the city and county. The agreement will continue for as long as the land is held in trust or until Class III gaming is no longer operated on the land.

I. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING:

Currently, there is not a compulsive gamblers program within St. Croix County. The County has indicated that if the Hudson Project goes into operation, their Human Services Department would initiate staff training and would develop treatment programs, including initial on-site screening of potential problem gamblers, treatment and aftercare services (Volume III, Tab 2, page 5).

There are six State-Funded Compulsive Gambling Treatment Centers in Minnesota (Volume II, Tab 7, page 38). Two are in Minneapolis. The other four are located in St. Cloud, Bemidji, Granite Falls and Duluth. According to the Minnesota Council on Compulsive Gambling, since 1984, limited funds have been appropriated by the Minnesota Legislature for training, research, gamblers' hot-line services, rehabilitation and public awareness programs (Volume II, Tab 6, page 2). Unfortunately, Minnesota Planning has also found that current levels of treatment in Minnesota are inadequate and that some treatment facilities already have waiting lists while others are near capacity (Volume II, Tab 7, page 37).

Since there are no Wisconsin state-funded treatment facilities near Hudson, the three Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. Additionally, the Tribes have stated they will contribute money to local self help programs for compulsive gamblers (Volume I, Tab 1, page 12).

III. RECOMMENDATIONS

Based upon the discussion and conclusions provided above, we recommend that the Secretary of the Interior find that the proposed action will be in the best interest of the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes and that it will not have a detrimental effect on the surrounding community. We also recommend that the decision be made to take this particular parcel into trust for the three Tribes for gaming purpose.

I attest that I have reviewed this transaction and the case file is documented in compliance with all of the above stated regulations and facts. I further state that I will not accept the property in trust until I have received satisfactory title evidence in accordance with 25 C.F.R. Part 151.12.

ATTEST:

Area Director

11-15-94
Date

EOP 064540

City of Hudson
505 Third Street
Hudson, Wisconsin 54016-1694
FAX: (715) 386-2285

Office of the Mayor

March 17, 1994

United States Department of the Interior
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, MN 55401-2241

ATTN: Robert R. Jaeger, Acting Area Director

Dear Mr. Jaeger:

This letter is in response to your request for input on whether the gaming establishment on newly acquired land is detrimental to the surrounding community. This is in relation to the application from the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians and the Sokaogon Chippewa Community.

I think you will find, as you review the attached material, that the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size.

The attached material has been gathered and submitted by members of our City staff and reviewed by me. I trust that this material satisfies your needs in this matter. In the event you have any further questions or desire further clarification on anything presented here, please contact me at your convenience.

Sincerely,

Thomas R. Redner
Mayor

THR/lm
Enclosures

[redacted]

Printed on Recycled Paper

Section 20 of the IGRA, 25 U.S.C. § 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community.

The decision to place land in trust status is committed to the sound discretion of the Secretary of the Interior. Each case is reviewed and decided on the unique or particular circumstances of the applicant tribe.

For the following reasons, we regret we are unable to concur with the Minneapolis Area Director's recommendation and cannot make a finding that the proposed gaming establishment would not be detrimental to the surrounding community.

The record before us indicates that the surrounding communities are strongly opposed to this proposed off-reservation trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to this trust acquisition for gaming purposes. In addition, in a March 28, 1995, letter, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District in whose district the St. Croix Meadows Greyhound Track is located, have expressed strong opposition to the proposed acquisition. The communities' and State officials' objections are based on a variety of factors, including increased expenses due to potential growth in traffic congestion and adverse effect on the communities' future residential, industrial and commercial development plans. Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by this proposed off-reservation gaming acquisition.

In addition, the record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin. Their opposition is based on the potential harmful effect of the acquisition on their gaming establishments. The record indicates that the St. Croix Casino in Turtle Lake, which is located within a 50-mile radius of the proposed trust acquisition, would be impacted. And, while competition alone would generally not be enough to conclude that any acquisition would be detrimental, it is a significant factor in this particular case. The Tribes' reservations are located approximately 85, 165, and 188 miles respectively from the proposed acquisition. Rather than seek acquisition of land closer to their own reservations, the Tribes chose to "migrate" to a location in close proximity to another tribe's market area and casino. Without question, St. Croix will suffer a loss of market share and revenues. Thus, we believe the proposed acquisition would be detrimental to the St. Croix Tribe within the meaning of Section 20(b)(1)(A) of the IGRA.

We have also received numerous complaints from individuals because of the proximity of the proposed Class III gaming establishment to the St. Croix National Scenic Riverway and the potential harmful impact of a casino located one-half mile from the Riverway. We are concerned that the potential impact of the proposed casino on the Riverway was not adequately addressed in environmental documents submitted in connection with the application.

HM document = 7

DRAFT

Document provided pursuant to Congressional subpoena

Indian Gaming Management
MS-2070

To: Assistant Secretary - Indian Affairs

Through: Deputy Commissioner of Indian Affaris

From: George T. Skibine
Director, Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles Band, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all

[1] References are to the application documents submitted by the Minneapolis Area Office.

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of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables. Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period was extended to April 30, 1995, by the Office of the Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of

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other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)
2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)

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15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in stating that "it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

No consultation with other State officials was solicited by the MAO. Shiela E. Harsdorf, State Representative, and twenty-eight other Representatives and State Senators sent a letter to the Secretary, dated March 28, 1995, expressing "strong opposition to the expansion of off-reservation casino-style gambling in the State of Wisconsin." The letter addresses four areas of detrimental impact.

First, the signatories cite the removal of land from the local property tax rolls. In the Findings of Fact, the MAO cites the Agreement for Government Services as evidence that the detrimental impact of placing land in trust has been mitigated. The applicant Tribes assert that the track will close, if it is not purchased by Indians, and all revenue to the local governments will cease, a potential detrimental effect of not acquiring the land in trust.

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Second, the representatives assert that "expansion of gambling is contrary to public will in Wisconsin." Elections in 1993 are cited in support. However, the 1993 referenda were primarily technical in nature, to bring the State constitution into conformance with the State-operated lottery. The representatives' letter states, "This advisory referendum showed strong support for limiting gambling to . . . dog tracks, state lottery games and existing tribal casinos." Public policy in Wisconsin embraces a State lottery and several types of Class III gaming.

Third, the letter says that off-reservation gambling may not foster economic development within the tribal nations. "People will be unwilling to travel long distances to casinos and bingo halls located in less-populous regions," says the letter. While the competitive impact of another casino is expected to affect existing Indian gaming operations, the three applicant Tribes are among those tribes in less-populous regions, who cannot draw significant customers from the market area of tribes with more urban locations. They seek to promote economic development by improving their business location.

Last, Representative Harsdorf states, "Many municipalities feel that the expansions have created tense racial atmospheres and that crime rates have increased. It is also unclear whether all tribes have benefitted from the IGRA." The Agreement for Government Services specifically addresses the impact of crime, and its mitigation. No information on racism or the disparate impact of IGRA is supplied. It is not clear that racism is impacted either by approval or disapproval of the application.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994

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Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

The Supervisors of the Town of Troy passed a resolution on December 12, 1994 in response to the Finding Of No Significant Impact (FONSI). The resolution restated the town's "vigorous objection to casino gambling at the St. Croix Meadows Facility," and reasserted "that casino gambling at the St. Croix Greyhound Racing Facility will be detrimental to the surrounding community." No evidence of detrimental impact was included in the resolution. The resolution was not submitted to the Department Interior in the application package, but was an attachment to a letter to the Secretary from William H.H. Cranmer, February 28, 1995. Neither the Town of Troy or Dr. Cranmer appealed the FONSI.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

Several thousand cards, letters, and petition signatures have been received in support of an Indian casino at the Hudson dog track.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that

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the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

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Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1½% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all business-

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es, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota

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casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin

In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes

On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market

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of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million). Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are <u>not</u> equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

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It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to reorder its spending plans.

Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers

The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were

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received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime

Hudson Police Dept. Crime & Arrests, (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell 3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level

The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns

One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

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IV. Property Values

An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase

Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500, and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters' estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than

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currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities

St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning

According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water

The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage

The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

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V. Roads

The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94. The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

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3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

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Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

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There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in

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reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any fax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto*

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giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

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Hudson Dog Track Application

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59 FR 22951
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Memorandum

Government-to-Government Relations With Native American Tribal Governments

April 29, 1994

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Nativ American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible fo ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested partie may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during th development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") anc 12866 ("Regulatory Planning and Review") to design solutions and tailor Federa

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(Publication page references are not available for this document.)
programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, o any other person.

The Director of the Office of Management and Budget is authorized and directe to publish this memorandum in the Federal Register.

WILLIAM CLINTON
THE WHITE HOUSE,
Washington, April 29, 1994.

59 FR 22951, 1994 WL 163120 (Pres.)
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Fax Message From
Congressman

Steve Gunderson

Third Congressional District, Wisconsin

2185 Rayburn House Office Building
Washington, D.C. 20515-4903
202-225-5506

cc: Jorge Sabine 16 MS
Done

TO: HEATHER Sibbison
ASSISTANT TO THE COUNSELOR

FAX NUMBER: _____ PHONE NUMBER _____

FROM:

___ STEVE GUNDERSON	___ DAVE GUNDERSEN
___ FRAN MCNAUGHT	___ JOAN JACKSON
X TIM BARTL	___ KEVEN KENNEDY
___ JOHN FRANK	___ TED REBARBER
___ JANET FRENE	___ SCOTT SMITH
___ INTERN _____	___ SCOTT STAFFORD

file: Dog Track

DATE: 5/1/95 # PAGES 4 (INCLUDING COVER SHEET)

COMMENTS: Comment Letter: Hudson Fee-to-Trust Acquisition.

This was delivered to 7229 @ 12:15 5/1

Antigo Silt Loam

[redacted]

STEVE GUNDERSON
3rd District, Wisconsin

WASHINGTON OFFICE
2438 RAYBURN H.O.B.
WASHINGTON, DC 20515-4903
202-225-5506
TDD [illegible]

ASSISTANT TO THE MAJORITY LEADER

AGRICULTURE COMMITTEE

ECONOMIC AND EDUCATIONAL OPPORTUNITIES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-4903

DISTRICT OFFICE
Post Office Box 247
[illegible]
1-800-[illegible]
715-[illegible]
TDD [illegible]

April 28, 1995

The Honorable Bruce Babbitt
Secretary
Department of Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Secretary Babbitt:

I am writing on behalf of my constituents to express my opposition to the fee to trust acquisition of the St. Croix Meadows greyhound track by the Red Cliff, Mole Lake, and Lac Courte Oreilles bands of the Chippewa Tribe pending before the Bureau of Indian Affairs. As you know, the track is located in Hudson, Wisconsin, in the western part of my district.

The debate over adding casino gambling at the dog track has inflamed passions of Hudson residents for several years and has been a prominent issue in several local elections. Until now, I have remained neutral, in part because I believed that the residents of St. Croix county should be allowed to develop their own opinions without interference from Washington. I also remained neutral because I was unclear whether the Indian Gaming Regulatory Act (IGRA) permitted my input. However, since your office has informed me that I may comment, I have considered the historical perspectives of the debate, the national significance of this decision, and the views of my constituents. I have concluded that the most prudent course would be for the Department to reject casino gambling at St. Croix Meadows.

I oppose the expansion of gaming at the Hudson dog track because it would set a national precedent for off-reservation casino gambling facilities. Section 20(b) of the IGRA provides that the Secretary of the Interior, with the governor's approval, may acquire land outside of an established reservation for gaming purposes if the Secretary determines that the acquisition is in the tribe's best interest and would not be detrimental to the surrounding community. According to your office, since Congress passed the IGRA in 1988, the Secretary of Interior has never approved the acquisition of off-reservation land to be used for casino gambling. This appears to indicate that the section was intended to apply only in exceptional cases.

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Congress passed the IGRA in large part to promote Native American economic development through gaming. At the same time, the Act sought to protect against the abuses of a burgeoning, but unregulated gaming industry. Most tribes that have developed gaming on their reservations have succeeded in significantly improving the economic conditions of their members.

Under existing compacts with the State of Wisconsin, each of the three bands applying to develop a casino in Hudson is allowed to build two casinos with blackjack facilities on its reservation. Each presently has one casino with blackjack facilities on its reservation. To increase economic opportunities for its members, each tribe may build an additional facility with blackjack without treading into the precedent-setting waters of off-reservation casinos. If your office approved the acquisition of the dog track, a national precedent would be set to encourage the development of additional off-reservation facilities when on-reservation development options are still available. For this reason, Hudson is not the place to break new ground.

In addition to setting a new precedent, proceeding with the acquisition would be detrimental to the Hudson area by further eroding relations among residents and limiting opportunities for economic development. Area residents and their local representatives oppose casino gambling. The passage of legislation allowing the dog track created many deep wounds in the city. In 1991, when a casino at the dog track was first debated, the City of Hudson recalled its mayor because he supported gaming. A year later, the City Council adopted a resolution opposing Indian gaming at the dog track. In February, the Council again voted to reject a casino.

Voters have increasingly opposed Indian gaming at the dog track. In 1992, the City of Hudson held a referendum which asked whether residents supported the transfer of the land to an Indian tribe if unspecified financial conditions were met. The results were 1,352 voters in support of the transfer and 1,288 against. However, in a 1993 statewide referendum which asked whether residents wanted to expand Indian gaming in Wisconsin, 65% of St. Croix County residents voted against expansion. In the adjoining Troy township, from which land was annexed for the track, 85% of the residents voted against expansion.

In sum, it is my conclusion that allowing a casino at the St. Croix Meadows facility would set an expansive national precedent for off-reservation gaming where none is needed. The approval would have detrimental effects on the residents by creating further divisiveness in a city where civic harmony has already been severely damaged. Further, the recent votes provide ample statistical proof of public opinion. For these reasons, I oppose the expansion of casino gambling to the St. Croix Meadows track.

I would appreciate a status report on the acquisition at your earliest convenience. Thank you for your consideration.

Best regards,

Steve Gunderson
Member of Congress

SG:tb

The only land transaction approved since enactment of IGRA for an off-reservation Class II gaming facility was for the Forest County Potawatomie Tribe. The property is located in Milwaukee, Wisconsin and the transaction was completed in 1990 prior to the establishment of the office of the Indian Gaming Management Staff and the established items to ascertain that the transaction meets the two-part determination required in Section 20.

Two acquisitions were approved for lands located off-former-recognized reservations in the State of Oklahoma: The Cherokee Nation of Oklahoma acquired two parcels: one in West Siloam Springs, OK for a total of 7.808 acres (approved by Central Office: 01/18/94 and the second in Rogers County, OK for a total of 15.66 acres (approved by Central Office: 09/24/93); both are for Class II gaming facilities.

Two acquisitions were approved for land "contiguous to the reservation " for two tribes in Louisiana: Tunica-Biloxi Tribe acquired 21.054 acres in Avoyelles Parish, LA for a Class III gaming facility (approved by Central Office: 11/15/93); and Coushatta Tribe acquired 531 acres in Allen Parish, LA for a Class III gaming facility (approved by Central Office: 09/30/94).

One land acquisition was approved for a tribe with no reservation on enactment date of the IGRA and the land was not in Oklahoma: Sisseton-Wahpeton Sioux Tribe of Lake Traverse Reservation acquired 143.13 acres in Richland County, North Dakota for a Class III gaming facility (approved by Central Office: 09/30/94).

Three transactions have been prepared for off-reservation acquisitions for Class III gaming facilities in the States of Oregon, Louisiana and Michigan. None received the concurrence of the Governor; consequently, none of the proposals were taken in trust.

Get it to him Monday
5/1

- mail stop 7229

file: Dog Track (St. Croix)
5/3

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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Minneapolis Area Office
331 Second Ave Avenue
Minneapolis, Minnesota 55401-2241

IN REPLY REFER TO:

Tribal Operations

April 20, 1995

Memorandum

To: Assistant Secretary - Indian Affairs

From: Office of the Area Director

Subject: Trust Acquisition Request - St. Croix Meadows Dogtrack Property

Attached is a request by the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the Tribes) to place 55.82 acres of land into trust status for the benefit of all three tribes. The property consists of the St. Croix Meadows Greyhound Racing Facility and is located in Hudson, Wisconsin. In addition to the land, the Tribes have also entered into an agreement to purchase the assets of the track from the current owners. Once the requirements of the Indian Gaming Regulatory Act of 1988 are satisfied, the agreements to purchase the assets of the dogtrack are executed, and the land is placed into trust, the Tribes will add casino type gaming to the facility.

The Tribes are currently awaiting satisfaction of the requirements of the Indian Gaming Regulatory Act of 1988 before executing the land and asset purchase agreements. We transmitted our Section 20 Recommended Findings of Fact and Conclusions for this project to you on November 15, 1994. Since that time, the Tribes have specifically requested that the Bureau of Indian Affairs begin the process of placing the land into trust status. As a result, we obtained the attached Preliminary Title Opinion from the Office of the Field Solicitor, Twin Cities. We have also attached the following material in support of the trust acquisition:

1) Title Insurance Commitment;

2) Level I Hazardous Waste Survey;

3) Finding of No Significant Impact;

4) Maps of the property;

5) Tribal Resolutions requesting the land be placed into trust;

6) Notification letters addressed to the local units of state government.

Please note, the responses of the local units of state government and additional material were included in our November 15, 1994 transmittal.

We have completed our review and analysis of the request and the supporting documentation. The findings and recommendations to place the land into trust after satisfaction of all IGRA requirements are set forth in this memorandum for your approval or disapproval.

I. PROPERTY TO BE ACQUIRED

The property to be acquired is located at 2200 Carmichael Road in Hudson, Wisconsin, approximately one mile south of the Carmichael Road/Interstate "94" Interchange. The site consists of approximately 55.82 acres located in the fractional Northeast Quarter of the Northeast Quarter and Southeast Quarter of the Northeast Quarter, Section 6, Township 28 North, Range 19 West, City of Hudson, Saint Croix County, Wisconsin, described as follows:

> The fractional Northeast Quarter of the Northeast Quarter of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional Northeast Quarter of the Northeast Quarter of said Section 6.
>
> Also, that part of the Southeast Quarter of the Northeast Quarter of said Section 6 described as follows: Commencing at the Northeast corner of said Section 6; thence S02°49'01"W, 1,891.74 feet along the East line of the fractional Northeast Quarter of said Section 6 to the Northeast corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the Southeast Quarter of the Northeast Quarter of said Section 6; thence N02°48'30"E along the West line of said Southeast Quarter of the Northeast Quarter to the Northwest corner thereof; thence Easterly along the North line of said Southeast Quarter of the Northeast Quarter to the Northeast corner thereof; thence S02°49'01"W, along the East line of said Southeast Quarter of the Northeast Quarter to the point of beginning.

In June, 1991, the St. Croix Meadows Greyhound Racing Park opened on the site. The facility consists of a racing area, enclosed grandstand and clubhouse, kennels,

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and parking areas. The racetrack is open year round and has twenty kennels, each kennel having the capacity of housing up to 72 greyhounds each. The racetrack currently employs approximately 282 employees, including the food service employees. Prior to the construction of the racetrack, the site was used for agricultural purposes.

II. COMPLIANCE WITH LAND ACQUISITION REGULATIONS

25 C.F.R. § 151.10 identifies various factors which must be considered in all fee-to-trust acquisitions. Each factor for the placement of the St. Croix Meadows Property in trust for the three Tribes is discussed below:

A. 25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority:

The Sokaogon Chippewa, Lac Courte Oreilles Chippewa and the Red Cliff Chippewa are all organized under the Indian Reorganization Act of 1934. Each tribe has requested to place the land in Hudson, Wisconsin, in trust for the benefit of all three Tribes under 25 U.S.C. § 465. The Bureau of Indian Affairs is authorized to process this application under 25 C.F.R. 151.3(a)(3) which states that land not held in trust may be acquired for a tribe in trust status when such acquisition is authorized by an act of Congress, and when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

B. 25 C.F.R. § 151.10(b) - The need of the individual Indian or the tribe for additional land:

The trust acreage at the three tribal reservations totals 57,868.76 acres.[1] However, each of the Tribes lack an adequate land base to provide facilities for economic development. This is due to the fact that each of the three reservations is located in areas of Wisconsin which are remote from significant population centers.

The Tribes operate a total of five (5) gaming facilities within the exterior boundaries of the three reservations. To ensure the continuing stream of revenue necessary for tribal economic development, self-sufficiency and a strong tribal government, the Tribes must expand its gaming operations beyond the existing facilities. The

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[1] The trust acreage is broken down as follows:
Sokaogon Chippewa Community - 1,694.10 Acres
Red Cliff Tribe - 7,881.12 Acres
Lac Courte Oreilles Tribe - 48, 293.54 Acres

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purchase and placement into trust of St. Croix Meadows Greyhound Park is viewed by the Tribes as critical to their long-term economic benefit. The project would permit the tribal governments, as well as tribal members, to participate in the operation of a gaming facility in a large metropolitan market.

Only the Sokaogon Tribe distributes gaming revenue to tribal members in the form of per capita payments. As a result, the majority of net revenue generated by the proposed casino would be used to expand tribal social programs, tribal government operations and economic development activities well beyond the limits allowed by existing federal and state assistance.

C. 25 C.F.R. § 151.10(c) - The purpose for which the land will be used:

The Tribes intend to use the property for a Class III gaming facility. The Tribes have entered into an agreement with the current owners of the St. Croix Meadows Greyhound Park in Hudson, Wisconsin, to purchase the assets of the dogtrack. This track is located on the proposed 55.82 acres of trust land. Once the requirements of the Indian Gaming Regulatory Act of 1988 have been satisfied, and the land is placed into trust for the Tribes, casino type gaming will be added to the existing facility. No other use of the land is foreseen.

D. 25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls:

Notices of the proposed fee-to-trust conversion were sent to the Mayor of the City of Hudson, the Chairman of the City of Hudson, the Chairman of the St. Croix County Board of Supervisors, and the Chairman of the Town of Troy. The concerns not related to the removal of the property from the tax rolls that were raised by these local units of state government were fully addressed as part of the process under Section 20(b)(1)(A) of the Indian Gaming Regulatory Act of 1988 in the Recommended Findings of Fact and Conclusions prepared by the Minneapolis Area Director and sent to the Assistant Secretary-Indian Affairs on November 15, 1994.

Over 90 percent of the spending at the proposed Hudson gaming facility is expected to originate from outside the State of Wisconsin. The Hudson gaming facility is also expected to support 2,691 jobs and generate over $56 million in annual earning for residents of Wisconsin. Additionally, the Tribes, City of Hudson, and the County of St. Croix have entered into an *Agreement for Government Services*. Under this agreement the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other

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services that are under the control of the city or county or are customarily provided to other commercial properties within the city or county.

Under the *Agreement for Government Services*, the Tribes will pay the city and county $1,150,000 annually through 1998 to compensate for the services provided. Beginning in 1999, and for each year thereafter, the Tribes will increase the last annual payment by five (5) percent. Thus, the local units of state government should not be detrimentally impacted due to the removal of the land from its tax rolls.

E. 25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise:

1. Potential land use conflicts: According to the City of Hudson, the proposed trust site is zoned general commercial district for the principal structure and ancillary track, kennel and parking facilities. Six acres of the proposed trust site are currently zoned single family residence. The east, south and westerly perimeters are classified as on-family residential districts and serve as a buffer area between the track operation and other surrounding land uses.

The City of Hudson has also stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses. We conclude that there are no land use conflicts that would result from the acquisition of this land into trust status and its development as a gaming facility. In fact, the current plans do not require construction of any buildings for the addition of casino type gaming to the dogtrack facility. The remodeling of the existing building which already contains pari-mutuel dog racing is the only construction that will be necessary. As a result, no zoning conflicts are foreseen.

2. Jurisdictional Issues: As trust land, the property would be considered "Indian Country" for jurisdictional purposes within the meaning of 18 U.S.C. § 1151. As a result, the United States would gain additional law enforcement jurisdiction in connection with the property. However, the local units of state government would have the primary law enforcement roll since the State of Wisconsin is a mandatory Public Law 280 State. The Tribes have agreed to pay for these services even though it is not required. Accordingly, jurisdictional conflicts should not present a significant obstacle to the proposed trust land acquisition.

F. 25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status:

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The addition of this parcel of land to the jurisdiction of the Great Lakes Agency and Minneapolis Area Office will not result in a significant increase in workload because the Tribes will be managing the property as its own enterprise. Both the Agency and Area Office are currently sufficiently staffed so that any additional workload may be handled without the need for extra manpower or equipment.

III. NATIONAL ENVIRONMENTAL POLICY ACT

The transaction package has met compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C § 4321 *et seq.* The documentation in support of the acquisition includes a Finding of No Significant Impact (FONSI) signed by the Superintendent, Great Lakes Agency, on September 14, 1994. The FONSI is based upon an Environmental Assessment (EA) prepared by Mid-States Association, Inc. in 1988 for the St. Croix Meadows Greyhound Racing Facility and an Environmental Assessment Addendum to the EA prepared by Bischof & Vasseur in 1994. The addendum evaluates the potential impacts resulting from the proposed transfer of the site to be held in trust by the United States on behalf of the three Tribes and the remodeling of the existing Kennel Club Area to accommodate the addition of casino type gaming. The EA and addendum were reviewed by the Environmental Services Staff of the Minneapolis Area Office which found it to be adequate in scope and that its content supports the conclusions drawn.

A Notice of Availability for the addendum, Environmental Assessment and draft FONSI was published once in the *Hudson Star - Observer*, a weekly newspaper printed in Hudson, Wisconsin, on June 23, 1994.

IV. HAZARDOUS SUBSTANCES DETERMINATION

The hazardous survey form, *Level I Survey: Contaminant Survey Checklist of Proposed Real Estate Acquisitions*, was completed and certified by the Area Office Hazardous Waste Coordinator on November 18, 1994. The completion of the form indicates compliance with the required survey for hazardous substance on property to be acquired in trust and concludes that no contaminants are present on the property. The survey was also approved by the Minneapolis Area Director on November 18, 1994.

V. OTHER CONSULTATION/REQUIREMENTS

In addition to compliance with NEPA, the documentation provided as a result of the proposed construction of the dog track facility in 1988, supports a finding of compliance with other related requirements as indicated by the following correspondence:

EOP 064293 G

archaeological sites: The Mississippi Valley Archaeology Center, Inc. stated that after archival review of available information at the University of Wisconsin - La Crosse and the State Historical Society of Wisconsin, there are no known archaeological sites in the proposed project area.

historic preservation: The State Historical Society of Wisconsin stated that there are no buildings in the study area that are listed in the National Register of Historic places.

endangered species: The Fish and Wildlife Service, Green Bay Field Office, Green Bay Wisconsin, provided a response dated January 9, 1989, concluding that no threatened or endangered species would be affected by the construction of the dog track facility.

other: The Addendum to the EA states that there are no anticipated impacts from the planned action on wetlands or surface water in the area. According to the National Wetlands Inventory map for the site, there are no designated wetland areas located on the site.

By letter dated January 3, 1989, the State of Wisconsin Department of Agriculture, Trade & Consumer Protection stated that there was no need for an agriculture Impact Statement as a result of the initial construction of the dogtrack. Additionally, since the planned action will utilize the existing racetrack facilities, it will not have a significant impact on prime or unique farmlands as described in the Farmland Protection Policy Act.

VI. RECOMMENDATION

It is our recommendation that after the requirements of the Indian Gaming Regulatory Act have been met, authorization should be provided to place the land into trust status for the benefit of the Tribes.

Area Director

cc: Superintendent, Great Lakes Agency
Chairman, Lac Courte Oreilles Band
Chairman, Sokaogon Community
Chairperson, Red Cliff Band
✓Bill Cadotte, Executive Mgmt. Services

EOP 064293 H

Hudson Dog Track Case

50: From: SCOTT KEEP 4/8/97 12:48PM (2655 bytes: 1 ln)
To: JOHN LESHY, EDWARD COHEN
Subject: Re: HUDSON DOG TRACK

---------- Forwarded ----------

From: Heather Sibbison at -IOS 3/24/97 11:42AM (2445 bytes: 1 ln)
To: ROBERT ANDERSON, Michael Anderson at -IBIA, Hilda Manuel at -IBIA, scott keep at -DOI/SOL_HQ, Dave Etheridge at -DOI/SOL_HQ, Tom Hartman at -IOSIAE, Nancy Pierskalla at -IOSIAE, George Skibine at -IOSIAE
Subject: Re: HUDSON DOG TRACK

---------- Message Contents ----------

Text item 1: Text_1

I assume we're cool on this based on our meeting, right?
Please brief Hilda and Mike. Thanks.

---------- Reply Separator ----------

Subject: HUDSON DOG TRACK
Author: George Skibine at -IOSIAE
Date: 3/17/97 4:31 PM

On Monday, March 17, 1997, at 2:00 PM, we had a conference call with plaintiffs and their attorneys to discuss the terms of any resubmission of their application to take land in trust in Hudson, Wisconsin, for gaming. One of the terms for consideration of a resubmitted application would be that the BIA Minneapolis Area Office would redo the consultation with nearby tribes and the surrounding communities.

PLaintiffs informed us that a pivotal question in their decision to resubmit an application is whether the Department will again stand by its position that the "naked" political opposition of the surrounding communities without factual support is enough for the Secretary to refuse to a make a finding that the proposed acquisition is not detrimental to the surrounding community. If that is the case, they indicated that they are not willing to spend time and money on this exercise, since they are fairly certain that the two communities have not changed their mind. i.e., They need to know whether this political opposition is or is not rebuttable by the tribal applicants.

We told them that we would confer with policy makers within the Department and let them know the outcome. We would like to discuss this issue at the 2:00 PM Wednesday gaming meeting, if possible. I think that it is a fair question for plaintiffs to ask.....GTS

EXHIBIT
MA - 11

Author: George Skibine at -IOSIAE
Date: 7/9/95 5:36 PM
Priority: Normal
Receipt Requested
TO: Miltona R. Wilkins
TO: Tom Hartman
TO: Paula L. Hart
TO: Tina LaRocque
Subject: Hudson Dog Track
---------- Message Contents ----------

I have left on Tona's desk the redrafted version of the Hudson letter, per Duffy and Heather's instructions, along with the disk I used. Please make sure it is put in final form, and brought up to Heather first thing on Monday. Please have copies made for Bob Anderson, Kevin, ~~Troy,~~ and Hilda. The Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes Area. Also, give Larry a copy of this message, and tell him to contact Tom Sweeney and keep him advised of any development on Hudson letter. I do not have a copy of the original Hudson letter draft, because it is no longer on my disk (George Skibine Docs). However, I cc: mailed that document to some of you and to SOL if it needs to be retrieved.

EXHIBIT
MA - 12

DRAFT: 6/29/95
a:\Hudson.ltr

Document provided pursuant
to Congressional subpoena

Rose M. Gurnoe, Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Bayfield, Wisconsin 54814

Gaiashkibos, Tribal Chairperson
Lac Courte Oreilles Band of
Lake Superior Chippewa Indians
Route 2, Box 2700
Hayward, Wisconsin 54843

Arlyn Ackley, Sr., Tribal Chairman
Sokaegon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520

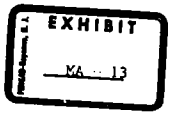
Dear Ms. Gurnoe and Messrs. Gaiashkibos and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaegon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes.

For the following reasons, the Secretary has determined not to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. 465, to acquire title to this 55-acre parcel of land in trust for the Tribes.

Land not held in trust or restricted status may only be acquired for an Indian tribe in trust status when such acquisition is authorized by an act of Congress. Authority to acquire the parcel in question is found in Section 5 of the IRA, which, in pertinent part, provides as follows:

> The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations,



Document provided pursuant
to Congressional subpoena

> including trust or otherwise restricted allotments, whether the allottee be living of deceased, for the purpose of providing land to Indians.
>
> . . . . . .
>
> Title to any lands or rights acquired pursuant to [this section] shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

The statute states that the decision to acquire land is one within the Secretary's discretion. 25 CFR Section 151.10 sets forth factors to be considered when the Secretary is acting on a request for acquisition of land in trust status, although the regulation does not purport to constrain the Secretary's discretion to consider other factors, nor to assign different weight to each factor.

One of the factors listed is the purpose for which the land will be used. The purpose of the acquisition is to enhance class III gaming at the facility with the introduction of slot machines and blackjack along with the pari-mutuel dog racing currently being conducted on the site by the owners of St. Croix Meadows Greyhound Park, Croixland Properties. For the following reasons, We are not prepared to take this off-reservation parcel into trust for gaming purposes at this time.

The parcel of land is located off-reservation, in Hudson, Wisconsin. The record before us indicates that the surrounding communities have strongly objected to this proposed trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to the proposed trust acquisition for gaming purposes. The communities' objections are based on a variety of factors, including the following: 1) Increased law enforcement expenses due to potential exponential growth in crime and traffic congestion; 2) testing waste water treatment facilities up to remaining operating capacity; 3) problems with solid waste; 4) adverse effect on the communities' future residential, industrial and commercial development plans; and 5) difficulties for current Hudson businesses to find and retain employees.

The record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin and the Shakopee Mdewakanton Sioux Community, as well as by a substantial number of other Indian tribes both in Wisconsin and in the neighboring State of Minnesota. Their opposition is centered on the potential harmful effect of this acquisition on their gaming establishments.

In addition, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District, and the U.S.

Document provided pursuant
to Congressional subpoena

Representative in whose district St. Croix Meadows Greyhound Track is located have expressed strong opposition to the proposed acquisition.

Finally, we have received numerous complaints from individuals because of the proximity of the proposed class III gaming establishment to the St. Croix National Scenic Riverway, and the potential harmful impact of a casino located one-half mile from the Riverway.

For these reasons, the Secretary has determined not to exercise his discretionary authority to acquire this off-reservation parcel of land in trust for the Tribes for gaming purposes.

As you know, Section 20 of the Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. In this particular case, because we have determined not to exercise our discretionary authority to acquire this parcel of land pursuant to Section 5 of the IRA and regulations in 25 CFR Part 151, we need not undertake the two-part determination of Section 20 of IGRA, an additional requirement imposed on the Secretary before gaming can occur on Indian lands acquired after the date of enactment of IGRA. This decision is final for the Department.

Sincerely,

Ada E. Deer
Assistant Secretary - Indian Affairs

[OR, IF FOR DEPUTY COMMISSIONER'S SIGNATURE, INCLUDE FOLLOWING STATEMENT, AND DELETE LAST SENTENCE ABOVE]:

This decision may be appealed to the Interior Board of Indian Appeals. 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board must certify that you have sent copies to these parties. If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal. If

Document provided pursuant
to Congressional subpoena

you file a notice of appeal, the Board of Indian Appeals will notify you of further appeal procedures.

If no appeal is timely filed, this decision will become final for the Department at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,

Deputy Commissioner for Indian Affairs

cc: Area Director, Minneapolis Area Office
Chairman, National Indian Gaming Commission

STATEMENT OF SECRETARY BRUCE BABBITT
BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
OCTOBER 30, 1997

I am glad to have an opportunity to set the record straight on the Hudson casino matter. Let me start with some plain facts that should dispel in fair minds the clouds of unwarranted suspicion that have been raised about it.

First, I had no communications with Harold Ickes or anyone else at the White House about the Interior Department's consideration of a request by three Wisconsin Chippewa tribes that the United States acquire a parcel of off-reservation land in Hudson, Wisconsin so that the tribes could open a casino on it in partnership with a failing dog racing track. I had no communications with Mr. Ickes or anyone else at the White House about either the substance or the timing of the Department's decision. I have since been told that Mr. Ickes' subordinates communicated with my subordinates on three occasions. I was not aware of those communications before the Department's decision on July 14, 1995. I do not believe that those communications involved any attempt by the White House to exert influence on the Department's decision in the Hudson case.

Second, I had no communications with Donald Fowler or anyone else at the Democratic National Committee concerning the Hudson matter.

Third, I did not personally make the decision to deny the Hudson application, nor did I participate in Department deliberations relating to the application. The decision, however, was made on my watch, and I take full responsibility for it. Furthermore, I agree with it.

EXHIBIT
MA - 14

Fourth, the Department based its decision solely on the criteria set forth in Section 20 of the Indian Gaming Regulatory Act. Let me be very clear why this decision was made, and could not properly have been made any other way. Under the Indian Gaming law, and this is a very important point, if tribes wish to place a casino off their own reservations, as in the Hudson case, then the law imposes stringent tests for Departmental approval. The law requires a finding that the casino would not be detrimental to the surrounding community. This determination must be made after consultation with local officials, including officials of other nearby Indian tribes. With respect to this criterion, the Department in this Administration has adhered to a policy that off-reservation gaming will not be imposed on communities that do not want it. In this case, the three Chippewa tribes requested that we acquire off-reservation land to open a casino located within the City of Hudson, which is 85 miles from the nearest of their three reservations. So we had to consider the application under the stringent rules for off-reservation casinos. Under Department policy, the only fair way to make this determination is to give great weight to the view of local elected officials and tribal leaders. In this case, the City Council of Hudson passed a resolution opposing an Indian casino in Hudson. The City Council of Troy, Wisconsin, a nearby community, also passed a resolution opposing an Indian casino in Hudson. The elected state representative from that district in Wisconsin strongly opposed it, as did the Congressman representing the district. Many other elected officials from the region also weighed in against the casino, including Senator Feingold of Wisconsin, Senator Wellstone of Minnesota, and Congressmen Oberstar, Sabo, Vento, Ramstad, Peterson, Minge and Luther, all of Minnesota. In addition, a tribe which has an on-reservation casino within 50 miles of Hudson strongly opposed the proposal.

This virtually unanimous opposition of local governments, including the nearby St. Croix tribe, required the Department to reject the application. This was the recommendation of the senior civil servant responsible for the matter, and I fully support the decision that was made on the basis of that recommendation. (A copy of the decision is attached.)

Fifth, it is not true, as some have alleged, that political appointees in the Department overruled a career civil servant recommendation that the Department approve the Hudson application. In fact, the eighteen-year career civil servant who headed the Indian Gaming Management Staff received both favorable and unfavorable recommendations from his subordinates and reached his own conclusion that the Department should deny the application in view of the strong community opposition. He made that recommendation to the Deputy Assistant Secretary for Indian Affairs who, in consultation with the Solicitor's Office and others in the Office of the Secretary, agreed with the recommendation and issued a decision to that effect.

Sixth, I had no knowledge as to whether lobbyists on one side or the other of the Hudson issue had sought the help of the Democratic National Committee on this matter. But to whatever extent this happened, I can say with conviction that it did not affect the substance or the timing of the Department's decision.

In sum, the allegations that there was improper White House or DNC influence and that I was a conduit for that influence are demonstrably false. There is no connection at either end of the alleged conduit. At one end, as I have stated, I did not speak to Mr. Ickes or anyone else at the White House or at the DNC; and, at the other end, I did not direct my

subordinates to reach any particular decision on this matter, although during my watch the Department's policy has been not to approve off-reservation Indian gaming establishments over the objections of reluctant communities. The Hudson decision reflected that policy and nothing else.

That should end this matter, and I suppose it would have ended the matter had I not muddied the waters somewhat in my letters to Senators McCain and Thompson in describing a meeting I had with Mr. Paul Eckstein on July 14, 1997. This is what happened:

Mr. Eckstein and I had been colleagues in law school and law practice. After I became Secretary, Mr. Eckstein, who practiced in Phoenix, came to represent clients in Wisconsin who supported the Hudson application. On July 14, Mr. Eckstein was visiting other offices at the Department to urge the Department to delay a decision in the Hudson case, which was ready to be made and released that day. Mr. Eckstein then asked to meet with me. Against my better judgment, I acceded to Mr. Eckstein's request. When he persistently pressed for a delay in the decision, I sought to terminate the meeting. I do not recall exactly what was said. On reflection, I probably said that Mr. Ickes, the Department's point of contact on many Interior matters, wanted the Department to decide the matter promptly. If I said that, it was just an awkward effort to terminate an uncomfortable meeting on a personally sympathetic note. But, as I have said here today, I had no such communication with Mr. Ickes or anyone else from the White House.

It has been reported that Mr. Eckstein recently made the additional assertion that I also mentioned campaign contributions from Indian tribes in this context. I have no recollection of doing so, or of discussing any such contributions with anyone from the White

House, the DNC, or anyone else.

If my letters to Senators McCain and Thompson caused confusion, then I must and do apologize to them and to the Committee. I certainly had no intention of misleading anyone in either letter. My best recollection of the facts is as I have just stated them.

The bottom line is that the Department's decision on the Hudson matter was based solely on the Department's policy not to approve off-reservation Indian gaming applications over community opposition. The record before the Department showed strong, official community opposition to the Hudson proposal. And there was no effort by the White House, directed toward me or, to my knowledge, to others in the Department, to influence the substance or even the timing of the Department's decision.

I hope I have clarified this issue. I would be pleased to answer your questions.

82] From: SCOTT KEEP at ~DOI/SOL_HQ 3/21/97 7:47AM (1442 bytes: 19 ln)
Priority: Urgent
To: JOHN LESHY, Heather Sibbison at ~INTERIOR-CCM, George Skibine at ~~NTERIOR-CCM, DAVE ETHERIDGE, DAVID MORAN, TROY WOODWARD, Tom Hartman at ~TERIOR-CCM, Hilda Manuel at ~INTERIOR-CCM, Michael Anderson at ~INTERIOR-CCM, #●●DontUse, EDWARD COHEN
Subject: Sokaogon - Decision

---------- Message Contents ----------

Late yesterday, in a very "meaty decision" (i.e. lots to it) Judge Crabb reversed her decision of last June in which she had limited plaintiffs' to the administrative record and denied them the opportunity to take the depositions of senior DOI officials and pursue discovery in an effort to uncover undue political influence.

Plaintiffs will now get to pursue discovery and will be able to take depositions. It is not clear whether they will be able to take Secretary Babbitt's deposition but they certainly will be able to take Heather S.'s, Mike Anderson's, John Duffy's and others. She has set a hearing before a Magistrate on April 11 to determine the scope of the discovery and to discuss scheduling.

Judge Crabb did decline to reconsider her decision that Mike Anderson had authority to act.

I am having copies made.

Notify
w/ Counsel
Jeff
[illegible]

EXHIBIT
MA - 15

[The deposition of Loretta Avent follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: LORETTA AVENT

FRIDAY, DECEMBER 5, 1997

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 10:00 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: James C. Wilson, Senior Investigative Counsel; Robert J. Dold, Jr., Investigative Counsel; and Andrew J. McLaughlin, Minority Counsel.

For MS. AVENT:

WILLIAM ROGERS, ESQ.
Arnold & Porter
555 12th St. N.W.
Washington, D.C. 20004

Mr. WILSON. If we could go on the record, please.

Good morning, Ms. Avent. On behalf of the members of the Committee on Government Reform and Oversight, thank you very much for appearing here today. This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter and notary public, and I will now request that she place you under oath.

THEREUPON, LORETTA AVENT, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. WILSON. I would like to note for the record those who are present at the beginning of this deposition. My name is James Wilson. I am the designated Majority counsel. I am accompanied today by Bob Dold, who is an investigative counsel with the Majority. Mr. Andrew McLaughlin represents the Minority on the committee. Ms. Avent is represented by Mr. William Rogers.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a courtroom.

If I ask about conversations that you have had in the past and you are unable to recall the exact words used in that conversation, you may state that you are unable to recall those exact words and then you may give me the gist or substance of any such conversation to the best of your recollection. If you recall only part of a conversation or only part of an event, please give me your best recollection of that conversation or that event.

If I ask you whether you have any information about a particular subject and you have overheard other persons conversing with each other regarding that subject or seen correspondence or documentation about that subject, please tell me that you do have such information and indicate the source from which you derived such knowledge.

Majority and Minority committee counsels will ask you questions regarding the subject matter of this investigation. Minority counsel will ask questions after Majority counsel is finished. After the Minority counsel has completed questioning, a new round of questioning may begin. Members of Congress who wish to ask questions, should they attend today's proceedings, will be accorded an immediate opportunity to ask questions. When they are finished, committee counsel will resume questioning.

Pursuant to the committee's rules, you are allowed to have an attorney present to advise you of your rights. Any objection raised during the course of the deposition shall be stated for the record. If the witness is instructed not to answer a question or otherwise refuses to answer a question, Minority and Majority counsel will confer to determine whether the refusal is proper. If Majority and Minority counsel agree that the question is proper, the witness will be asked to answer the question. If an objection is not withdrawn, the Chairman or a Member designated by the Chairman may decide whether the objection is proper.

This deposition is considered as taken in executive session of the committee, which means it may not be made public without the consent of the committee pursuant to clause 2(k)7 of House Rule XI. No later than 5 days after your testimony is transcribed and you have been notified that your transcript is available, you may submit suggested changes to the Chairman.

In your case, Ms. Avent, obviously, you have traveled a great distance to come here today, and as I discussed yesterday with Mr. Rogers over the telephone, we will make every effort to provide you with a transcript of this deposition as soon as possible. It has generally been the case, and I can't make any representations on this, but it has generally been the case that the transcriptions have been available within 2 or 3 days of the deposition being taken, and as soon as we receive the transcript, I will make an arrangement with Mr. Rogers to furnish you with that transcript.

The committee staff may make any typographical or technical changes requested by you. However, substantive changes, modifications, clarifications or amendments to the deposition transcript submitted by you must be accompanied by a letter requesting the changes and a statement of your reasons for each proposed change. A letter requesting substantive changes must be signed by you. Any substantive changes shall be included as an appendix to the transcript conditioned upon your signing of the transcript.

Do you understand everything we have gone over so far?

The WITNESS. Yes, I do.

Mr. WILSON. If you don't understand a question, please say so, and either I will repeat it, rephrase it, or ask the reporter to read it back so that you do understand the question. Do you understand that you should tell me if you don't understand my question?

The WITNESS. Yes.

Mr. WILSON. The reporter will be taking down everything we say, and is obviously making a written record of the deposition. Please give verbal, audible answers in order to assist the House reporter.

If you can't hear me, please say so and I will repeat the question or have the court reporter read the question to you.

Your testimony is being taken under oath as if we were in court, and if you answer a question, it will be assumed that you understood the question and the answer was intended to be responsive to the question. Do you understand that?

The WITNESS. Yes.

Mr. WILSON. It is my understanding that you have been served this morning with a subpoena and you are here pursuant to your having received that subpoena; is that correct?

The WITNESS. Yes.

Mr. WILSON. Do you have any questions about this deposition before we begin the substantive portion?

The WITNESS. No.

Mr. WILSON. If anybody has any statements to make, this would be an appropriate time to put them on the record.

Mr. MCLAUGHLIN. I will make my usual note that missing from the preamble is the fact that objections as to relevancy, pursuant to House Rule XI 2(k)8, are the province of the full committee and not the Chairman, and such objections are appealable to the full committee.

EXAMINATION BY MR. WILSON:

Question. Ms. Avent, would you please state your full name and spell your name for the record?

Answer. Loretta T. Avent, A-V-E-N-T, Loretta is with one R and two Ts.

Question. Did you attend college?

Answer. No.

Question. Could you please provide a very brief employment history from, and I will choose as an arbitrary time period the age of 20 until the present, and I am emphasizing if you could just provide a very brief overview.

Answer. Okay. My first job was as a practical nurse at a local hospital, and I went into, I guess I worked at a, I can't even think of the name, a microbiology lab, and then I came under what is considered the umbrella of public administration organizations, and so over a course of a number of years I worked for the Metropolitan Washington Council of Governments, the National Association of Regional Counsel, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the National Governors Association, the Federal Home Loan Bank Board, Freddie Mac, which was under the Federal Home Loan Bank Board,

and the National Committee Against Discrimination in Housing, and the American Institute of Planners, which does not mean that I am incapable of holding a job. I just stayed in the same field, and I was referred from one job to the other. In those capacities, they were considered Federal affairs coordinator or legislative assistant.

Question. What job did you hold immediately before going to the White House as a White House employee?

Answer. I was doing the same thing I am doing now. I was working in my own firm doing political consulting, public relations. That was pretty much it.

Question. When did you become a White House employee?

Answer. January 21st, 1993.

Question. And at that time, what was your position?

Answer. Special Assistant to the President for Intergovernmental Affairs.

Question. Did you hold that same position for your entire tenure at the White House?

Answer. No. At some point I moved—the title changed and I was Deputy Assistant to the President for Intergovernmental Affairs.

Question. Who recommended, if anybody did recommend you, who recommended you for the position at the White House?

Mr. MCLAUGHLIN. I am just going to note an objection for the record that it is totally irrelevant to the Hudson Dog Track matter.

Mr. WILSON. I will ask it, unless your attorney has an objection.

Mr. ROGERS. No, that's okay. Go ahead.

The WITNESS. Who recommended me?

EXAMINATION BY MR. WILSON:

Question. Well, just to try and save some time on this, I am just trying to get a basic sense of how you came to your position at the White House.

Answer. I would hope through my good reputation of having been one of the most competent workers in the area of public administration.

Question. When did you leave your position at the White House?

Answer. February 1996.

Question. And what is your current occupation?

Answer. Self-employed. It is Avent & Associates. It is the same kind of firm I had prior to going to the White House.

Question. Have you discussed this deposition today with anyone else, apart from your counsel?

Answer. No.

Question. Have you provided documents regarding the Hudson Dog Track matter to the Department of Justice?

Answer. No.

Question. Do you have any documents pertaining to the Hudson Dog Track matter in your personal possession?

Answer. No.

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. No. I did receive a call from the Department of Justice to have a meeting.

Question. And when were you called?

Answer. Monday, December the 1st. Monday, December the 1st, if Monday was December the 1st. Yes.

Question. Apart from during the course of the deposition today and apart from arranging the logistics of this deposition, have you spoken with any congressional personnel about the Hudson Dog Track matter?

Answer. No.

Question. And that is a two-part question.

I think you have answered it in terms of recently. I am also asking about discussions with congressional personnel in the past, perhaps prior to 1995 or during 1995?

Answer. About the Hudson?

Question. Yes, with congressional personnel.

Answer. No, no.

Question. When did you first hear about the Hudson Dog Track matter?

Answer. In 1995. It was probably early '95.

Question. And from whom did you first hear about Hudson Dog Track?

Answer. When I first heard about it, it was not—no one used the term Hudson, the Hudson is coming from the congressional contact I have had when I first got the call from the Senate committee. I first heard about it in '95 after a meeting that I held with a number of tribal leaders from all over the country, and one of the trib-

al leaders asked, amongst many leaving the meeting, if they could come and have a meeting with me, which was pretty standard, and the tribal leader came in and wanted to discuss an issue with me, and that was the first that I heard about a concern.

Question. When was that meeting?

Answer. Oh, boy. I did so many meetings. I am going to say that it was somewhere around early '95.

Question. Do you remember where the meeting was?

Answer. Oh, yes. The meeting was on the 4th floor of the Old Executive Office Building. It is the only room that could hold the number of leaders there.

Question. Based on that answer, I am not going to ask you if you would provide a list of everybody that was at the meeting, but who asked you or who brought up the matter? And I will, for simplification, say the nomenclature is a bit difficult and rather than getting into the need of trust and logs of description, I am just going to say the Hudson Dog Track matter as a shorthand.

Answer. That's fine.

Question. But do you recall who first mentioned the Hudson Dog Track matter?

Answer. Yes. Chairman Arlen Ackley, A-C-K-L-E-Y; Arlen. A-R-L-E-N.

Question. I have provided Ms. Avent with a document which is being marked as we speak as Exhibit LA–1, and if you could take a moment just to review this document, please.

Answer. Okay.

[Avent Deposition Exhibit No. LA–1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

Mr. ROGERS. Counsel, do you have another copy?

Mr. WILSON. Oh, yes.

The WITNESS. This is the memo.

EXAMINATION BY MR. WILSON:

Question. This is a memo that is from Ms. Avent to Harold Ickes and it is dated April 24, 1995.

Referring to the meeting that you just—that we just discussed, which was in early 1995, do you know or do you recall whether you had any——

Answer. Could I just finish going through it, because this is the first I have seen it for——

Question. Oh, absolutely, absolutely.

Answer. Let me just see the whole memo. I have seen excerpts from it, but I just want to go over it.

Question. Absolutely.

EXAMINATION BY MR. WILSON:

Question. Is this the first time you have seen this memorandum since roughly a time contemporaneous to the drafting of the memorandum?

Answer. Yes.

Question. A moment ago we were discussing a meeting with tribal chairmen in early 1995. Do you recall whether you had any contacts with individuals or conversations with individuals about the Hudson Dog Track between that first meeting and April 24 of 1995?

Answer. Repeat that again.

Question. I will recut the question.

Between the first meeting that you had during which Hudson Dog Track was mentioned and you had mentioned earlier that that was in early 1995, and the drafting of this memorandum in April, on April 24, 1995, do you know of any other conversations or meetings that you were present for during which the Hudson Dog Track was mentioned?

Answer. No.

Question. I would like to take a minute just to walk through this memorandum if we could.

Answer. Okay.

Question. In the first sentence it states, I just got a call from Bruce in reference to a person named Pat O'Connor.

Who is Bruce?

Answer. Bruce Lindsey.

Question. Where did Mr. Lindsey call from?

Answer. I really don't know where he called from. My assistant would probably just say, Bruce is on the line.

Question. Please, to the extent you are able to recall, tell us what Mr. Lindsey told you during this telephone call.

Answer. I really cannot recall the exact words, and I don't want to make any assumptions, but to the best of my recollection, he mentioned this person had complained about my not being responsive to his call, and I said, okay, I will respond.

Question. Did Mr. Lindsey provide any indication why he was—well, let me just sort of set some background.

It is my understanding that there was a meeting earlier in the day during which Mr. Lindsey was present with Mr. O'Connor and he made this telephone call on the same day as that meeting. Is that your recollection?

Answer. I really—I don't know anything about that.

Question. What did you tell Mr. Lindsey?

Answer. That I would call, that I would call and find out what the concerns were.

Question. Did Mr. Lindsey make any comments about the issues involved in the Hudson Dog Track matter?

Answer. No.

Question. In the second line of this memorandum, there is a statement that, referring to Pat O'Connor as having called on numerous occasions.

Answer. Where are you?

Question. On the second line of the first paragraph, "whom I don't know, who has called me on numerous occasions."

Mr. McLAUGHLIN. The first sentence of the first paragraph.

The WITNESS. Oh, okay.

EXAMINATION BY MR. WILSON:

Question. And I wanted to ask you about, prior to your drafting on this memorandum, had you spoken with Mr. O'Connor about any matters?

Answer. No.

Question. And do you recall how you were aware that he had called on numerous occasions?

Answer. Oh, because I guess he indicated that he had called, and he probably had.

Question. Going down to the very last sentence of the first paragraph, which states, "Following the legal advice we have received concerning these kinds of issues, I have not and would not speak with him or any lobbyist or lawyer."

What kind of, when you say these kinds of issues, what kinds of issues were you referring to?

Answer. Show me where you are. These are not my glasses. These are not my—these are store-bought glasses and I am having difficulty. My glasses are at the Hyatt Regency. I left them there a month ago and they still have them.

Question. Well, hopefully we will only have to do this once.

Answer. Okay. Just tell me where you are.

Question. In the very last sentence of the first paragraph.

Answer. Okay. So you want me to explain?

Question. Just what these kinds of issues are.

Answer. Oh. Any issue that dealt with—I mean I didn't deal with any gaming issues, period, and I didn't deal with any issues that dealt with anything that fell under what I considered regulatory agencies, and I considered the gaming issue coming under the National Indian Gaming Commission, so I would not have dealt under any circumstances with that issue.

Mr. ROGERS. Did you get the name of the commission?

The COURT REPORTER. Yes, I did.

EXAMINATION BY MR. WILSON:

Question. I probably am jumping ahead of myself a little bit here, but do you know from subsequent conversations why Mr. O'Connor was attempting to contact you?

Answer. No, other than——

Mr. ROGERS. You want to know what she knows now?

Mr. WILSON. Yes.

The WITNESS. What I know now?

Mr. McLAUGHLIN. Wait. From press accounts, or do you mean——

Mr. WILSON. Well, from any account.

The WITNESS. Okay. I don't know much more than I would make the assumption that everybody at anywhere knew that I worked with the Indians, so most people

would probably call me as the first place, and I would refer them, if it was inappropriate for me to deal with the subject.

EXAMINATION BY MR. WILSON:

Question. In the sentence we have just been speaking about, you refer to legal advice we have received.

Who provided such legal advice?

Answer. During the course of my working on a variety of issues, I probably talked to whatever attorney I bumped into if I thought the matter was—had any kind of legal implications, and I mean that literally. If I saw one in the hall, I would say, should I deal with this? No.

Question. Moving down into the second paragraph, there is a sentence that begins, and it is on the 6th line of the second paragraph?

Answer. Okay, I'm with you.

Question. It is the sentence that begins, "This is such a hot potato, like Cabazon, too hot to touch."

What did you mean when you wrote that?

Answer. Cabazon is a California Indian tribe and there were just lots of issues surrounding gaming in the State of California. So Cabazon was always the place that I knew if anything remotely sounded like it had Cabazon connected to it, I didn't touch it.

Question. And what was the issue with Cabazon that made you use the words "hot potato, too hot to touch?"

Answer. Just that it was in court, it was a big court case, and I don't have specifics on it, because I wasn't particularly interested in it other than I just knew it was dealing with gaming and I am not an expert on gaming and I have no expertise in the legal arena at all.

Question. Going down to the last paragraph on the first page, on the second line, there is a reference to an April 28 meeting.

Do you remember where that meeting was to be held?

Answer. Yes. It was in the Old Executive Office Building.

Question. And who was involved in that meeting?

Answer. Oh, this was a follow-up meeting to an earlier meeting we had. It was almost like an anniversary. There were all 500-plus tribal leaders were invited, and I would guess a third attended, like the leadership. When I say tribal leaders, sometimes it would be a council member versus the chairman, but it is an elected leader. Always use that word.

Question. At the April 28th meeting, did the Hudson Dog Track matter come up at all?

Answer. Absolutely not.

Question. Prior to April 28, did the name of a company called Delaware North ever come up?

Answer. Never heard it.

Question. Turning to the second page, the full sentence which begins at the bottom of the first page, it reads, "This is a Department of Interior and Justice Department, and that's where it should stay."

What does the reference to the Justice Department mean in the context of this statement?

Answer. Because it's the same reference that I would use toward the Department of Interior. In Justice they have what they called the tribal court or tribal whatever, and gaming—there is a person in Interior and a person in Justice I think that work together, and I really never dealt with them, but I knew that this issue belonged outside of intergovernmental affairs.

Question. Were you aware at the time of whether there was or was not any Department of Justice involvement in this matter?

Answer. To be perfectly honest, I didn't even think about it.

Question. Do you know whether anybody, any specific person at the Department of Justice was involved in this matter?

Answer. I have no knowledge and no interest.

Question. In the middle paragraph on the second page, there is a short sentence that reads: "I will call you later and give you an update," and that is directed to Mr. Ickes.

Do you know whether you did call Mr. Ickes and give him that update after this memorandum was drafted?

Answer. I don't remember. I doubt if I did.

Question. Do you recall having any discussions with Mr. Ickes about the Hudson Dog Track matter?

Answer. No, I don't recall any discussions on that.

Question. At the very bottom of the memorandum, there are courtesy copies indicated for Maggie Williams and Cheryl Mills.

Why was this memorandum copied to Ms. Williams and Ms. Mills?

Answer. The reason it was copied to Maggie, because I sort of reported to a range of people and I just cc'd her, and I am shocked I didn't cc—and Cheryl Mills because she was the attorney, and when I use the word "legal", usually I would have cc'd it to Jose, so I usually cc'd it to one person who had responsibility in a given area.

The WITNESS. Do I get to keep this?

Mr. WILSON. I will just sort of give you an overview. We actually are required to keep the documents and at the end of the deposition I will collect them up. They will be appended to the transcript, so when you review the deposition you will have the copies of the documents. So if you prefer to hand them back now, or——

The WITNESS. That's fine.

Mr. MCLAUGHLIN. I will make my usual request that we mark the copy that the witness actually saw to go into the record.

Oh, you have already marked the other one. That's fine, but——

Mr. DOLD. If you want to give him a copy of the one she actually looked at.

Mr. WILSON. That's fine.

[Avent Deposition Exhibit No. LA–2 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I have provided Ms. Avent with a document that is marked Exhibit LA–2. It's a memorandum dated April 24 to Cheryl Mills from Michael Schmidt with a cc to Ms. Avent.

If you could take just a moment to review this document, please.

Answer. Okay.

Mr. MCLAUGHLIN. While we are letting the witness read the document, I will just note that Michael Yeager from the Democratic staff has just joined us.

Mr. WILSON. Off the record.

[Discussion off the record.]

The WITNESS. I'm glad to see this one, because it helps to refresh my memory.

EXAMINATION BY MR. WILSON:

Question. Referring to this document, do you know why this memorandum was sent to Cheryl Mills?

Answer. Because—I mean I don't know why Mike sent it, so I can only tell you why I sent it to her.

Question. And, if you could.

Mr. MCLAUGHLIN. Wait. Did you send this memo to Cheryl Mills?

The WITNESS. No. Mike did this one. I can only talk about the one I sent to Cheryl. I don't know——

EXAMINATION BY MR. WILSON:

Question. Did you have any discussions with Mr. Schmidt about sending information about this matter to Cheryl Mills?

Answer. No. I only—he had a copy of my memo which he saw went to Cheryl Mills.

Question. And not to belabor this, but my understanding from that is you then, or from your knowledge of what you sent to various people, you don't know why Mr. Smith sent this to Cheryl Mills?

Answer. No, I don't know why.

Question. Do you know why Michael Schmidt was involved in the call that you were on with Patrick O'Connor?

Answer. Okay. Mike worked in Domestic Policy, and he did issues that dealt with Indian gaming, and because intergovernmental did not do issue specifics, then that would be the appropriate place to refer a call internally, and then they would refer them to their appropriate place.

Question. So if you could, maybe you could just provide an overview. Mr. Lindsey called you on April 24 and between receiving his call and placing a call to Mr. O'Connor, what steps did you take?

Answer. Between the call from Bruce and what point?

Question. And the call that was placed to Mr. O'Connor. I am just trying to get a sense of what happened between—did you talk to people, contact people?

Answer. It is very simple. I guess I returned—I hate to use the word "guess"—returned a call to Mr. O'Connor. My recollection is I'm not sure I spoke to him when

I placed the call, but he did call, and then I spoke to him, and I explained to him that I did not talk to lobbyists and lawyers.

I only dealt with the elected leaders of a tribe. He got very agitated, and at some point, and I don't know—you know, and I can read this; I can't remember, because I dealt with so many calls and so many letters, whether or not he called, I called, but I can tell you this, that the three of us were on the telephone. Mr. O'Connor, Mr. Schmidt and myself, and this is pretty much what happened. And I said the same thing over and over: I don't talk to lobbyists, I don't talk to lawyers, and I do not do gaming issues, period.

Question. What was Mr. Schmidt's involvement in the Hudson Dog Track matter?

Answer. Other than this phone call, I'm not aware of any.

Question. Did you have any discussions after this telephone call was made with Mr. Schmidt about the Hudson Dog Track matter?

Answer. Not about the Hudson Dog Track matter as much as about Mr. O'Connor's phone call.

Question. And what—when you had subsequent conversations and other phone calls, what was discussed?

Answer. Very simply, this is why we only deal with elected tribal leaders, that they are elected by their members and they can best represent their own interests, and I just would never change my policy of dealing directly with the elected tribal leaders, and that I hoped that our administration would continue the government-to-government relations. I just believe in it in my gut.

Question. When did you have that exchange with Mr. Schmidt?

Answer. I can't give you a specific time. Probably right after the call. You know, maybe more than once, because we always talked about lobbyists and lawyers and not having a direct relationship with them.

Question. At the bottom of the first page of this memorandum, the sentence reads: "After several calls trying to get around Jay and Katy on Wednesday of last week, Pat sent in a memo from him," and then in parenthesis, "not from the tribal leaders, as requested," close parenthesis, "to Loretta asking to talk to her about intervening with Secretary Babbitt."

Did you receive that memorandum?

Answer. I'm going to say I did because I saw it. I don't even remember it, but I saw it, because it is the kind of thing if I saw it, I mean I wouldn't pay any attention to it. But—and I would like to see it again, because I don't even remember it asking to intervene with Secretary Babbitt.

Question. This is not, not an attempt to ask you a bunch of questions and then show you the memo, I am not sure that I have a copy of the memo, and that is simply because I am not sure. I might. But this is why I am asking the questions about it.

Do you have any recollection about the format or contents of the memo?

Answer. Yeah. This is pretty accurate.

Question. Right. But what I am asking about is the statement that Pat, meaning Mr. O'Connor, sent in a memo from him to Loretta, meaning you, asking to talk to her about intervening with Secretary Babbitt, and so I'm trying to find——

Answer. It's a fax from Mr. O'Connor to me. That's what this is. It is a fax from Mr. O'Connor to me with a statement about, I guess, having a meeting, and also a statement about this Red Cliff Tribe, which is just absolutely not true. I don't even know what that is, but that's why I don't deal with lobbyist and lawyers, no pun intended.

Mr. McLAUGHLIN. Except when you receive a subpoena.

Mr. WILSON. Probably a fairly sound practice.

EXAMINATION BY MR. WILSON:

Question. Do you recall whether you kept that fax transmission in your records?

Answer. Oh, I don't recall. All the papers and stuff are in a box which they check off and they would be in the record room. I wouldn't have pulled that out to keep it or do anything special with it.

Question. On the second page of the memorandum, in the third full paragraph of the second page, the paragraph that begins, he must stop telling others that he has access to the White House on this issue, it states, we cannot—we legally cannot intervene with the Secretary of the Interior on this issue.

When this sentence was drafted, did you have any understanding about why you could not intervene with the Secretary on this matter?

Answer. Let me—on this, and when we use the term, when I used the term "legally," I just say that, not about Interior, about HUD, about HHS, about any agency. You just know what you can and can't do, and I just don't do it. So legal to me,

I'm not using it as somebody that has a legal background, but if I don't understand it, I just use the word "legal."

Question. I'm going to provide you another document. But why don't we just leave these for now here in case you want to refer to them or they become germane to something we say later and then I will collect them at the end.

Answer. Okay.

[Avent Deposition Exhibit No. LA–3 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I have provided Ms. Avent with a document that has been marked Exhibit LA–3. If you would take a moment just to review this, please.

Answer. All right.

Question. This is a memorandum dated August 18 from Ms. Avent to Cheryl Mills and it is copied to Harold Ickes, Maggie Williams, Bruce Lindsey and Mike Schmidt, and the gray line reads, "For your eyes only."

Do you recall why you put "for your eyes only" on the red line?

Answer. No. Just from time to time I would put that, but this was on a particular bunch of stuff that was being left out in the lobby, and I am always very careful about that, because you never know what is being left, and so I didn't want to have any problem with the security guard.

Question. The first line of the memo reads: "More stuff keeps getting left at the security guard's desk for me on the same issue." If you could just provide an explanation of what the "more stuff" refers to.

Answer. I would get calls that different people wanted to leave, it would be newspaper articles or it would be just stuff, and a lot of times I didn't, I didn't open it, but I would need it because the guards would call and tell me that stuff would have my name on it and I would just have it sent because I was going to be traveling and I didn't want it to just be out there floating and the guards would not take responsibility for it if it had your name on it.

Question. Pardon me? They would not take responsibility for it?

Answer. No. Because if your name is on it, they want you to come get it, and if you are not going to be in town, then I needed to make sure that other people were aware that it was being left. And this wasn't just—it was on anything, a lot of things.

Question. I am just trying to get a sense of why in your memorandum to Cheryl Mills and cc it to many people on the issue of items being left at the security desk for you. Few provide a sense of why you felt the need to inform Ms. Mills about this occurrence.

Answer. Because we have already gone from here to here, and so I am very cognizant of whether it is lobbyists or lawyers trying to give me information or whether it was coming from Mr. O'Connor or anybody. So I wanted to make sure that everybody was aware and if stuff came in, I would make sure it went outside of my department, because I didn't handle it, period.

Question. Now, the items that were left at the security guard desk, you mentioned they perhaps pertained to many different issues.

Answer. Yes.

Question. Did material relating to the Hudson Dog Track——

Answer. No, nothing came, nothing came.

Question. On the second sentence of this memorandum reads, "It is building and you need to just be aware of what's out there."

What does that refer to?

Answer. Just newspaper articles. There were stories. People would call me from Indian country today, and——

Question. And this is about the dog track?

Answer. Oh, it would be—it was not—it was not called the dog track, okay? I don't want to get into—because we didn't—I didn't deal with the dog track issue. It was—when I say "stuff", it was the concern about whether or not lobbyists were coming in and who was representing whose interests, and so I could always give the same answer: no lobbyists, no lawyers. And so if they wanted to bring stuff, they were more than—they could leave it wherever they wanted to, but there was nothing that came in on that, and the "building" really was on conversation, lots of it, in Indian country, lots.

EXAMINATION BY MR. WILSON:

Question. And if you could summarize the lots of conversations that you just referred to, how would you summarize the lots of conversations?

Mr. MCLAUGHLIN. You mean lots of conversations in Indian country; not your conversations?

The WITNESS. Yes. It is not conversation about this issue, because nobody was talking to me about this issue, believe it. When I say conversations, just in Indian country, and I was always trying to make sure that everybody understood that in the country—I used to use a joke that they had the best news service in the world. This stuff would travel, and I used the term "stuff." So it is no specific issue; it is just stuff and lots of conversation.

EXAMINATION BY MR. WILSON:

Question. Now, in the fifth line of the memorandum, it states, "I assume this means they are building up to something." And what does that refer to?

Answer. Okay. Let me just try to explain a style and a pattern that might make this a lot easier. When you are dealing with 500-plus federally recognized tribes, when I took the job there were 543, then there were 200-plus tribes that were trying to get federally recognized, which I met with on a regular basis. Then there were the urban Indians. So when a situation like this would arise, I couldn't get weighted down with any issue, and I wasn't—because this was not one that I was dealing with.

So when calls would come in or people wanted to leave stuff, to me I would just make this a statement almost like a blanket statement because I am moving on, because I dealt with mayors and county officials, et cetera. An so there was—this memo probably is saying more than it was really saying. I mean, that could be the way it is interpreted. There was nothing there and that's all—I mean, I don't even recall getting anything in.

Question. When you used the word "they're," you say they are building up to something, who does the "they're" refer to?

Answer. The way I read this and the way I would have written this would mean that there is the press, there is tribes, there is—I mean, it could be anybody. And I just was moving on and moving away from having any more relationship with that.

Question. Now, in the sixth line of the memo, there is a sentence that reads, "It has been crazy from the start."

Answer. Uh-huh.

Question. What does that refer to?

Answer. Going right back to this stuff with Pat O'Connor. It just was crazy, and that's the way I talk.

Question. There in the third to the last line there's a sentence that begins, "One attachment has two pages with their concerns and the other one is a memo from Ahsha, my volunteer, from a telephone call he took."

Do you recall what the attachment with two pages was, what kind of document this was?

Answer. Oh, it probably was—the only thing I could think of—think that this was, it might have been this memo or it would have been one of my memos because that's all I have done is related to this. But I don't really know what that is.

Question. Now, my assumption, from what seems to be fairly explicit here, is that a person whose name Ahsha is on this memo is your volunteer. Is this a person that worked for you for some period of time?

Answer. No. He was just one of a number of interns. They all worked about the same length of time. He was unpaid. I am trying to think how long he worked. I guess he had been with me a couple of months. I am really not sure because I had about 6 different—because that's all you had. You really didn't have any staff.

Question. Do you know if he wrote—and I do have one memorandum that I will show you——

Answer. Okay.

Question [continuing]. But do you know if he wrote memoranda about Mr. O'Connor or the Hudson Dog Track matter?

Answer. He would probably have written—on this he would have only written if there was some concern that I had or if I was out of the office and I would say, draft this. But he would not have——

Question. Do you have any specific knowledge of anything that he drafted?

Answer. I mean, he might have. I just really don't recall but if I see it, I will.

Question. I am a little past halfway, and if you wanted to I can take a break at this point.

Answer. No. I just want to help get through it. I am fine.

Question. Okay. I have provided Ms. Avent with a document that has been marked Exhibit LA–4. If you could take just a moment to review that, please.

[Avent Deposition Exhibit No. LA–4 was marked for identification.]
The WITNESS. Good job, Ahsha.

EXAMINATION BY MR. WILSON:

Question. This is a memorandum for Ms. Avent from Mr. Safai dated August 17, 1995. It is marked at the top, "urgent." Do you know why this memorandum was marked "urgent"?

Answer. No. Because I was—if I am reading it right, I was out and I guess this now refers to that and he would have—because he is just an intern and if a tribal leader called and said urgent, he would put urgent, not just on this one but from any tribal leader.

Good job, Ahsha.

Question. Did you direct him to respond in any way to the concerns brought out in this memorandum?

Answer. No. I don't even—no, I would never ask an intern to respond to a tribal leader, ever.

Question. I have provided Ms. Avent with a document that has been marked Exhibit LA–5.

[Avent Deposition Exhibit No. LA–5 was marked for identification.]
The WITNESS. Okay.

EXAMINATION BY MR. WILSON:

Question. And if you could take just a moment to review this document, please.

Answer. Okay.

Question. If you could please turn to page 2, there is a list of points made, a summary of points made, and the first one refers to staff being disappointed and this refers to the ultimate decision to deny the permit for the land being taken into trust at the Hudson Dog Track.

Were you aware, in 1995, of any expressions of disappointment on the part of Interior staff regarding the decision to deny the application?

Answer. No.

Question. Did you have any contacts with any Department of Interior staff on this matter?

Answer. No. No.

Question. Did you have any conversations with Mr. Schmidt or any other of your colleagues at the White House, or anybody else, during which there was discussion of how staff at Interior felt about the Hudson Dog Track matter?

Answer. No.

Question. Did you ever, and I will eliminate current press coverage, but in 1995 or 1996, were you ever aware of any dissension at the Department of the Interior regarding the decision to deny the permit for the land in trust?

Answer. No.

Question. The tenth point on this document refers to an allegation that the decision was political and not factual. Again, were you aware of any observations or statements from anybody that you worked with at the White House or the Department of Interior about a decision being made on a political basis?

Answer. No.

Question. I have provided Ms. Avent with a document that has been marked LA–6. This is a short memorandum dated October 23, 1996. It is a memorandum for the President from Leon Panetta, Chief of Staff at the White House.

[Avent Deposition Exhibit No. LA–6 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. Were you aware that the President made an inquiry about the Hudson Dog Track matter in 1996?

Answer. I was gone, so I don't know anything that happened on this after I left. I couldn't.

Mr. MCLAUGHLIN. Just so the record is clear, the sentence reads, "In response to a note in a background memo for your visit to the Green Bay-Milwaukee area, you inquired about the status of a dispute between the Interior Department and a Native American tribe in Wisconsin."

I don't want the record to be unclear, that this was not some kind of formal inquiry out of nowhere. This was apparently the President asking about a note in a background memo. That's a note for the record so it is not unclear. It is not a question.

The WITNESS. Okay.

Mr. MCLAUGHLIN. Have you ever seen this before?

The WITNESS. No.

Mr. MCLAUGHLIN. Had you left the White House by 10-23-96?

The WITNESS. Yes. Yes. I left in February, I believe.

Mr. WILSON. That is a good clarification to make, and I would actually ask Mr. McLaughlin to provide any information, if he knows, what the note in the background memo was.

Mr. MCLAUGHLIN. I am just reading from the plain meaning of this memorandum. So it says, "In response to a note in a background memo you inquired about." So it is not like this is an inquiry out of nowhere, at least in terms of this memorandum. So I think to suggest that there is some kind of—and I am not saying that your question did suggest this, but if in any way the record could be read to reflect that suggestion that this was somehow an inquiry out of nowhere or in response to anything other than a note in a background memo for a visit to the Green Bay-Milwaukee area, that suggestion would be inaccurate.

Do you have any information about that, Mr. Wilson, that you want to share?

Mr. WILSON. I have provided the—Ms. Avent with a document which has been marked Exhibit LA–7 for the record.

[Avent Deposition Exhibit No. LA–7 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. These are three pages from something that you would certainly have never—well, I shouldn't say that, but I doubt that you have ever seen before. They are notes from the daytimer of Mr. Patrick O'Connor.

Answer. Oh.

Question. They were—they speak for themselves. The first page, which is dated April 10, 1995, states "call to Loretta." The second page, which is marked April 17——

Mr. ROGERS. "Call to Loretta Avent."

The WITNESS. What is this right here, this little writing?

EXAMINATION BY MR. WILSON:

Question. I believe the full thing says, "at White House report to Tom Corcoran."

Answer. Oh, okay.

Question. And the second page is dated April 17, 1995, again, in a copy of Mr. O'Connor's daytimer. It states, "St. Croix tribe, call the White House to Loretta Avent office."

The third page is dated April——

Mr. ROGERS. Looks like two calls that day. Is that right, counsel?

Mr. WILSON. Just to fully explain what this is, on the left-hand side, it is my understanding that this is a "to do" list and I won't provide any——

Mr. MCLAUGHLIN. In reference to this, you had testified earlier that he made a number of calls to your office that you didn't take and didn't return.

The WITNESS. Well, from my best recollection, I wasn't there and so when I go back now, I mean I am looking at this, like these are the first time that I have seen most of these but it helps. But I wasn't there, and I probably still——

EXAMINATION BY MR. WILSON:

Question. The third page is dated April 18, 1995. It reads, "2 call Loretta Avent." And I think we have covered this earlier, and I believe that you have fully explained that calls were placed; you were not there, and you did not speak with Mr. O'Connor prior to the April 24 discussion with Mr. O'Connor. Is that correct?

Answer. That's correct.

Question. Do you recall whether you received any notification that Mr. O'Connor was calling you?

Answer. No. And I—let me just, for clarification, if my—if the interns took a call, they would have left me a message. So I want to be very clear on that. But I would have—when I was out of town, I would come back and I would have a stack of messages, and that would not be one of the ones I would look at to return.

Question. How would they record incoming calls?

Answer. Just—just when I would come back from a trip, there would just be a stack.

Question. Small slips of incoming calls?

Answer. Pink slips. I hated using the word "pink slip," but they would be on pink slips and they would usually have as much as possible because I would always say to them try to find out why a person was calling.

Question. Do you know whether those slips were retained for records?

Answer. They may have been. I mean, I don't—I wouldn't have them. I am sure we got so many calls that they might have just trashed them. But I am sure there is a record somewhere.

Question. I have given Ms. Avent a document that has been marked Exhibit LA–8.

[Avent Deposition Exhibit No. LA–8 was marked for identification.]

The WITNESS. What is the St. Croix tribe? What is the implications of that here? I mean, I keep seeing my name and the St. Croix tribe. What does that mean?

EXAMINATION BY MR. WILSON:

Question. My understanding, and it is my understanding—I don't know this to be correct or not—is that that is the shorthand recordkeeping for the matter that Mr. O'Connor's is writing in the daytimer.

Answer. Okay.

Question. There is material redacted. It is not as if this is the only thing on the calendar. It is, again, my understanding that the other things that he did during the day are also here but we, as is appropriate, are only in possession of material that relates to the Hudson Dog Track matter. I think it is simply a billing record.

This is a page dated April 19, 1995, and it reads, and I think this is what is stated on this piece of paper, "St. Croix tribe, D-I-S-C, Tom Corcoran, re fax to Loretta Avent. Drafting and sending fax to Avent."

I don't know whether this refers to something we have already discussed or not, but, again, do you know whether you received a fax from Mr. O'Connor?

Answer. I am sure that is that fax that I was telling you about, that had that information that's mentioned in Mike's memo.

Question. Now, hopefully we can wrap up fairly quickly here. I think you have answered, through our discussion of the documents, most of the general questions that I have but I will quickly go through them.

Apart from the specific events that we have discussed and in the context of individuals we have discussed, did you have any communications with other White House personnel about the Hudson Dog Track?

Answer. No more than what is here, no.

Question. And I believe you have testified that you did not have any contacts with the Department of Interior staff on this matter?

Answer. No, no.

Question. Are you aware of whether any tribal leaders met with White House officials, other than yourself or Mr. Schmidt, on the Hudson Dog Track matter?

Answer. No, I am not.

Question. Did you receive any telephone calls from any lobbyists or consultants, other than Mr. O'Connor, on this matter? Obviously that assumes that you know who is a lobbyist and a consultant, but just to—in the interest of saving time, did you receive any other calls about Hudson Dog Track from anybody other than Mr. O'Connor?

Answer. No.

Question. Are you aware of any contacts or messages from the Democratic National Committee to either yourself or anybody else at the White House on the Hudson Dog Track matter?

Answer. No.

Question. Are you aware of any contacts with the Department of Justice on the Hudson Dog Track matter?

Answer. No.

Question. Are you aware of any contacts from any employees or affiliates with the Committee to Re-elect the President, specifically Terry McAuliffe relating——

Mr. MCLAUGHLIN. I am sorry. Do you mean Clinton Gore '96 or the Nixon Committee to Re-elect the President? I think Committee to Re-elect the President is a term of art abbreviated by the initials CREEP, that Richard Nixon used for his 1972 re-election campaign. Perhaps you mean Clinton Gore '96 primary and general election committees?

EXAMINATION BY MR. WILSON:

Question. You don't know of anybody?

Answer. No.

Question. In your meetings with any of the tribal chairman, we have discussed at least two meetings with the tribal chairman, did anybody ever discuss the political affiliation of any of the tribal representatives who were in favor of the Hudson Dog Track application?

Answer. The Hudson Dog Track issue was just never brought up in any meetings that we had.

Question. And I think my last question may have already been answered, but a company named Delaware North, did that ever come up in any conversations about any matters that you dealt with?

Answer. No, no.

Question. In your discussions with tribal representatives, did any of the tribal representatives mention having problems with trying to get to see the Secretary of the Interior or any of his employees?

Answer. Did the tribal——

Question. Did any of the tribal leaders express any concerns about——

Answer. You mean any tribal leaders?

Question. Yes.

Answer. No. I mean, I have a—I want to be very truthful when I answer. When tribal leaders—whenever they come to a meeting, they want to see somebody at Justice, Labor, Education, and I don't want to get focused because we are dealing with this. They always want to have government-to-government relations with the Secretary, with the President, because they see themselves as the equivalent. And so in a meeting, when you would have 100 to 200 tribal leaders, somewhere during the course of that meeting they would want a meeting with Secretary Riley, with Secretary Cisneros, with Secretary Babbitt, with Secretary Shalala.

The only ones they never—I never heard them say they wanted a meeting with was the State Department. I mean, other than that.

Question. In 1995, were you actually aware of who the tribal representatives were who were either in favor or opposed to the Hudson Dog Track?

Answer. The Hudson Dog Track, I hate to keep repeating myself, it was never a discussion with me, just other than this, and I sort of move away from it because it is hard because I know what your responsibility is, but there seems to be so much focus on this. But my job, I was dealing with about 19 groups and when I tell you that, you know, and they were the groups of the black mayors, the Hispanic, the Asians and the list goes on, and the gay-elected officials, et cetera, so I have probably spent so little time with this, other than this, and I am just being very straightforward with you on that.

So—but that was not a discussion and it—it is important for me to say it is not a discussion I would have had other than I would hear out any tribal leader and then I would try to always direct them to the appropriate agency, and if it was inappropriate to be in governmental affairs I would tell a tribal leader that, but I would tell a mayor that or a county official or anybody that I was dealing with. So this was not just on this issue. It is just the way I operate, period.

Mr. WILSON. At this point. I have no further questions.

Mr. McLaughlin.

EXAMINATION BY MR. MCLAUGHLIN

Question. I have a few questions, Ms. Avent. I want to preface my questions by saying on behalf of the Democratic members of the committee we thank you for coming here. I know you are outside of Washington now.

Answer. Thank you.

Question. In Washington, this so-called investigation is widely derided as a Keystone Cops operation, riddled by ineptitude and the spirit of partisan witch-hunt. It is amazing to those of us on the staff here to watch it unfold and to watch the bungling go forward, but I know it is not funny to somebody like you.

Answer. No, it isn't.

Question. Can you describe to us the burden that the House has placed on you by requiring you to come out here to Washington under threat of a subpoena? You said you missed days of work, for example?

Answer. Well, I mean I missed—I will say to you what I said to them walking up, that I missed 3 days, because it is 3,000 miles away so it is just impossible to be able to—it is not like Chicago and New York. So that's a problem. But it is also after the holidays and you have family and you have friends and I was—I wasn't joking with them but I made the statement that since the Congress is on recess, then I would like the people whose tax dollars—we pay their salaries—to take our concerns into consideration.

Question. And has the committee offered to reimburse you for the 3 days of income that you are going to lose?

Answer. No.

Question. They have not offered to pay you for the money that you are going to lose spending 3 days to come here to Washington?

Answer. No.

Question. Does it strike you as odd that the committee doesn't come to you and that you are required to come to your government, especially in this era of——

Answer. Well, I did ask that of the attorney in Phoenix because I would have preferred doing it over the telephone because I don't have a lot to add.

Question. Doesn't it seem funny that the government makes you come to the government instead of the government coming to the citizen? You don't have to answer that.

Answer. Does it seem funny? I don't——

Question. Are you familiar with the fact that the first chief counsel of this committee resigned because of the incompetence of the staff and the politicized nature of the investigation and was quoted in the newspaper saying that the investigation was all about, quote, sliming Democrats, unquote? Are you aware of that?

Answer. No.

Question. Particularly nauseating to me, at least as a staff member on this committee, is the fact that the committee is now trying to slime Bruce Babbitt. I just wanted to ask you a few questions about him. I understand that you may know him going back some number of years, is that correct?

Answer. I do.

Question. You have dealt with him prior to working at the White House?

Answer. I know of Secretary Babbitt from Arizona, and I think we were sort of crossing paths. But you have to remember that I also worked at the NGA, so I have known the Secretary prior to him being Secretary.

Question. So in your experience, to whatever extent you have had dealings with him, has he ever conducted himself in any way other than with complete integrity and truthfulness?

Answer. Not with me. I am not aware.

Question. To the extent that you are familiar with his reputation.

Answer. His reputation is that he is a very upstanding straight arrow. As a matter of fact, we—I will just share with you what I shared with counsel yesterday. When I read this about Bruce Babbitt, I laugh because I couldn't imagine approaching him or anybody approaching him on this kind of issue, because the word is that that isn't the way he reacts or responds. So I was a little surprised to see all of this happening, but, you know, that's life.

Question. That's what makes it, I think, particularly disgusting to many of the people who watch this effort unfold, is to use this effort to slime him, to use the words of the former chief Republican counsel of this committee. In your position at intergovernmental affairs——

Mr. WILSON. May I interrupt for a moment?

Mr. MCLAUGHLIN. Of course.

Mr. WILSON. Mr. McLaughlin, are you representing that statements were made about Bruce Babbitt by any former employees of this committee?

Mr. MCLAUGHLIN. No. I think that the comment of Mr. John Rowley was that in general the investigation was designed to slime Democrats and so seeing the investigation now moved to Bruce Babbitt it is, of course, not surprising to me, but as I have said as an individual observing and not in any kind of official capacity, I think that's quite disgusting.

But let me continue with my question.

EXAMINATION BY MR. MCLAUGHLIN:

Question. One of the memos that we looked at earlier included a comment from you that you treated all 550 elected leaders of the tribes equally, and you believed in treating them equally. Is that correct?

Answer. Yes.

Question. Did you ever, in your position, exercise favoritism on behalf of some tribes because they were supporters of the President or did you treat all 550 tribes equally?

Answer. I am just going to respond to this one time, and I would have said the same thing without regards to who asked me this question, that my anger and my frustration comes from something very simple, that when you serve your government you do it and you do it hopefully for the right reason. And one of the things that I had always hoped that our administration would do, and I have said it, was to treat the first Americans, to bring them to the table of equity and fairness, and I saw us doing that.

I think one of the best Presidents to the Indian country was Richard Nixon and so I used his model as one for us to continue building on.

When I got my first call about this, my reaction is what I said to the gentleman that called me, that I would hate for the almost 4 years that I worked there to do what I thought was good for America to be summed up in what I consider this, and it is just my own feeling, a waste of taxpayers dollars, and I said this to Mr. Rogers yesterday because I think about all of the poor Indian kids that need education, the diabetes on reservations, et cetera, and that I would love to see taxpayers' dollars go to that. I would come here and answer truthfully, though, but I feel very angry because it is like the tribes now are the ones that are paying a price for something.

I am not absolutely sure what all is going on, but the statement that I would say that everybody knew that I never believed that the Indians have to pay to play because I felt that they have paid historically and that finally they were at a table and being treated fairly and equitable.

So for me, 543 tribes the day I started and when I left it was roughly about 560, plus the Federal—the tribes that are trying to get federally recognized, and so I treated all of them as respected governments and their leaders and that was why I did not deal with lobbyists and lawyers. And so when I come, I am going to always respond as openly and as honestly as I can to the best of my recollection, but we didn't deal with politics.

As a matter of fact, the President of the National Congress of American Indians was a Republican, but he always operated as a tribal leader and so when I met with them I never worked with a group of people before that—politics was never an issue. And so I am almost offended because I think that this has been unfortunate, but I also respect the fact that everybody here, including the three of you, are doing the job that you have to do and so I will not change.

And I laughed because I hadn't seen a lot of these. I never thought that there was any need to keep any of this because I never thought I would go from what I did to here. And then I sum up by saying that I was away from my husband for almost 4 years, and I spent a lot of time working. So I spent no time dealing with this kind of stuff. I was just working, and I worked around the clock, and the tribes knew they could call me any time they wanted to. And all I kept thinking was, I have two grandkids, that one day all of us would be at a point of fairness, equity, and I felt good about it.

Now, I was—I mentioned yesterday, I don't think I will ever write another memo and I am not sure I ever want to work in government again because I find this just appalling, and then I found it appalling because I started thinking when I got the call, I had lost a lot of money but I didn't care because I thought I was working for a good reason. But all of a sudden when I got the call, I am like what am I going to do, when I got the letter? So I didn't even think about getting legal representation.

I was just going to come, but when I talked to the

Senate—because I don't look at life like that, and I don't look at this like that, and someone said you just need—I don't understand the legal process and that's why I never dealt with lobbyists—not lobbyists, but really lobbyists that were lawyers. And so here I am, and then I decided I said why should I pay for doing what I consider just doing right because you can never find—if you do it right, there is never any wrong and right. And so I am going to come, I am going to answer some things I recall, and when I sit here, I can't remember, you know, word for word because I was dealing with—I mean all I kept thinking was, I really came here and worked my blank off, that's all I thought.

I mean, I worked. And I treated the tribes and the mayors and the black mayors, the gay-elected officials, I treated everybody the same. And so now I am having to remember something that I know that, you know, I hear the word "perjury" and so I am thinking, oh, I need to make a correction when you ask me have you talked about it and I say, oh, my gosh before this goes off I want to tell you that, yes, I did, I talked to somebody, my husband. Because I worry about all of these things.

Then I am thinking, why am I here? Why am I here? And, you know, I don't want to look at the other stuff because I wasn't there and so my only point is that I hope what we did and I hope when this administration is over that when another administration takes over that they bring the first Americans right back to where they belong, where they deserve to be and where they have earned the right to be, and that this to me is almost insignificant to the bigger picture.

And believe me, I understand what you have got to do and so I am not here to pass judgment on anybody, but just to say that I didn't have any ill conversations with the Secretary, with Mr. Lindsey, with Mr. Specter, Arlyn Ackley or anybody, and that—to the best of my knowledge that's what I have answered, and that's all I want to do.

Question. Let me just make a note for the record on behalf of the Democratic members of the committee. We certainly think there is no reason why you should

be here, there is no reason why you should be caught up in this and it is an unfortunate consequence of the slime job that's going on by this committee that you are here. But nevertheless, let me just note that your record of public service is an unblemished one, Ms. Avent. It is a record of distinction and one that you can be proud of and we have seen nothing to suggest to the contrary.

Let me just wrap up with one question that you may or may not know the answer to: You had a firm policy of no contacts with lawyers or lobbyists that you implemented during your tenure in governmental affairs. Do you know if your predecessors in the Bush administration had a similar policy of no contacts with lawyers or lobbyists?

Answer. I mean, I don't—I mean, I have had friends in every administration and one of my dearest and closest and best friends was the director of this office under President Bush, and I would think that we come from the same backgrounds, that she would have been as open, honest and direct as I was and I assume most people in the job. I think most people in government do a good job.

Mr. MCLAUGHLIN. Well, thank you again. And at this point I have no further questions.

Mr. WILSON. I just have one question and one observation, and normally I wouldn't waste more of your time but because there is a written record I feel compelled to make one observation, and that is it is my understanding that the Department of Justice Attorney General Janet Reno is also investigating the circumstances that now we call the Hudson Dog Track. I used to work for a former Attorney General and I have great respect for the Department of Justice as an institution and I have great respect for the individuals in the Department of Justice.

We are investigating Secretary Babbitt and the Hudson Dog Track matter. Attorney General Janet Reno is investigating Secretary Babbitt and the Hudson Dog Track matter. It is my understanding from what Mr. McLaughlin says that it is the position of Representative Waxman and the Minority staff that Attorney General Janet Reno is thus attempting to slime——

Mr. MCLAUGHLIN. That is an inaccurate statement, Mr. Wilson. The statement is that I, Andrew McLaughlin, consider this to be an embarrassment to the United States Government, that this committee is engaged in a partisan slime job. Your so-called investigation——

Mr. WILSON. I will just finish my statement.

Mr. MCLAUGHLIN. Your so-called investigation of Mr. Babbitt is one piece of a larger slime job. That's the words of your own former boss, Mr. Wilson. Those are not my words.

Mr. WILSON. It is not the words of my boss, and I see no difference between an investigation that the Attorney General of the United States is carrying on and that we are carrying on, and if you characterize this—an investigation of the Hudson Dog Track matter as a slime job, which you have done, then you are thus, by reasonable analogy, characterizing the investigation of the Attorney General. I am going to finish this, and I will allow you to make your statement.

Mr. MCLAUGHLIN. I will make the statement that it is your investigation that is a slime job, Mr. Wilson, your investigation. I have confidence in the Department of Justice and in the FBI, which you people apparently do not have, in second-guessing findings of the—the factual findings of the FBI and the legal conclusions of the Attorney General. It is your investigation which is an embarrassment to this democracy.

EXAMINATION BY MR. WILSON:

Question. Ms. Avent, I apologize.

Notwithstanding the fact that this is an inconvenience to you and we all recognize that, have you been treated with courtesy and professionalism in your dealings with the Majority staff——

Answer. Yes.

Question [continuing]. In this process?

Answer. Yes.

Question. Thank you very much. On behalf of both myself, Mr. Dold and the Majority staff, I appreciate your taking the time to come here and I thank you very much for your statements.

Answer. Okay.

[Whereupon, at 11:45 a.m., the deposition was concluded.]

[The exhibits referred to follow:]

THE WHITE HOUSE

WASHINGTON

April 24, 1995

MEMORANDUM FOR HAROLD ICKES

FROM: Loretta Avent

I just got a call from Bruce in reference to a person named Pat O'Connor, whom I don't know, who has called me on numerous occasions. Unfortunately, I was on my reservation circuit, so I asked both Jay Campbell and Katy Button in my office to call and advise him I was travelling and that before I could respond personally, I would need a letter from one of the tribal leaders he was representing explaining their situation and/or their concerns. Following the legal advice we have received concerning these kinds of issues, I have not and would not speak with him, or any lobbyist or lawyer.

Irrespective of lawyers and lobbyists say they know personally in the Administration , my first responsibility is to take care of the pres. because I am aware of the politics and the press surrounding this particular situation, it is in our best interest to keep it totally away from the white house in general, and the pres in particular. This is such a hot potato (like Cabazon) -- too hot to touch. The legal and political implications of our involvement would be disastrous. I am on my way into a meeting with five of our strongest tribal leaders (because of their significant voter turnout), who have already gone ballistic about other tribal governments who have greater access to the Administration because of their ability to pay hired guns (as they call them) and their belief that this unfairly gets things to happen. They believe that when the President said "Government-to-Government" and "respect for tribal consultation" that it meant directly with them. They consider the lobbyists and lawyers trying to access us as staff they (the tribal leaders) pay and that their responsibility is to report and advise them (the tribal leaders), and as tribal leaders elected by their membership, they will do the business of tribal governments directly with our government.

This puts us in a Catch-22. To ensure we don't get caught in this web, I treat all 550 elected tribal leaders the same (I deal directly with them on behalf of the President).

Harold, my goal is to clean up as much as I can clean up (seven reservations in less than ten days) prior to the April 28th meeting. We are 98% there. I do not want this situation to be part of or anywhere near the meeting on the 28th. This is a

EXHIBIT 1A - 1

EOP 069070

Department of Interior and Justice Department and that's where it should stay. Finally, the fact that he would even suggest I would discuss anything remotely connected to Indian gaming tells me he is not truly connected to Indian country (all 550 federally recognized tribes know I don't do gaming and say it). Both Domestic Policy and Intergovernmental Affairs deal with this issue in this manner.

I explained this to Bruce and he understands the way I operate and I assured him I would make the call directly to advise the party that called. I will do this as soon as my meeting is over. I'll call later and give you an update. The press is just waiting for this kind of story. We don't need to give it to them.

One last concern leading into Friday, but I am working on that now. Because of the diversity and complexities within Indian Country and the constant changes in elected leadership, there is no lobbyist or lawyer that I will put before my responsibility to the President and his commitment to Indian Country (April 29, 1994).

cc: Maggie Williams
Cheryl Mills

EXECUTIVE OFFICE OF THE PRESIDENT

24-Apr-1995 07:17pm

TO: Cheryl D. Mills

FROM: Michael T. Schmidt
Domestic Policy Council

CC: Carol H. Rasco
CC: Loretta T. Avent
CC: Katharine M. Button

SUBJECT: Call from Lobbiest Pat O'Connor

Cheryl,

This e-mail is to fill you in more detail about a call that Loretta and I were on with a Lobbyist/Fundraiser named Pat O'Connor. It was half-dictated to me by Loretta via phone, so I apologize in advance if it is unwieldy at times:

Pat O'connor is a lobbyist that represents a number of gaming tribes in Wisconsin and Minnesota. He is also, I believe, a DNC trustee of some sort. He is working on some off-reservation gaming project (dog racing I think) called "the Hudson Project," which under the Indian Gaming Regulatory Act will need Secretary Babbitt's approval to go forward, since it is off reservation gaming.

Pat called Loretta last week on this issue. As you know, last year WH counsel advised Loretta that she should not meet with lobbyists or lawyers on Indian issues. Also, on April 29, the President signed a memorandum stating his strong support for the government-to-government relationship with the Tribes and direct consultation (which they hold us to in every letter they send!!). We get hit hard by Tribal leaders when we meet with Lobbyists, since many times the tribal leaders are not even aware that the lobbyists are calling us on their behalf. Loretta was out of town when Pat called, but asked Jay and Katy Button on her staff to return the calls from Pat, informing him that he needed to have the Tribal leader(s) that he represent send in whatever request that they had, and that she would work with the leaders directly. This is her standard response in these situations.

After several calls trying to get around Jay and Katy, on Wednesday of last week Pat sent in a memo from him (not from the Tribal leaders as requested) to Loretta asking to talk to her about intervening with Secretary Babbitt to allow this Hudson project to be able to do off-reservation gaming. This fax also

stated that Loretta had told the leader of the Red Cliff Tribe (who Loretta has never met or spoken with) that she would intervene on their behalf (not true!). After this fax came in, Jay on Loretta's staff called Pat's office again asking for the letter from the tribal leader. It never came.

In the meantime, Pat bumped into the President today in Minnesota and mentioned to him that Loretta never returned his calls (technically true, but her staff did return them several times because she was travelling). A call came from AA1 this morning from Bruce Lindsey to Loretta to find out what had happened. Loretta reviewed the story I have written so far, and told Bruce that she would call Pat to explain our process. Loretta called me (since I do Indian Gaming Policy) and then conferenced me into a call with Mr. O'connor (her assistant Katy Button was also in on the call). And then, in Loretta's words, "his story began to unravel" in two ways: 1) He had to admit to Loretta that he had a return call from Loretta's office; 2) See the attached fax from him -- he had to back off of the statement about the leader of the Red Cliff Tribe talking to Loretta about this since it was not true. He was agitated that Loretta could not meet with him on this issue, and he took my name and number and promised to call me about this issue sometime this week, and that he would also bring it up in his meeting this Friday with Don Fowler at the DNC. He abruptly hung up before I could respond.

According to Loretta:

The first mistake Pat O'connor is making is trying to tie the President into an issue that he cannot be tied into for legal and political reasons. The White House should not be involved in this issue!

He must stop telling others that he has access to the WH on this issue. As you know, we legally cannot intervene with the Secretary of Interior on this issue.

Please have Harold call Don Fowler and explain that there are no secrets in Indian Country, that word of this conversation is already getting out and it would be political poison for the President or his staff to be anywhere near this issue.

Loretta consistently will not allow anyone take advantage of the President's best intentions and put him into potentially negative press situation (especially with 100 tribal leaders coming to town on Friday).

Loretta asks that you do whatever you think we need to do to take care of the President's best interests on this -- these Indian Gaming issues are always explosive (as the Cabazon situation made clear).

If you have any questions on any of this, call Katy Button to get ahold of Loretta in AZ, or call me at 6-5567 and I will try to

EOP 069077

give you whatever info you need.

Avent

THE WHITE HOUSE

WASHINGTON

August 18, 1995

COPY from ORM

OA9174

MEMORANDUM FOR CHERYL MILLS

CC: Harold Ickes
Maggie Williams
Bruce Lindsey
Mike Schmidt

FROM: Loretta T. Avent

RE: For Your Eyes Only

More stuff keeps getting left at the security guards desk for me on the same issue (see attached). Its building and you need to just be aware of what's out there. I, unfortunately, will be on business and vacation travel through September 6. I will alert my volunteer and intern to be on the look-out for any other information that might be left at the security guards desk. I'll instruct them to forward anything they receive immediately to you. I assume this means they're building up to something. What, I don't know. It has been crazy from the start. I Just want to make sure we're all on the same page with the same information. One attachment has 2 pages with their concerns and the other one is a memo from Ahsha (my volunteer) from a telephone call he took.

EXHIBIT

LA - 3

EOP 069072

August 17, 1995

URGENT--URGENT--URGENT--URGENT

MEMORANDUM FOR LORETTA T. AVENT

FROM: Ahsha Ali Safai

RE: Hudson

Dwayne Derrickson called and expressed deep concern for the issue his tribe faces on behalf of Chairman Arlyn Ackley . The Chairman is looking for a response to their issue. Chairman Ackley is hoping you will be able to provide some guidance within the next few days because of the fact that he is planned to face his tribal council as well as his tribal community and is expected to have some answers regarding the Hudson case.

Dwayne talked about the importance of this issue being brought to closure. He used the words, "If this issue can't be resolved, then we will have to go to the press, courts, or to the opposition!".

They will be in town next week and were hoping to meet with you. I told them that I expected you to be on travel, but for them to check back with me late today or tomorrow.

Dwayne said that Chairman Ackley hardly asks for help, but in this case they are hoping that you will be able to provide them with some answers. Please advise.

EXHIBIT
LA - 4

EOP 069075

MEMORANDUM

August 3, 1995

TO: Ms. Loretta Avent
Special Assistant to the President
for Intergovernmental Affairs

FROM: Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community

RE: Disapproval of Hudson Application for Trust Status

We have been able to obtain information from the Department of the Interior's Indian Gaming Office that their staff people disagreed with the disapproval of our trust application signed by Michael Anderson of the Department of Interior.

All my information indicates that Interior's staff was disappointed and completely disagreed with this decision. In fact, and I quote "there was no real evidence to support disapproval". The staff tells us that the people who made the final decision did not follow § 20 of the Indian Gaming Regulatory Act of 1988. That this decision was purely a discretionary-/political one.

In the letter, Mr. Anderson stated that there was a problem with the St. Croix Waterway. However, the staff tells us that this small issue could have been explained but we were not given the opportunity to respond to this.

The Department of the Interior staff indicated to us that they could not find anything detrimental in our application either to nearby tribes or to surrounding communities. Moreover, Mr. Anderson states that this property acquisition would be detrimental to a nearby tribe.

Another quote from the Department's staff was "What is the point of § 20 if not to be helpful to remote tribes?". They indicated to us that the extraordinary thirty (30) day period that was provided to our opponents which allowed them to submit an additional

EXHIBIT
LA - 5

EOP 069073

economic study did not provide any substantial information that would point to the proposed facility being detrimental to the surrounding communities or tribes. They commented that there are two criteria. One -- it should be in the best interest of the Indian tribe (applicant). Two -- Could not be detrimental to the surrounding communities or nearby tribes. Their indication to us is that they were both disappointed and that they disagreed with the disapproval of the trust application.

As the Chairman of my tribe I must protest the Department of the Interior's treatment of our application for the placing of the Hudson Dog Track into trust status. The Minneapolis BIA Area Director and staff followed the letter of the law in approving our application. The Department of the Interior's staff (per our information) also carefully followed the criteria set out in the Indian Gaming Regulatory Act. However, the people who made the final decision did not.

Finally, if I may reiterate these points which we were able to obtain. (Loretta, they were taken from a telephone conversation, therefore repetitious and redundant.)

1. Staff was disappointed;
2. Decision makers did not fully consider Section 20 IGRA;
3. Staff disagreed with decision;
4. No real evidence;
5. St. Croix waterway question could easily be addressed (We were not given an opportunity to do so.);
6. Staff didn't want to set national precedent of a tribe rejecting another tribe's application;
7. Staff didn't want to set a national precedent of a community rejecting a tribe's application - 6 and 7 would have to be detrimental;
8. Decision makers were worried about being second guessed by the Governor;
9. What is the part of best 20, IGRA if not to helped "remote" tribes?;
10. Political, not factual decision; and
11. Staff could not find anything detrimental to the nearby communities or tribes.

EOP 069074

THE WHITE HOUSE

WASHINGTON

October 23, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: LEON E. PANETTA
Chief of Staff

SUBJECT: Status of Native American Gaming Dispute in Wisconsin

In response to a note in a background memo for your visit to the Green Bay-Milwaukee area, you inquired about the status of a dispute between the Interior Department and a Native American tribe in Wisconsin.

The attached memorandum reporting on the status of the litigation against the Interior Department by the tribe was prepared by David Fein in the White House Counsel's Office.

EOP 069098

EXHIBIT
LA - 6

10 MONDAY APRIL 10, 199_ APPOINTMENTS & SCHEDULED EVENTS

Wk 15 • Day 100, 265 Left

MONDAY APRIL 10, 1995 10

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10			
11	St Croix tube Call to Loretta: Avent at White House: Report to Tom Cormorant		
12			
1			
2			
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EXHIBIT LA - 7

OC 000009

17 MONDAY
APRIL 17, 1995
APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT
	V/ Call Loretta Avent		
	[redacted]		

Wk 16 • Day 107, 258 Left

MONDAY
APRIL 17, 1995 17
DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10			
11			
12	St Croix Staple Call to White House to Loretta Avent Office.		
1			
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OC 000010

18 TUESDAY
APRIL 18, 1995
APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT
8			
9			
10			
11			
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Wk 16 • Day 108, 257 Left

TUESDAY
APRIL 18, 1995 18
DIARY AND WORK RECORD

TIME	NAME OR PROJECT	DESCRIPTION
		2 call Loretta Advents

OC 000011

19 WEDNESDAY
APRIL 19, 1995
APPOINTMENTS & [illegible]

HRS	NAME	SUB

WEDNESDAY 19
Wk 16 • Day 109, 256 Left
APRIL 19, 1995
DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10	St Croix, Tube		
	Dir Tom Corcoran re		
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OC 000012

EXHIBIT
LA - 8

[The deposition of Michael Chapman follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: MICHAEL CHAPMAN

FRIDAY, JANUARY 9, 1998

The deposition in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 10:17 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Robert J. Dold, Jr., Investigative Counsel; James C. Wilson, Senior Investigative Counsel; and Michael J. Yeager, Minority Counsel.

For MR. CHAPMAN:

TIMOTHY S. ELLIOTT, ESQ.
Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
Washington, D.C. 20240

Mr. DOLD. Good morning, Mr. Chapman. On behalf of the members of the Committee on Government Reform and Oversight, I appreciate and thank you for appearing here today.

This proceeding is known as a deposition and the person transcribing this proceeding is a House reporter and a notary public. I will now request that the reporter place you under oath.

THEREUPON, MICHAEL CHAPMAN, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. DOLD. I would like to note for the record those who are present at the beginning of this proceeding. My name is Bob Dold. I'm the designated Majority counsel, and I'm accompanied today by Jim Wilson, who is also Majority counsel for the committee.

Mr. Mike Yeager is the designated Minority counsel, and Mr. Chapman is represented today by Mr. Tim Elliott.

Mr. Chapman, although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a court of law. If I ask you about conversations you have had in the past and you are unable to recall the exact words used in the conversation, you may state that you are unable to recall those exact words and then you may give me the gist or substance of any such conversation to the best of your recollection.

If you recall only a part of a conversation or only a part of an event, please give me your best recollection of those events or parts of the conversation that you recall.

If I ask whether you have any information on a particular subject and you have overheard other persons conversing with each other regarding it or have seen correspondence or documentation regarding it, please tell me that you do have such information and indicate the source, either a conversation, a document or otherwise.

Majority and Minority committee counsels will ask you questions regarding the subject matter of this investigation. Minority counsel will ask questions after Majority counsel has finished. After Minority counsel has completed questioning, a new round of questioning may begin.

Members of Congress who attend today's proceeding will be afforded an immediate opportunity to ask questions, assuming they come. And I don't anticipate any Members are coming today or coming back into town for the deposition, but if they do come, they will be afforded an immediate opportunity to ask questions. At the conclusion of that, committee counsel will pick up where they left off.

Pursuant to the committee rules you are allowed to have an attorney present to advise you of your rights. Any objection raised during the course of the deposition shall be stated for the record. If the witness is instructed not to answer a question

or otherwise refuses to answer a question, Majority and Minority counsel will confer to determine whether the objection is proper.

This deposition is considered as taken in executive session of the committee, which means it may not be made public without the consent of the committee pursuant to clause 2(k)(7) of House Rule XI.

We ask that you abide by the rules of the House and not discuss with anyone other than your attorney the deposition and the issues raised during this proceeding.

Finally, no later than 5 days after your testimony is transcribed—and normally it comes back to us in a day or two—and you have been notified that your transcript is available, you may submit suggested changes to the Chairman. Committee staff can make any typographical or technical changes requested by you. Substantive changes, modifications, clarifications or amendments to the deposition, however, must be accompanied by a letter requesting the changes and a statement of the reasons for each proposed change. A letter requesting any substantive changes must be signed by you. Any substantive changes shall be included as an appendix to the transcript conditioned upon your signing of the transcript.

Mr. DOLD. Do you understand everything we've gone over so far?

The WITNESS. Yes.

Mr. DOLD. If you do not understand a question, please say so and I will repeat it or rephrase it so that you understand the question.

Do you understand that you should tell me if you do not understand my question?

The WITNESS. Yes.

Mr. DOLD. The reporter will be taking down everything that we say and will make a written record of the deposition. You must give verbal, audible answers because the reporter cannot record a nod of the head or what a gesture means.

Do you understand this?

The WITNESS. Yes.

Mr. DOLD. If you don't hear me, please say so and I will repeat the question or have the reporter read the question to you.

Please wait until I finish each question before answering and I will wait until you complete your answer before I ask the next question. This will help the reporter make a clear record, because he cannot take down what we are both saying at the same time.

Your testimony is being taken under oath as if you were in a court and if you answer the question it will be assumed that you understood the question and the answer was intended to be responsive to it.

Do you understand that?

The WITNESS. Yes.

Mr. DOLD. I understand that you are here voluntarily today, and we thank you for that.

Mr. DOLD. Mr. Elliott, do you have anything?

Mr. ELLIOTT. Yes.

Mr. Chapman, in my view, has virtually nothing to add to the record that is being put together by the committee and the staff. One thinks about if one puts a microscope on any decision that's been made by a Federal agency, I suspect that the one with the microscope would find things done with which the person with the microscope would disagree or take issue, particularly when you have the advantage of hindsight.

That's what the judicial system is for. That's what we have our judges do. We have litigation in this case, and we believe the court will rule for the United States.

I believe that the committee should let the judicial process work because there has been absolutely no evidence of wrongdoing by any Federal official, nor is there any evidence that there is a need from this case for legislation.

We do, as I have said, have litigation, and we will insist that had the committee staff in its questions—and I will advise Mr. Chapman to stay away from issues involved in the litigation so far as he is aware of them.

Mr. YEAGER. I'd like to echo Mr. Elliott's concerns and his observations about the committee's inquiry into this process. As the Minority has done in the past with every deposition on the Hudson Casino matter, we object to this deposition. We feel that not only does Mr. Chapman have virtually nothing of significance to add to the public record on this issue, we feel that this entire inquiry is duplicative and unnecessary, and a waste of taxpayer-funded resources.

So on behalf of the Minority, I'd like to restate that objection.

Mr. DOLD. Mr. Chapman, do you have any questions before we begin the subtantive portion?

Answer. No.

EXAMINATION BY MR. DOLD:

Question. Would you state your name and spell it, please.

Answer. Michael Chapman. M-I-C-H-A-E-L, Chapman, C-H-A-P-M-A-N?

Answer. And did you attend college?

Answer. Yes.

Question. And where did you attend college?

Answer. University of Wisconsin, Green Bay; University of Wisconsin, Madison, and NACE College in Chicago.

Question. Were those—was NACE College in Chicago for graduate degrees?

Answer. No, I got my B.A. actually from NACE.

Question. Can you give me a brief employment history from college forward?

Answer. Sure. I have been—well, I'll start a little before because I didn't graduate until later.

I have been involved in the student movement. I was president of the American Student Association. I went on to be communications deputy and acting director of the National Congress of American Indians, at which point I began to do foundation, not-for-profit fund-raising and public relations.

I worked with NACE College in Chicago and then worked with the American Indian Business Association in Chicago; and then at that point began to do some freelance consulting and fund-raising around not-for-profit causes. And then came to Washington in '92 and came to Interior in '93.

Question. And what was your position at the Department of Interior?

Answer. I was essentially a consultant in '93 and '94, and in January of '95 I became a permanent employee, Special Assistant to the Deputy Commissioner.

Question. You say you came to Washington in 1992. Did you have employment in 1992 in Washington?

Answer. Just consulting.

Question. In '92 who were you consulting for?

Answer. Various national not-for-profits. Americans for Indian Opportunity and First Nation's Development Institute. And the Association on American Indian Affairs.

Question. And in 1993 when you came to the Department of the Interior doing consulting work, who were you consulting for in the Department? The Department as a whole, or was there a specific area?

Answer. I was a Special Assistant essentially, part-time in the Office of the Secretary and then in the Bureau of Indian Affairs, and then later on the Indian Arts and Crafts Board.

Question. And what is your current occupation?

Answer. I'm Special Assistant to the Deputy Commissioner.

Question. Do you know who hired you at the Department of Interior back in '93?

Answer. I believe it was the acting Deputy Commissioner, Woodrow Hopper. We had a series of actings before Ms. Manuel became permanent.

Question. And how did you get the job at the Department of Interior?

Answer. I applied. It was a short-term employment.

Question. What were your responsibilities at the Department of Interior in 1995?

Answer. I was Special Assistant to the Deputy Commissioner. I helped do a lot of intertribal meetings and facilitations and consultations on behalf of the Bureau of Indian Affairs.

Question. And who was the Deputy Commissioner at that time?

Answer. Hilda Manuel.

Question. And where were you located? Where was your physical office located while were at the Department?

Answer. In the 4100 corridor, which is where the Deputy Commissioner and Assistant Secretary is.

Mr. ELLIOTT. The main Interior building.

EXAMINATION BY MR. DOLD:

Question. And who would be around the 4100 corridor? Who else?

Answer. The Assistant Secretary, the Deputy Commissioner, the Deputy Assistant Secretary, other Special Assistants.

Question. And just so we've got it for the record, who are those individuals, the titles, the four?

Answer. Ada Deer was the Assistant Secretary; Michael Anderson, the Deputy Assistant; Hilda Manuel, the Deputy Commissioner, and various others.

Question. And who did you report to during 1995 in your role as Assistant to the Deputy Commissioner? Did I get that right?

Answer. Special Assistant.

The Deputy Commissioner, Hilda Manuel.

Question. Have you discussed this deposition with anyone prior to coming here?

Answer. No, no.

Mr. ELLIOTT. It's not exactly true. He's talked with me.

EXAMINATION BY MR. DOLD:

Question. Besides your attorney.

Answer. Well, no.

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. No.

Question. And just for the record, when I refer to the Hudson Dog Track matter, I'm referring to the fee-to-trust application in Hudson, Wisconsin.

Apart from this deposition and arranging logistics for this deposition, have you spoken with any congressional personnel about the Hudson Dog Track?

Answer. No.

Question. Have you talked to anybody—congressional personnel about the Hudson Dog Track before the decision came down in July of 1995?

Answer. Did I—clarify.

Question. Have you talked to anybody up on Capitol Hill, congressional—Senate, Congress, anybody like that?

Answer. Oh, no, no.

Question. Do you have any documents pertaining to the Hudson Dog Track in your personal possession?

Answer. The only document I had was a transcript from a meeting in Wisconsin, which I furnished the committee.

Question. Which meeting are you referring to?

Answer. The April meeting, the consultation the Secretary had with Wisconsin tribal leaders.

Question. Do you recall when that meeting was?

Answer. Just April, April of '95. I don't recall the dates.

Question. And the Secretary was at that meeting in April?

Answer. Yes.

Question. Do you know if the Hudson Dog Track matter was discussed at that meeting?

Answer. Yes, it was.

Mr. YEAGER. Mr. Dold, I think we have a transcript of that meeting.

EXAMINATION BY MR. DOLD:

Question. Mr. Chapman, when did you first hear about the Hudson Dog Track?

Answer. I would assume in '94. I am from Wisconsin. I am a member of the Menominee Indian tribe, so I had some working familiarity with the issues in Wisconsin; and it was from that context—it wasn't from a policy Interior context—that I initially became aware of it.

And my mother was a tribal chairperson of the tribe for five terms in the early '90s, so obviously I had some involvement with Wisconsin-related issues.

Question. When did you first hear about the Hudson Dog Track issue in your capacity at the Department of Interior?

Answer. At that April meeting.

Question. Were you also at the April meeting?

Answer. Yes, I was.

Question. Mr. Chapman, can you give me your understanding of the application process of how an Indian tribe would take land in the trust?

Answer. I have limited familiarity with it. I don't deal with policy matters principally at Interior, and certainly don't deal with land acquisitions or gaming issues.

So I could not tell you, is the answer.

Question. So you have no idea?

Answer. That's correct.

Question. On July 14th of '95, the application to take land in trust was rejected. Do you know why it was rejected?

Answer. My recollection or my belief is, it had—it would have adverse impact on some of the tribes in the immediate vicinity and there was objection in the local community.

Question. Did you agree with the recommendation?

Answer. Yeah, I had no problem with it. It wasn't an issue in terms of my role. I don't have a policy role; I process essentially documents in that immediate corridor.

Mr. YEAGER. Did you have any substantive role with regard to the Hudson Dog Track?

The WITNESS. No.

Mr. YEAGER. So whether you agreed with it or not is irrelevant?

The WITNESS. Right.

EXAMINATION BY MR. DOLD:

Question. Did you ever review the rejection letter for the Hudson Dog Track?

Answer. I don't recall. I review a lot of documents, principally for grammar and typographical errors and stuff, so I don't have a recollection.

Question. Do you recall who made the decision in the Hudson Dog Track matter?

Answer. Mike Anderson.

Question. Was he the sole decision-maker?

Answer. I would—yeah, I would assume on behalf of the Department, yes.

Mr. YEAGER. Do you know that? Is that something that you have personal knowledge of, or is that something that you have read about?

The WITNESS. Well, yeah, if you asked me this question without all the media coverage, I probably would have no recollection. But in the context of hindsight, I know for a fact that he signed the letter and he was acting in his capacity as Assistant Secretary.

EXAMINATION BY MR. DOLD:

Question. And the only reason that you know that Mr. Anderson was the one signing the letter was due to media reports and hindsight; is that accurate?

Answer. Correct. Correct.

Mr. ELLIOTT. No. What he said is that he recalled, I think.

I mean, that's your recollection; is that correct?

The WITNESS. Correct.

EXAMINATION BY MR. DOLD:

Question. Did you play any role in the rejection of the application in 1995?

Answer. No.

Mr. ELLIOTT. Could you clarify that?

EXAMINATION BY MR. DOLD:

Question. Did you have anything to do with the facilitating of giving a rejection letter out of the Department's door in 1995?

Answer. I took a file, I assume, from Hilda Manuel's office to the Deputy Assistant Secretary's office, the immediate corridor. I probably physically helped process it per se, but didn't have any policy role or decision-making role in the context of it, but—just outside of moving it physically, helping physically move it in terms of getting it signed.

Question. Did you tell Mr. Anderson to sign the letter on July 14th, 1995?

Mr. ELLIOTT. He's testified to the organizational structure. He—he doesn't tell—he does not supervise Mr. Anderson.

Mr. DOLD. And I'm not insinuating that he does.

Mr. ELLIOTT. All right.

EXAMINATION BY MR. DOLD:

Question. Did you tell Mr. Anderson that the letter—did you tell Mr. Anderson that he needed to sign the rejection letter on July 14th, 1995?

Answer. I encouraged him to sign it in light of the fact that Ada Deer, the Assistant Secretary, was in Wisconsin and was traveling to the Lac Courte Oreilles reservation Friday, that day.

Mr. YEAGER. Do you have any authority to instruct——

The WITNESS. No.

Mr. YEAGER.—Mr. Anderson to take any action in his capacity as Deputy Assistant Secretary?

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. Can you please tell us about the conversation that you had with Mr. Anderson?

Answer. I don't have a recollection of what the conversation was.

I can tell you the gist of it was, Mike, you should sign this because Ada's in Wisconsin. They made this decision and she's going to visit the Lac Courte Oreilles reservation this weekend.

Question. And was that a direction that you had?

Answer. It wasn't a direction that I could give. It was just——

Question. Let me rephrase. Was that something that you thought of that you said, we really should do this? Mike Chapman says, well, Ada Deer is in Wisconsin; I should really have you sign this right away?

Answer. Yes, yes, yes.

Mr. YEAGER. Do you recall encouraging him to sign a decision that had already been made or to take action on a decision that had not already been made?

Mr. ELLIOTT. I'm not sure that that's a question—I mean, he's moving the paper from one office to another for it to be signed. So he knew that it was to be signed, and the decision wasn't really made until it actually got signed.

So I think the question's not fair.

EXAMINATION BY MR. DOLD:

Question. Mr. Chapman, do you know why it was important, or why did you feel it was important that the letter be signed before Ms. Deer traveled up to a section of Wisconsin; is that correct?

Answer. That's correct.

Question. Why was that important?

Answer. Well, the decision, or the letter, was in the surnaming process, and my fear was that it was—it could be leaked, or the tribes involved anticipated it was going to be released; she was going to Lac Courte Oreilles which was one of the tribes involved in the decision—and that we wanted it made or the decision made public, since it was already in the surnaming process and we didn't want it leaked. Because, having been at the April meeting, I knew it was a very volatile issue in Wisconsin.

Question. Who would have—leaked by whom?

Answer. Nobody in particular. It was—I don't know if you're familiar with surnaming, but it goes through five offices; and as a consequence, somebody could have inquired. Because there were press inquiries about the status of the decision that a reporter could have asked anybody, and they could have said, you know, we just surnamed it, and it's going to be released momentarily.

Question. I guess I'm just not following you as to who would have leaked——

Answer. I'm not saying anybody leaked. I'm saying the potential of it, the decision could have had the capacity of being released inappropriately to people inquiring about it, because it was in the process of being surnamed.

Question. I guess I'm just having problems following you.

So the concern was that you did not want to have, or your feeling was, you did not want to let the tribes know that the application was going to be denied by a nonofficial capacity?

Answer. No, no.

Question. Okay. If you could just tell me what the concern was——

Answer. Well, it wasn't denied. My action wasn't motivated by what the decision actually was—you know, whether or not it was favorable or being denied—because at that point I had no clue as to what it was until it actually came into the immediate office of that corridor; but the fact that this was going—I assume Gaming—from the Gaming Office to the Executive Sec. up into the corridor, and that was lingering, and because it was a volatile decision in Wisconsin, and whatever the decision was, it could have bearing on one faction or the other.

And Ada was in Wisconsin, and we had—the Department had implied that it was imminent the decision would be made, that I encouraged that because I helped process that paper on Friday, that Mr. Anderson sign it.

Mr. YEAGER. If I could just jump in with a clarifying question. The surnaming process, that is an approval process?

The WITNESS. Yes.

Mr. YEAGER. So are you walking a draft document around to various people and showing it to them?

The WITNESS. Well, I only have it when it reaches that corridor.

EXAMINATION BY MR. DOLD:

Question. How many people did you take it to? Did you walk it from one spot to the next?

Answer. From the Deputy Commissioner to the Deputy Assistant Secretary 15 feet across the hall. I often move things out of her out-box.

Question. Would it have been proper to have leaked the document to let the tribes know ahead of time?

Answer. No.

Question. It was your assumption that employees at the Interior Department might act inappropriately?

Answer. No.

Question. Did you trust the employees at the Interior Department?

Answer. Yes.

People I worked with? Yes.

Question. And if you trusted them, why were you so worried about the possible impropriety of a leak?

Answer. Well, I'm not sure.

Mr. YEAGER. This was a decision of great import to the applicant tribes, presumably?

The WITNESS. Correct.

EXAMINATION BY MR. DOLD:

Question. And you wanted to make sure that the tribes knew before Ada got there——

Answer. Well, she was there.

Question. While Ms. Deer was there?

Answer. She was going to the Lac Courte Oreilles' reservation for their powwow that weekend.

Question. That she had the decision or that they knew the decision. You wanted to make sure that they knew the decision while she was there, the Lac Courte Oreilles; is that correct?

Answer. Yeah, correct.

Question. When were you first aware that the application would be rejected?

Answer. That day.

Question. That day being July 14th, 1995?

Answer. The day the document was signed by Mr. Anderson. If that's the same day, yes.

Question. Did you mention to Mr. Anderson that this was of importance from the Secretary's office?

Answer. No, I did not.

Question. Were you aware of a May 17th, 1995, meeting where the Department of Interior staff met to go over the Hudson Dog Track application?

Answer. No, I was not.

Mr. ELLIOTT. Could you be more specific about that question? Were you aware of a particular meeting, and it was just Interior staff; or are you talking about a meeting with outsiders?

EXAMINATION BY MR. DOLD:

Question. No, that's not what I'm trying to find out. I believe it was a meeting with Interior staff, and I just wanted to know if you knew about a May 17th, '95 meeting.

Answer. No.

Question. Do you have any idea when a preliminary decision was made on the Hudson Dog Track?

Answer. No.

Question. To your knowledge, who was the first person to think that the application should be rejected?

Answer. I have no idea.

Question. When you were talking to people, it was just you don't know?

Answer. I can tell you from the benefit of media coverage that Mr. Hartman had some role in it early on.

Question. But you didn't know at the time?

Answer. That's correct.

Mr. ELLIOTT. You're talking recent media coverage?

The WITNESS. Right.

[Chapman Deposition Exhibit No. MC–1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Mr. Chapman what has been marked as MC–1. It is an article from the New York Times, dated January 4th, 1998. It is a letter to the editor from Secretary Bruce Babbitt. I don't know if you read the article before, but I'll give you a second to just take a look over it.

Answer. Okay.

Question. The Secretary of Interior stated that the Department does not force off reservation casinos upon unwilling communities. Is that your understanding as well?

Mr. YEAGER. Mr. Dold, I have to object. He has stated and restated the fact that he has no policy role whatsoever related to gaming issues, and you appear to be asking him questions about whether he agrees or disagrees with a statement made by the Secretary of the Interior, or whether he understood that to be the policy at the time.

It just seems to be a totally inappropriate question for this witness.

EXAMINATION BY MR. DOLD:

Question. Mr. Chapman, you worked and reported to Hilda Manuel; is that correct?

Answer. That is correct.

Question. And would you be in meetings with Ms. Manuel where Indian gaming might ever come up?

Answer. Outside of tribal consultations, as in the instance in the April meeting, I would be. In terms of internal policy meetings at Interior, no, I would not be.

Question. Mr. Chapman, were you ever at a meeting at the Department of Interior or otherwise where Department of the Interior policy was discussed?

Answer. I would assume so. I can't—yes.

Mr. ELLIOTT. I think the safe answer is yes.

EXAMINATION BY MR. DOLD:

Question. Mr. Chapman, is it your understanding that the Department of Interior does not force off-reservation casinos upon unwilling communities?

Answer. Yes, it's my understanding that that is the policy, but I've no role. And certainly the benefit of media coverage of late has enhanced that understanding.

Question. Was that your understanding in 1995 while working in the Department of the Interior?

Answer. I do not recall.

Question. Do you recall in 1995 what the Department of the Interior policy was regarding opposition for off-reservation casino applications?

Answer. No, I do not.

Question. When were the applicants first informed that their application would be rejected because of local opposition?

Mr. YEAGER. Do you know the answer to that question?

Mr. ELLIOTT. There are two questions in there, Mr. Dold. One is whether he knew the rejection was for local opposition, and he's testified it was both tribes—he understood it was both tribes and the local opposition.

EXAMINATION BY MR. DOLD:

Question. Let me rephrase the question.

When were the applicants first informed that their application would be rejected because of local opposition and tribal opposition?

Answer. I do not know. Once the document was signed, it goes back to Gaming and it is processed. We don't issue—we don't mail the letters or anything. It goes back to the originating office.

Question. Do you recall what the local opposition was that was of concern for the Hudson application?

Answer. No, no.

Question. When you walked the decision, or the rejection letter, into Mr. Anderson's office, did you watch him sign it; or what were the events that took place at that time?

Answer. I do not recall watching him sign it or staying in the office. I think I generally put files in his in-box; and in this particular instance, said Ada's in Wisconsin and is going to the Lac Courte Oreilles later this evening. If you could sign this, it would be helpful.

Question. So you talked directly to Mr. Anderson at that time?

Answer. Correct.

Question. How long were you in his office?

Answer. Probably less than a minute.

Question. Did you ever see the rejection letter after that point in time?

Answer. No.

Question. Did you speak with anyone at the White House about the Hudson Dog Track?

Answer. No.

Question. Do you know who would normally field calls from the White House if they were to call? I mean, is there some person that people would direct them to?

Answer. I would assume political appointees.

Mr. YEAGER. I take it from your answer that you're not a political appointee?

The WITNESS. Correct.

[Chapman Deposition Exhibit No. MC–2 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I'm placing before Mr. Chapman what's been marked as MC–2. It is a memorandum for Harold Ickes from Jennifer O'Connor regarding Indian gaming in Wisconsin.

Answer. Who is Jennifer O'Connor?

Question. Jennifer O'Connor, I believe works with Harold Ickes at the White House or at least did in May of 1995. The memo, in paragraph 3, says, "The Department is reviewing the proposal. Staff met last night and came up with a preliminary decision, which will likely not be final for another month. The staff believe it is probably a bad idea to create the trust land to allow the establishment of a casino. Their reasons are as follows"—and then inside it says "local community"—"the local community is almost uniformly opposed to the proposed casinos." was that your understanding, or did you hear conversations—was that your understanding?

Mr. ELLIOTT. Was—just a minute before you answer. Was what his understanding?

Mr. DOLD. Was the local community opposition—"the local community is most uniformly opposed to the proposed casino," was that your understanding in 1995?

Mr. ELLIOTT. At what point in 1995?

Mr. DOLD. In May.

Mr. ELLIOTT. Are you talking May——

Mr. DOLD. In May, in May of 1995.

The WITNESS. I would have no reason to know that. And I did not and do not know that.

EXAMINATION BY MR. DOLD:

Question. Did you ever have any conversations with people at the Department of Interior, specifically the Indian Gaming Management Staff, at any time where they might have—where they told you that it would be a bad idea to create the trust land?

Answer. No.

Question. Is it your view that the local opposition must articulate a specific detriment to the community, or would you know?

Mr. ELLIOTT. I'm going to object to this question. He has testified that he did not engage—he's not part of the Gaming Management Staff, has not been in the gaming end of the Bureau of Indian Affairs, has not been engaged in the policy-making positions of the Department for gaming.

He has—his only activity with regard to this was, one, attendance at the April dialogue in Wisconsin at which it was raised by the tribes and carrying the final decision letter to Mr. Anderson for it to be signed and communicating with him at that point.

That's all he's testified to at this point, and you're asking him to go over again whether he has knowledge of and agrees with a policy with which he's not familiar.

EXAMINATION BY MR. DOLD:

Question. Mr. Chapman, did you review the rejection letter before it went to Mr. Anderson in July of 1995?

Answer. I believe I did. For grammatical and typographical errors, not for substance or policy issues.

Question. So the only reason you would have reviewed this rejection letter is simply for typographical or grammatical errors?

Answer. Correct.

Question. Mr. Chapman, you have stated previously that you have been in meetings where policy has been discussed. Were you aware of a policy regarding local opposition?

Answer. No, I was not.

Mr. ELLIOTT. We're still speaking of July '95?

Mr. DOLD. Absolutely. In July of '95.

EXAMINATION BY MR. DOLD:

Question. Do you know who at the Department of Interior would have made a determination regarding whether the local opposition expressed in this case was valid?

Answer. No, I do not.

Mr. ELLIOTT. Just a minute.

The WITNESS. Can you state that question again? Do I know who——

EXAMINATION BY MR. DOLD:

Question. Do you know who at the Department would have made a determination whether the opposition, as stated in the Hudson Dog Track matter, was valid?

Answer. Outside of Mr. Anderson signing the final letter, no.

Question. So Mr. Anderson would have been the one to do that?

Answer. He signed the action. I would assume he was.

Question. I'm sorry. Have you ever been to Hudson, Wisconsin?

Answer. No.

Question. To your knowledge, has anybody from the 4100 corridor been out to Hudson, Wisconsin, to visit the Hudson Dog Track?

Answer. To my knowledge, no.

Question. Were you aware that the Hudson Dog Track was already a Class III gaming facility?

Answer. No.

Question. Was there a policy at the Department of Interior to consult with applicant tribes if issues were identified which might result in a negative determination under IGRA?

Mr. YEAGER. I would object to the question. I'll try to explain why.

Counsel, I understand why you would ask Mr. Chapman if he had observed or heard conversations because of his location in the building, if he had knowledge about specific facts concerning this application because of his presence in the general vicinity. But your questions are directed to him in a way that he should respond in some sort of substantive way, that he should offer an opinion about policy or analyze information that he may have heard.

I don't want to jump all over you for every question you're asking, but I think you could go through this much more quickly if you ask him about facts he may have observed or things that would be within his area of knowledge.

Mr. DOLD. And I'm not asking him to expand outside of his horizon of knowledge.

EXAMINATION BY MR. DOLD:

Question. The areas that I want, and for the record, Mr. Chapman, areas that you might have heard in conversation, meetings you might have been in where policy was discussed, areas like that. I'm not asking you to speculate. Or if you don't know of the policy, a simple "no" is fine.

I'm not trying to say, Mr. Chapman, what is the Department of Interior policy? You must tell me now; otherwise, you don't know of one. That would be ridiculous.

But so the question goes to your personal knowledge, was there a policy to your knowledge to consult with applicant tribes if issues were identified which might result in a negative determination?

Answer. I assume there was, but to my knowledge, no. I did not have a command of it or knowledge of it.

Question. Has the Menominee tribe ever requested to take land into trust?

Answer. I assume they have.

Question. Would you have any knowledge—do you have any knowledge personally if there was a consultation process——

Answer. No.

Question [continuing]. For that? Do you know what the Menominee Indian tribe stance was on the Hudson Dog Track matter?

Answer. I do not. I don't believe they had one, but I don't know that for a fact.

Question. Being from Wisconsin, Mr. Chapman, did you ever talk to anyone outside the Department of Interior about the Hudson Dog Track in Wisconsin?

Answer. No, I did not.

Question. In Minnesota?

Answer. No.

Question. Did you talk with anyone outside the Department of Interior about it?

Answer. No.

Question. Mr. Chapman, were you aware of any specific concerns any of the dog track opponents had in and around Hudson, any opponents that were in the Hudson area?

Answer. I was not, no.

Question. Do you know if the applicant tribes were given an opportunity to cure any defects——

Answer. I do not.

Question [continuing]. With their application?

Answer. I do not.

Question. Returning back to Exhibit Number 1, the Secretary's letter—the Secretary's letter says that the Republican Governor of Wisconsin and many others opposed the casino.

Do you know, to your knowledge, was that a true statement? Were you aware of that?

Answer. I was not aware of that.

Mr. YEAGER. Were you aware of the Democratic Members of Congress who opposed the application?

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. Do you know why the applicant tribes were not consulted regarding the reasons for Mr. Anderson's denial?

Mr. ELLIOTT. I've got a problem with that question, Mr. Dold. There's an assumption in there that he knows that they weren't consulted.

EXAMINATION BY MR. DOLD:

Question. Let me rephrase it.

Do you know if the tribes were consulted about the decision after Mr. Anderson signed the letter?

Answer. I do not.

Question. Do you know if the tribes were consulted before Mr. Anderson signed the letter?

Answer. No.

Mr. YEAGER. Would you have reason to know one way or the other?

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. So you know of no policy with which consultation would happen with the tribes——

Mr. ELLIOTT. Is that a follow-up——

Mr. DOLD [continuing]. Regarding the application process?

Mr. ELLIOTT [continuing]. To——

Mr. DOLD. He said no, no.

I'm asking if you knew of any policy to consult with the tribes.

The WITNESS. Outside of, I believe, executive memorandum on government-to-government consultation with the White House, that's the only policy, per se, that I'm familiar with. And I have a vague familiarity with it, but——

EXAMINATION BY MR. DOLD:

Question. And that was a policy—government-to-government policy handed down from the White House——

Answer. Correct.

Question [continuing]. Directed from the President?

Answer. Correct.

Question. Mr. Chapman, how did you learn about the government-to-government policy handed down from the White House?

Answer. I don't recall.

Mr. YEAGER. The substantive work you did do, I think you testified to, was related to intergovernmental relations; is that what I understood?

The WITNESS. Helping facilitate meetings with tribes, going and doing the logistics in Wisconsin, setting up the hotel, making sure that people were invited, the court reporter was there, just facilitating those.

EXAMINATION BY MR. DOLD:

Question. Mr. Chapman, do you know which tribes were opposed to the Hudson casino application?

Answer. Definitively, no, out of Oneida and Winnebago and Hoechunk at the time voiced their opposition in the April meeting.

Question. And do you know who the applicant tribes were?

Answer. I couldn't name them with any certainty, no.

Question. Were you aware that any of the tribes opposed to the Hudson Dog Track application had ever made political contributions?

Answer. No.

Question. Do you know Marge Anderson?

Answer. Uh-huh.

Question. And how do you know Marge Anderson?

Answer. As a tribe leader.

Question. Do you know Debbie Doxtator?

Answer. I do.

Question. How do you know Debbie Doxtator?

Answer. As a tribal leader.

Question. Were you aware that they had been invited to White House coffees?

Answer. No.

Question. Were you aware that they were contributors of any sort——

Answer. No.

Question [continuing]. To the Democratic Party?

Answer. No.

Question. Were you aware of any communications between the Department of Interior and the White House on this matter?

Answer. No.

Question. Were you aware of any communications between the Department of Interior and the Democratic National Committee on the matter?

Answer. No.

Question. Did you attend any meetings where—did you attend any meetings on this issue where Marge Anderson or Debbie Doxtator would have been invited?

Mr. YEAGER. Would have been invited?

Mr. DOLD. Or were invited. I apologize.

The WITNESS. The chairperson of Oneida was at the April meeting in Wisconsin. So I don't recall if she was the chair of the tribe at that time or it was her predecessor. That's the only context Ms. Anderson was at.

EXAMINATION BY MR. DOLD:

Question. Would you, in your capacity at the Department of the Interior, meet with Marge Anderson or Debbie Doxtator on any matter?

Answer. No.

Question. And when you say no, did you attend any meetings besides the one you stated in Wisconsin where Marge Anderson and Debbie Doxtator were present?

Answer. Outside of conventions, no.

Question. The Secretary of Interior has said that the decision to reject the applicant was supported by the Gaming Office staff.

To your knowledge, was this support ever put in writing?

Answer. No. I have no reason to know that, nor do I recall.

Question. Were you ever aware that career officials at the Department of Interior were in favor of approving the fee-to-trust application?

Answer. No.

Question. Prior to July 14th, '95, were you ever aware that career officials at the Department of Interior—what was your understanding of the positions taken by Interior officials in Ashland, Wisconsin?

Answer. I have no understanding or knowledge.

Question. Do you have any understanding or knowledge of any of the decision-making process outside of the main Interior office?

Answer. No. No.

[Chapman Deposition Exhibit No. MC–3 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Mr. Chapman what is marked as MC–3. It is a memorandum to the Assistant Secretary of Indian Affairs from the office of the area director, and the subject is the request for off-reservation gaming for land in Hudson, Wisconsin.

You're free to look over this. I have only a very short question on it. Very specifically, or generally, I should say, have you ever seen this document?

Answer. No.

Question. Were you aware of its existence?

Answer. No.

Question. Do you know if this would have been received—and the date on this is November 15th, 1994. Do you have any knowledge as to what—on November 15th, 1994, who was the Assistant Secretary of Indian Affairs?

Answer. Ada Deer.

[Chapman Deposition Exhibit No. MC–4 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Mr. Chapman what has been marked as MC–4. It is a memorandum to the Director of Indian Gaming Management Staff from the Indian—Indian Gaming Management Staff, signed by Mr. Hartman. And the subject is the application of the Sakaogon Community, the Lac Courte Oreilles Band, and the Red Cliff Band to place land located in Hudson, Wisconsin, in trust for gaming purposes.

And again I will let you take a look over this.

Answer. You can——

Question. Have you ever seen these document before?

Answer. No, I have not.

Question. Have you ever—I know you commented before that you had done some proofreading on some things. Have you ever proofread documents coming out of the Indian Gaming Management Staff?

Answer. If they were for the Deputy Commissioner or Assistant Secretary's signature, presumably I have, yes. But this would not have——

Question. So the documents that you would have proofread for grammar, spelling, et cetera, would have been those going up the chain of command?

Answer. Correct.

Mr. ELLIOTT. At that level?

Mr. DOLD. At that level?

The WITNESS. Uh-huh.

EXAMINATION BY MR. DOLD:

Question. Were you ever in any meetings where this was discussed——

Answer. Outside of——

Question [continuing]. This analysis?

Answer. Oh, no.

Question. Were you ever in any meetings or around Mr. Hartman where he communicated anything about the Hudson Dog Track matter?

Answer. No.

[Chapman Deposition Exhibit No. MC–5 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Mr. Chapman what has been marked as MC–5. It is a memo to the Assistant Secretary of Indian Affairs through Deputy Commissioner of Indian Affairs, from George T. Skibine, the Director of the Indian Gaming Management Staff. Again, the subject is the application of the Sakaogon Community, the Lac Courte Oreilles Band, and the Red Cliff Band to place land located in Hudson, Wisconsin, in trust for gaming purposes.

Mr. YEAGER. Forgive me for interrupting. The record will reflect that this document bears draft headers and footers on every page.

Mr. DOLD. Not on every page, but we'll stipulate that it is a draft or at least a stamped draft.

EXAMINATION BY MR. DOLD:

Question. Mr. Chapman, have you ever seen this document before?

Answer. I do not recall, no.

Question. Was it customary to provide a memo to the decision-maker outlining the analysis for decision?

Answer. State that again.

Question. Was it customary to provide a memo to the decision-maker outlining the analysis for a decision?

Answer. It's often accompanied with controversial decisions, some clarifying background information. This would, I assume, because it's anything that gets—that I would have a role in proofreading or anything in final form. Drafts never come up.

Mr. YEAGER. You proofread—just so I understand, proofread documents typically that make their way through the surname process when those documents are in final form or close to be in final form.

The WITNESS. Uh-huh.

Mr. ELLIOTT. Yes. You have to speak.

The WITNESS. Yes.

EXAMINATION BY MR. DOLD:

Question. Mr. Chapman, you mentioned a couple times that this was a controversial decision. Can you tell us how you knew it was a controversial decision?

Answer. Because of the April meeting in which the transcript would reflect that there was great debate and opposition among the tribal leaders.

Question. Did Ms. Deer recuse herself on this matter?

Answer. Yes, she did.

Question. And when did she recuse herself from the decision-making process?

Answer. I assume it was after the April meeting, so it would have been late spring.

Question. And she would have first received the memo from Denise Homer, the Area Director, in November of '94. Is that what the document says? So she didn't recuse herself again until April of '95?

Answer. Uh-huh.

Yes. I'm sorry.

Question. Was this widely known that she recused herself?

Answer. I'm not sure. In the immediate corridor, we were aware of it.

Question. In the 4100 corridor?

Answer. Right.

Question. Is the Indian Gaming Management Staff on that corridor?

Answer. No.

Question. Did you tell anyone that she had recused herself, that you recall?

Answer. Outside of Ms. Manuel and Mr. Anderson, no.

Question. Do you know if Mr. Duffy was ever notified?

Answer. I do not know that.

Question. Was there ever an e-mail notifying interdepartmental people——

Answer. Not that I'm aware of.

Question [continuing]. That Ms. Deer recused herself?

Answer. Not that I'm aware of.

Mr. YEAGER. Was it your job to notify others in the Department when you became aware of her recusal?

The WITNESS. My job, no.

EXAMINATION BY MR. DOLD:

Question. Mr. Chapman, if I may go back a little bit, we had talked before about the controversial decision and how you knew it was a controversial decision. And you testified that it was because of your meeting in April in Wisconsin.

And I talked to you a little bit about—or asked you whether memos normally would accompany a decision to the ultimate decision-maker to inform him of the process of a decision or the analysis. Do you recall that, our conversation?

Answer. Right.

Question. Do you know of a situation where a controversial issue placed before a decision-maker was not accompanied by a memo going over the analysis of the decision?

Answer. Do I know—state that over again.

Question. Do you know of a situation where a controversial decision before the Department of Interior was placed before a decision-maker without an accompanying memo going into the analysis of the decision?

Answer. I do not recall.

Mr. YEAGER. Do you convey all memoranda to and from decision-makers, or can they receive memoranda from other—by other means?

The WITNESS. Yeah. Absolutely.

Mr. YEAGER. So you're not the sole——

The WITNESS. No.

Mr. YEAGER [continuing]. Carrier of all——

The WITNESS. I'm not a gatekeeper.

Mr. YEAGER [continuing]. Of all the decisions.

EXAMINATION BY MR. DOLD:

Question. I'm just asking if you know of a situation. I think you said you didn't. Is that correct?

Answer. That's correct.

[Chapman Deposition Exhibit No. MC–6 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Mr. Chapman what has been marked as MC–6. And this is a draft letter to Rose Gurnoe, Gaiashkibos, and Arlyn Ackley, tribal chairmen of the applicant tribes. I'll just ask you to take a quick look over that.

Answer. Uh-huh. Okay.

Question. Have you ever seen this document before?

Answer. I do not recall seeing it.

Question. You'll note on the first page it's, draft, dated June 29th, 1995. And then if you'll turn to page 3, you'll see that the draft is for Ms. Deer's signature.

Do you have any idea why this document so late in June was drafted for Ms. Deer's signature?

Answer. I do not.

Question. Did you ever talk with Ms. Deer about the rejection?

Answer. I believe I faxed her a copy of Mr. Anderson's letter that day, but not—to get it to her and share it with her, but not having any substantive conversation about the merits of it, no.

Question. And you faxed a copy of the letter to her——

Answer. In Wisconsin.

Question. Do you know where in Wisconsin she was at that time when she received the fax?

Answer. I do not.

Question. If I can briefly turn to page 2 of this, there's an indented paragraph, and then one, two, the third paragraph down, the second sentence says, "The record before us indicates that the surrounding communities strongly object to this proposed trust acquisition."

Were you aware of the opposition or the rejection to the trust acquisition by the local communities?

Mr. YEAGER. I think he's answered that question, Counsel.

The WITNESS. In retrospect, certainly I'm aware of it. But at the time——

EXAMINATION BY MR. DOLD:

Question. Not in retrospect. At the time?

Answer. I do not, no.

Question. Were you ever at a meeting or did you ever overhear anybody talking where issues regarding the Hudson Dog Track, like the increased law enforcement expenses due to potential exponential growth in crime and traffic testing—it's right down here at the bottom of the paragraph—to the testing wastewater treatment facilities with the problems of solid waste, et cetera, were ever discussed?

Answer. No.

Mr. YEAGER. Would you have been at such meetings where those things would have been discussed?

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. On page 3, and this will be my last question on—well, no. I'll ask another after that.

But the first full paragraph says, "We have received numerous complaints from individuals because of the proximity of the proposed Class III gaming establishment to the St. Croix National Scenic Riverway."

Two questions on this: Have you ever heard anybody talk about the concerns of the St. Croix National——

Answer. No.

Question [continuing]. Scenic Riverway?

And did you ever have conversations or overhear anybody talking about the proposed Class III gaming facility?

Answer. Outside of that April meeting, no.

Mr. YEAGER. Would you have known whether or not the relevant decision-makers, staff members would have had those kinds of conversations?

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. Mr. Chapman, was it common to have letters drafted for either the Deputy Commissioner or the Assistant Secretary on matters? You'll notice that this letter here is drafted for both Ada Deer and then, different, for the Deputy Commissioner, who I believe was Hilda Manuel.

Mr. ELLIOTT. Mr. Dold, just to clarify what you're asking, you mean a single letter drafted in that fashion?

Mr. DOLD. Yes.

Mr. ELLIOTT. As opposed—but the obvious answer to your question is yes. There were letters that were drafted for either one.

EXAMINATION BY MR. DOLD:

Question. A single letter where it would be for one or the other, but a single letter drafted that way. Was that a common thing or one that you were aware of?

Answer. No.

Question. Mr. Chapman, do you know Tom Collier?

Answer. Yes.

Question. And do you know John Duffy?

Answer. Yes.

Question. Do you know where they are? Are they still with the Department of Interior?

Answer. No, they are not.

Question. Do you know where they are today?

Answer. They're in private practice. I can't tell you the law firm.

Question. Do you know if anybody at the Department of Interior has had contacts with them?

Let me rephrase that. Let me—how do you know Mr. Collier and Mr. Duffy?

Answer. As Chief of Staff and Counsel to the Secretary.

Question. Have they had any contact while in private practice with your office?

Answer. With—no.

Question. Do you know?

Mr. YEAGER. Your office being the office of the Deputy Commissioner of the BIA? Is that what you mean?

Mr. DOLD. Yeah. That's fine.

EXAMINATION BY MR. DOLD:

Question. Do you know of them contacting the Bureau of Indian Affairs—do you know of any contact they would have had with the Bureau of Indian Affairs on official matters since they left the Department of Interior?

Answer. I'm aware that they represent Indian interests and tribes. I couldn't tell you which tribes. And they have interfaced with our office, yes.

Question. They have interfaced with your office?

Answer. [Indicating in the affirmative.]

Question. Do you recall on anything specific?

Answer. No.

Question. Has anyone ever discussed with you or have you ever overheard the political affiliation of any of the tribal representatives in favor of the Hudson Casino application?

Answer. Am I aware of their political affiliation?

Question. Yes.

Answer. I am aware of Gaiashkibos' political affiliation at the time.

Question. Okay. And what was his political affiliation?

Answer. He was Republican.

Question. How do you know this?

Answer. Because he ran for State legislature in Wisconsin on the Republican ticket.

Question. Was this ever discussed with anyone at the Department of Interior?

Answer. No.

Question. And when were you aware that he was running?

Answer. During the course of the race, I believe, I don't—I assume it was '92.

Question. Has anyone at the Department of Interior——

Answer. '94.

Question. '94?

Answer. [Indicating in the affirmative.]

Question. Has anyone at the Department of Interior ever discussed Tommy Thompson's, the Governor of Wisconsin's position on the Hudson Dog Track?

Mr. ELLIOTT. Would——
The WITNESS. Not that I'm aware of.
Mr. ELLIOTT. Okay.

EXAMINATION BY MR. DOLD:

Question. Has anyone at the Department of Interior or—scratch that.
Has anyone ever discussed with you either in person or otherwise means—has anyone ever discussed with you in person or otherwise the political contributions the tribes opposed to the Hudson Dog Track application—scratch that.
Has anyone ever discussed with you whether the opponent tribes ever made political contributions?
Answer. No.
Question. I have no further questions.
Mr. DOLD. Mike.
Mr. YEAGER. I would like to take a few minutes if I could.
Mr. DOLD. No problem. Let's go off the record for 5 minutes.
[Recess.]
Mr. YEAGER. You're finished?
Mr. DOLD. I'm finished

EXAMINATION BY MR. YEAGER:

Question. On behalf of the Minority, I would like to thank you for coming in today and spending as much time as you have today. I have a few quick questions.
You mentioned that you were aware that Ada Deer had recused herself from any decision-making role in this fee-to-trust application.
Answer. Uh-huh.
Question. Do you know when you became aware of that?
Answer. I do not.
Question. Do you remember having any kind of conversation with Ms. Deer about whether to recuse herself or not?
Answer. Yes.
Question. Can you tell me a little bit about that conversation?
Answer. We discussed after the April meeting when I became, certainly, familiar with the issue or the volatileness of the issue. And shortly thereafter her, Ms. Manuel, and I discussed her recusal. And my concern was Gaiashkibos, who was chair of the Lac Courte Oreilles tribe, had testified on her behalf at her confirmation hearing; and she had given a political contribution to his State legislative run, and as a result, the appearance of a conflict was there. And I had recommended in a discussion or contributed to a discussion that she might want to consider recusing herself.
Question. You recommended that to Ms. Deer?
Answer. Uh-huh.
Question. And did she indicate one way or the other whether she would recuse herself at that time?
Answer. She was in agreement with it. But I didn't convey—it was only my suggestion to her that she might consider it. It wasn't my responsibility to convey that to whoever, the Gaming staff or the Secretary's office. So I'm not—I did not convey it. I only had recommended that she do it; she agreed with it, and I don't know what she——
Question. What she did or who knew about it?
Answer. Right.
Question. I have made an issue today about the fact that you've indicated that you played no substantive role in this fee-to-trust application. So I'll be careful in the way I frame my question.
Did you at any time observe any conduct or hear any communication that led you to believe that any improper influence was brought to bear in the fee-to-trust application process?
Answer. I was not aware of any such conversations or privy to them, so no.
Question. Do you have reason, any reason to believe whatsoever there was any improper conduct in the Department of Interior in connection with this——
Answer. I do not.
Question [continuing]. Application?
Thank you again for coming today.

EXAMINATION BY MR. DOLD:

Question. Just a couple very, very brief follow-ups.
The meeting that you had discussing Ms. Deer's recusal——

Answer. Uh-huh.

Question [continuing]. On this issue, who else was in attendance in that meeting?

Answer. It was Ms. Deer, myself, and Ms. Manuel.

Question. And you don't recall—was there any memorandum, anything memorializing that meeting?

Answer. Not that I'm aware of.

Question. And was this meeting shortly—you say shortly after your April, the April meeting out in Wisconsin; isn't that correct?

Answer. Correct.

Mr. DOLD. Mr. Chapman, on behalf of the Government Reform and Oversight Committee, and on behalf of Mr. Wilson and myself, thank you very much for coming in today.

The WITNESS. Thank you.

Mr. DOLD. We can go off the record.

[Whereupon, at 11:53 a.m., the deposition was concluded.]

[The exhibits referred to follow:]

No Casino Favoritism

To the Editor

William Safire (column, Dec. 31) jumps to erroneous conclusions as to why the Interior Department denied the application by three Wisconsin tribes to establish a casino 85 to 188 miles from their reservation.

It was the right decision, made for the right reasons, and I have told the truth about it. This department does not force off-reservation casinos upon unwilling communities. City councils of the towns of Hudson and Troy, as well as three senators from both political parties, seven Minnesota members of Congress, the Republican Governor of Wisconsin and many others opposed the casino.

Mr. Safire opines that Harold M. Ickes "caused heat to be put on" me to deny the application. The facts, spread across a voluminous record, prove otherwise. I did not participate in the decision, and as I have said in sworn testimony, I have never spoken to Mr. Ickes — nor to anyone else at the White House or the Democratic National Committee — about this matter.

Mr. Safire falsely asserts that a "staff recommendation" approving the casino was changed for political reasons. In fact, the draft memorandum cites only the criteria to be considered in determining local opposition, not whether the casino should be approved. The decision to deny was based on the recommendation of the senior civil servant in the gaming office and supported by his staff. They testified they were unaware of any contributions by interested tribes or of any communications between the tribes and the White House or the D.N.C.

BRUCE BABBITT
Secretary of Interior
Washington, Jan. 2, 1998

EXHIBIT
MC-1

May 18, 1995

'ORANDUM FOR HAROLD ICKES

ROM: JENNIFER O'CONNOR

UBJECT: INDIAN GAMING IN WISCONSIN

ne attached information from Patrick O'Connor refers to a proposal at Interior to allow three 'isconsin tribes to establish a casino at a bankrupt dog track in Hudson, Wisconsin.

ne Secretary of the Interior has the discretionary ability to create trust lands to enable the ibes to establish the casinos. However, by statute, he must first assess the economic costs id benefits to the local community.

ne Department is reviewing the proposal. Staff met last night and came up with a eliminary decision, which will likely not be final for another month. The staff believe it is obably a bad idea to create the trust land to allow the establishment of the casino. Their asons are as follows (NOTE -- this information is not public and is confidential at this oint.):

> The local community is almost uniformly opposed to the proposed casino. The tribes that want to establish it live 250 miles away, but no one in the immediate area wants it established, including the Mayor, City Council, other local officials and Congressman Gunderson. The Department feels that this local opposition is an indication of adverse impact on the local community.
>
> The Minnesota delegation is also uniformly opposed to the proposal. Minnesota tribes located near the state border feel they would be adversely impacted by the competition.
>
> It is likely that a decision to approve this proposal would result in a spotlight being shone on the Indian Gaming Regulatory Act, which is under some legislative pressure at the moment. The Department wants to avoid this kind of negative attention to the Act.

ne other side of the argument is the support of free market economics. Some Department aff think the bottom line here is the Minnesota and Wisconsin tribes who are benefitting iormously from gaming don't want the competition, and are able to hire bigger lobbyists an the three very poor tribes who want the casino However, the staff don't think this 'gument negates the uniform opposition from the local community.

ne current status is this: the Department is reviewing the comments received during the omment period which ended April 30. It has committed to making a final decision within a onth.

EOP 064394

EXHIBIT

MC--2

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

MINNEAPOLIS AREA OFFICE
331 SOUTH 2ND AVENUE
MINNEAPOLIS, MINNESOTA 55401-2241

IN REPLY REFER TO

Tribal Operations

1994

MEMORANDUM

TO: Assistant Secretary - Indian Affairs

FROM: Office of the Area Director

SUBJECT: Request for Off-Reservation Gaming for Land in Hudson, Wisconsin

On March 4, 1994, the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes"), together, pursuant to Section 2719(b) of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988), filed an application with the Minneapolis Area Director requesting that the United States take a certain parcel of real property located in Hudson, Wisconsin, into trust for the benefit of the Tribes for gaming purposes. The Tribes do not currently own the property, but they have an agreement to purchase the land if and when the Secretary of the Interior makes the findings necessary under Section 2719, the Governor concurs in the Secretary's findings, the steps necessary to place the land into trust have been completed, the National Indian Gaming Commission approves the management contract and collateral agreements and the Tribes have amended their gaming compacts of 1991 to permit the operation of pari-mutuel greyhound racing.

This memorandum outlines the Minneapolis Area Office's review and analysis of the Tribe's application and transmits; (1) the Area Director's Findings and Recommendations, (2) the comments of the Field Solicitor, Twin Cities, and (3) the Documentary Support required for the Secretary's Determination concerning the request for off-reservation gaming on proposed Trust Acquisition of the Tribes.

I. APPLICATION INFORMATION

A. Sokaogon Tribe: The Sokaogon Chippewa Community of Wisconsin occupy a small reservation in Forest County, Wisconsin with the central community in Mole Lake. There

EOP 064500

EXHIBIT
MC-3

are 1,528 persons enrolled in the Tribe. 512 members live on or near the reservation. According to figures provided by the Tribe, 42% are unemployed and actively seeking employment.

The Sokaogon Chippewa Community Tribal Council is authorized by Article VII, Section (e), to manage all economic affairs and enterprises of the Community. The Sokaogon Chippewa Community Tribal Council included two resolutions as part of the Tribes application package. Resolution No. 9-11A-93 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 2-4A-94 approved the St. Croix Meadows-Joint Operating Agreement and authorized the Tribal Chairman to sign the agreement.

B. Lac Courte Oreilles Tribe: The Lac Courte Oreilles Band of Lake Superior Chippewa had a reported enrollment of 5,431 people in 1991. In 1991, 1,923 of these people lived on the reservation and another 1,126 lived within 150 miles of the reservation.

The Lac Courte Oreilles Tribal Governing Board is empowered by Article V, Section 1(f) of the Lac Courte Oreilles Constitution to purchase lands within or without the boundary of the Tribe's reservation. The Tribal Governing Board is empowered by Article V, section 1(h) to engage in any business that will further the social or economic well-being of members of the Band. The Lac Courte Oreilles Governing Board submitted three resolutions as part of the Tribes application package. Resolution No. 93-82 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 94-08 approved the Joint Operating Agreement and directed the Tribal Chairman to execute the agreement on behalf of the Lac Courte Oreilles Band of Lake Superior Chippewa. Resolution 94-09 created the Lac Courte Oreilles Economic Development Commission to act on behalf of Lac Courte Oreilles.

C. Red Cliff Tribe: The Red Cliff Band of Lake Superior Chippewa occupy a small reservation in Bayfield County, Wisconsin, on the shores of Lake Superior. There are 3,180 persons enrolled in the band. 1,651 members live on or near the reservation.

The Red Cliff Tribal Council is authorized by the Red Cliff Constitution Article VI, Section 1(e) to manage all economic affairs and enterprises of the Tribe. The Red Cliff Tribal Council included two resolutions as part of the Tribes application package. Resolution 9/23/93C requests the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust. Resolution 2/7/94A authorized the Tribal Chairperson to sign the Joint Operating Agreement on behalf of the Red Cliff Band of Lake Superior Chippewa and also authorized the Chairperson to take such other actions necessary to effectuate the agreement.

These Tribes continue to have high rates of unemployment and poverty in spite of having developed gaming facilities on their reservations. We agree with the Tribes determination that this is true largely because they are located at great distances away from urban markets.

EOP 064501

Each of these Tribes also have relatively small populations and land holdings. The Hudson location will provide the tribes with access to an urban market for the gaming facility. However, since it is unlikely that many of the residents of these three communities will chose to relocate to be employed at this location, the benefits which will accrue to each of these communities will come not from direct employment in the gaming facility, but, rather, from employment and the goods and services which would be generated by the spending of each community's share of the net income.

The average amount estimated to be received by each of the three Tribes over the next five years from the operation of the Hudson Gaming Facility is approximately $10 million per year. This money would be used by the Tribes to improve health care facilities on their reservations, purchase land, improve housing facilities, improve community and elderly programs, improve educational facilities and as educational grants, and to invest in economic development in the communities.

1. Description of Land:

The Tribes have requested that land located in the City of Hudson, County of St. Croix and State of Wisconsin, be taken into trust pursuant to 25 C.F.R. Parts 151 and 25 U.S.C. § 465 and § 2719. The land is currently owned by Croixland Properties Limited Partnership.

This request is for a parcel of land located in the fractional NE¼ of the NE¼, and SE¼ of the NE¼, Section 6, T28N, R19W, City of Hudson, Saint Croix County, Wisconsin, described as follows:

The fractional NE¼ of the NE¼ of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional NE¼ of the NE¼ of said Section 6.

ALSO, that part of the SE¼ of the NE¼ of said Section 6 described as follows: Commencing at the NE corner of said Section 6; thence S02°49'01"W 1,891.74 feet along the East line of the fractional NE¼ of said Section 6 to the NE corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the SE¼ of the NE¼ of said Section 6; thence N02°48'30"E along the west line of said SE¼ of the NE¼ to the NW corner thereof; thence Easterly along the North line of said SE¼ of the NE¼ to the NE corner thereof; thence S02°49'01"W, along the East line of said SE¼ of the NE¼ to the point of beginning.

The properties listed above encompass an area of approximately 55.82 acres currently consisting of the St. Croix Meadows Greyhound Racing Facility. The site is served by all necessary utilities and a highway system which includes Interstate Highway 94.

2. Third Parties:

The Tribes have entered into a Joint Operating Agreement with Galaxy Gaming and Racing Limited Partnership, an affiliate of Croixland, in order to provide management of the proposed gaming facility. We have informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Association. The National Indian Gaming Commission concurred in our determination and the Tribes have requested their approval.

II. GOVERNMENTAL ACTIONS REQUIRED

The process of taking Off-Reservation land into trust requires a tribal applicant to meet the requirements of 25 C.F.R. Part 151 - Land Acquisition, and Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988). Section 2719(b)(1)(A)requires the following two part determination:

> "The Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's Determination;"

This report does not contain information written specifically to meet the requirements of 25 C.F.R. Part 151, Land Acquisition. This report only outlines the Minneapolis Area Office's review and analysis of the Tribe's proposal to meet the two part determination required by the Indian Gaming Regulatory Act. 25 C.F.R. Part 151 requires specific actions within real estate services that exceeds Section 2719 action under the Indian Gaming Regulatory Act. If and when it becomes necessary, the requirements of 25 C.F.R. Part 151 will be addressed by the Area Office in a separate document.

The Indian Gaming Regulatory Act has several requirements that have been met by the Tribes; first, all three Tribes have successfully negotiated Class III Gaming Compacts with the State of Wisconsin as required by Section 2710(d)(1)(C) of the Indian Gaming Regulatory Act and the Secretary of Interior published the Approval Notice of the Gaming Compacts in the Federal Register; second, in accordance with 2710(d)(1)(A), each Tribe has adopted tribal gaming ordinances that have been approved by the Chairman of the National Indian Gaming Commission.

III. CONSULTATION PROCESS

The Bureau of Indian Affairs consultations with the City of Hudson, Local Officials, and Tribal Officials are described in detail in the Recommended Findings of Fact and

Conclusions. As the Recommended Findings of Fact and Conclusions indicate, the Tribes' application has received mixed support from the Community and nearby Tribes.

IV DOCUMENTARY RECORD

The Minneapolis Area Office has prepared four volumes of documentary support required for the Secretary's determination. The documentary support consists of documents the Tribes have submitted in support of their application and documents the Area Office has compiled during the course of the review and analysis of this application. The documentary record contains a complete index of documents.

Volume I contains proprietary information that is privileged commercial and financial information, which is confidential and exempt from disclosure pursuant to 5 U.S.C. 552 (b)4.

V RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the documentary support that was prepared during the course of the review and analysis of the Tribes' Application, the Area Office has prepared the attached Recommended Findings of Fact and Conclusions.

Based upon the Tribes' application, the documentary support and the consultations between the Great Lakes Agency Superintendent, the City of Hudson, St. Croix County, and other federally acknowledged Indian Tribes located in Wisconsin and Minnesota, the Recommended Findings of Fact and Conclusions conclude that allowing gaming on the proposed trust property is in the best interests of the Tribe and its members and would not be detrimental to the surrounding community.

VI RECOMMENDATION

Because the establishment of a gaming facility on the proposed trust land is in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, I recommend that the Secretary determine that the proposed trust property be acquired by the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes for Gaming purposes.

Area Director

Attachments

MINNEAPOLIS AREA OFFICE'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

November 15, 1994

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RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

INTRODUCTION:

The Sokaogon Chippewa Community of Wisconsin, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (Collectively referred to as the "Tribes") have entered into an agreement with the current owners (Croixland Properties Limited Partnership or "Croixland") of the St. Croix Meadow Greyhound Park located in the City of Hudson, Wisconsin, to purchase the assets of the pari-mutual dog track. The Tribes have requested that the land currently comprising St. Croix Meadows, as well as land immediately surrounding the dog track (totaling approximately 55 acres), be placed into trust. The stated purpose of the acquisition is to begin Class III gaming at the facility with the introduction of 1,500 - 2,000 slot machines and 30 - 40 blackjack tables.

Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988) states, in part, that lands can be acquired for gaming only if "the Secretary, after consultation with the Indian Tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a Gaming Establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community..." 25 U.S.C. § 2719 (b)(1)(A). The following is the Minneapolis Area Office's analysis and recommendations of the Tribes application under this section.

I. BEST INTEREST OF THE TRIBES

A. GROSS AND NET INCOME TO THE TRIBES:

Two separate market studies were prepared regarding this proposal. One by Arthur Andersen & Co. (AA)(Tab 3)[1] which used the "comparative market analysis approach" to estimate the Hudson market potential, and one by James M. Murray, PhD. (Tab 4) which used the gravity model and Reilly's Law of Retail Gravitation to establish the sphere of influence of the Hudson facility both currently and as projected. Although the specific findings of the two reports do differ significantly in some respects, we will incorporate both reports into our analysis.

The AA Study estimates the total market gaming revenues in the primary market of Minneapolis/St. Paul to be between $550 - $630

[1] Unless otherwise stated, the tabs are located in Volume I.

million, with the proposed Hudson Casino share projected to be $80 million (excluding the dog track) (Tab 3, pages 21 & 22). AA projects Total Revenues for the first year to be $88,367,000. The Net Income is projected to be $30,910,000 in the first year of operation. Pursuant to the Joint Operating Agreement (Tab 7D, page 8) each tribe would receive 25% of the net revenue. Thus, under this study, each tribe is projected to receive $7,727,000 in the first year of operation and $11,506,000 by the fifth year (V-I, Tab 3, page 30).

Dr. Murphy estimates the total gaming revenues in the primary market to be currently at $406,906,108 a year (Tab 4, page 15). He estimates the proposed Hudson Casino take (including income from the dog track) would be $104.1 million in the first year of operation and $131.4 million by the fifth year (Tab 4, page 18). He projects Net Revenues to be $31.1 million in the first year and 48.8 million by the fifth year (Tab 5, page 1). Dr. Murphy did not provide an estimate of the total market gaming revenues. However, we note that his estimate of total revenues of $511,124,739 (Tab 4, page 15) is consistent with the estimate made by the Arthur Andersen study.

The two reports differ notably in amount of gross income projected and the total amount of expenses expected to be incurred by the Hudson Venture in the first year (See Table 1 of this report). As a result, we combined the two reports to calculate a best case scenario and a worst case scenario.

Dr. Murphy does not give a breakdown of the expected expenses since his report focuses more on the overall impact to the Tribes and surrounding community from the spending of the net proceeds. Nevertheless, we feel it is important to include this information since it substantiates the Tribes position.

If you combine Dr. Murphy's total expenses ($73 million) with AA's estimated Total Revenues ($88,367,000), the Tribes would net approximately $3.84 million each (15,367,00 multiplied by 25%). This number represents the worst case scenario under a combination of the two studies.

The best case scenario under a combination of the two studies is a Net Revenue of approximately $46.6 million ($104.10 million in Gross Revenue under Dr. Murphy's study minus $57.45 million in total expenses in AA's study) to be divided equally among the three Tribes and current owner. Under this scenario each Tribe would receive $11.65 million in the first year of operation.

We find that due to the sheer size of the market of the urban area, the Tribes would enjoy a financial benefit well beyond any financial benefits generated from reservation located casinos. Also, an urban location would be more likely to produce a relatively stable annual cash flow for the Tribes. It would also

Table 1

COMPARISON OF THE MARKET STUDIES FOR THE FIRST YEAR OF OPERATION

Revenues:	Arthur Andersen:	Dr. James Murray:
Casino	$70,000,000	
Dog Track	11,367,000	
Food & Beverage	7,000,000	
Total Gross Revenues:	88,367,000	104,100,000
Expenses:		
Casino	20,300,000	
Dog Track	7,131,000	
Food & Beverage	5,600,000	
G&A, Marketing, Sec, Property	17,673,000	
Operating Expenses		60,000,000
Depreciation	3,111,000	
Interest	3,641,000	
Debt Service per Year		13,000,000
Total Expenses:	57,456,000	73,000,000
PROJECTED NET INCOME:	*$30,911,000*	*$31,100,000*

provide each Tribe a source of income which it can use to further Self-Determination and economic independence.

B. PROJECTIONS OF MANAGEMENT AND TRIBAL EXPENSES:

For the first five to seven years the Hudson Venture will be operated by the three Tribal Economic Development Commissions and Galaxy Gaming pursuant to the terms of the Joint Operating Agreement (Tab 7D, page 11, § 3.1). We informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Commission. The National Indian Gaming Commission concurred verbally in our determination. The Tribes have submitted the Joint Operating Agreement and the collateral agreements to NIGC for approval.

Under the Joint Operating Agreement, the "Business Board" will have general oversight and authority over the operation. It will be composed of eight persons: two Galaxy Gaming representatives and two representatives from each of the three Tribes (Tab 7D, page 4, § 2.7). The primary management officials include any person with the authority to hire and fire employees and any person with the authority to set working policy (Tab 7D, page 10, § 2.31). The Business Board will unanimously select four of the primary management officials. They include the Chief Executive Officer, General Manager, Chief Financial Officer and the Human Resource Director Id.

The Chief Executive Officer will be a member of the Business Board. This position will be unanimously selected by the Business Board and will be granted the power and authority to oversee the daily business affairs and operations of the Enterprise (Tab 7D, page 5, § 2.9). The CEO is required to report to the Business Board and under the Joint Operating Agreement, will not be able to undermine the Boards authority. Thus, even though the CEO must be a Galaxy Gaming Representative as long as the Financing Debt remains outstanding, the three Tribes will have substantial control of the operation (Tab 7D, page 16, § 5.1).

Each Tribe will also select their own Tribal Inspector. The three Tribal Inspectors will have full access to all aspects of the Enterprise (Tab 7D, page 20, § 5.6.3).

Under the Joint Operating Agreement, each Tribe is guaranteed a minimum monthly payment of $66,667.67 from the net revenues. Galaxy Gaming will then receive the next $66,667.67 for that month. Anything over $266,667.67 for any particular month will be distributed equally between the three Tribes and Galaxy Gaming (Tab 7D, § 2.26 and § 7.1). Galaxy will be entitled to a 25% share in the net revenues for the first seven years of operation with the Tribes maintaining the authority to "buy-out" all of Galaxy's rights in the agreement after the completion of the

fifth full year of the operation (Tab 7D, page 41, § 24).

The Joint Operating Agreement requires Galaxy to loan[3] the Enterprise the amount necessary to fully pay the Tribe for any yearly shortfall of the guaranteed payments (Tab 7D, page 8, § 2.26). However, the market studies indicate that loans will not be necessary to fulfill this minimum monthly obligation.

1. **Assumed Liabilities and Nonrecourse Liability:**

The Economic Development Commissions (EDCs) of the Tribes have agreed to purchase the St. Croix Meadows real property for $10.00. The assets necessary to run the operation (the building and improvements constructed on the land) will also be transferred to the EDCs subject to certain obligations of the seller. Under the Asset Purchase Agreement, the obligations will be paid as operating expenses and are referred to as the "Nonrecourse Liability" (Tab 7, pages 6 & 7). They include the debt owed to First Union National Bank of Florida (principal of $37,900,000 plus certain accrued interest arrearage which has been or will be capitalized) and the debt owed to the First National Bank of Hudson (Principal in the amount of $1,230,000). Although the agreement provides no limitation on the amount of interest that the Tribes will eventually pay, it does state that "in no event shall the aggregate principal amount of the Nonrecourse Liability exceed $39,200,000" (Tab 7, page 7).

The EDCs have also agreed to take the assets subject to certain "Assumed Liabilities" (Tab 7, pages 7 & 8). They include the following:

(a) Real property lease obligations;
(b) Personal property lease obligations;
(c) Obligations under contracts and licenses;
(d) Deposits held by seller under the real property and personal property leases.

The Tribes have not provided the dollar amount of the obligations these assumed liabilities will total. However, we do note the Tribes have estimated a yearly total expenditure in both market studies which includes these expenses.

Croixland will continue to own and pay taxes only on 6.96 acres of land next to the Hudson proposal (Tab 7B). The remaining land will be transferred to the Land Venture and leased to the Tribe's EDCs (Tab 7E). The EDCs will pay all taxes, assessments, water and sewer rents, rates and charges, charges for public utilities,

---

[3] The interest rate on this loan is equal to the prime commercial lending rate of First Union plus 1% (Tab 7D, page 9, § 2.27).

and maintenance of the Parking Lot Land (Tab 7E, page 7, Article 4).

2. **Joint Venture Agreement of Meadows Parking Lot Joint Venture:**

Croixland and the Tribes have also agreed to form a joint venture partnership (Tab 7F). It will be called the Meadows Parking Lot Joint Venture and is not scheduled to terminate until December 31, 2045 (Tab 7F, page 6, Article 3). The purpose of this agreement is to transfer ownership of the parking lot to the partnership. To accomplish this, Croixland has agreed to sell the parking lot land to the Joint Venture at closing (Tab 7, page 27, § 9.03(g)). The property shall be deemed to be owned by the Venture as an entity and no Venturer will own the parking lot individually (Tab 7F, page 6, Article 2).

Under the Asset Purchase Agreement, Croixland will transfer the parking lot land to the venture for $10.00 and the portion of the First Union Debt equal to the fair market value of the parking lot land (Tab 7, page 11, Article III). The venture will then lease the parking lot to the Tribe's EDCs. Thus, the Meadows Parking Lot Joint Venture will be the landlord and the Tribal EDCs will be the tenants under terms of the Parking Lot Lease (Tab 7E). Rent payable by the EDCs under the Net Lease will initially be "a sum equal to 110 percent of the aggregate of the monthly debt service payable over the initial Lease Year with respect to the portion of the... (First Union Debt) allocable to the Demised Premises" (Tab 7E, page 4, Article 3). The annual base rent after the initial lease year will be determined by multiplying the annual base rent for the preceding year by a fraction (adjustment level divided by the base level) Id. The lease is to terminate in the year 2018 (Tab 7E, page 2).

We have advised the Tribes of the troublesome aspects of this arrangement. Specifically, we informed the Tribes that the ownership arrangement does not appear to be beneficial to the Tribes and seems likely to cause friction in the future. However, it is our determination that this arrangement, by itself, is not a basis to reject the application.

3. **Agreement for Government Services:**

The three Tribes, City of Hudson and the County of St. Croix entered into an *Agreement for Government Services* on April 18, 1994 (Tab 9). Under this agreement, the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other services that are under the control of the City or County or are

customarily provided to other commercial properties within the City or County (Tab 9, page 2).

The Tribes have agreed to initially pay the City and County $1,150,000 for the services Id. The payments will be paid on a semi-annual basis beginning on January 31, 1995. The first payment will be pro-rated from the date the land is actually accepted into trust.

Beginning in 1999, the Tribes will begin paying the City and County an amount equal to the allocable amount for the preceding year ($1,150,000 in 1998 with no adjustments) multiplied by 1.05 (Tab 9, page 3). The following table provides a comparison of the amount the Tribes will initially pay the city and county and the future value of $1,150,000:

ALLOCABLE AMOUNT PROJECTIONS ASSUMING NO ADJUSTMENT

Year:	Actual Amount Owed:	Future Value of 1,150,000:[3] A	B
1999	1,207,500	1,240,850	1,195,425
2000	1,267,875	1,338,877	1,242,644
2001	1,331,269	1,444,649	1,291,729
2002	1,397,832	1,558,776	1,342,752
2003	1,467,724	1,681,919	1,395,791
2004	1,541,110	1,814,791	1,450,925
2005	1,618,166	1,958,159	1,508,236
2006	1,699,074	2,112,854	1,567,811
2007	1,784,028	2,279,769	1,629,740
2008	1,873,229	2,459,871	1,694,115
10 YEAR TOTALS	15,187,807	17,890,515	14,319,168
2025	4,293,477	8,959,357	3,273,099

As the above chart indicates, the yearly 1.05 increase in the payment by the Tribes to the City and County for services is reasonable. The Office of the Field Solicitor, Twin Cities, has also indicated the Government Services Agreement is an agreement in which the Tribes may participate (Volume II, Tab 2, page 3). Thus, we find this agreement acceptable.

The Agreement for Government Services states that "any real estate taxes and assessments and personal property taxes paid with respect to the Non-Trust Property with respect to any calendar year shall be treated as a credit against the payment by the Tribes of the Allocable Amount (as adjusted) for such

[3] Formula Used to determine the future value:
For Column A: Annual Interest Rate is 7.9% for 1 period a year.
For Column B: Annual Interest Rate is 7.9% for 2 periods a year.

calendar year" (Tab 9, page 4). However, this does not apply to taxes paid by Croixland for improvements or special assessments Id. The Tribes will also receive a total reimbursement from Galaxy Gaming and Racing Limited Partnership in the amount of $297,500 in years 1995, 1996 and 1997 (Tab 9, page 18). This amount represents the difference in the Tribes proposal and the City's proposal for payment of government services.

The Agreement for Government Services states that the Tribes will cause Croixland to pay the delinquent and overdue real estate taxes and assessments and personal property taxes due through 1993 (Tab 9, page 4). Thus, all encumbrances on the land will be removed prior to placing the land into trust. However, to verify this, we have requested the Tribes submit title evidence prior to beginning the 25 C.F.R. Part 151 process. The Tribes responded by providing a copy of the Title Insurance Commitment (Tab 10). Also see the Tribe's letter to the Minneapolis Area Office dated October 14, 1994 (Volume II, Tab 4).

4. Ground Lease:

This lease agreement is between Croixland Properties Limited Partnership and the Tribe's EDCs. The Asset Purchase Agreement provides that the land will be leased to the Tribe's EDCs at the same time the conveyance of the Assets' takes place and immediately prior to the conveyance of the land (Tab 7, page 3 § 1.01(a)). The Asset Purchase Agreement then calls for the land and the Croixland's interest in the Ground Lease to be conveyed to the Tribes Id. Thus, the Tribes will become the landlord and the EDC's the tenants under the terms of the Ground Lease.

Initially, we had concern over the language in Article I, Section 1.03(d) of the Ground Lease and Article II, Section 2.01 of Asset Purchase Agreement since it appeared as if these agreements required the United States to become the landlord and a party to the Ground Lease. We informed the Tribes that this type of arrangement is not acceptable. As a result, the Tribes and Croixland amended the requisite sections to make clear that the United States, as trustee for the Tribes, will not be assigned or conveyed the landlord's interest in the Ground Lease or have any obligations or responsibilities under its terms (Tab 7, Amendments). We are satisfied that the Ground Lease is now only between the Tribes (as the assignee of the Seller), as landlord, and the EDCs, as tenant.

The Ground Lease is for 25 years and may be extended by the EDCs for an additional 25 year term (Tab 7C, page 1). All rent is payable directly to the Tribes. The EDCs will be required to pay

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' We note that the land is not defined as an "Asset" in any of the agreements.

rent of $12 a year and all costs expenses and other payments which the EDCs assume or agree to pay. The EDCs will also be required to pay to the Tribes rent from the net revenue pursuant to the terms of the Joint Operating Agreement. The EDCs also agree to pay all real estate taxes, assessments, water and sewer rents, and other governmental charges imposed against the facility, or imposed against any personal property or any Rent or Additional Rent (Tab 7C, page 4, Article 3).

The tenant may construct any building on the land after obtaining approval of the Landlord (Tab 7C, Article 4). The tenant is obligated to provide indemnification for any work on the facility, any use, non-use, possession, occupation, condition, operation, maintenance or management of the facility, any negligence on the part of the Tenant or their agents, contractors, employees, invitee or tenants, and any injury or death to any person or damage to or loss of property occurring in, on or about the facility. Galaxy Gaming is not required to provide any indemnification. The tenant is also required to provide insurance, Galaxy is not required to pay for any of it (Tab 7C, Articles 7 & 8).

5. Activities Loan:

The Joint Operating Agreement is between the Tribe's EDCs and Galaxy Gaming and Racing Limited Partnership. This agreement also provides that Galaxy Gaming will assist the Business Board in securing financing to the EDCs for the funds necessary to renovate and remodel the existing dog track facility and to begin operation. Galaxy guarantees the obtainment of this financing (Tab 7D, page 2, § 1.6).

To fund renovation of the third floor of the existing building, an "Activities Loan" (Tab 7D, page 3, § 2.1) will be made by a third-party lender to the EDCs and Galaxy Gaming and Racing Limited Partnership in an amount of up to $10,000,000 (any amount over $5,000,000 must be approved unanimously by the Business Board). This money will be used for costs, expenses and expenditures set forth in the Renovation Budget, for initial working capital as needed and for payments of expenditures necessary to "protect and keep perfected the Activities Loan."

C. BASIS FOR PROJECTIONS AND COMPARISONS:

The Proposed facility will be located at 2200 Carmichael Road in Hudson, Wisconsin. The site is approximately one mile south of the Carmichael Road/Interstate 94 interchange in a rural area in the southeast corner of Hudson. The existing grandstand building of the greyhound track has three floors with over 160,000 square feet of space. The property includes parking for approximately 4,000 vehicles.

The Las Vegas office of Arthur Andersen & Co., an international "Big 6" accounting firm performed a market demand and feasibility study. Dr. James M. Murray, PhD. performed an analysis of the market for the addition of casino games to the existing greyhound track and an analysis of the economic impact of the proposed Venture on the Tribal Reservations and the communities where the proposed facility would be located. We relied heavily on both studies to reach our recommendations and findings.

Our review of the market studies indicates that there was a substantial amount of time involved in accumulating the data in the studies. We find the sources of data to be reliable. The Arthur Andersen & Co. study contains pro forma financials which were reviewed and found to be acceptable by the Minneapolis Area Branch of Credit (Volume II, Tab 5).

D. PROJECTED TRIBAL EMPLOYMENT:

The Tribes have stated they plan to "actively recruit Native American candidates for positions at all levels." For employees at the Hudson Venture, a hiring preference will be given in the following manner: first, to members of the three Tribes and their spouses and children, second, to other Tribal members and third, to local residents from communities surrounding Hudson (Tab 7D, page 22).

Each of the three Tribes have stated that due to the location of their reservations, they do not anticipate many Tribal members who are currently living on the reservations to move to Hudson for employment in the casino (Tab 1, page 4). Since the Lac Courte Oreilles Reservation is located approximately 117 road miles from Hudson, the Red Cliff Reservation is located approximately 221 road miles away and the Sokaogon Reservation is located approximately 290 road miles away from Hudson, we have no reason to dispute the Band's assessment. The Tribes do anticipate 10 - 20 percent of the 1,600 positions at the Hudson Venture to be filled by Tribal members already living near the Hudson, Wisconsin area (Tab 1, page 5).

The three Tribes expect to receive an average of $10 million annually over the next five years as their share of the profits (Tab 5, S-1). They have identified areas of "high priority"[1] for which this money will be spent at each reservation. We have advised each Tribe that if they are going to provide a per capita payment from their gaming proceed, a Revenue Allocation Plan must be submitted and approved under the December 21, 1992, Guidelines

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[1] Activities Identified as High Priorities by all three Bands: improved health care facilities, educational facilities and grants, housing, economic and community development, programs for the elderly, land purchases and community programs.

to Govern the Review and Approval of Per Capita Distribution Plans and Section 2710 of the Indian Gaming Regulatory Act. Currently, only the Sokaogon Community has indicated that per capita payments will be made. The Sokaogon Community did submit a Revenue Allocation Plan. We returned the plan to the Community and recommended minor changes. We expect to approve the plan when these changes are made.

Each Band anticipates increased employment on the reservations due directly to the spending of their share of the net income generated by the Hudson Venture. In his analysis of the economic impact of the proposed Hudson Gaming Facility on the three Tribes, Dr. Murray estimates the creation of 150 new jobs on each reservation over the next five years (Tab 5, S-1). Although the Tribes may have to recruit non-Indians to fill many of the new positions due to a lack of training, the Tribes anticipate that the majority of these jobs will eventually be held by Tribal members.

E. BASIS FOR PROJECTING THE INCREASE IN TRIBAL EMPLOYMENT:

When we assume the figures provided by Dr. Murphy are accurate, the impact of a total of 450 new jobs on the reservations will have a substantial beneficial impact on tribal unemployment. The following figures provided by the three Tribes bolster this contention (Tab 5):

TRIBE	TOTAL ENROLLMENT:	NUMBER LIVING ON THE RESERVATION:	LABOR FORCE:	UNEMPLOYMENT RATE:
Red Cliff:	3,180	1,651	821	39% (321)
Lac Courte Oreilles:	5,431	1,923	1,362	58% (800)
Sokaogon:	1,528	512	198	42% (83)

Since each Tribe has a high unemployment rate, the jobs created on the reservation will provide incentive to Tribal members to work on the reservation rather than moving to Hudson for employment. Tribal members living off the reservation would also have incentive to move back.

F. PROJECTED BENEFITS FROM TOURISM:

As with any project of this nature, the success of the Tribe's proposed facility will depend on the volume of people/visitors who come to gamble at the Tribe's proposed facility. Based on the Market Analysis prepared by Dr. Murray, the Tribes estimates that 3,184,330 people will visit the facility annually (Tab 4,

page 15). Of that number, 95% are expected to come from the Twin Cities area and are expected to drop $199,399,166; 5% of the visitors will come from outside the Twin Cities Area and are expected to add $5 million to the net profit of the facility Id.

G. PROJECTED TRAINING BENEFITS:

In their cover letter, the three Tribes stated that the Hudson Venture will "provide both jobs and training at the supervisory and managerial levels for our people" (Tab 1, page 5). They plan to implement a cross training internship program to accomplish this goal. The Tribe's representative has stated that the internship program will last one year and will obligate the trainee to stay on an additional year to help train other employees.

Under the Joint Operating Agreement (Tab 7D, § 5.8.2) as positions in the facility become available, preference in recruiting, training, and employment in all job categories of the Enterprise, including management positions, shall be given first to qualified members of the Tribes and their spouses and children; second to qualified members of other Tribes and their spouses and children; third, to residents of the City of Hudson; fourth, to residents of the Township of Troy; fifth, to residents of the County of St. Croix.

E. PROJECTED BENEFITS TO THE TRIBAL COMMUNITIES FROM THE INCREASE IN TRIBAL INCOME:

The Tribes contend that substantial benefits would accrue to their Tribal members and surrounding communities. Specifically, they show the following benefits will result (Tab 1, page 7):

- The creation of approximately 150 new jobs on each reservation.
- The employment will generate an annual average of about $3 million per Tribe in added earnings for these employees.
- A total of over $11 million in additional earnings and 600 additional jobs will be created as a recirculation of the gaming revenue.
- The proceeds will be applied to health, education, scholarship funds, housing, elderly care, early child care, land purchases and other community support services and as per-capita payments. The Tribes expect that a substantial increase in the quality of life will be directly experienced by all members.

Our data indicates that the three Tribes have high rates of unemployment and poverty in spite of having developed local

tribal gaming facilities. This is true in part because they are located farther away from urban markets than other tribes in Wisconsin and Minnesota. The Hudson proposal will help remedy this problem by providing these Tribes with access to a urban market for gaming.

As we have already indicated, the Tribes have relatively small populations and land holdings. Thus, the proposal is expected to have a significant positive impact. However, the positive impact is not expected to be employment in the proposed facility, but from the spending of the income by the Tribes on their respective reservations.

I. PROJECTED BENEFITS TO THE RELATIONSHIP BETWEEN THE TRIBES AND SURROUNDING COMMUNITY:

The Tribes anticipate that between 80 and 90 percent of the 1600 employees will be from the non-Indian surrounding community (Tab 5, Page S-2). The Tribes are also committed to providing funding for the increased infrastructure costs to the City of Hudson (Tab 1, page 12). This indicates the Tribes willingness to cooperate with the surrounding community as well as the local governments. Once the Casino goes into operation and begins generating income for the community, we anticipate an improvement in the relationship between those persons now opposed to the Hudson Venture, casino management, and the three Tribes.

J. POSSIBLE ADVERSE IMPACTS ON THE TRIBES AND PLANS FOR DEALING WITH THOSE IMPACTS:

The Tribes have stated that they do not anticipate any adverse impacts as a result of this proposal.

The Minneapolis Area Office recognizes possible conflict between some members of the local community and the proposed management of the Hudson Venture. In fact, a member of the local Hudson community has formed her own activist group to oppose the Casino. The group has submitted a petition in opposition to the Venture and claims to have collected over 3,000 signatures. Please note, the petition was submitted after the City of Hudson, County of St. Croix and the School District of Hudson, held public hearings, made findings and submitted their own comments on the proposal. Thus, we have only provided cursory review of the petition. We have not determined whether all the people who signed the petition are registered voters in the State of Wisconsin or Minnesota. Since the group has not provided any additional specific substantive reasons as to why the Hudson Venture should not be approved, other than those already addressed, we have informed the local activist group that the petitions should be directed to the Governor of Wisconsin.

Nevertheless, we do not regard the possibility of friction

between some members of the local community and the three Tribes or the management of the proposed Venture, as grounds to reject the proposal.

II. NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

A. CONSULTATION:

To satisfy the consultation required by Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719 (1988), the Bureau of Indian Affairs, Minneapolis Area Office, consulted with State and local government officials and nearby tribes on the impacts of the gaming operation to the surrounding community (Volume III). The Bureau's consultation process consisted of letters to local government officials, including the applicant Tribe, seeking responses to several suggested areas of discussion for an analysis of the "best interest of the tribe and its members" and "not detrimental to the surrounding community" determination Id.

1. Consultation with the Governor of the State of Wisconsin:

There has been no consultation with the Governor of Wisconsin by the Minneapolis Area Office or the Great Lakes Agency since it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings.

2. Consultation with the City of Hudson:

(a) Mayor: The Mayor of the City of Hudson, Thomas H. Redner, responded to our request for input by providing detailed material addressing possible impacts on the environmental, social structure, infrastructure, land use patterns, income and employment, the possible need for additional services and compulsive gamblers programs. The Mayor stated in his cover letter, that "the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size" (Volume III, Tab 1).

(b) Common Council: The Common Council of the City of Hudson adopted a resolution with a stated purpose of protecting the "city's interest in the event the transfer takes place." The Council only sought to protect the City's financial interest and did not take a position on the proposal (Volume III, Tab 1, page 12).

(c) School District: The School District of Hudson provided considerable correspondence on the proposal (Volume III, Tab 4). Their primary concern was insuring that the tax revenue that would be lost after the land was placed into trust be replaced. To accomplish this, the School District passed a resolution to protect their financial interests (Volume III, Tab 4). However, the resolution did not approve or disapprove the purpose of the proposal. An agreement between the City, County and Tribes was

eventually finalized (Volume I, Tab 9). It provides for a distribution formula for services to be paid by the Tribes. The School District approved the distribution formula in an intergovernmental agreement with the County on April 12, 1994. The particular financial aspects of the agreement are discussed in Part I of this report. The School District then wrote to the Governor of the State of Wisconsin calling for in-depth investigations regarding the impact on education (Volume III, Tab 4, page 7). They expressed their desire for additional funding, earlier growth escalators and the possible need for a reversionary clause in the deed. This indicates weak support for the current proposal.

3. **Consultation with the County of St. Croix:**

The County Board Office of St. Croix County, Wisconsin also provided correspondence on the proposal (Volume III, Tab 2). On March 13, 1994, prior to the signing of the "Agreement for Government Services", they wrote to the Governor to advise him that significant back real estate taxes are owed on St. Croix Meadows (Volume III, Tab 2, page 8). The Board requested that the Governor not approve any agreement in relation to the proposal until the county has received payment of all real estate taxes, penalties, and interest due and unpaid on the St. Croix Meadows dog track property. They also noted strong public opposition to the proposal. However, after the signing of the agreement, the Board showed their support of the proposal by criticizing the Hudson School District in their call for in-depth investigations by the Governor (Volume III, Tab 2, page 10). No mention was made of the public opposition. This indicates that the Board fully supports the proposal.

The St. Croix County Board Office also prepared an "Impact Assessment" of the proposed gaming establishment (Volume III, Tab 2, page 1). It focused on the impact of the proposal to the County as a whole, including the City specifically. The assessment was prepared by the County Planning Department Staff and reviewed by the Chairman, Richard Peterson. Although each of the seven subject matters were addressed, Mr. Peterson stated in the cover letter that the County could not conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. We note that this assessment was completed prior to the signing of the *Agreement for Government Services*.

4. **Consultation with the Town of Troy:**

The Town of Troy provided their response to our consultation letter on March 14, 1994 (Volume III, Tab 3). The town had several areas of concern dealing with, increased traffic, lowered standard of living, limited housing, and the possible additional cost services.

The town's concern over increased traffic is addressed in the Finding of No Significant Impact. The concern over a lower standard of living as an argument against the proposal is without merit since the Tribes have indicated that the proposed gaming facility will require many supervisory and managerial positions as well as training programs. Additionally, Dr. James M. Murray estimates that 85 percent of the employment and payroll in the expanded operation will accrue to Wisconsin residents and that 90 percent of the spending at the proposed gaming facility will originate from outside the state of Wisconsin (Volume I, Tab 5, page 12). The concern of limited housing does have merit. However, we find that any growth to the community as a result of gaming facility would not have a detrimental affect on Hudson. The towns concern over additional cost of services has been addressed in the Agreement for Government Services.

5. **General Public Response:**

(a) Public Opposition: Approximately 76 letters[4], written by people in the Hudson community, were sent to the Department of the Interior expressing opposition to the proposal. Their arguments against approval of this proposal are based primarily on social concerns, i.e. concern over increased crime; concern over the impact of gaming on the children in the area; concern over the projected increased traffic; concern over a possible increased cost to the city; possible increased cost to the social programs that problem gamblers would cause; concern over organized crime; and general concern over the diminishment of the aesthetical values to the city. The people against this proposal also cited the referendum of April 1993, to show that a majority of people were against the expansion of gambling in Wisconsin. Many stated that the market is already saturated and that the dog track was a failure so the Casino will be too. As a result, it is only serving as a "bailout" for the current owners of the St. Croix Meadows. Many people stated that Hudson is fine economically without the casino and does not need the low paying jobs that would be created. A few people were morally opposed to the idea of gambling.

Approximately 3,100 people signed a petition expressing opposition to the proposal. We have not verified the legitimacy of the signatures. Nor have we determined how may people who signed the petition are registered voters in Hudson. It is our determination that these petitions should be directed to the Governor of the State of Wisconsin.

A thorough report was sent in by one member of the Hudson community to provide evidence to form a basis to reject the application. However, each of the issues raised in the report

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[4] These letters are attached.

have been addressed by the Tribe's application, in the Finding of No Significant Impact, by the local governments of Hudson, or in other areas of our findings. Many of the arguments advanced by people opposed to the proposal are also political in nature and raise policy issues for the Department of the Interior. It is our determination that none of these issues form a basis to reject the proposal.

(b) Public Support: One letter, written by Wisconsin State Legislature, Doni Burns, was sent expressing support for the proposal. He stated that the majority of people in Hudson were in support of this proposal. To support his position he referred to a referendum passed in 1992 in regard to the possibility of a casino at St. Croix Meadows.

The referendum voted on in 1992 asked the following question:[7]

> *Do you support the Transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?*

Results: 1,351 people voted "yes", (51.2%);
1,288 voted "no" (48.8%)

The survey results were provided by the City of Hudson and referred to in a number of the responses by people in favor as well as people opposed to the casino.

This referendum differs from the April 1993 statewide referendum in that it is site specific. The 1993 statewide referendum (Volume II, Tab 8) which has been cited by people opposed to the proposal, asked:

> *"Do you favor a constitutional amendment that would restrict gambling casinos in this state?"*

St. Croix County results: 6,328 voted "yes" (65.4%)
3,352 voted "no" (34.6%)

While the Hudson Proposal may be an expansion of a type of gaming in Hudson, it will not be an expansion of a gaming facility. Additionally, since the Tribes have agreed to a limited number of Class III facilities with the State of Wisconsin, it will also not be an expansion of gaming in Wisconsin. It may also be argued (indeed, the Tribes have done so) that this is not an expansion of gaming even in Hudson since the building is already

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[7] The question and results where obtained from the City of Hudson (Volume III, Tab 1, page 11).

in place and the dog track is currently in operation. At any rate, it is our determination that the 1993 referendum, standing alone, does not preclude the Secretary of the Interior from making a determination the Hudson proposal would not be detrimental to the surrounding community.

Approximately 800 people signed a petition supporting the Hudson proposal. They did not provide any supporting reasons. No evidence has been provided to show that these signatures are not legitimate. However, we have not verified the residency of these supporters or determined whether or not they are registered voters in the State of Wisconsin or elsewhere.

6. **Consultation with Neighboring Tribes:**

18 Tribes in the State of Minnesota and Wisconsin were informed of the proposal (Volume III, Tabs 5 - 16). We requested that these Tribes provide input on the impact the proposal would have on their respective reservations by letter, all dated December 30, 1993. Nine of the eleven responses that we received were emphatically against the proposed Hudson project. However, none of the Tribes that responded provided reliable or scientific data to support their views. The following are the Tribes and Tribal Organizations that responded as a result of our inquires and a summation of their comments and our response:

(a) St. Croix Band of Chippewa Indians of Wisconsin: St. Croix is strongly opposed to the project (Volume III, Tab 12). They stated, "the proposed Hudson fee to trust acquisition will have an extreme detrimental and crippling impact on the St. Croix Casino located in Turtle Lake, Wisconsin." They supported this position by providing a detailed response to the seven questions and an *Impact Statement*. This material focused heavily on the probable loss of revenue at the Tribe's Turtle Lake Casino. The St. Croix Tribe stated that the Hudson proposal would cut into the revenue generated at their Turtle Lake Casino because the Hudson proposal is larger, in a better location and has a better highway system. St. Croix also stated that the gaming market is already saturated and as a result, they would have to increase marketing expenditures just to survive and would lose current qualified employees to the Hudson project. The Tribe did not provide any data to support their position.

St. Croix provided a casino density illustration to show that "the market is becoming saturated". However, they did not provide any financial studies to back up this or any other claim dealing with a loss of income.

We question St. Croix's opposition to this project since initially, they were the first Tribe to consider purchasing the St. Croix Meadows Dog Track for gaming purposes. We also find that their economic position is overstated since they have two

casinos currently in operation and may also be working to purchase the Lake Geneva Dog Track to add a casino.

(b) Wisconsin Winnebago Nation: The Wisconsin Winnebago Business Committee responded by stating that they do not want this proposal to even be considered until the State of Wisconsin has fulfilled its commitment under the Tribal/State Compact to agree to a fourth Class III gaming site for the Wisconsin Winnebago Nation (Volume III, Tab 13).

We find that the conflict over the Gaming Compact between the Wisconsin Winnebago Nation and the State of Wisconsin provides no legal basis to reject the Hudson's proposal.

(c) Leech Lake Band of Chippewa Indians: The Leech Lake Tribal Council passed a resolution against the proposal (Volume III, Tab 6). They stated that numerous problems will arise for the State and the gaming Tribes in Minnesota if gaming is expanded to off-reservation locations. According to the Tribe, the problems would not only be a monetary loss to the surrounding Tribes but also political in nature due to the unfair use of the "special trust and tax status" of the Tribes. However, they did not elaborate as to what the political ramifications would be. Nor did the Leech Lake Band provide any justification for limiting the expansion of gaming to "off-reservation" locations.

(d) Shakopee Mdewakanton Sioux Community: The Shakopee Mdewakanton Sioux Community's Business Council passed a resolution stating their opposition to the proposed Hudson Venture (Volume III, Tab 11, page 3). Their objections were based on loss of income for the surrounding gaming Tribes and the political ramifications. Specifically, the Business Council stated the proposed casino would have a "detrimental political impact in Minnesota since Minnesota Tribes have agreed by formal tribal/state compacts to not expand Tribal gaming off-reservation..."

The Community also argued that the proposed area is actually Mdewakanton Sioux territory Id. As a result, they feel that approval of an off-reservation gaming facility in Hudson should be reserved for the Mdewakanton Sioux Tribe. We have found no legal basis for this argument. Our Fee to Trust review under 25 C.F.R. Part 151 will identify any interest this Tribe may hold in the land at Hudson.

The Chairman and CEO of the Little Six, Inc., also responded on behalf of the Mdewakanton Dakota Community (Volume III, Tab ii, pages 8 - 11) . He stated that the Community "vehemently opposes" the proposal for the following reasons:

1) This is only an off-reservation gaming experiment which could have devastating impacts on the negotiation process

among the National Indian Gaming Association, Congress, State Governors, and Attorneys General.

2) This proposal could damage the national efforts to protect gaming and could have severe political ramifications in Minnesota. They did not elaborate or provide any scientific information to support this claim.

3) The proposal could cause the State of Minnesota to open up gaming around the State thereby diminishing the beneficial economic impact of Indian Gaming. The Tribe has not provided any legal justification to show why gaming should not be expanded by Wisconsin Tribes in Wisconsin.

4) The market is at or very near the saturation point and cannot absorb another casino in the Twin Cities area without having a negative impact on jobs. A market study has not been provided by the Shakopee Mdewakanton.

5) The proposal could damage the current cooperative government to government relationship between the State of Minnesota and the Tribes. The Tribe has yet to explain how this will happen.

(e) Prairie Island Dakota Community: The Prairie Island Dakota Community passed a resolution voicing their opposition to the proposal (Volume III, Tab 10). They stated that the Hudson Casino would "saturate the already extremely competitive Minneapolis-St. Paul market area." In addition, the Tribe contends that they would not be able to compete due to the advantages the Hudson site offers. Specifically, the Tribe stated that they would suffer a severe loss of revenue (they estimate a 30%-50% reduction in customers) due to the following reasons: the proximity of Hudson to the metro area, the proximity of the proposed casino to an interstate highway and because the dog track is already an existing "first-class facility".

(f) Lower Sioux Community: The Lower Sioux Community did not pass a resolution opposing the proposal. However, the Chairman did write a letter indicating his opposition (Volume III, Tab 7). He stated that the Lower Sioux Community would be severely and unfairly damaged economically. He also indicated that the Community would be damaged politically since all of the Minnesota Tribes have not sought to locate a gaming establishment away from the reservations and to do so would cause a region-wide and probably a nation-wide race by other Tribes to do the same. No data was provided to validate his arguments.

(g) Minnesota Chippewa Tribe: The Minnesota Chippewa Tribe passed a resolution opposing the Hudson Project (Volume III, Tab 14). They stated this proposal could set a dangerous precedent by creating an open market for expansion by other Tribes.

(h) Mille Lacs Band of Chippewa Indians: Although the Mille Lacs Band did not pass a resolution to declare their opposition to the proposal, the Chief Executive did write a letter stating the Tribe's opposition and referred to letters written by the Minnesota Indian Gaming Association (Volume III, Tab 8). She also asserted that the Indian Gaming Regulatory Act was designed to act as a reservation based economic development tool and that the Hudson proposal is inconsistent with that intent. She said that reservation based gaming has allowed Mille Lacs to take a 45% unemployment rate to "effectively zero". She feels this number would increase should the proposal go through. No studies or data was provided to support these claims.

(i) Minnesota Indian Gaming Association: The Minnesota Indian Gaming Association passed a resolution and wrote a number of letters expressing their opposition to the Hudson Proposal (Volume III, Tab 15). They stated that since Minnesota Tribes oppose off-reservation gaming activity and have promised not to expand tribal gaming off-reservation, the Hudson proposal is an infringement upon their own inherent sovereign rights. In addition, the following reasons were given for their opposition:

1) Other gaming Tribes would suffer economically due to the Hudson proposal's close proximity to the metro area. In particular, the more remote casinos would be hurt.

2) The St. Croix area has historically been considered to be Dakota land. Findings: This issue will be addressed in the actual transferring of the land into trust pursuant to 25 C.F.R. Part 151. The objections identified in the Preliminary Title Opinion, if any, will have to be satisfied before the land may be transferred.

3) An off-reservation expansion of this magnitude would create huge political problems for Minnesota Tribes. The Minnesota Indian Gaming Association stated that State Legislators have been under political pressure from private businesses who want to expand gaming by placing video games in bars among other things. They also stated that they have fought hard to keep this from happening and the this proposal would jeopardize what they have fought to maintain.

MIGA also argues that the National Governors Association and other adversaries have been stating that tribes would expand gaming off-reservation into major cities in direct competition with non-Indian businesses. MIGA does not want them to be proven right.

(j) Lac du Flambeau Band of Lake Superior Chippewa Indians: The Lac du Flambeau Band stated that they do not oppose the Hudson project (Volume III, Tab 1). They also stated that their experience in gaming indicates that there would be a beneficial

impact.

(k) Oneida Tribe of Indians of Wisconsin: The Oneida Tribe stated that since they are located 250 miles away from Hudson, Wisconsin, they are not in a position to offer detailed comments or analysis on the impacts of the proposal (Volume III, Tab 9). They did state that they do not perceive that there would be any serious detrimental impacts on their reservation or gaming operations.

B. IMPACT ON NEARBY TRIBES:

1. Economic:

None of the Tribes who have written to our office to protest this proposal has provided us with any figures to back up their claim that the Hudson Venture would be "devastating economically" to the other casinos in the area. As a result, we must rely heavily on the study prepared by Arthur Andersen and Dr. Murphy to estimate the impact on the other Tribes economically.

Arthur Anderson's study estimates current market revenue for the six existing casinos in the Minneapolis/St. Paul area to be $510 million with a total estimated market revenue between $550 and $630 million* (Volume I, Tab 3, page 21).

Since the Hudson Venture's share of the market is estimated to be $80 Million, AA has found that even though the existing casinos would suffer some economic loss, the "proposed Hudson casino should not significantly impact aggregate revenues of the existing casinos" Id. We have particular concern over the economic impact of those casinos located within 55 road miles from Hudson. They include the Mystic Lake Casino, Turtle Lake Casino and Treasure Island Casino. Each of the Tribes operating these casinos have voiced strong opposition to the Hudson Proposal based on economic reasons. However, none of these Tribes have provided our office with any hard figures to back up their claims.

On August 12, 1994, we requested the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes provide an analysis which focuses on the particular economic impact of the proposed casino on the

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* The market was estimated by Arthur Andersen & Co. using the following figures:

Population within 100 miles.... 3,800,000
MULTIPLIED BY: Estimated per capita gaming revenue.... $145 - $165

We also note that the Hole in the Wall Casino in Danbury, Wisconsin, was not included in figuring the total estimated market revenue.

Mystic Lake, Turtle Lake and Treasure Island Casinos. The Tribes did not respond in writing. Their representative, Bill Cadotte, did state that there is no legal basis to reject the proposal based on what the potential political ramifications "might" be. We concur. Specifically, we find that additional market studies cannot be completed by the three Tribes without financial data supplied by the three casinos in question.

2. **Political:**

A number of Tribes and commentators have indicated that expansion of off-reservation gaming erodes their political power and will eventually undermine their ability to limit States from expanding gaming. However, it can be argued that each new gaming operation, whether or not on land placed into trust prior to October 17, 1988, erodes Tribal political power to protect the gaming industry. We find that the Tribal Sovereignty of the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes is far more important than limiting the expansion of Tribal Gaming. In fact, each Tribe currently operating gaming facilities went into the industry knowing that expansion into major metropolitan areas was a possibility and maybe even likely. We find that it is up to each individual Tribe to operate within the limits of the Indian Gaming Regulatory Act, their Class III Gaming Compacts and their existing governing documents. The Minneapolis Area Office will not restrict Lac Courte Oreilles's, Red Cliff's, Sokaogon's or any other Tribe from operating within these limits and find that any negative political ramifications from this proposal would be minimal.

C. EVIDENCE OF ENVIRONMENTAL IMPACTS AND PLANS FOR REDUCING ANY ADVERSE IMPACTS:

The Lac Courte Oreilles and Red Cliff Bands Lake Superior Chippewa Indians and the Sokaogon Chippewa Community propose to purchase, and place into federal trust 55.82 acres of land. The proposed trust site consists of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building, for the purpose of operating a Class III gaming facility in addition to the existing pari-mutuel dog track operation. The main parking lot west of the grandstand building is not intended for trust acquisition.

The existing grandstand would be remodeled to accommodate gaming activities, however, most support facilities (kitchen, washrooms, office space, etc.) would be maintained.

1. **Environmental Considerations:**

An "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" was prepared by

Mid-State Associates, Inc., in accordance with the requirements of the Wisconsin Racing Board Application for License (Volume IV, Tab 4). An addendum to the Environmental Assessment was prepared by Bischof & Vasseur for the proposed trust acquisition (Volume IV, Tab 3). Based on the findings of the EA and the Addendum, the Superintendent, Great Lakes Agency, found that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary. The *Finding of No Significant Impact* was issued on September 14, 1994 (Volume IV, Tab 1).

A Level I Hazardous Waste Survey has not yet been completed. However, we do note that a Phase I Environmental Property Assessment has been prepared by Braun Intertec for the Tribes. It indicates that there are no documented or observable environmental concerns associated with asbestos containing building materials or underground storage tanks. It also states that there is no documented evidence indicating any past or current land-use activities that have had an adverse environmental impact on the site. We also note that prior to the United States taking the land into trust, a Level I Hazardous Waste Survey must be completed and approved at the Area Office. We will satisfy this requirement under the 25 C.F.R. Part 151 process.

2. **Natural and Cultural Resources:**

The addendum to the Environmental Assessment states that the proposed facility will have no new significant short-term, long-term, or cumulative impacts on the regional geology, including bedrock and soils, ground water/water quality, or climate (Volume IV, Tab 3).

The Addendum also states that the facility is not expected to impact any natural areas such as native trees or wildlife habitat. Additionally, there are no anticipated impacts from the planned action on wetlands or other surface waters in the area. According to the National Wetlands Inventory Map for the site, there are no designated wetland areas located on the site. No rare plant or animal species or other significant natural feature will be adversely impacted.

(a) Land Resources: The topography of St. Croix County ranges from gently rolling to hilly and rough (Volume IV, Tab 4, pages 3 & 4). All of the county has been covered by continental glaciation. The St. Croix River has also had a major impact on the topography of the area. The St. Croix River is bounded by 100' - 200' bluffs along its eastern shore. The Hudson Casino Venture would be located on the plateau above these river bluffs.

The site where the proposed facility would be located and the

immediate area surrounding the site is "mostly gently rolling with an average elevation of 840 feet" Id.

The site surrounding the facility is a combination of many soils. Pillot silt loam is the most common Id. The slope of this soil is 0 to 3 percent so runoff is slow and there is slight hazard of erosion. Most of the remaining soil at the site is Burkhardt-Sattre complex of differing slopes. Since most areas of the Burkhardt-Sattre complex are cultivated, there is no identified erosion or soil blowing problem.

Since the planned action will utilize the existing racetrack facilities, there will be no significant impact on prime or unique farmlands in the Farmland Protection Policy Act (Volume IV, Tab 3, page 3).

(b) Water Resources: The Hudson area has an abundance of groundwater. All potable water used in St. Croix County is groundwater. The supply of water is presently determined by the ability to pump it out of the ground. The source of the groundwater is precipitation (Volume IV, Tab 4, page 3).

The Hudson area surface waters occupy two major drainage systems. The St. Croix River drains the western two-thirds of St. Croix County. The balance of the county is mostly drained by the Chippewa River which flows into the Mississippi River Id.

The St. Croix River is located approximately 4800 feet to the west of the proposed facility. There are no other existing surface water bodies in the EA study area Id.

(c) Air Quality: Both the City of Hudson and St. Croix County have stated that the projected traffic increase will not cause the air quality to exceed applicable standards (Volume III, Tab 1, page 1 and Volume III, Tab 2, page 2). Air monitoring stations are currently in place at the track exit and the southeast corner of the Carmichael Interchange to detect any change in the air quality which could be harmful to the area Id.

(d) Threatened and Endangered Species: St. Croix County is listed as a habitat for the following three endangered or threatened species (Volume IV, Tab 4, page 4):

(1) Peregrine Falcon - Potential breeding habitat; Endangered.
(2) Bald Eagle - Breeding and wintering habitat; Threatened.
(3) Higgins' Eye Pearly Mussel - River habitat; Endangered.

According to the EA, site visits in 1988 to the area around the proposed facility did not detect any of these species Id. The development site may serve as a habitat for the Peregrine Falcon and Bald Eagle. However, none have yet been located. Additionally, there is no habitat for the Higgins' Eye Pearly

Mussel at the site. At any rate, the natural area consisting of vegetation or wildlife habitat will not be impacted by the internal construction or additional traffic flow Id.

(e) Cultural Resources: No specific cultural resources or structures are known to exist on the site.

The State Historical Society of Wisconsin has stated that there are no buildings in the study area that are listed in the National Register of Historic places (Volume IV, Tab 2, page 2).

The Mississippi Valley Archaeology Center, Inc., stated that there are no known archeological sites in the proposed project area (Volume IV, Tab 2, page 3).

D. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY:

Concern over an increase in crime has been expressed by most of those people who wrote to oppose the Hudson Venture. However, none of the letters contained any scientific or statistical evidence to back up this claim. The City of Hudson has stated that similar predictions were made in regard to the St. Croix Meadows dog track before it went into operation in 1990. The City stated, to date, "none of the earlier negative predictions concerning increased crime, etc., have come true..." (Volume III, Tab 1, page 2). To prevent any crime escalation in the City of Hudson, and to help offset any fear among the community, the City has stated that they will hire an additional Investigator Crime Prevention Office in the year the Casino is opened (Volume III, Tab 1, page 4). The City also expects the Police Department to expand the police force by five officers and one clerical employee within the next five years Id. Additionally, the Tribes have stated that they are committed to paying for the reasonable costs of these services (Volume I, Tab 1, page 12).

The City stated that the residents of the community have come to accept the dog track's existence and that there is no overwhelming majority of citizens either in favor of or opposed to the casino (Volume III, Tab 1, page 2). Nevertheless, the city is prepared to handle any negative reaction by the community over the casino.

E. IMPACT ON THE INFRASTRUCTURE:

1. Utilities:

The current facility is supplied by existing public water, sanitary sewer, electric, and telephone utilities. No additional infrastructure is scheduled to be constructed as part of the proposed action.

2. **Zoning:**

According to the City of Hudson, most of the proposed trust site is zoned general commercial district (B-2) for the principal structure and ancillary track, kennel and parking facilities (Volume III, Tab 1, page 4). Six acres of the proposed trust site are currently zoned single family residence Id. The east, south and westerly perimeters are classified as on-family residential districts (R-1) and serve as a buffer area between the track operation and other surrounding land uses Id.

3. **Water:**

The City of Hudson stated that the water trunk mains and storage facilities are adequate for providing water service to the proposed casino and "ancillary development south of I-94" (Volume III, Tab 1, page 3).

4. **Sewer and Storm Drainage:**

According to the Impact Assessment of the Proposed Casino on St. Croix County which was prepared by the County, St. Croix County anticipates an increase in waste generation from the proposed casino (Volume III, Tab 2, page 1). Currently, the St. Croix Meadows generates .5 pounds per person Id. This equals approximately 104 tons of waste per year. Based on the anticipated average daily attendance of 7,000 people, the proposed casino would result in a production of 639 tons of waste per year, an increase of 535 tons. The County has stated that the waste-to-energy facility that services St. Croix County has adequate capacity to handle the increase Id. To verify the figures, the County compared their estimates to the St. Croix Bingo and Casino gaming facility in Turtle Lake, Wisconsin. That facility averages .53 pounds per person or 677 tons per years.

An existing storm water collection system collects storm water runoff and directs it towards a retention pond located near the southwest corner of the parking area. From there, collected storm water is allowed to evaporate, percolate into site sils, or slowly flow along a regional storm water control system towards the St. Croix River (Volume IV, Tab 4, pages 7 & 8). According to Hudson officials, the existing storm water control system is adequate to handle storm water runoff from the site (Volume III, Tab 1, page 3).

5. **Lighting:**

The County has stated that although the City of Hudson has jurisdiction to control and monitor the lighting, the County has a responsibility to surrounding neighbors in other jurisdictions (Volume III, Tab 2, page 2). As a result, the County expressed that any changes made to the current lighting system take into

consideration the larger community which may be affected. They did not express any dissatisfaction with the current system.

The City of Hudson stated that this concern was addressed at the time St. Croix Meadows was constructed. Specifically, a lighting system is already in place which reduces the light spillage at the property lines "to an amount equivalent to residential streets" (Volume III, Tab 1, pages 1 & 2). The City also acknowledged that the lights may be on for extended periods of time because the casino operation is likely to be open until 2:00 a.m. or 24 hours per day Id.

6. Roads:

(a) Access: The City of Hudson stated that the current street system is sufficient enough to accommodate projected traffic needs based on 40,000 average daily trips (Volume III, Tab 1, page 4). However, development on Carmichael Road north of the proposed casino may be necessary. Specifically, traffic regulatory signals will likely be needed at the interchange of Carmichael Road and Hanley Road.

St. Croix County expressed particular concern with increases in traffic on USH 12, CTH UU, CTH A, and Carmichael Road (Volume III, Tab 2, pages 2 & 3). The County stated that even minimal traffic increases will have a negative impact on these roadways since they are already at capacity. However, information gathered from the Wisconsin Department of Transportation indicates that any negative impact from additional traffic will be minimal (Volume IV, Tab 3, pages 38 & 39).

(b) Traffic Impact Analysis: A traffic study was completed and is contained in the 1988 Environmental Assessment for the St. Croix Meadows dog track (Volume IV, Tab 2, page 18). It is based on traffic projections in the year 2011. Peak traffic estimates were provided to the Wisconsin Department of Transportation regarding the proposed Hudson Casino Venture. No significant problems were identified regarding the proposed traffic increase on the Interstate 94/Carmichael Road Interchange.

The *Finding of No Significant Impact* (Volume IV, Tab 1) also indicates that although no transportation system is likely to be developed in Hudson that would assure there will be no slow-down or delays during peak traffic periods, various methods would be utilized to manage delays should they occur. These methods include varying dog track racing times so as not to coincide with peak casino attendance times, elimination of parking fees and gates for easy parking lot entry, use of shuttle buses and remote parking areas, possible adjustment of time delays on traffic lights during peak attendance times, and installation of traffic lights.

F. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY:

The City has stated that approximately 25 acres of the site is developed. The six acres that are zoned as single family residence have limited development potential; 18.5 acres are located in an area of the bluff east of the track and are generally not suited for development, although there may be some potential; 5.5 acres are suitable for development (Volume III, Tab 1, page 4).

The City of Hudson has stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses Id.

G. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY:

Total employment at the proposed facility is expected to be between 1,500 and 1,600 positions. Current employment figures at St. Croix meadows is approximately 175 full-time positions and 225 part-time positions (Volume III, Tab 2, page 4). All existing employees would be offered re-employment at their current wage rates. Thus, between 1,100 and 1,200 new positions are expected to be generated Id.

Even though the three Tribes will give hiring preference to their own tribal members, 80-90% of the new positions are expected to be filled by non-Tribal members already living in the Hudson area Id. Wage rates for these jobs are estimated at between $5 and $10 per hour, not including salaried positions Id.

According to statistics provided by the St. Croix County, the service industry accounts for 20 percent of the County's 1993 total labor force of 28,300 people. Since the casino is expected to pull some employment from existing service jobs within the county, County officials estimate that approximately 175 service positions will be filled by currently unemployed County residents either through direct employment at the casino or by other service jobs Id.

The remaining 900-1025 positions are expected to be filled by people from the nearby Wisconsin counties.

According the Economic Impact Report by Dr. James Murray, over 90 percent of the spending at the proposed Hudson Gaming Facility is expected to originate from outside the state (Volume I, Tab 5, page S-2). Dr. Murray estimates the total impact of the gaming facility would be to support 2,691 jobs and generate over $56 million in annual earnings for residents of Wisconsin (Volume I, Tab 5, page 12).

H. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO:

Additional services will be needed in the City of Hudson, County of St. Croix and at the site of the Hudson Project. To assure that all necessary services are provided, the three Tribes, County of St. Croix and the City of Hudson have entered into an *Agreement for Government Services* (Volume I, Tab 9). In the agreement, the Tribes, through their EDC's, will pay the City and County for general government services, including, but not limited to, the following services: police, fire, water, sewer, ambulance, rescue, emergency medical and education. These services will be provided in the same manner and at the same level of the services provided to residents of the City and County and other commercial entities located in the city and county. The agreement will continue for as long as the land is held in trust or until Class III gaming is no longer operated on the land.

I. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING:

Currently, there is not a compulsive gamblers program within St. Croix County. The County has indicated that if the Hudson Project goes into operation, their Human Services Department would initiate staff training and would develop treatment programs, including initial on-site screening of potential problem gamblers, treatment and aftercare services (Volume III, Tab 2, page 5).

There are six State-Funded Compulsive Gambling Treatment Centers in Minnesota (Volume II, Tab 7, page 38). Two are in Minneapolis. The other four are located in St. Cloud, Bemidji, Granite Falls and Duluth. According to the Minnesota Council on Compulsive Gambling, since 1984, limited funds have been appropriated by the Minnesota Legislature for training, research, gamblers' hot-line services, rehabilitation and public awareness programs (Volume II, Tab 6, page 2). Unfortunately, Minnesota Planning has also found that current levels of treatment in Minnesota are inadequate and that some treatment facilities already have waiting lists while others are near capacity (Volume II, Tab 7, page 37).

Since there are no Wisconsin state-funded treatment facilities near Hudson, the three Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. Additionally, the Tribes have stated they will contribute money to local self help programs for compulsive gamblers (Volume I, Tab 1, page 12).

III. RECOMMENDATIONS

Based upon the discussion and conclusions provided above, we recommend that the Secretary of the Interior find that the proposed action will be in the best interest of the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes and that it will not have a detrimental effect on the surrounding community. We also recommend that the decision be made to take this particular parcel into trust for the three Tribes for gaming purpose.

I attest that I have reviewed this transaction and the case file is documented in compliance with all of the above stated regulations and facts. I further state that I will not accept the property in trust until I have received satisfactory title evidence in accordance with 25 C.F.R. Part 151.12.

ATTEST:

Area Director

11-13-94
Date

EOP 064540

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Indian Gaming-Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles BAnd, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

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[1] References are to the application documents submitted by the Minneapolis Area Office.

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EXHIBIT
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Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

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The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

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Hudson Dog Track Application

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

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County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, -"Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

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Hudson Dog Track Application

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1¼% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

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The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin
In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes
On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

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Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million) Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are <u>not</u> equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is <u>influence</u>, not dominance or exclusion. The Murray research indicates that casino patrons <u>on average</u> patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

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Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers
The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime
Hudson Police Dept. Crime & Arrests. (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

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3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level
The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns
One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values
An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase
Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

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2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities
St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning
According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water
The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage
The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads
The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

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The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

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Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

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St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

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Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 – a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any fax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

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are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

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Indian Gaming Management
MS-2070

To: Assistant Secretary - Indian Affairs

Through: Deputy Commissioner of Indian Affaris

From: George T. Skibine
Director, Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles Band, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all

[1] References are to the application documents submitted by the Minneapolis Area Office.

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EXHIBIT
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of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables. Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period was extended to April 30, 1995, by the Office of the Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of

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other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)
2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)

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15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in stating that "it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

No consultation with other State officials was solicited by the MAO. Shiela E. Harsdorf, State Representative, and twenty-eight other Representatives and State Senators sent a letter to the Secretary, dated March 28, 1995, expressing "strong opposition to the expansion of off-reservation casino-style gambling in the State of Wisconsin." The letter addresses four areas of detrimental impact.

First, the signatories cite the removal of land from the local property tax rolls. In the Findings of Fact, the MAO cites the Agreement for Government Services as evidence that the detrimental impact of placing land in trust has been mitigated. The applicant Tribes assert that the track will close, if it is not purchased by Indians, and all revenue to the local governments will cease, a potential detrimental effect of not acquiring the land in trust.

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Second, the representatives assert that "expansion of gambling is contrary to public will in Wisconsin." Elections in 1993 are cited in support. However, the 1993 referenda were primarily technical in nature, to bring the State constitution into conformance with the State-operated lottery. The representatives' letter states, "This advisory referendum showed strong support for limiting gambling to . . . dog tracks, state lottery games and existing tribal casinos." Public policy in Wisconsin embraces a State lottery and several types of Class III gaming.

Third, the letter says that off-reservation gambling may not foster economic development within the tribal nations. "People will be unwilling to travel long distances to casinos and bingo halls located in less-populous regions," says the letter. While the competitive impact of another casino is expected to affect existing Indian gaming operations, the three applicant Tribes are among those tribes in less-populous regions, who cannot draw significant customers from the market area of tribes with more urban locations. They seek to promote economic development by improving their business location.

Last, Representative Harsdorf states, "Many municipalities feel that the expansions have created tense racial atmospheres and that crime rates have increased. It is also unclear whether all tribes have benefitted from the IGRA." The Agreement for Government Services specifically addresses the impact of crime, and its mitigation. No information on racism or the disparate impact of IGRA is supplied. It is not clear that racism is impacted either by approval or disapproval of the application.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994

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Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

The Supervisors of the Town of Troy passed a resolution on December 12, 1994 in response to the Finding Of No Significant Impact (FONSI). The resolution restated the town's "vigorous objection to casino gambling at the St. Croix Meadows Facility," and reasserted "that casino gambling at the St. Croix Greyhound Racing Facility will be detrimental to the surrounding community." No evidence of detrimental impact was included in the resolution. The resolution was not submitted to the Department Interior in the application package, but was an attachment to a letter to the Secretary from William H.H. Cranmer, February 28, 1995. Neither the Town of Troy or Dr. Cranmer appealed the FONSI.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

Several thousand cards, letters, and petition signatures have been received in support of an Indian casino at the Hudson dog track.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that

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the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

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Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1½% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all business-

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es, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota

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casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin

In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes

On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market

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of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million). Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

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It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to reorder its spending plans.

Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers

The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were

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received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime

Hudson Police Dept. Crime & Arrests, (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell 3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level

The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns

One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

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IV. Property Values

An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase

Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500, and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters' estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than

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currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities

St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning

According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water

The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage

The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

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V. Roads

The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94. The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

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3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

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Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

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There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in

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reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any fax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto*

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giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

DRAFT

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Hudson Dog Track Application

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Rose M. Gurnoe, Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Bayfield, Wisconsin 54814

Gaiashkibos, Tribal Chairperson
Lac Courte Oreilles Band of
Lake Superior Chippewa Indians
Route 2, Box 2700
Hayward, Wisconsin 54843

Arlyn Ackley, Sr., Tribal Chairman
Sokaegon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520

Dear Ms. Gurnoe and Messrs. Gaiashkibos and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaegon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes.

For the following reasons, the Secretary has determined not to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. 465, to acquire title to this 55-acre parcel of land in trust for the Tribes.

Land not held in trust or restricted status may only be acquired for an Indian tribe in trust status when such acquisition is authorized by an act of Congress. Authority to acquire the parcel in question is found in Section 5 of the IRA, which, in pertinent part, provides as follows:

> The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations,

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> including trust or otherwise restricted allotments, whether the allottee be living of deceased, for the purpose of providing land to Indians.
>
> . . . . . .
>
> Title to any lands or rights acquired pursuant to [this section] shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

The statute states that the decision to acquire land is one within the Secretary's discretion. 25 CFR Section 151.10 sets forth factors to be considered when the Secretary is acting on a request for acquisition of land in trust status, although the regulation does not purport to constrain the Secretary's discretion to consider other factors, nor to assign different weight to each factor.

One of the factors listed is the purpose for which the land will be used. The purpose of the acquisition is to enhance class III gaming at the facility with the introduction of slot machines and blackjack along with the pari-mutuel dog racing currently being conducted on the site by the owners of St. Croix Meadows Greyhound Park, Croixland Properties. For the following reasons, We are not prepared to take this off-reservation parcel into trust for gaming purposes at this time.

The parcel of land is located off-reservation, in Hudson, Wisconsin. The record before us indicates that the surrounding communities have strongly objected to this proposed trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to the proposed trust acquisition for gaming purposes. The communities' objections are based on a variety of factors, including the following: 1) Increased law enforcement expenses due to potential exponential growth in crime and traffic congestion; 2) testing waste water treatment facilities up to remaining operating capacity; 3) problems with solid waste; 4) adverse effect on the communities' future residential, industrial and commercial development plans; and 5) difficulties for current Hudson businesses to find and retain employees.

The record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin and the Shakopee Mdewakanton Sioux Community, as well as by a substantial number of other Indian tribes both in Wisconsin and in the neighboring State of Minnesota. Their opposition is centered on the potential harmful effect of this acquisition on their gaming establishments.

In addition, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District, and the U.S.

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Representative in whose district St. Croix Meadows Greyhound Track is located have expressed strong opposition to the proposed acquisition.

Finally, we have received numerous complaints from individuals because of the proximity of the proposed class III gaming establishment to the St. Croix National Scenic Riverway, and the potential harmful impact of a casino located one-half mile from the Riverway.

For these reasons, the Secretary has determined not to exercise his discretionary authority to acquire this off-reservation parcel of land in trust for the Tribes for gaming purposes.

As you know, Section 20 of the Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. In this particular case, because we have determined not to exercise our discretionary authority to acquire this parcel of land pursuant to Section 5 of the IRA and regulations in 25 CFR Part 151, we need not undertake the two-part determination of Section 20 of IGRA, an additional requirement imposed on the Secretary before gaming can occur on Indian lands acquired after the date of enactment of IGRA. This decision is final for the Department.

Sincerely,

Ada E. Deer
Assistant Secretary - Indian Affairs

[OR, IF FOR DEPUTY COMMISSIONER'S SIGNATURE, INCLUDE FOLLOWING STATEMENT, AND DELETE LAST SENTENCE ABOVE]:

This decision may be appealed to the Interior Board of Indian Appeals. 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board must certify that you have sent copies to these parties. If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal. If

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you file a notice of appeal, the Board of Indian Appeals will notify you of further appeal procedures.

If no appeal is timely filed, this decision will become final for the Department at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,

Deputy Commissioner for Indian Affairs

cc: Area Director, Minneapolis Area Office
Chairman, National Indian Gaming Commission

[The deposition of Thomas Corcoran follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: THOMAS CORCORAN

WEDNESDAY, DECEMBER 10, 1997

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 10:08 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Robert J. Dold, Jr., Investigative Counsel; James C. Wilson, Senior Investigative Counsel; Elliott Berke, Counsel; and Michael J. Yeager, Minority Counsel.

For MR. CORCORAN:

THOMAS CORCORAN, ESQ.
O'Connor & Hannan, L.L.P.
Suite 800
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-3483

Mr. DOLD. Good morning, Mr. Corcoran. On behalf of the members of the Committee on Government Reform and Oversight, I appreciate and thank you for appearing here today.

The person transcribing this deposition is a House reporter and a notary public and I will now request that the House reporter place you under oath.

THEREUPON, THOMAS CORCORAN, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. DOLD. I would like to note for the record those who are present at the beginning of this deposition. I am Bob Dold, the designated Majority counsel for the committee; I am accompanied today by Jim Wilson, also with the Majority staff, and Elliot Berke, who is also with the Majority. Michael Yeager is the designated Minority counsel for the committee. And Mr. Corcoran is accompanied today by Mr. Robert Adler.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath your testimony here today has the same force and effect as if you were testifying before Congress or a court of law.

If I ask you about conversations you have had in the past and you are unable to recall the exact words used in the conversation, you may state that you are unable to recall the exact words and then give me the gist or substance of any such conversation, to the best of your recollection. If you recall only part of a conversation or only part of an event, please give me your best recollection of those events or parts of conversations that you recall.

If I ask you whether you have any information on a particular subject, and you have overheard other persons conversing with each other regarding it, or have seen correspondence or documentation regarding it, please tell me that you do have such information and indicate the source, either a conversation or document or otherwise from which you derive such knowledge.

Majority and Minority counsels will ask you questions regarding the subject matter in the investigation. Minority counsel will ask questions after the Majority has finished. After Minority counsel has completed questioning, a new round of questioning may begin.

Members of Congress who wish to question will be afforded an immediate opportunity. And although I do not anticipate them coming up here today, if they do, they will be offered an immediate opportunity to ask questions. At the conclusion of their questioning, counsel will pick up where they have left off.

Pursuant to committee rules, you are allowed to have an attorney present to advise you of your rights. Any objection raised during the course of the deposition shall be stated for the record. If a witness is instructed not to answer a question or otherwise refuses to answer a question, Majority and Minority counsel will confer to determine whether the objection is proper. If the Majority and Minority counsels

agree a question is proper, the witness will be asked to answer the question. If an objection is not withdrawn, the Chairman or a Member designated by the Chairman may decide whether the objection is proper.

This deposition is considered as taken in executive session of the committee, which means it may not be made public without the consent of the committee. You are asked to abide by the Rules of the House and not to discuss with anyone other than your attorney this deposition and the issues and questions raised during this proceeding.

Finally, no later than five days after your testimony is transcribed and you have been notified that a transcript is available, you may submit any suggested changes to the Chairman. The transcript will be available for your review at the committee office and the committee staff can make any typographical or clerical changes that you request.

Any substantive changes, modifications or clarifications or amendments to the deposition transcript submitted by you must be accompanied by a letter requesting the changes and the statement for the reasons for each proposed change. A letter requesting such changes must be signed by you. Any substantive changes shall be included as an appendix to the transcript conditioned upon your signing of the transcript.

Do you understand everything we have gone over thus far?

The WITNESS. Yes, I do.

Mr. DOLD. Just a few ground rules. Have you been deposed before?

The WITNESS. No.

Mr. DOLD. If you don't understand a question, please say so and I will repeat it or rephrase it so that you will understand the question.

The reporter will be taking down everything we say and will make a written record of the deposition. You must give verbal, audible answers because the reporter cannot report a nod of the head or determine what a gesture means. Do you understand that?

The WITNESS. Yes, I do.

Mr. DOLD. If you can't hear me, please say so and I will repeat the question or have the court reporter read the question back to you.

Please wait until I finish each question before answering and I will do the same for you. This will help make a clear record, because the court reporter cannot take down what we are both saying at the same time.

Your testimony is being taken under oath as if we were in court, and if you answer a question, it will be assumed that you understood the question and your answer is intended to be responsive to it. Do you understand that?

The WITNESS. Yes, I do.

Mr. DOLD. I see that you are here voluntarily and not as a result of a subpoena; is that correct?

The WITNESS. That's correct.

Mr. DOLD. Do you have any questions before we begin the substantive portions?

The WITNESS. No questions.

Mr. ADLER. No.

Mr. DOLD. Mr. Yeager.

Mr. YEAGER. Just a brief comment. I have objected before and I will object again to this deposition and all depositions related to the Hudson casino matter. By Hudson casino matter, I'm referring to the decision by the Department of the Interior to deny the application by three Indian tribes to place land in trust for development of a casino in Hudson, Wisconsin.

This matter has been investigated thoroughly by the Senate Governmental Affairs Committee. The Justice Department is currently investigating it. I understand that the Resources Committee of the House has commenced an additional investigation, and these depositions seem to the Minority to be entirely duplicative and unnecessary.

As I have stated before, we don't take the position that the committee lacks the power to pursue the inquiry. We think that it is an imprudent and oppressive use of that power.

So I would like to thank Mr. Corcoran, former member of this institution, for coming in voluntarily, and that's all.

Mr. DOLD. Before I really get into the substantive questioning, Mr. Yeager had made reference to the Hudson Dog Track as a fee-to-trust application. Throughout the deposition I, too, will be making reference to the Hudson Dog Track, and what I mean is the fee-to-trust transfer of land in Hudson, Wisconsin.

The WITNESS. I understand.

Mr. YEAGER. Understand.

EXAMINATION BY MR. DOLD:

Question. Would you spell your name?

Answer. Spelled C-O-R-C-O-R-A-N.

Question. And can you give us a brief educational background?

Answer. I was educated in local schools in Illinois, graduated from Notre Dame University, attended graduate school at the University of Illinois, University of Chicago, and the Northwestern University.

Question. Can you give us a brief employment history after you graduated from school?

Answer. I got started in politics and government while at the University of Chicago, because in 1962 I was on the campaign staff of the late Illinois Senator Everett Dirksen. After service in the Army as an artillery officer, I began working for the Illinois State Senate on the staff. Subsequently, I came to Washington as the staff director for the State of Illinois Washington office. I then joined the Chicago and Northwestern Railroad as an officer.

I was elected to Congress in 1966 and served four successive terms. After retirement from the United States House of Representatives, I worked as a consultant and a corporate director. I became associated with O'Connor & Hannan in late 1991, worked as a consultant for the law firm, and effective January 1, 1994, I was elected as a general partner. And that's my current status.

Question. Have you discussed this deposition with anyone other than counsel?

Answer. Only my attorney.

Question. Have you given documents regarding the Hudson Dog Track to the Department of Justice and, more specifically, their campaign task force?

Answer. No, I have not.

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. No.

Question. Mr. Corcoran, when were you first aware that there was a possibility that the Hudson Dog Track might be used for gaming purposes by three Indian tribes?

Answer. My first awareness of this project occurred in the early part of 1995, and in early February, I think it was February the 7th of 1995, we entered into a contract with the St. Croix Tribe of Wisconsin on this matter.

Question. When you say you entered into a contract with the St. Croix Tribe, was that something that somebody brought to your attention as a member of the firm?

Answer. Yes. It was, as I recall, Larry Kitto who first talked with me about the possibility of O'Connor & Hannan representing the St. Croix Tribe, and possibly other tribes. But as it turned out on this particular issue, the Hudson Dog Track matter, we only represented one client and that was the St. Croix Tribe.

Question. So Mr. Kitto was the one that first brought this up to your attention?

Answer. That is correct.

Question. And who else was involved in the lobbying effort with you on the Hudson Dog Track?

Mr. ADLER. You mean after the engagement started?

EXAMINATION BY MR. DOLD:

Question. After Mr. Kitto first came to you.

Mr. ADLER. And let me get a further clarification. Obviously, this is a matter of public record, but there were lots of various people involved in this. Are you talking about O'Connor & Hannan people involved?

EXAMINATION BY MR. DOLD:

Question. Specifically talking about O'Connor & Hannan people, Mr. Corcoran, who you would be working with in the lobbying effort. Your supposed lobbying team, if you will.

Answer. The lobbying team at O'Connor & Hannan, this particular matter, consisted of myself, Pat O'Connor, Larry Kitto, Pat O'Donnell and Tom Schneider. Also, at one point, Michael Callapy was brought into the issue for advice that was given to me. I don't think that there was anybody else in our firm that was involved.

Question. With regard to O'Connor & Hannan, you have Mr. Pat O'Connor, Larry Kitto, Pat O'Donnell, Tom Schneider, yourself and Mike Callapy.

Answer. Michael.

Question. Michael.

Answer. And he would insist on Michael. He did not lobby, is what I was attempting to suggest. I asked him a question and he—but he—and I don't know if he ever

charged time on it or not. I don't recall that he did. But within our firm, those were the only people that were ever involved in this particular matter.

Question. Was there a designated area that each was involved in; specific duties that one would take as opposed to another?

Answer. Well, first of all, my role in this particular matter was to run the file, manage the file and provide overall coordination for our lobbying effort.

With respect to individual assignments, they developed pretty much as we learned the nature of the issue and the problem that was confronting our client. But I would say that with respect to your question, the person who had the responsibility of approaching and trying to enlist the assistance of the White House was Pat O'Connor. The person who had the responsibility of working with the Democrats in Congress was Larry Kitto, and on a specific assignment and only one assignment Pat O'Donnell was asked by me to assist in arranging a meeting with Senator McCain.

Question. We will get into this a little more specifically, but a quick follow-up. When you say Pat O'Connor was involved in dealing with the White House, why did you feel it was necessary to get the White House involved on a matter that the Department of Interior would have decision-making power over?

Answer. I felt that the White House had already become involved in the issue of Indian gaming and the responsibilities that the Department of Interior had in that respect.

The St. Croix tribe was not the first involvement that I had with the tribes and Indian gaming. Early in the Clinton administration, when Bruce Babbitt first became Secretary of Interior, he spent some time in Indian country with meetings and speeches and indicated, to the delight of the tribes, that he had a pretty expansive view of the Indian Gaming Regulatory Act and agreed with them and with us that the intent of the Congress, when in 1988 the Indian Gaming Regulatory Act became law, was that it would be used as a tool for economic development. Sort of a code word, economic development. And tribes love that characterization of it.

Soon after he had made several contacts with Indian country, and it doesn't take too long to do that in this country——

Question. Sure.

Answer [continuing]. The White House learned from a number of Governors, who of course had been, in a sense, colleagues of our President at that time while he was Governor, talked to him about this, and as a matter of policy it appeared to me that there was a change in the approach that Secretary Babbitt was going to take to the implementation of the Indian Gaming Regulatory Act.

Secondly, and finally, he provided some organization, basically reorganization, within the Office of the Secretary so that on Indian gaming issues, because of their policy nature, because of the controversies that arise, and because of the potential intrusive involvement that they can have at the State level and local level, that a decision had been made, it appeared to me, that there would be within the Office of the Secretary a review of all applications coming from the Bureau of Indian Affairs dealing with Indian gaming.

Question. And when you say the White House was looking into, when it had an active role in Indian gaming or IGRA, was there a hope that the White House would contact Secretary Babbitt on this particular issue of the Hudson Dog Track?

Answer. I don't think that there was any plan on our part to involve the President himself in this matter; but I think, given the policy position that the administration had taken already, that with respect to what is a very unusual matter—and that is the fee-to-trust off-reservation transfer of land for gaming purposes, which to my knowledge only once in the history of the United States has ever been approved—that on something of that nature, with those policy implications, that given the history of this administration, that they would want to be aware of what was happening. And, as we know, it was moving pretty rapidly through the Department of the Interior to headquarters.

Mr. YEAGER. Just to clarify, if I could, your understanding was that the White House was interested in giving policy guidance to the Department of the Interior because Governors—affected Governors—had expressed concern about the Secretary of the Interior's previously stated position about Indian gaming; development of Indian gaming facilities?

The WITNESS. Yes, that's correct. That's what prompted it, in my opinion.

Mr. YEAGER. And by that you don't mean to say—and correct me if I'm wrong—that the White House was involved in individual decisions?

The WITNESS. No, I don't think the White House, at the beginning, was involved in individual decisions, nor did we want them to become involved in this particular individual decision.

Mr. YEAGER. Thank you.

EXAMINATION BY MR. DOLD:

Question. When you say that only once in the history of IGRA did this fee-to-trust for gaming purposes off-reservation come, I guess it's come to fruition at this point in time, do you know of other times when it went through the Department of the Interior and was approved by the Department of the Interior? It happened more than once at that point in time; correct?

Answer. No. I think there may be one or two examples of that wherein the Governor vetoed it, or in the end—but the point I was attempting to make was that this is a very unusual proceeding and only once had such a proposal been approved to the point where a casino went into operation, and that is the project in Milwaukee, Wisconsin.

And it was brought forcefully to my attention by our client, because in that particular case, that very unique case, our client supported the proposal, as did all the other affected nearby tribes. And in this particular case, despite their efforts with the Bureau of Indian Affairs at the local and area level, they had been unsuccessful in getting a denial of the application.

Question. Do you know if the St. Croix tribe made any political contributions in the 1996 election cycle?

Answer. Not to my knowledge.

Mr. YEAGER. You're talking about at the time he was actively involved in the case?

Mr. DOLD. Whether he knows at any time if the St. Croix had made political contributions during the 1996 election cycle.

The WITNESS. Not to my knowledge.

Mr. YEAGER. Sitting here today what does he know, or did he know it at the time?

Mr. DOLD. Sitting here today, any time, if he knows of any contributions.

The WITNESS. No, I do not.

Mr. DOLD. I'm showing Mr. Corcoran what has been marked as TC–1, which are some calendar entries from Patrick O'Connor.

[Corcoran Deposition Exhibit No. TC–1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

EXAMINATION BY MR. DOLD:

Question. And I would like to just take a little time and run through some of these and perhaps you can make sense of them for us.

On February 2nd, this first sheet on the calendar, up here on the right side, it says, Secretary has to sign off, meet with Secretary. Then underneath, it says, Tom Foley.

Do you know if Patrick O'Connor—did he ever tell you that he was meeting actually with—is this Secretary Babbitt, to your knowledge?

Mr. ADLER. You will have to ask Mr. O'Connor. You can ask if he knows.

EXAMINATION BY MR. DOLD:

Question. Did Mr. O'Connor tell you he was actually meeting with Secretary Babbitt?

Answer. No, he never told me that. And to my knowledge he did not meet with Secretary Babbitt.

Question. At the bottom it says, St. Croix Indian tribe, New Life, Corcoran, discussion Corcoran.

Answer. I think that says new file.

Question. New file. Okay, good. New file, Corcoran. Discussed Corcoran regarding forthcoming meeting with Duffy of Interior regarding creating trust lands at Hudson, Wisconsin, dog track for a casino and need to contact Tom Collier.

Is this in reference to what we discussed before about Patrick O'Connor coming to you and having you set up a file for the Hudson—or do you have any idea why he would have put this on his calendar?

Mr. ADLER. It wasn't O'Connor who came to him.

The WITNESS. It was Kitto.

EXAMINATION BY MR. DOLD:

Question. I apologize.

Answer. At that time we were having discussions, Kitto had brought it to my attention about the possibility of being retained by the St. Croix tribe, and my view

of Mr. O'Connor's note here is that he and I talked about that possibility on this particular day.

Mr. ADLER. I don't want you speculating, Tom. If you remember what, or if this refreshes your recollection, but it will not help the record to start interpreting what Mr. O'Connor may have said. If you had a discussion that refreshes your recollection——

The WITNESS. I do not recall a discussion with Mr. O'Connor on February 2nd.

EXAMINATION BY MR. DOLD:

Question. On the next page, February 6, on the right side it says, "Discussion with Tom Corcoran regarding clients meeting on February 8th with Duffy in Oberstar's office; call to Tom Collier's office." That's another notation.

But can you tell us what Mr. O'Connor might have talked to you about regarding a client meeting on February 8th with Mr. Duffy?

Mr. YEAGER. First, do you recall having a conversation with Mr. O'Connor on that date?

The WITNESS. I don't recall having a conversation with Mr. O'Connor on that particular date. The February 8 meeting, I would assume, refers to the meeting that had previously been organized by Larry Kitto in Congressman Oberstar's office.

EXAMINATION BY MR. DOLD:

Question. Were you briefed on what took place in Congressman Oberstar's office?

Answer. With respect to the meeting with the Minnesota delegation, or many members of the congressional delegation from Minnesota, I was told that Secretary Babbitt had been invited. He did not attend but he was represented by John Duffy, his counselor, and by George Skibine, who was the head of the management gaming office.

Question. And do you recall anything else that came out of that meeting that they reported to you?

Answer. In follow-up discussions after the meeting, Larry Kitto told me that the representatives of the Secretary were, in his opinion, not very sympathetic to the position of our client. I also talked with Lewis Taylor, who is the chairman of the St. Croix tribe, our client, and he was very disappointed in the reaction of Mr. Duffy and Mr. Skibine insofar as his position in opposition to the conversion was concerned.

Question. Throughout the calendar on the next couple of pages it refers to St. Croix tribe, report to Corcoran.

How often would Mr. O'Connor report to you on matters he was handling with the St. Croix tribe?

Answer. When Mr. O'Connor and I are working together on a project I hear from him quite often.

Question. Moving along, on February 13th it says, "Discussion with Tom Corcoran regarding the need for"—is that a position paper for the Interior? Why it should not support a casino at Hudson Dog Track?

Answer. You're on February?

Question. February 13th. The page before. I think we have two pages on February 13.

Mr. ADLER. What's the question?

EXAMINATION BY MR. DOLD:

Question. Regarding the position paper. Do you recall having a discussion regarding the need for a position paper to get to Interior?

Answer. I don't recall that specific conversation with Pat O'Connor, but I do recall that we, at about that time, talked about a position paper.

Question. And did, indeed, you actually get a position paper sent over to Interior?

Answer. There was never a position paper developed on this issue, to my knowledge.

Question. Just noting on April 6th, and perhaps we might have already discussed this, but it says, "Discussion with Tom Corcoran regarding need to call White House on Hudson Dog Track."

Would this have been for a specific purpose on or around April 6th that might have come up or would this be a general decision to get in touch with the White House?

Answer. Again, I don't recall that specific discussion on April the 6th, and I don't think that there would have been any specific request that Mr. O'Connor would be making of the White House. It just would have been in the general nature of trying to get consideration for a full record over at Interior.

Mr. ADLER. If you would, when you go through these, you are taking about Mr. O'Connor's diary and first of all assuming that whatever he wrote down involved Mr. Corcoran. If you would ask him whether that——

Mr. DOLD. I certainly apologize, and I mean to preface it, and if I forget to, please stop me. If you don't have a reference or have any memory of a meeting or having him talk to you about that, please let me know. I don't mean to assume because it is written down in someone else's calendar that it indeed happened.

EXAMINATION BY MR. DOLD:

Question. On April 10th, Mr. O'Connor has written down, call to Loretta Avent at White House, report to Tom Corcoran.

Do you recall if Mr. O'Connor ever reported that he was in touch with Loretta Avent at the White House or made that phone call to her?

Answer. I don't recall that specific conversation, but I am aware that, and was aware at that time, that Pat O'Connor was attempting to communicate with Loretta Avent in her capacity as the White House liaison to Native Americans.

Question. Do you know if Mr. O'Connor contacted anyone else at the White House, that you are aware of?

Answer. As I recall, in roughly that period of time, I don't know when it occurred, Mr. O'Connor mentioned this client that we had and indicated that it was a dog track conversion matter to the President of the United States while the President was visiting in the State of Minnesota. And the President, I understand, asked Bruce Lindsey to talk with O'Connor about it.

Question. Did Mr. O'Connor give you any other details about that meeting with the President?

Answer. No, nothing beyond that. The President handed it off to Bruce Lindsey.

Question. Do you know if Mr. Lindsey ever did contact Mr. O'Connor or if they ever got together?

Answer. They talked at that particular time, and I have learned subsequently that there was another person in the meeting, a staff person to the President.

Question. Do you recall who that was?

Answer. It's a woman whose name is, is it Carol Morris or something?

Question. Linda Moore?

Answer. Linda Moore. Linda Moore. I learned that because my attorney asked me to look at the depositions during the last few days of these cases, the two cases out in Wisconsin, and that's how I learned about that.

Whether or not there was any follow-up with Bruce Lindsey and Pat O'Connor, I do not know. I do know that the next person in the White House that Mr. O'Connor approached was Harold Ickes.

Question. And do you know what happened with Harold Ickes or what Mr. O'Connor did when he contacted or approached Harold Ickes?

Mr. ADLER. Those are two questions. Do you want to try one?

EXAMINATION BY MR. DOLD:

Question. Well, let's start with, do you know if indeed he contacted Harold Ickes? You said he approached him or tried to.

Answer. It's my recollection that following the discussion with Bruce Lindsey, Harold Ickes attempted to call——

Mr. YEAGER. Is it your recollection or do you—I don't mean to interrupt you, but is this your recollection or are you putting these facts together from press accounts?

Mr. ADLER. What did you know at the time?

The WITNESS. At the time, I knew from a report by Pat O'Connor that Harold Ickes had followed up on the discussion with Bruce Lindsey. I also knew at the time that they never did talk, and I think it was a case of just not making a connection. And as a result Pat O'Connor sent a letter to Harold Ickes.

EXAMINATION BY MR. DOLD:

Question. On April 25th, in Mr. O'Connor's calendar, I know we've skipped over some stuff, because we've already covered it, but Mr. O'Connor has down, talked to Mr. Mercer, on the right side of the portion at the top. Talked to Mercer, White House rep. And then down at the bottom—well, let me leave it at that. Talked with Mercer, White House rep.

Did Mr. O'Connor ever communicate to you that he was in contact with David Mercer at the DNC or—I'm sorry, do you know who Mr. Mercer is? Let me just step back.

Answer. Yes, I know who Mr. Mercer is.

Question. Did Mr. O'Connor ever tell you that he was in contact with Mr. Mercer?

Answer. Yes, he has told me. He told me that during that period of time.

Question. Do you know what Mr. O'Connor was trying to accomplish in talking with I believe it's David Mercer?

Answer. No, I do not.

Question. At the bottom of the page it says, St. Croix tribe meeting in St. Paul with Larry Kitto, and then I can't make out the next word, discussing meeting on Friday with Don Fowler of DNC. The next says, take communication with Laura Hartigan of the Presidential Committee to Re-elect.

Recognizing this is Pat O'Connor's calendar and not yours, did Mr. O'Connor ever let you know that they were going to have a meeting with Chairman Fowler on the Hudson Dog Track matter?

Answer. Yes, I was informed by Mr. O'Connor that he had set up a meeting with Don Fowler.

Question. Do you know why there was an effort—I know we discussed earlier that Mr. O'Connor was in charge of the White House aspect of it, Mr. Kitto was dealing more with the congressional delegations, do you know why Mr. O'Connor would have gotten in touch with Don Fowler of the DNC on this matter?

Mr. ADLER. Do you know? Did O'Connor or anyone else tell him the purpose of setting up this meeting or trying to set up the meeting with Mr. Fowler?

Mr. DOLD. Right.

EXAMINATION BY MR. DOLD:

Question. I'm looking to know if somebody told you, because this is obviously not your handwriting or your calendar, if someone told you why they were meeting with Don Fowler of the DNC?

Answer. Mr. O'Connor told me that he was attempting to set up a meeting with Don Fowler and that the purpose would be to indicate to Mr. Fowler that our client was not getting a very good hearing at the Department of Interior.

Question. Do you know who attended that meeting at the Democratic National Committee?

Answer. I'm not certain who attended it. I did not attend it, but I believe O'Connor and Kitto were there, the chairman of our tribe that we represented, Lewis Taylor was there, and there were other tribal leaders.

Question. Were they from Wisconsin?

Answer. Wisconsin and Minnesota.

Question. Again at the bottom here it says, communication with Laura Hartigan of Presidential Committee to Re-elect.

Did Mr. O'Connor or anyone at O'Connor & Hannan, part of the lobbying team on this issue, tell you or talk to you about communicating with the Clinton—I assume this is the Clinton/Gore re-election committee; is that correct?

Answer. I do not know, but I think it's a fair assumption.

Question. Do you have any knowledge that Mr. O'Connor talked with Laura Hartigan or anyone over at the Clinton/Gore campaign?

Answer. I have no knowledge that he spoke with anybody at the Committee to Re-elect on this matter.

Question. Do you know if Mr. O'Connor or Mr. Kitto ever got in touch with a Terry McAuliffe?

Answer. I know that from time to time Pat O'Connor would mention Terry McAuliffe, but whether or not he ever discussed the Hudson Dog Track with Terry McAuliffe, I do not know.

Question. If I can turn your attention here to May the 5th of Mr. O'Connor's calendar. It's Hudson Dog Track, Loretta Avent, the President, Bruce Lindsey, Harold Ickes, Don Fowler, Interior. Then it's got, Indians, 50 DNC, Larry Kitto, Committee to Re-elect.

A third notation says, Committee to Re-elect briefing, May 9th. I don't know what that word is. And then it says, May 18th, $5,000. And then a notation, 50, dash, committee before primaries, no events, dash, $1,000.

Do you know if there was a plan to donate money to either the Committee to Re-elect, as noted here, which I assume is the Clinton/Gore '96, or to the Democratic National Committee?

Mr. YEAGER. Presumably, you mean, in exchange for some sort of favorable decision?

Mr. DOLD. No.

Mr. ADLER. Do you mean——

Mr. DOLD. If he knows of a plan to donate money to the DNC or to the Committee to Re-elect.

Mr. ADLER. But involving the Hudson Dog Track matter?

Mr. DOLD. Involving players of the Hudson Dog Track matter. I think it would be very difficult for me to say this would be for the Hudson Dog Track matter or donating money. It says, Indians, 50 DNC, Larry Kitto. Whether that would be Indians donating money, I'm not ready to take the leap right now that it's a quid pro quo.

Mr. YEAGER. I certainly would hope not.

Mr. ADLER. A slightly different question. My question is, is your question to Mr. Corcoran really whether or not, as part of the lobbying effort, there was a campaign contribution aspect to that lobbying effort? Is that your question?

Mr. DOLD. I guess my basic question is, did anyone discuss donating money involving Indians to the Democratic National Committee or to the Clinton/Gore '96 campaign?

Mr. YEAGER. I'm not sure what you mean by involving Indians.

EXAMINATION BY MR. DOLD:

Question. Did Larry Kitto or Patrick O'Connor discuss donating money in this time frame to either the Democratic National Committee or to the Committee to Reelect, meaning Clinton/Gore '96?

Answer. Never with me.

Question. Did you ever become aware of any such discussions about donating money to the DNC or to the Clinton/Gore '96 subsequent to the May 5th——

Answer. Only within the last few days when, at the direction of my attorney, I read the depositions involving the cases in Wisconsin.

Question. And if I may, what did you learn from the depositions that would have indicated donations of money to the DNC or the Clinton/Gore '96?

Answer. What I saw was entries like this for Pat O'Connor on May the 5th.

Question. If I may, I'm going to jump back just a little bit, and I apologize. We had talked before about Pat O'Connor's contact with President Clinton on this issue. Do you know of any other contact by anybody on the lobbying team with the President on the Hudson matter?

Answer. The only other contact that I know of with respect to anybody from O'Connor & Hannan with the President was a casual contact, not really a lobbying contact, that Tom Schneider told me about, as I recall a day or so after it happened.

Mr. Schneider is a good friend of the President. He was attending a reception, I believe at the White House, and they were just chatting. And in the course of that chat the President indicated that Pat O'Connor had mentioned this dog track to him. They both had a pretty good laugh about the fact that the President of the United States had been informed about a dog track in Wisconsin, and I must say that Tom and I had a pretty good laugh about it as well.

Question. Do you recall about what time this was in the calendar of events?

Answer. I think it was in May of 1995. I don't know exactly when it happened.

Question. On May 8th, Mr. O'Connor writes down here, discussions with Tom Corcoran and editing letter to Harold Ickes. Did you have anything to do with any of the correspondence that were sent to Mr. Ickes or anyone at the White House?

Answer. With respect to the letter that Pat O'Connor sent to Harold Ickes on May the 8th of 1995, I had been informed by Pat O'Connor that because he was unable to reach Mr. Ickes by telephone that he was going to send a letter to Mr. Ickes. He subsequently sent me a draft of that letter and he asked me to assist in reviewing it to make sure that the facts were correct, and he also asked me to facilitate its delivery to Mr. Ickes because Pat O'Connor at that time was in Minneapolis. And so I assisted him in both respects.

Question. How did you—did you put it in the mail? How did it get over to Mr. Ickes? Did you fax it over, if you recall?

Answer. My recollection is that we sent it by messenger, and we faxed it as well.

Mr. ADLER. I think you also signed O'Connor's name to it?

The WITNESS. Yes. He was in, as I said, Minneapolis and he asked me to put his signature on it.

Mr. DOLD. I am showing Mr. Corcoran what has been marked as TC–2, and we will get back to TC–1 in a minute but this is, I believe, a copy of the May 8th letter to Mr. Ickes, O'Connor Hannan stationery.

[Corcoran Deposition Exhibit No. TC–2 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. The signature down there says, Patrick O'Connor. And I believe you said Mr. O'Connor, at his request, asked you to do that?

Answer. Right.

Question. I know he also asked you to facilitate getting it over to Mr. Ickes. The front cover of this is a fax cover sheet to Don Fowler, slash, David Mercer from yourself, and with a note saying that Mr. O'Connor had asked you to fax it to them.

Do you know why it was important that Mr. Fowler and Mr. Mercer get a copy of this letter?

Answer. No, I do not know.

Question. And just for reference, the letter here, the May 8th letter, this is the letter that was sent to you and you reviewed and sent on?

Answer. That's correct.

Question. If I may just make reference to what would be page 2 of the letter, really number 4 is the one I want to address right now, number 4 says, "All of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore campaign committee."

Do you know why that would have been important in the Hudson Dog Track matter?

Answer. Pat O'Connor told me that with respect to item 4, that he wanted to get the further attention of the chairman of the Democratic Party, that the opponents, not only our client but other tribes, were, in Pat's words, good Democrats.

Question. Was there a hope—was there a communicated belief or hope by Mr. O'Connor to you that Mr. Fowler and Mr. Mercer would, in getting their attention, would take action on the Hudson Dog Track by making contact with people either in the White House or in the Department of Interior?

Answer. Could you repeat that question?

Question. I will try. Was there a hope on behalf of Mr. O'Connor——

Mr. YEAGER. I am concerned about the use of the word "hope." If you could phrase it in terms of communications.

Mr. ADLER. Did he tell you.

EXAMINATION BY MR. DOLD:

Question. Did Mr. O'Connor ever communicate to you his hope or his belief that this would hopefully get Mr. Fowler or Mr. Mercer to make phone calls or contact with either the White House or the Department of Interior?

Answer. Yes, he told me that was his hope.

Question. Do you know if that ever happened, if Mr. Fowler or Mr. Mercer ever made contact with either anyone at the White House or at the Department of Interior?

Answer. I do not know if Mr. Fowler ever made contact with anyone at either the White House or the Department of Interior.

Mr. ADLER. Same answer for Mr. Mercer?

The WITNESS. The same answer for Mr. Mercer.

EXAMINATION BY MR. DOLD:

Question. If I can return to the first exhibit, on May 9th, it has, discussion with Tom Corcoran. I don't know what the notation "LD," if that is a "LD" to Tom Snyder, briefing him on problem. Is that——

Mr. YEAGER. We are on exhibit——

Mr. DOLD. Back to Exhibit 1. I apologize, Mike.

Mr. YEAGER. Okay.

EXAMINATION BY MR. DOLD:

Question. Tuesday, May 9th, it says—my question is, the Tom Snyder, S-N-Y-D-E-R, is that the same Tom Snyder that we were referring to before?

Answer. That further proves that it is Pat O'Connor's diary.

Question. Okay.

Answer. And the answer is, it is.

Question. Okay. Turning to May 16th, very briefly, it does make reference there to getting report from Tom Snyder—again, this is Patrick O'Connor's calendar, that he talked to the President regarding status of matter.

The only point in bringing this up is that you had just before had said, about in May. Would this have been about the same time? His notation was May 16th. Would it have been at or around that time?

Answer. I think it would have been about that time.

Question. On May 19th, if I can ask you to turn to May 19th on this, the entry here says, journal article on Delaware North, meeting with Tom Corcoran.

My question is: What is Delaware North?

Mr. ADLER. Before he answers, let me put on the record my objection to questioning of any extensive nature regarding Delaware North. This, as I mentioned before we started, is the subject of litigation involving the defendant, or defendants Mr. Corcoran and Mr. O'Donnell. But putting that aside, the mandate of your committee, at least the one that I reviewed, deals with political fund-raising improprieties and possible violations of law, and there is no conceivable basis or inference that the assertion of Delaware North and the ownership issues and Delaware North's possible history or problems had in any way, shape, or form any connection with fund-raising of a political nature or any discussions along those lines.

I am going to let him answer some questioning on this but I would ask you to limit it in view of the sensitivity of this issue and, as I say, my real concern about the Delaware North issue is it is really not being within the mandate of your committee. But why don't we proceed. But I do want to state my objection on the record.

Mr. YEAGER. And I would just say that since Delaware North is mentioned in Mr. O'Connor's journal, I don't see a problem with asking what it is, but I share those concerns about the relevancy of questioning on—extensive questioning on Delaware North to this investigation.

Mr. DOLD. Okay.

Mr. ADLER. Why don't we proceed and see where we go.

Mr. DOLD. Sure. I don't plan to go into any extensive detailed review of Delaware North, certainly not at this point in time.

The WITNESS. So as I recall, the question is, what is Delaware North?

EXAMINATION BY MR. DOLD:

Question. What is Delaware North?

Answer. I believe Delaware North is an owner of the Hudson Dog Track in Wisconsin.

Question. And it says—it has reference to a Wall Street Journal article.

Answer. The only Wall Street Journal article that I know about concerning Delaware North is that dated November 17th, 1994, in which questions are raised about the association of that company with organized crime.

Mr. DOLD. Let the record show I am showing Mr. Corcoran what has been marked as TC–3.

[Corcoran Deposition Exhibit No. TC–3 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. My only question regarding this is, it is a notation, it says, "Pat O'D", is that Pat O'Donnell?

Answer. It is Pat O'Donnell.

Question. And it has got initials at the bottom "T.C."

Answer. Those are my initials.

Question. My questioning regarding the Wall Street Journal article, is this the Wall Street Journal article that you are referring to?

Answer. Yes, it is.

Mr. ADLER. This came up—I did not think about putting this on the record yesterday. This exhibit is not complete. There is, in fact, I believe—it may have been our problem in making our document production for you, but there is in fact a second article, as this transmittal references. Do you have it?

Mr. DOLD. I am sure I don't have it here with us. If you have an extra copy, I will be more than happy to put that in as the official exhibit, if Mr. Yeager doesn't have any objection.

Mr. YEAGER. I have no objection.

The WITNESS. Let me just say that I am happy that my attorney, who is operating here on a voluntary basis, mentioned that because when I sent that to my partner, Pat O'Donnell, I would say that the second article was probably more important than the first article.

EXAMINATION BY MR. DOLD:

Question. And the second article is a Milwaukee Journal Sentinel article?

Answer. About Delaware North and the dog track at Kaukauna, as I remember it, in Wisconsin.

Question. Kaukauna is another dog track in Wisconsin?

Answer. Another dog track.

Question. And there is a 5-29-95 notation at the top?

Answer. Right.

Mr. ADLER. The date of the article?

Mr. DOLD. The date for the date of the article. What I am going to do is take the last one off and attach it to this exhibit.

EXAMINATION BY MR. DOLD:

Question. In order to try to get the Delaware North aspect of this thing out of the way, as a means of follow-up, you stated that your understanding was that Delaware North was an owner of the Hudson Dog Track. How did you come to this understanding?

Answer. I learned about the involvement of Delaware North and the Hudson Dog Track back in 1995, when first I talked with our client about the ownership of the dog track. Lewis Taylor, the chairman of the St. Croix tribe, indicated that Hudson—the Hudson Dog Track was owned by Delaware North.

I, in addition, talked with the tribal attorney named Howard Bickler for the St. Croix tribe. He said, Delaware North owns the dog track at Hudson.

I talked with Larry Kitto about the ownership question. He said it was owned by Delaware North. Scott Dacy, a representative for the Oneida tribe, indicated that it was Delaware North who owned the dog track at Hudson.

I remember talking with, at about that time, with Larry Kitto and asking if there were any people, any additional people in Wisconsin, in particular those who did part of their work at least in the State Capitol at Madison, and he said that—who would confirm that Delaware North owns the Hudson Dog Track, and he recommended I talk to a person named Tom Krajewski.

Mr. ADLER. Spell it, please.

The WITNESS. K-R-A-J-E-W-S-K-I, who is located in Madison, Wisconsin, represents—at least at that time represented the Ho-Chunk tribe, an important tribe in Wisconsin.

Mr. ADLER. Spell it please.

The WITNESS. H-O, hyphen, capital C-H-U-N-K. And so I called Tom Krajewski and he indicated that Hudson—the Hudson Dog Track was owned by Delaware North.

Subsequently, as our lobbying campaign unfolded, I was getting reports back from Larry Kitto, Frank Ducheneaux and others about other efforts to involve the Wisconsin delegation here in Washington. And the report came back that Senator Kohl could not help us. He was going to be neutral on the question because Delaware North—well, because, number one, as you may know, he owns the Milwaukee Bucks, professional basketball team, and Delaware North had, and I assume still has, the concession with the Milwaukee Bucks. For that reason, he was not going to get involved.

We had hoped that Senator Inouye, a leader in the Senate over many years, former chairman of the Senate Indian Affairs Committee, would get involved, and we learned to our disappointment that Senator D'Amato had approached Senator Inouye on behalf of a constituent, Delaware North, to at least be neutral on this matter.

And so as a consequence it seemed fairly well established, particularly by the people on the ground out at the State Capitol, and I have had some experience with State politics in Illinois, and so the indication was rather overwhelming, and without any exception the indication was that Delaware North was the owner. And as I indicated previously in this testimony, I still believe that they have some equity interest in this matter.

If at that time there had been one or two reports indicating otherwise, I would have taken appropriate steps to check into it further.

EXAMINATION BY MR. DOLD:

Question. Okay. If I can return to Exhibit TC–1, on May 24th, that's the next one I would like to talk to you about, it says, on the notation on the right side it says, "dinner, Al Gore, discussion with Peter Knight and David Strauss regarding Indian problem regarding Hudson Dog Track."

Did Mr. O'Connor, seeing that you were the keeper of the file, one he reported to often, did he ever tell you about a discussion he had with Peter Knight and David Strauss or with Vice President Gore?

Answer. I don't remember this particular matter being discussed at that time involving the aides to the Vice President, but I do recall in passing that Mr. O'Connor, who spends a lot of time with the Vice President and his aides, had indicated that he had mentioned it to one or both of them.

My recollection is that they, so far as I know, based on his reports, took no further action.

Question. On May 25th, the next page, it says, "Reporting to Corcoran on discussions with Peter Knight and David Strauss at Al Gore dinner." We have already covered that.

Additionally, it says, "Reporting on meeting with Terry McAuliffe."

Do you recall Mr. O'Connor talking to you about a meeting he had with Terry McAuliffe on the Hudson Dog Track matter?

Answer. I don't recall this particular conversation but, again, with Mr. O'Connor, when he would call, he likes to give you a full outline of his activities, and I don't know whether it is because I am Irish or not but I seem to get most of those reports. There was no such report involving the Hudson Dog Track and campaign funds or any kind of a plan to link our opposition to this pending application at Interior, and funds that would be—campaign funds that would be generated to the Committee to Re-elect.

Mr. YEAGER. Committee to Re-elect, I presume, refers to Clinton/Gore '96?

The WITNESS. Exactly.

EXAMINATION BY MR. DOLD:

Question. On June 6th, if I could move to June 6th, on the right side there is a calendar entry, Mr. O'Connor has written, call to Corcoran regarding Terry McAuliffe arranging appointment with Harold Ickes. We will just leave it at that.

Do you recall a conversation with Mr. O'Connor where he reported that Mr. McAuliffe was arranging an appointment with Mr. Ickes on the Hudson Dog Track matter?

Answer. I don't recall that specific discussion but I do know that Mr. O'Connor was quite frustrated about his inability to arrange a meeting with Harold Ickes, and I am not surprised, and I probably was aware at that time that one of many people that he approached was Terry McAuliffe, in order to get assistance in that regard.

Question. If I may turn to July 14th, 1995, which I will note is the day that the Hudson Dog Track application was officially denied by Mr. Anderson, an entry down at the bottom, and I will note it does not mention your name specifically but Mr. O'Connor has written, Fowler at DNC and Terry McAuliffe at Committee to Re-elect, which we will stipulate is, I believe, the Clinton/Gore '96, outlining fund-raising strategies.

Did at any time Mr. O'Connor or subsequently if you ever found out about any fund-raising strategy with Mr. Fowler and Mr. McAuliffe, even though he does not mention you specifically as someone he contacted to give you a report as it has on other calendar entries, do you recall him ever talking to you about this?

Answer. I never had any such conversation with Mr. O'Connor regarding the DNC and the Clinton/Gore committee involving a fund-raising strategy connected with the Hudson Dog Track proposal. I have never heard, since the period that that was an active case for us, that there was such a strategy. And I can assure you that if there had been such a strategy back in the spring and summer of 1995, Mr. O'Connor would have cleared that with me.

Mr. ADLER. Would you have approved it?

The WITNESS. And I would not have approved it.

EXAMINATION BY MR. DOLD:

Question. Mr. Corcoran, I know we discussed the fund-raising aspect. If I can ask you to turn to July 20th for a follow-up question, I want to make a distinction, if I can, if there is one, between O'Connor & Hannan fund-raising strategies and fund-raising strategies that the Indians may have had out in the Wisconsin and Minnesota area.

July 20th, the bottom thing we have here is discussion regarding fund-raising, and just above that it says, discussion regarding thank you letters to the White House and Members of Congress, discussion regarding fund-raising.

Does your previous statement with regard to fund-raising also include any fund-raising strategies that may have been articulated to the St. Croix tribe or to any of the tribes involved with MIGA, the Minnesota Indian Gaming Association?

Mr. ADLER. I didn't understand the question.

EXAMINATION BY MR. DOLD:

Question. My question, and I will try to clarify, certainly a fund-raising strategy orchestrated or outlined by the O'Connor & Hannan firm would be one that one would hope that everyone would know about and clear through, would that—hearing your statements about that previously—I take that to be an O'Connor & Hannan strategy, would that also—would Mr. O'Connor have cleared a fund-raising strategy that he may have communicated to the St. Croix tribe?

Answer. If there was any linkage between a fund-raising strategy and the Hudson Dog Track application, he would have cleared that with me.

Question. Do you have any idea what he is talking about here on the July 20th entry?

Answer. Just from the position on these matters in general that both Larry Kitto and Pat O'Connor have, I know that they, particularly Kitto, has encouraged the tribes to become more active in political fund-raising. He believes that that is a way of helping the tribes strengthen their position and their profile here in Washington and at the State level. So as a general fund-raising matter, I believe, and it has been confirmed by my reading of the depositions to which I referred earlier, that my attorney recommended I do, during the last few days, that Larry in particular, who is our man, of course, with respect to the tribes, he is a Native American himself, he has worked with them all his career and he strongly advocates that the tribes in Wisconsin, like the tribes, as you indicated, in Minnesota, actively participate not only with their votes but now that they have more resources, that they do so with their contributions.

I would just hope that we could get them to look at the Republican Party in that respect with the same vigor.

Question. Do you know if Mr. O'Connor—not that I don't agree or disagree with you, but do you know whether Mr. O'Connor ever had any conversations about tribes in Wisconsin or in Minnesota making contributions? I know you said Mr. Kitto was an advocate of having them become more involved in the process. Do you know if Mr. O'Connor did?

Answer. I don't know that Pat O'Connor ever did that but I believe he would encourage that activity.

Mr. ADLER. Maybe this will help you out. Mr. O'Connor is known to be a very aggressive biller—okay?—And oftentimes, Mr. Corcoran can tell you, he will bill for things that you or I may wonder whether it had a direct result or effect on a particular file. And your obvious question, anyone's obvious question in reading this, whether O'Connor thought that, in fact, there was linkage but what you and I would consider, I think, as linkage is really I think something very different in O'Connor's mind.

I mean, if you read through his testimony in the Wisconsin case, for example, if he goes to a fund-raiser and no business is discussed, he is schmoozing, he will bill that. Others wouldn't but Paul—but O'Connor is a very successful, as we all know, fund-raiser and attorney, respected in a lot of places in this town, and that's the way he has conducted, apparently, his career.

And I think that that may sort of—that may help the investigation in the analysis as to why Mr. O'Connor—he can speak for himself obviously.

Mr. DOLD. Sure.

Mr. ADLER. But I have thought this thing through, and I think I am correct in what I am suggesting, that why he billed this, even though Mr. Corcoran who was in charge of the whole matter has clearly testified that there never was any linkage.

Mr. YEAGER. Would you agree with that, Mr. Corcoran?

The WITNESS. Yes, I agree.

Mr. DOLD. And I hope it doesn't come across that I am doubting what you have said.

Mr. ADLER. No, I understand.

Mr. DOLD. And I appreciate that. I really do.

Mr. ADLER. Your inquiry is a legitimate one and it says what it said, but I think that that—when you get to the bottom of it, that that is what you will find here.

Mr. DOLD. I am showing Mr. Corcoran what has been marked as TC–4. It is a calendar entry from Larry Kitto, and I think we have covered most of what we are going to cover regarding Mr. Kitto and fund-raising.

[Corcoran Deposition Exhibit No. TC–4 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. This entry, in his calendar, on the left side and actually the right, it has a list of people: Pat, Larry, Lewis Taylor, Joanne Jones, Onida, Stan Crooks, Mary Anderson and Frank Ducheneaux, and then it says Gore——

Answer. I think that would be Marg Anderson.

Question. I am sorry. Marg Anderson. Thank you.

Then it says Gore, June, and it has got some numbers after it, 1-7, maybe 95 is a speculation on my part. Then underneath it says, 25 people of 1,000 each. And it says President, dash, 19th and 20th June. And then on the right side it says, DNC committee to Re-elect. And then underneath it says, fifty grand.

Let me just ask, recognizing again that this is not your calendar——

Answer. Right.

Question [continuing]. And it does not mention your name on here, do you know if Mr. Kitto ever mentioned a Presidential event around the 19th or 20th of June where he might have been involved in raising some money from people, mainly some of the people I listed, above the notation?

Answer. I have no knowledge of that.

Mr. DOLD. I am showing Mr. Corcoran what has been marked as TC–5. It is some handwritten notes regarding a February 8th, '95, meeting, is what it appears to me.

[Corcoran Deposition Exhibit No. TC–5 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. And I would just ask you to take a look, gander over those.

Answer. First of all, they are my notes.

Question. They are yours. Okay. Directing your attention down to the bottom of that first page of Exhibit 5, it says, communicate to Babbitt—or maybe could you just read that bottom portion?

Answer. I think it says, communicate to Babbitt, I agree.

Mr. YEAGER. I am not sure I caught that, whether you identified whose notes they were.

Mr. DOLD. Mr. Corcoran volunteered they were his notes. I apologize, Mike.

The WITNESS. They are my notes.

EXAMINATION BY MR. DOLD:

Question. And then, one, the copying was not so good, says, pull it or something; two, is they need to tell us what their process, formally ask.

Could you just read the bottom portion?

Answer. Here is a better copy. These are my notes and to me what they say is, insofar as the action following the meeting that Congressman Oberstar and others in the Minnesota delegation hosted with the Secretary of the Interior's representatives John Duffy and George Skibine that because of the disappointment that our representatives and our client had about the meeting and the impression they had that there was a lack of sympathy for developing the kind of concern about the economic factors that we felt had been overlooked in evaluating this application and in taking into account the consultation, which is a very critical factor with tribes about—of the impact it would have on the nearby tribes, Larry Kitto was reporting to me about his view as to what we ought to do in order to follow up with Secretary Babbitt.

In other words, the meeting with his representatives was not as successful as we wanted, and the lobbying effort should focus on following up with the Secretary himself. Obviously, the objective would be denial of the application, and in item No. 2 there, what I have recorded is that they need to tell us, that is Interior needs to tell us, what their process is for evaluating the pending application to convert this land on a fee to transfer basis to tribal lands with tribal governmental powers for the purpose of Indian gaming and that we may have to formally ask them in writing what is your process, what is your procedure? And we wanted to learn about that procedure, that decision-making process, in order that we could be able to feed into it the views of the opponents——

Question. Sure.

Answer [continuing]. To the project. So at that point, that's where we were on February the 8th.

Question. Did you ever find out what the actual process—what steps you needed to actually take in order to get fee-to-trust? Did you ever find out the actual steps needed or the ones that Interior required to do an application like the one the three Indian tribes were trying to do in Hudson, Wisconsin?

Answer. In general terms, we did find out what their procedure on this type of matter and application would be. First of all, we found out from Penny Coleman, who at the time was an attorney in the solicitor's office at Interior—and this was a discussion that I had with her—that while at one time the Interior Department was going to develop a formal rulemaking procedure on this with publication in the Federal Register and so forth and so on, that they had never done that.

Secondly, we learned that as a substitute for that, what the Interior Department had done for these very unusual, very controversial off-reservation transfers for gaming purposes was develop a set of guidelines.

And third, I was able to obtain a copy of those guidelines and I circulated them, of course, first to our client and to others who might be interested.

Question. Where did you obtain a copy of the guidelines?

Answer. I think Penny Coleman sent it to me, as I remember. It is not a formal document.

Question. Right.

Answer. It may be that she suggested going to the Office of Tribal Services within the department or something like that. But I was able to get that document.

Mr. ADLER. It is in the record.

The WITNESS. It is an attachment to my memorandum of February 14th, 1995, to Lewis Taylor.

Mr. DOLD. I will be happy to make that an exhibit if you would like. Otherwise your answer is sufficient.

The WITNESS. I think you have it.

Mr. DOLD. I know we have it. We don't have it here as an exhibit.

Mr. ADLER. It is Bates Stamped AA0000029 et seq. We provided it.

Mr. DOLD. Perhaps this would be a good time for a couple minute break. I would like to expedite this as fast as we can. We can go off the record.

[Brief Recess.]

EXAMINATION BY MR. DOLD:

Question. We can just go back on the record.

Returning very briefly, just to Exhibit 5, the notes from Mr. Kitto, your notes in talking to Mr. Kitto and communicating to Babbitt, number one does read, "kill it," correct?

Answer. Correct. No more confluence.

Mr. DOLD. I am showing Mr. Corcoran what has been marked as TC–6. It is an April 17th through 21st, no year is associated but it is a Minnesota legislative update regarding the Hudson Dog Track. I will note that it is page 2; I have got two copies of page 2. The second page of the Exhibit that I have got before Mr. Corcoran is a——

Mr. ADLER. Do you have an extra copy?

Mr. DOLD. I don't have an extra copy. I apologize.

Mr. ADLER. Okay. Go ahead.

Mr. DOLD. The second page is the Minnesota legislative update for April 24th through the 28th. Also the only section that is written is on the Hudson Dog Track.

[Corcoran Deposition Exhibit No. TC–6 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. Really drawing your attention to the second page of the legislative update, the Minnesota legislative update for April 24th through 28th, it reads, delegation of tribes from Minnesota and Wisconsin met with Don Fowler, chairman of the Democratic National Committee. The purpose of the meeting was to request the DNC and the Committee to Re-elect the President to help communicate with the White House and the President about the Department of Interior should not approve the fee-to-trust land transfer for the Hudson Dog Track. The message was quite simple. All of the people against this project, both Indian and non-Indian, are Democrats who have substantially large block of votes and who contribute heavily to the Democratic Party.

Let me first start off by saying, have you ever seen Minnesota legislative update or this Minnesota legislative update?

Answer. I have seen this document. I do not recall seeing the first page but I do recall seeing the second page within the last few days when at the suggestion of my attorney I looked at the depositions.

Question. Do you—and for the record, this is a production from Mr. Kitto. I believe we received it through Mr. O'Connor. Do you know who drafted this? Do you have any idea who drafted this?

Answer. I do not, no.

Question. Do you know if it was ever communicated to you whether some of the tribes or Mr. Kitto or Mr. O'Connor felt that the purpose of the meeting was to request the DNC and the Committee to Re-elect the President to help communicate with the White House and the President about why the Department of Interior should not approve the fee-to-trust land transfer for the Hudson Dog Track?

Answer. That meeting, which took place with DNC Chairman Collier on April 28th, 1995——

Mr. ADLER. With Fowler?

The WITNESS. Fowler, was reported to me that it was going to take place. I think that the representation here as to the purpose is incorrect. I think the purpose, as stated in the second sentence, is correct. But the message was a multifaceted one. Number one, as I believed and as I was told, following the meeting, the purpose of

the meeting was to ask for help from the chairman of the Democratic Party, Don Fowler, to assist the tribes who opposed the project to get more information from their standpoint as to the rationale against the project into the Department of Interior.

Number two, the tribes, and as I have testified earlier, feel very strongly—this is a new phenomenon for me over the last few years, having become familiar with the tribes—that consultation on a government-to-government basis is a critical component of what they want from the U.S. Government and local governments as well. In their view, and I know that our client, Lewis Taylor, felt very strongly that his tribe had not been consulted on this pending application.

They also felt that the requirement in the Indian Gaming Regulatory Act, in section 20, as I remember, that the impact in the decision-making process should not only be on the tribes who were applying for some support from the Department of Interior but the impact on those tribes who would be considered nearby tribes ought to be taken into account as well, and that would not only be the economic consideration but it would be political considerations in the larger sense of government to government, not campaign politics, and the social factors ought to be considered.

Their view was that the agency, the Department of the Interior, had not been giving at the local and area office level of the Bureau of Indian Affairs any real consideration to those important criteria in the decision-making process.

Now, it was also mentioned, I was told in passing, by both Larry Kitto and Lewis Taylor, that they had mentioned that most of the people who are opposed to this thing are Democrats, good Democrats, and a lot of the beneficiaries of this down the road might be Republicans.

In fact, I think they may have been aware of the discussions between the proponents and developers of this project and the Milwaukee Brewers that if this thing became a reality, that part of the funds might be dedicated to the construction of a new stadium, which they thought would be in the interest of Governor Tommy Thompson, who had indicated at that time opposition to the project. But they were concerned that as things moved along that even he might change his position.

So there were a number of factors that were discussed in that meeting as it was reported to me.

EXAMINATION BY MR. DOLD:

Question. Do you have any idea, Mr. Corcoran, who put together the Minnesota legislative update? Is this a function that MIGA does?

Answer. I do not know.

Mr. DOLD. I'm showing Mr. Corcoran what has been marked as TC–7, which is some handwritten notes with a message slip at the bottom.

[Corcoran Deposition Exhibit No. TC–7 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. Mr. Corcoran, are these your notes or are these—do you know whose notes these are?

Answer. These are my notes.

Question. The question I have for you right at the top, it says—or could you read just the——

Answer. George Skibine.

Question. Could you read the first four lines or so?

Answer. I called him at the suggestion of H. Sibbison, that would be Heather Sibbison, and he said they are putting it together. It would refer to the evaluation of the application regarding the Hudson Dog Track, and he would mail me a copy of the FOI.

Question. What is FOI?

Answer. FOI is the finding of——

Question. Impact?

Answer. Impact.

Question. That's really what I was looking for. So the "it" he is talking to is their evaluation?

Answer. At least a part of the evaluation.

Question. And did he actually send it to you; do you recall?

Answer. What we did receive, and it took us a great deal of time and effort to get it, was this finding of what turned out to be a finding of no significant impact.

And the reason that we wanted that was because we questioned whether or not there was an adequate analysis of the economic impact as well as other considerations, and what we wanted very much to accomplish was to get some independent

analysis of the market share consequences to our client if this casino were developed and came operating as a casino rather than just a dog track at Hudson.

And so I had talked with Heather Sibbison to find out the timetable. I had talked—and she directed me to or recommended that I talk with George Skibine, who really, at that time, had the responsibility to review the application. And what I was really interested in was their timetable.

Because I had recommended to the St. Croix tribe that they needed to have something more than just their own belief that the new casino would cut their market share and that what they ought to consider doing was commissioning an independent analysis, such as one from Pete Marwick or Cooper & Lybrand or somebody like that. And so they did commission Cooper & Lybrand to do precisely that kind of market analysis. And I wanted to make sure that we had enough time before a decision was made on this application to make that a part of the record.

So that was the purpose of that inquiry.

Mr. DOLD. Showing Mr. Corcoran what is being marked as TC–8, a letter to Senator McCain from Mr. Corcoran and Patrick O'Donnell.

[Corcoran Deposition Exhibit No. TC–8 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I think we discussed a little bit about this before, but I wondered if you might be able to tell us if you remember this letter first off.

Answer. I do recall the letter.

Question. The notation at the top notes meeting at 2:30 p.m., 6/8/95. Is that about the time or is that when you would have met with Senator McCain?

Answer. That's when we met with the Senator.

Question. And who all was in attendance at the meeting with Senator McCain?

Answer. There were four people in the meeting, Pat O'Donnell, Frank Ducheneaux, myself, and the Senator.

Question. And can you tell us basically what you discussed in that meeting?

Answer. The reason that I asked Pat O'Donnell to arrange that meeting was that early in June some of the intelligence that I had been trying to gather about where this application stood and what its prospects were at Interior began to come together such that in a conversation with Frank Ducheneaux, which occurred about the 1st of June or the 2nd or 3rd, somewhere in there, both his intelligence and mine had come to the same conclusion, which was that the Department of the Interior was taking a very narrow view of the environmental impact.

As you may know, on March the 15th, 1995, Pat O'Connor, Larry Kitto, Frank Ducheneaux, and I met with Tom Collier, chief of staff for Secretary Babbitt. And in that meeting, among other things, he indicated that one of the questions that had not yet been resolved in the decision-making process was whether it would be a narrow interpretation of the environmental impact or whether it would be a broader one, going to socioeconomic considerations and so forth. Obviously, we wanted the socioeconomic.

We had the study commissioned by Cooper and Lybrand, so forth and so on, as a consequence. And what we learned early in June was that it seemed like the agency was going to take a narrow interpretation of the environmental impact. We didn't think that would be in our interest or for the client.

Secondly, there was this second newspaper article, to which I referred earlier, which I had sent Pat O'Donnell afterwards, which referred to an announcement that the Delaware North companies had made with a tribe in Wisconsin to convert a dog track at Kaukauna, Wisconsin, to an Indian gaming facility.

What that indicated to me was that one of the arguments that we had been making against the project was being fulfilled, and that was that it would set a bad precedent if it were approved, because it would be the first time that a dog track had been able to enter into an agreement with a tribe and take advantage of the off-reservation fee-to-trust land transfer for gaming purposes.

So that if the Hudson Dog Track had been approved, it was my view that that precedent would be there so that subsequently other dog tracks in Wisconsin and around the country, where it could be worked out, would be at the public trough for a bailout. And that, in my opinion, was an abuse of the Indian Gaming Regulatory Act. It was created in 1998 by the Congress and signed by the President as an economic tool for tribes.

Mr. ADLER. 1998, you said.

Answer. 1988, I meant to say. And it was never intended to benefit commercial gamblers whose dog tracks were going into bankruptcy because they couldn't compete with the tribes. And so that piece of information added to my concern and to

my thought at that time that we ought to talk with the chairman of the Senate Indian Affairs Committee.

Also, at about that time, I learned about the Wall Street Journal article, and I asked our office to get a copy of it, which we did, through some service, and I read it. It seemed to raise questions about Delaware North and their connection with organized crime, and so that was another reason why I asked Pat O'Donnell to set up the meeting with Senator McCain.

Because, as I have indicated, I have been representing tribes now for the last several years and was well aware that Senator McCain had not only a concern, which would be expected given his responsibilities in the Senate with that committee at that time, but also he had established a standard that, and he had said this publicly at hearings of the committee, that if there were even the appearance of the possibility of organized crime getting into Indian gaming, that it would be a terrible mistake not only to an individual project but to Indian gaming throughout the United States.

And I well knew that our opponents here, particularly in Washington, from the States of Nevada and New Jersey and so forth, are very aggressive in their testimony before these committees, very aggressive with their "Dear Colleague" letters about their assertions that organized crime is—this is an assertion that they make—that organized crime is infiltrating Indian gaming. Yet every time the Senate Indian Affairs Committee, or in the case of the House, the House Resources Committee, called hearings, the Justice Department would come to testify and they would say, no evidence. The FBI would come, just like today here, and say, no evidence. But, nonetheless, as you know, here in the Congress people can be pretty enthusiastic in support of their position.

So for those reasons, we met with Senator McCain.

Mr. YEAGER. I would like to make an observation for the record. I don't think that, and I don't know this, but I don't think that Delaware North will ever have an opportunity to respond to any allegations that there is a connection between that company and organized crime. So on behalf of the Minority I would just like to say for the record that we are not investigating any connection.

We have no evidence to suggest that there is such a connection, and it is our view that that entire matter is outside the purview of this investigation and we ought not go further down that road.

EXAMINATION BY MR. DOLD:

Question. In understanding part of your answer, if I can try to put a little cap on it, your Delaware North concern and their going into Wisconsin into gaming, with specifically the tribe in Kaukauna, was the concern with Delaware North having publicized ties to organized crime and going into private tracks in the Wisconsin area that it would lead to a slippery slope of Indians gaming with private individuals or was the tie to actually the Hudson Dog Track?

I know you had mentioned before you thought they owned it, but the specific example in the papers was to Kaukauna, so I am just trying to get a sense. Did you feel in meeting with Senator McCain that this was a bad precedent to set and it was going down the wrong avenue, or was it Delaware North and the Hudson Dog Track?

Answer. There were two—what you are referring to, if I understand your question, are two of the arguments that we made, not all of the arguments that we advanced when we met with Senator McCain.

One of those two was the bailout and the use of the Indian Gaming Regulatory Act for that purpose, and our belief that with the approval of the Hudson Dog Track that very soon thereafter we would see the Kaukauna Dog Track. In our view, it was the same owner in each case, and so the bailout was a major concern.

And then, secondarily, there was this issue about organized crime that was raised as a question in the article back in 1994 in the Wall Street Journal about Delaware North. And our view of that was it's a well-respected newspaper. A question was raised. We had no other knowledge about Delaware North and organized crime. The retainer arrangement that we had with our client did not provide us with the resources nor would we be particularly capable of investigating that particular matter.

But Senator McCain, as a United States Senator and, more importantly as the chairman at that time of the Senate Indian Affairs Committee, was someone with whom we wanted to meet to make him aware of it, and we were delighted that during the course of the meeting he volunteered that he would take up the matter of the Wall Street Journal article with the Justice Department.

Question. Just as a follow-up, because we don't want to spend a whole lot of time on this, do you know what he did with the Justice Department, if he did anything? Do you know if he contacted the Justice Department?

Answer. A short time after that meeting, my partner, Pat O'Donnell, was down in Williamsburg at one of these fund-raising weekends that high powered people like O'Donnell can afford, and he spent some time playing tennis. It was a social event. And he talked with Senator McCain and Senator McCain apparently indicated to him that he had turned the issue over or turned the matter of the Wall Street Journal article over to the Justice Department. And as I remember Pat then sent me a short memorandum about that.

Mr. ADLER. But I think his testimony is he does not know whether in fact Senator McCain did send it to the Justice Department.

The WITNESS. That is correct. I have no idea as to what Senator McCain did. The only reason that we referred in that letter of July the 20th to the Justice Department was because he volunteered that he would take the matter up with the Department of Justice, and seemed to confirm it, that he had done something, in his discussion with O'Donnell.

Mr. YEAGER. If I might interject a question, just so we can get our eye back on the ball, are you aware of any role the Department of Justice plays in either granting or denial of a fee-to-trust application?

The WITNESS. No.

Mr. YEAGER. Do you have any knowledge the Department of Justice conveyed any negative information about Delaware North or any other entity that may or may not have an ownership interest in the Hudson Dog Track?

The WITNESS. No, I have no such knowledge.

Mr. DOLD. Any more?

Mr. YEAGER. No.

Mr. DOLD. I'm showing Mr. Corcoran what has been marked as TC–9. It is a fax to Mr. Corcoran from Larry Kitto. The date at the top of the fax is 6/8/95 and attached is a June 5th, '95, memo to the tribal clients from Larry Kitto regarding the Hudson Dog Track issue. It has bullet points or numbered points as to, I guess, a plan for lobbying and who is to be doing each of the tasks listed.

[Corcoran Deposition Exhibit No. TC–9 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. The one I really want to ask you about—well, first of all, have you ever seen this memo?

Answer. Yes, I have.

Question. Did you have anything to do with putting it together or assigning tasks related to the specific points in the memo; meaning did you help assign—like ask Congressman Sabo, Vento, Oberstar on No. 8—did you have anything to do with assigning Mr. Kitto? Even though we have discussed that he was in charge of congressional delegations, did you have anything to do with assigning people tasks in this memo?

Mr. ADLER. Let me see if I can—really, there are two questions. One, as I heard, is does he have any role in the drafting of this memo; and the second one, what I think you are asking him is with respect to the tasks which are set forth in this memo, was he involved in the decision as to who should be doing what?

Mr. DOLD. Correct.

The WITNESS. First of all, with respect to drafting the memorandum, I had no authorship and no role other than Larry and I previous to that point might have been talking about the status of the pending application at Interior.

With respect to the assignments that are enumerated here, 1 through 13, I had no role in making those assignments.

EXAMINATION BY MR. DOLD:

Question. Directing your attention to No. 7.

Answer. Yes.

Question. It says, increase pressure and communications with the White House through Vice President Gore's office, the National Democratic Committee and the Committee to Re-elect the President. And then the person apparently pursuing this is Larry Kitto and Patrick O'Connor.

Do you know who in the White House, particularly in Vice President Gore's office, Mr. Kitto or Mr. O'Connor was communicating with when it says up here, increase pressure? Do you know who they were dealing with through Vice President Gore's office?

Answer. I do not know.

Mr. YEAGER. If anybody.

Mr. ADLER. Yeah, there's a foundational problem here. The foundation question is, does he know, after the date of this memo, whether in fact anything was done by anybody on the lobbying team with respect to the activities in paragraph 7? Should he answer that question?

Mr. DOLD. That's fine. I know we have calendar entries of Mr. O'Connor already talking to Strauss.

Mr. ADLER. But in terms of what he knows.

The WITNESS. I have no knowledge of anything that was done with respect to item 7 in this memorandum.

Mr. DOLD. I'm showing Mr. Corcoran what is being marked as TC–10. It is a calendar that we received from O'Connor and Hannan.

[Corcoran Deposition Exhibit No. TC–10 was marked for identification.]

Mr. YEAGER. Hopefully, you won't ask him to read through this entire document.

Mr. DOLD. No. Just for the record, that was laughter, as is evident by looking at the document.

EXAMINATION BY MR. DOLD:

Question. First of all, Mr. Corcoran, have you ever seen this document before?

Answer. Yes, I have.

Question. Whose calendar is this, if you know?

Answer. My calendar.

Question. On Monday, May 8th, down starting, I guess with about the 4:30 line, could you just help us by just running through and reading what that area says?

Answer. It says, St. Croix, 2 hours, discussion with PJO, meaning Pat O'Connor, review of memo for White House deputy Chief of Staff Ickes, discussion with PJO, memorandum and cover letter to White House Aide Ickes, memo to Larry Kitto, Lewis Taylor, DNC Chairman Fowler, and David Mercer, with DNC discussion with PJO.

Question. In between the LK and the LT, the Larry Kitto and the Lewis Taylor, there appears to be like an H-O, H-U. Do you know what that refers to?

Answer. The reason I hesitated there is because I don't know what that means.

Mr. YEAGER. Does that say Kitto?

Mr. ADLER. I think it's Kitto.

EXAMINATION BY MR. DOLD:

Question. It could be the full name, L. Kitto?

Answer. It could be Kitto. No, no, no, I wouldn't have—oh, it is Kitto. It is Kitto. Yeah, it is Kitto. You got it.

Question. That is a little confusing the "I" and the Kitto looks like a comma?

Answer. Right, it is Larry Kitto.

Question. I think we have discussed the fact that was the May 8th letter?

Answer. That's the May 8th letter to Harold Ickes.

Mr. DOLD. I'm showing Mr. Corcoran what has been marked as TC–11, which is a memo from Mr. Kitto and Mr. Corcoran to the tribal clients dated 12 November 1995 regarding the Hudson Dog Track update.

[Corcoran Deposition Exhibit No. TC–11 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. Directing your attention to the second page, item No. 6: As we know, this issue became very political and neither the White House or those in Congress who supported us will want this issue to come up again during the 1996 election year.

First of all, do you recall this memo?

Answer. Yes, I do.

Question. And when you say, memo to tribal clients, who did you send this memo to?

Answer. Larry sent this memorandum to all of the clients, both the clients at that time of O'Connor and Hannan as well as his own clients in Minnesota.

Question. And do you know who those were, by chance?

Answer. I do not know all of his clients. It's the Minnesota Indian Gaming Association, would be one; Pryor Island would be another; Mille Lacs might be another. And I'm sorry I don't know how to spell that.

Mr. DOLD. Mille Lacs is M-I-L-L-E, then, new word, L-A-C-S, I believe.

The WITNESS. Upper Sioux would be one, and so forth.

EXAMINATION BY MR. DOLD:

Question. Do you know, or when you say the issue became very political, what were you referring to, the actual application itself?

Answer. Well, I'm not sure what Larry had in mind when he drafted this.

Mr. ADLER. You shouldn't interpret unless you had a discussion—it's not real clear here, Counsel, what Mr. Corcoran's role was in this document.

And you should not, Tom, if this is Mr. Kitto's language, unless he told you or you discussed with him what his thinking was, you should not be speculating as to what was in Mr. Kitto's mind.

You may want to—listening to the record, I don't think it's real clear as to what Mr. Corcoran's role was in this thing.

EXAMINATION BY MR. DOLD:

Question. Okay. So Mr. Kitto was the one who basically drafted it and you kind of signed on; is that it?

Answer. He basically drafted it. I can comment to some degree with what I know about item 6.

Question. It's okay.

Mr. ADLER. It's okay.

Question. That's fine.

Going down under item 7, item 7 is, we have begun to make contacts with the Congress, the administration and the White House to alert them about our concerns. Additionally, we suggest that tribal attorneys, on behalf of their clients, contact the Department of Justice and the Department of Interior to, a second bullet there, ask that the case be handled by the Department of Justice lawyers.

Can you tell me what the purpose of that was?

Answer. I am familiar with the concern about the case being handled by Department of Justice lawyers. This is the Federal case filed by the proponents of the dog track conversion against the Department of Justice.

Mr. ADLER. Against the Department of?

Answer. Interior. Against the Department of the Interior.

What prompted my involvement in this is I got a call at about that time from Howard Bickler, who is the tribal attorney for the St. Croix tribe. He said that he had learned that there had been some discussions and maybe even negotiations between the two parties in the lawsuit and that possibly a settlement would be to drop the case and return the issue for a new evaluation to the Department of the Interior.

His concern was that he didn't think that Interior in Washington would really want that to happen, and he also was concerned about the capacity of the local attorneys on behalf of the Department of Justice to handle this matter in a way which would be consistent with what he believed the Department of the Interior wanted to do on this matter.

And he asked me if there was any way just to alert people at Interior of his concern, which I did, as I recall. I think I either spoke with or sent a memorandum, just a brief memorandum, to Heather Sibbison about it, because she is the, she was the deputy assistant to John Duffy, who, in my judgment, was responsible for Indian gaming issues in the Office of the Secretary.

Mr. YEAGER. I don't know how many further questions Counsel has on this memo, which is dated November 1995, after the application had been denied, but I think we're in the area that's irrelevant, really, to the Interior Department's consideration of the application, which is really what we're looking at.

Mr. DOLD. I don't have any further questions on this memo here.

I am going to take a quick review of my notes, but I think that's all the questions I have right now. I don't think I anticipate anything else.

Mr. YEAGER. I have a few questions.

EXAMINATION BY MR. YEAGER:

Question. On behalf of the Minority, I would like to thank you, Mr. Corcoran, for coming in today voluntarily.

Just to recap a couple of items that you discussed earlier today, you represented the St. Croix tribe with respect to the application to the Interior Department; is that correct?

Answer. Correct.

Question. It was your file?

Answer. Yes.

Question. Meaning that you were in charge of the file?

Answer. Correct.

Question. So presumably you would have a pretty good idea of what was going on, what various attorneys in the firm were doing on the file?

Answer. That is correct.

Question. So if there were a strategy to raise funds or issue funds in connection with this application, you would know about it?

Answer. I would know about it.

Question. And you have testified clearly today that there was no such strategy?

Answer. There was no such strategy.

Question. And no plan?

Answer. No plan.

Question. In fact, you have testified that you don't know even to this day that the St. Croix tribe has made political contributions?

Answer. That is correct.

Question. You are a former Republican Member of the House of Representatives; is that correct?

Answer. Correct.

Question. And Patrick O'Donnell is a former Republican official?

Answer. That's correct.

Question. Is it fair to say that you and Mr. O'Donnell were assigned to handle a part of this case or you took responsibility for a part of this case, specifically your meeting with Senator McCain, because you were Republicans?

Answer. The reason that I asked Pat O'Donnell to arrange a meeting with Senator McCain is because of his friendship and because of his Republican affiliation, their affiliation in the Republican Party as well as mine.

Question. Is it fair to say that your firm, O'Connor and Hannan, was handling this matter on two fronts, a Democratic front and a Republican front?

Answer. Oh, yes. Yeah, in fact, I talked with the local Congressman, who at that time was Steve Gunderson, a Republican from Wisconsin. So at any point when in the lobbying effort we were going to be dealing with a Democrat, we would have a Democrat handle that assignment, and also with the Republican, it would be a Republican.

Question. Would you say that's fairly usual in a firm that engages in lobbying activity?

Answer. Quite common.

Mr. YEAGER. That's all.

Mr. DOLD. Just a couple of follow-up questions.

EXAMINATION BY MR. DOLD:

Question. Mr. Corcoran, you had testified earlier that you are not aware of any contributions given by the St. Croix tribe. Are you aware of any contributions given by any of Mr. Kitto's clients, MIGA, or the Upper Sioux or any of those other tribes?

Answer. Not at that time. But, as I indicated earlier, I have read the depositions at the suggestion of my attorney and I have learned that, I think it's the Shakopee Sioux tribe, for example, which owns and operates Mystic Lakes, did contribute to the Democratic National Committee. And maybe they contributed to the Committee to Re-elect, I don't recall. But I am aware now that at least that contribution was made, and I know that the Minnesota tribes do contribute, so I'm certain that they did.

Question. But that's the only one you know of?

Answer. It's the only one I can recall, yes.

Question. So you're not aware of all the contributions made?

Answer. No, I'm not.

Question. And do you know for a fact what Mr. Kitto or Mr. O'Connor discussed with the tribal opponents at any meeting they might have had with them?

Answer. With the tribal opponents?

Question. Of the Hudson application.

Answer. With respect to fund-raising, no, I have no knowledge of that.

Mr. DOLD. I have no further questions.

The WITNESS. Thank you very much.

Mr. DOLD. On behalf of the committee and Mr. Wilson and myself, thank you very much for coming. Mr. Adler, thank you.

Mr. YEAGER. Thank you.

[Whereupon, at 12:45 p.m., the deposition was concluded.]

[The exhibits referred to follow:]

2 THURSDAY FEBRUARY 2, 1995 APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

THURSDAY FEBRUARY 2, 1995 2

DIARY AND WORK RECORD

Lauri Taylor - St Croix
Dog Trad - Hudson
3 tribes - convert
to Gaming
trust lands
Gov - Veto
Sec hard to sign off
Meet with Sec
Tom Foley

REDACTED MATERIAL

St Croix Indian tribe
New file Corcoran
Since Corcoran re forthcoming
meeting w/ Jeffry of Interior
re creating trust lands at
Hudson Wind Dog Track for a casino
and need to contact Tom Collins

EXHIBIT
TC - 1

ATTORNEY'S EYES ONLY

7

TUESDAY
FEBRUARY 7, 1995

APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

Semi-what?	Where? Duration?	Purpose Who What Involved?	To whom Paid?	Reimbursed? By whom?	Amount

Wk 6 • Day 38, 327 Left

TUESDAY
FEBRUARY 7, 1995

7

DIARY AND WORK RECORD

HRS	NAME OR PROJECT
8	St Croix Indian tribe - Call to Collier at Interior Drafting Fax to Collier Reporting to Tom Corcoran 1 hr
9	
10	
11	
12	
1	
2	
3	
4	
5	

OC 000004

8 WEDNESDAY FEBRUARY 8, 1t

APPOINTMENTS & SCHEDULED EVENTS

FRIS	NAME	PLACE	SUBJECT

TO BE DONE TODAY (ACTION LIST)

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

Wk 6 • Day 39 326 Left

WEDNESDAY FEBRUARY 8, 1995 8

DIARY AND WORK RECORD

FRIS	NAME OR PROJECT	DESCRIPTION	TIME
8 0800			
9 0900			
10 1000			
11 1100			
12 1200			
1 1300			
2 1400			
3 1500			
4 1600			
5 1700			

REDACTED MATERIAL

To Cross Indian tribe
Reports to Corcoran
on collier [illegible] setting [illegible]

REDACTED MATERIAL

[illegible] on [illegible] in [illegible] [illegible] from [illegible]

OC 000063

ATTORNEY'S EYES ONLY

8

WEDNESDAY
FEBRUARY 8, 1995

APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

Item Which?	Where? Dr. Amount?	Purpose Who What Involved?	To whom Paid?	Reimbursed? By whom?	Amount

Wk 6 • Day 39, 326 Left

WEDNESDAY
FEBRUARY 8, 1995

8

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10			
11			
12			
1			
2			
3			
4			
5			

To every Indian tribe
Resorting to Corcoran

316

OC 000005

6 MONDAY FEBRUARY 6, 1995

APPOINTMENTS & SCHEDULED EVENTS

HRS NAME SUBJECT

REDACTED MATERIAL

St Croix Indian tribe
Collier Louis Taylor
Rose
Suffy - Brave
Regional B approval
Bobbit attention
Feed back
future meeting
Lucy Thornberg

EXPENSE & REIMBURSEMENT RECORD:

MONDAY FEBRUARY 6, 1995 6

Wk 6 • Day 37 328 Left

DIARY AND WORK RECORD

NAME OR PROJECT DESCRIPTION TIME

REDACTED MATERIAL

St Croix Indian tribe
Long D. Dia with tom Corcoran
re Client's meeting on Feb 8th
with Suffy in D. Lenstor's
office; Call to Tom
Collier's Office at Interior

REDACTED MATERIAL

OC 000062

ATTORNEY'S EYES ONLY

13 MONDAY
NOVEMBER 13, 1995
APPOINTMENTS & SCHEDULED EVENTS

MRS NAME PLACE PROJECT

Wk 46 • Day 317, 48 Left

MONDAY
NOVEMBER 13, 1995
DIARY AND WORK RECORD

MRS NAME OR PROJECT DESCRIPTION

8 9 10 11 12 1 2 3 4 5

H - Call Tony K Ito
a agreement by e. Comite

EXPENSE & REIMBURSEMENT RECORD:

OC 000132

11 MONDAY
SEPTEMBER 11, 1995
APPOINTMENTS & SCHEDULED EVENTS

NAME SUBJECT

REDACTED MATERIAL

MONDAY 11
Wk 37 • Dev 254, 111 Left SEPTEMBER 11, 1995
DIARY AND WORK RECORD

8:
9:
10:
11:
12:
1:
2:
3:
4:
5:

St Croix Tube
Getting Report from Quinn
re Ron Platt and litigation
Calls to Corcoran, Kitto re
suit to be filed in Fed. Ct.
in Minnesota; Discussions
Walters re litigation

REDACTED MATERIAL

OC 000092

ATTORNEY'S EYES ONLY

11 SATURDAY FEBRUARY 11, 1995

APPOINTMENTS & SCHEDULED EVENTS

TIME	NAME	PLACE	SUBJECT

EXPENSE & REIMBURSEMENT RECORD:

Name Who?	Subject Or Project	Purpose Who Where Involved?	To Whom Paid?	Reimbursed By Whom?	Amount
10	thru 16th St Croix tribe				
	a) Call Corcoran				Draft
	b) Call Larry Kite				Position Paper

Wk 6 • Day 42, 323 Left

SATURDAY FEBRUARY 11, 1995 11

DIARY AND WORK RECORD

TIME	NAME OR PROJECT	DESCRIPTION

8 9 10 11 12 1 2 3 4 5

OC 000006

13 MONDAY FEBRUARY 13, 1995

APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

Item What?	Where? Dis-ation?	Purpose Who What Invoice?	To whom Paid?	Reimbursed? By whom?	Amount

MONDAY FEBRUARY 13, 1995 13

Wk 7 • Day 44 321 Left

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10			
11			
12			
1			
2			
3			
4			
5			

REDACTED MATERIAL

St Croix Indian tribe
Dis. with tom Corcoran
re need for a position
~~paper~~ paper for Interior
Why it should not support
a gaming casino at the
Hudson Wisc Dog tract.

REDACTED MATERIAL

OC 000064

ATTORNEY'S EYES ONLY

13 MONDAY
FEBRUARY 13, 1995

APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

Item What?	Where? Dr.ment?	Purpose Who What Involved?	To whom Paid?	Reimbursed? By whom?	Amount

Wk 7 • Day 44, 321 Left

MONDAY
FEBRUARY 13, 1995 13

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10			
11			
12			
1			
2	St Croix Indian tribe Dis. with tom Borsoson		
3			
4			
5			

OC 000007

ATTORNEY'S
EYES ONLY

6 THURSDAY
APRIL 6, 1995

APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

Wk 14 • Day 96, 269 Left

THURSDAY
APRIL 6, 1995 6

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10			
11			
12			
1			
2			
3			
4			
5			

REDACTED MATERIAL

St Croix hotel
Dis w Tom Corsaron
Hl need to call White
House on Hudson
Dog Street
Dis Tom, [illegible]

REDACTED MATERIAL

OC 000065

[redacted]

7 FRIDAY APRIL 7, 1995

APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT
	REDAC MATE		
	Call to White House		
	Call Loretta Avant		
	TO BE DONE TODAY (ACTION LIST)		
	Red clip tubes		
	REDAC MATE		

EXPENSE & REIMBURSEMENT RECORD:

4 • Day 97, 268 Left

FRIDAY APRIL 7, 1995

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION
8		
9		
10		
11		
12		
1		
2		
3		
4		
5		

REDACTED MATERIAL

OC 000047

[redacted]

10 MONDAY
APRIL 10, 199_
APPOINTMENTS & SCHEDULED EVENTS

Wk 15 • Day 100, 265 Left

MONDAY
APRIL 10, 1995
10

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10			
11	St Croix tribe Call to Loretta: Avent at White House: Report to Tom Cormorant		
12			
1			
2			
3			
4			
5			

OC 000009

19 WEDNESDAY
APRIL 19, 1995
APPOINTMENTS & [redacted]

TIME	NAME	SUB

Wk 16 • Day 109, 258 Left

WEDNESDAY
APRIL 19, 1995 19

DIARY AND WORK RECORD

TIME	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10		St Croix, Tache Dir Tom Corcoran re fax to Lorette Ouent; drafting and sending fax to advent 1/2 hr	
11			
12			
1			
2			
3			
4			
5			

OC 000012

22 SATURDAY
APRIL 22, 1995

APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

SATURDAY 22
APRIL 22, 1995

Wk 16 • Day 112 253 left

DIARY AND WORK RECORD

HRS	APPT. TO PROJECT	DESCRIPTION	TIME
8		To Troy tube. Disc Larry Kitto re setting up appt's with D.N.C and Richie House	
9			
10			
11			
12			
1			
2			
3			
4			
5			

REDACTED MATERIAL

OC 000067

ATTORNEY'S EYES ONLY

24 MONDAY
APRIL 24, 1995
APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT

REDACTED MATERIAL

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

Item	Amount	Purpose	Reimbursement	Amount

Wk 17 • Day 114 251 Left

MONDAY
APRIL 24, 1995 24
DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME

8:
9:
10:
11:
12:
1:
2:
3:
4:
5:

St Croix tribe
L.D. calls to Loretta Avent
office re my decision
to raise the Hudson
Race track issue with
Pres Clinton in mpls if
I didn't hear from her
Meeting w/ the President
on the Hudson Race track
issue with Bruce Lindsey
and Linda Moore. Also of
the White House staff
Answering call from
Loretta Avent also her
staff re Hudson Soy track
Reporting to Larry Kitto

REDACTED MATERIAL

OC 000068

ATTORNEY'S EYES ONLY

25 TUESDAY APRIL 25, 1995

APPOINTMENTS & SCHEDULED EVENTS

2:30 PM Meeting with Kitto
Dinner Mark Club

REDACTED MATERIAL

Mercer

EXPENSE & REIMBURSEMENT RECORD:

REDACTED MATE

TUESDAY APRIL 25, 1995 25

Wk 17 • Day 115, 250 Left

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION
8		
9		
10	talk to Mercer Wild Horse Rep —	
11	Kent Bluedog Lorry Onites Louis Taylor - St Croix Joanne Jones - HO - Chunks Stanley Crooks - Wipeshore Group Douglas Lotto - P. Island	
12		
1	Mary Anderson - Mille Lac Tribe Frank Duchneaux	
2		
3		
4		
5	St Croix tribe - Meeting in St Paul with Larry Kitto Rand Dieuning Meeting on Friday w/ Don Fowler of the D.O.C.; I.D. tribe Conversation with Lora Norlegan of the Prep. Committee to Request	

REDACTED MATERIAL

OC 000069

ATTORNEY'S EYES ONLY

27 THURSDAY
APRIL 27, 1995
APPOINTMENTS & SCHEDULED EVENTS

2. Call Tulite House

REDACTED MATERIAL

THURSDAY 27
APRIL 27, 1995
Wk 17 • Day 117, 248 Left
DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8	TIME		
	St Croix tribe		
9	Calls to the Tulite House and the A.N.C re the tribes meeting with Chairman		
10	Fowler; Call to tom Donnor re some; Call to Larry Kitts in Wash A.C.		
11			
12			
1			
2			
3			
4			
5			

REDACTED MATERIAL

OC 000070

ATTORNEY'S EYES ONLY

5 FRIDAY 1995

MENTS & SCHEDULED EVENTS

PLACE SUBJECT

REDACTED MATERIAL

2 Hudson Sog track

TO BE DONE TODAY (ACTION LIST)

Loretta Advent
the Pres Bruce Lindsey
Horsed Ickes - Don Fowler
Interior
Indiana - 50 DNC - Larry Kitto
Committee to Re Elect

3 Committee to Relect
Briefing - May 9th
Hilary May 18th $5000 -
$50 - Committee Before primaries
no events - 1000
June 19th

4 D.N.C. - Minor Events

EXPENSE & REIMBURSEMENT RECORD:

Item Where?	Where? Dur Sum?	Purpose Who What Involved?	To whom Paid?	Reimbursed? By whom?	Amount

Wk 18 • Day 125, 240 Left

FRIDAY MAY 5, 1995 5

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10			
11			
12			
1			
2			
3			
4			
5			

REDACTED MATERIAL

OC 000049

7 SUNDAY MAY 7, 1995 417-235-0856

APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT
	1) Prepare Fax to Ickes		

REDACTED MATERIAL

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

Item Which?	Where? Duration?	Purpose Who Whom Involved?	To whom Paid?	Homeowner? Bill Sent?	Amount

SUNDAY MAY 7, 1995 7

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8	St Croix tribe		
9	Drafting letter to Harold Ickes ~~[illegible]~~ at White House setting forth reasons to approve creating trust lands for Casino at the Hudson Wis Dog track; disc. Tony Kitto checking on facts set forth in Ickes letter.		
10			
11			
12			
1			
2			
3			
4			
5			

OC 000071

ATTORNEY'S EYES ONLY

8 MONDAY
MAY 8, 1995

APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT

REDACTED MATERIAL

TO BE DONE TODAY (ACTION LIST)

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

Item What?	Where? Duration?	Purpose Who What Involved?	To whom Paid?	Reimbursed? By whom?	Amount

Wk 19 • Day 128, 237 Left

MONDAY
MAY 8, 1995 8

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8	St Croix tribe	Discussion w. tom Corcoran and editing letter to Harold Tyler; arranging distribution of letter	
9			
10			
11			
12			
1			
2			
3			
4			
5			

OC 000072

ATTORNEY'S EYES ONLY

9 TUESDAY
MAY 9, 1995
APPOINTMENTS & SCHEDULED EVENTS

TO BE DONE TODAY (ACTION LIST)
4 call David Mercer
202-544-0471
ad Harold Sohn
to F. Kelley

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

TUESDAY 9
Wk 19 • Day 129, 236 Left
MAY 9, 1995
DIARY AND WORK RECORD

REDACTED MATERIAL

St. Croix tribe
Sun tom Corcoran; LD
to tom Synder briefing
him on problem; fax to
Snyder; call to DM

REDACTED MATERIAL

OC 000073

ATTORNEY'S EYES ONLY

10 WEDNESDAY—
MAY 10, 1995
APPOINTMENTS & SCHEDULED EVENTS

Call Mercer

REDACTED MATERIAL

VEDNESDAY
MAY 10, 1995 10

REDACTED MATERIAL

St Croix Tribe.
L.D. Dis. David Mercer
re follow up with Harold
Tokes; Dis. tom Corcoran
re follow up Congressional
delegations

OC 000074

ATTORNEY'S
EYES ONLY

12 FRIDAY
MAY 12, 1995
APPOINTMENTS & SCHEDULED EVENTS

1. Call David Mercer
2. Call Larry Kitto

TO BE DONE TODAY (ACTION LIST)
Call Tom Synder
(See May 5th)

REDACTED MATERIAL

FRIDAY 12
Wk 19 • Day 132, 233 Left
MAY 12, 1995
DIARY AND WORK RECORD

REDACTED MATERIAL

St Croix Tribe
Call to Larry Kitto re he
advising the tribes and mem
and Wis delegations re my
letter to Harold Tobias; Call
to David Mercer to get update

OC 000075

ATTORNEY'S EYES ONLY

13 SATURDAY
MAY 13, 1995
APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

call Donald Mercer
TO BE DONE TODAY (ACTION LIST)
call Tom Sunder

REDACTED MATERIAL

SATURDAY 13
MAY 13, 1995
DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10			
11			
12			
1			
2			
3			
4			
5			

REDACTED MATERIAL

OC 000052

14 SUNDAY
MAY 14, 1995
APPOINTMENTS & SCHEDULED EVENTS

Mother's Day

SUBJECT

Day 134, 231 Left

SUNDAY
MAY 14, 1995
DIARY AND WORK RECORD

14

Call Moran –
Call Tom Synder

SEDACTED
MATERIAL

SEDACTED
MATERIAL

OC 000053

15 MONDAY
MAY 15, 1995
APPOINTMENTS & SCHEDULED EVENTS

REDAC

12 Call Mercer

REDAC

EXPENSE & REIMBURSEMENT RECORD:

Wk 20 • Day 135, 230 Left

MONDAY
MAY 15, 1995 15
DIARY AND WORK RECORD

HRS | DESCRIPTION | TIME

8 | 9 | 10 | 11 | 12 | 1 | 2 | 3 | 4 | 5

REDACTED MATERIAL

St Croix tube
Call to Mercer

Corcoran call to Tom

OC 000054

15 MONDAY
MAY 15, 1995
APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

Call Mercer -

BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

MONDAY 15
MAY 15, 1995
Wk 20 • Day 135, 230 Left
DIARY AND WORK RECORD

HRS	PROJECT	DESCRIPTION
8		
9		
10		
11		
12		
1		
2		
3		
4		
5		

REDACTED MATERIAL

St Croix tribe Hudson Dog tracks
Call to Mercer, ONC
re status report on meeting
w/ Harold Ickes; call to Tom
Corcoran re sending Acquisition
report to Harold Ickes.

OC 000076

ATTORNEY'S EYES ONLY

16 TUESDAY MAY 16, 1995

[redacted]

Report to Mercer
5 Call Tom Synder

REDACTED MATERIAL

11 Call John Sutton

46 Call Kitto
Letter Hess } Synder
May 23 - Dinner

EXPENSE & REIMBURSEMENT RECORD:

Letty

Wk 20 • Day 136 229 Left

TUESDAY MAY 16, 1995 16

DIARY AND WORK RECORD

NAME OR PROJECT DESCRIPTION TIME

8 9 10 11 12 1 2 3 4 5

St Croix Tribe - Hudson Dry
Getting report from Tom Synder
that he talked to President
Clinton re stolen matter
Reporting to David Mercer,
Tom Corcoran, Call to
John to John Sutton, at
Harold Ickes Office; Reporting
to Larry Kitto

REDACTED MATERIAL

[redacted]

OC 000077

ATTORNEY'S EYES ONLY

17 WEDNESDAY MAY 17, 1995

APPOINTMENTS & SCHEDULED EVENTS

NAME PLACE SUBJECT

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

Wk 20 • Day 137, 228 Left

WEDNESDAY MAY 17, 1995 17

DIARY AND WORK RECORD

DESCRIPTION

REDACTED MATERIAL

8 0800

9 0900

10 1000

11 1100

12 1200

1 1300

2 1400

3 1500

4 1600

5 1700

St Croix Lake.
Sister W David Mercer
re delay in getting
Appt with Harold Ickes

REDACTED MATERIAL

OC 000078

ATTORNEY'S EYES ONLY

19 FRIDAY MAY 19, 1995

APPOINTMENTS & SCHEDULED EVENTS

NAME	PLACE	SUBJECT
1 See Corcoran re Indians		
3 Dinner Mercer		

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

Item What?	Where? Duration?	Purpose Who Involved?	Is Item Paid?	Reimbursed By Whom?	Amount

Wk 20 • Day 139, 226 Left

FRIDAY MAY 19, 1995 19

DIARY AND WORK RECORD

HRS	NAME OR PROJECT / DESCRIPTION	TIME
8	St Croix	
	Inc with Frank D re Status of Hudson Dog Track	
9		
10		
11		
12	St Croix tribe meeting w/ Frank D. and reviewing Wall Street Journal article on Delaware North. meeting with Tom Corcoran and drafting proposed letter to be sent by Mina Delegation to Harold Ickes re Hudson Dog Track. L.D. Dinner with Lorry Kitts arranging meeting with Mina delegation on Wednesday May 24th in Washington	
1		
2		
3		
4	Dinner meeting with David Mercer of the DNC, reporting on Cause of delay in meeting with Harold Ickes.	
5		

REDACTED MATERIAL

OC 000079

ATTORNEY'S EYES ONLY

23 TUESDAY
MAY 23, 1995
APPOINTMENTS & SCHEDULED EVENTS

SUBJECT

TUESDAY 23
MAY 23, 1995
Wk 21 • Day 143, 222 Left
DIARY AND WORK RECORD

TIME	NAME OR PROJECT	DESCRIPTION	TIME
8	St Croix tribe		
9	Meeting with Larry Kitto and Terry Mac Auffe		
10			
11			
12			
1			
2			
3			
4			
5			

OC 000031

24 WEDNESDAY
MAY 24, 1995
APPOINTMENTS & SCHEDULED EVENTS

TO BE DONE TODAY (ACTION LIST)

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

WEDNESDAY
MAY 24, 1995 24
DIARY AND WORK RECORD

St Croix Tribe
trip to the Committee to
Reelect; (terry Moe Ruliffe)
Conference with chairman
of National Finance Committee
getting him to agree to call
Harold Ickes and arrange
appt. for Indians; Dinner
Al Gore, disc with Peter
Knight and David
Strauss re Indian
problem re Hudson
Dog track

REDACTED MATERIAL

OC 000080

ATTORNEY'S EYES ONLY

25 THURSDAY
MAY 25, 1995

APPOINTMENTS & SCHEDULED EVENTS

NAME PLACE SUBJECT

REDACTED MATERIAL

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

THURSDAY 25
MAY 25, 1995

DIARY AND WORK RECORD

8 9 10 11 12 1 2 3 4 5

St Croix tube
Reporting to Corcoran on
discussions with Peter
Knight, David Strauss at
Al Gore Dinner; reporting
on meeting w/ Terry McAuly

REDACTED MATERIAL

OC 000081

ATTORNEY'S EYES ONLY

31 WEDNESDAY
MAY 31, 1995
APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

Wk 22 • Day 151, 214 Left

WEDNESDAY
MAY 31, 1995 31
DIARY AND WORK RECORD

8 9 10 11 12 1 2 3 4 5

St. Croix tube
L.N. Ave with Tom
Corcoran re Milbus
W. is Journal Article re
Hudson Ang track; reader
fax

REDACTED MATERIAL

OC 000082

ATTORNEY'S EYES ONLY

[redacted] [redacted]

6 TUESDAY
JUNE 6, 1995
APPOINTMENTS & SCHEDULED EVENTS

NAME PLACE SUBJECT

REDACTED MATERIAL

Call ~~David~~ Mercer
re meeting with
~~Fred~~ Ickes
Howard

EXPENSE & REIMBURSEMENT RECORD:

Wk 23 • Day 157, 208 Left

TUESDAY
JUNE 6, 1995
DIARY AND WORK RECORD

NAME OPPOSITE DESCRIPTION

6

REDACTED MATERIAL

[redacted]

[redacted]

[redacted]

So every tribe
L.D. call to Corcoran
re Terry Mac Auliffe
arranging appt. with
Harold ~~Ickes~~ Ickes
Dina re getting City Council
at Hudson to take
legal action opposing
casino

OC 000083

ATTORNEY'S
EYES ONLY

12 MONDAY JUNE 12, 1995

APPOINTMENTS & SCHEDULED EVENTS

Wk 24 • Day 163, 202 Left

MONDAY JUNE 12, 1995 12

DIARY AND WORK RECORD

4/ Corcoran
a/ Hydrogen status

REDACTED MATERIAL

REDACTED MATERIAL

St Croix tribe
Getting up date from Corcoran
re meeting w/ Senator McCrane
and w/ Hanew Developments 1/2

OC 000084

ATTORNEY'S EYES ONLY

[redacted]

19 MONDAY JUNE 19, 1995

APPOINTMENTS & SCHEDULED EVENTS

NAME	PLACE	SUBJECT
1 Coll. Terry Moe H		

REDACTED MATERIAL

4 - Larry Kitts
a) Hudson - Lawyer
b) DNC - Comm to Re
c) Letters follow up
d) What about Tokes
e) What about Foley

EXPENSE & REIMBURSEMENT RECORD:

[redacted]

WK 25 • Day 170, 195 Left

MONDAY JUNE 19, 1995 19

DIARY AND WORK RECORD

HRS	NO. OR PROJECT	DESCRIPTION	HRS
8			
9			
10		St Croix tribe	
11		L.D to Larry [illegible] re meeting with City attorney in Hudson Wis; checking on letters from Congressmen and Senators to White House and Interior; Sec re support to be given to Committee to Reelect and D.N.C - 1/2 hr Sec w Tom Corcoran	
12			
1			
2			
3			
4			
5			

OC 000085

[redacted]

ATTORNEY'S EYES ONLY

29 THURSDAY
JUNE 29, 1995

APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

Wk 26 • Day 180, 185 Left

THURSDAY
JUNE 29, 1995 29

DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10			
11			
12	St Croix trip		
1	Getting update from tom Corcoran		
2			
3			
4			
5			

OC 000038

14 FRIDAY
JULY 14, 1995
APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

2 P.M Larry Ketto

FRIDAY 14
JULY 14, 1995
DIARY AND WORK RECORD

St Croix tribe
Meeting with Larry Ketto
in Triple; discussion
re need to go to Hudson
Wise and Vest with City
Council members and City
attorney; Dive re necessity
to follow up with Harold
Acker at the
White House; Fowler at O.N.C
and Terry Mac at the
Committee to Reelect —
~~outline~~ outlining fund
raising ~~strategies~~ strategies

REDACTED MATERIAL

OC 000086

ATTORNEY'S EYES ONLY

18 TUESDAY Don Fowler
JULY 18, 1995
APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	SUBJECT

Hotel Don Fowler

REDACTED

TUESDAY 18
JULY 18, 1995
Wk 29 • Day 199, 166 Left
DIARY AND WORK RECORD

HRS	NAME OR PROJECT	DESCRIPTION	TIME
8			
9			
10			
11			
12			
1			
2			
3			
4			
5			

OC 000059

[redacted]

19 WEDNESDAY
JULY 19, 1995
APPOINTMENTS & SCHEDULED EVENTS

1. Call Walters
w Dog tracks

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

WEDNESDAY 19
Wk 29 • Day 200, 165 Left
JULY 19, 1995
DIARY AND WORK RECORD

REDACTED MATERIAL

St. Croix Tube.
1. D. Discussion with Chairman Fowler re Supt. of Interior Decision to be reject an application for a Casino at the Hydsor Wisc. Dog track; sending faxes to Chairman Fowler; reporting to Corcoran and Kitto. [illegible] Mr. Cribbam Voiced by Opposition 1½ hr

OC 000087

[redacted]

ATTORNEY'S EYES ONLY

[redacted]

20 THURSDAY
JULY 20, 1995

APPOINTMENTS & SCHEDULED EVENTS

NAME PLACE SUBJECT

TO BE DONE TODAY (ACTION LIST)

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

[redacted]

Wk 29 • Day 201, 164 Left

THURSDAY
JULY 20, 1995 20

DIARY AND WORK RECORD

NAME DESCRIPTION TIME

8: St. Croix tribe
Briefing Kitts on
my conversations with
with Chairman Fowler
of the DNC; dis re
"thank you" letters to White
House and members of
congress; dis re
fund raising

9:
10:
11:
12:
1:
2:
3:
4:
5:

REDACTED MATERIAL

OC 000088

[redacted]

ATTORNEY'S EYES ONLY

26 WEDNESDAY
JULY 26, 1995

APPOINTMENTS & SCHEDULED EVENTS

Call Dan Fitto - Sioux - M
a) Larry Kitto - Sioux - M
b) John Taylor - St Croix Tube W

EXPENSE & REIMBURSEMENT RECORD:

Wk 30 • Day 207 158 Left

WEDNESDAY
JULY 26, 1995

DIARY AND WORK RECORD

HRS | NAME OR PROJECT | DESCRIPTION

8 0800
9 0900
10 1000
11 1100
12 1200
1 1300
2 1400
3 1500
4 1600
5 1700

[redacted]

SATURDAY
AUGUST 5, 1995

APPOINTMENTS & SCHEDULED EVENTS

NAME PLACE SUBJECT

TO BE DONE TODAY (ACTION LIST)

letter to Senator Inouye
Consult
Dorgan

EXPENSE & REIMBURSEMENT RECORD:

Wk 31 • Day 217, 148 Left

SATURDAY
AUGUST 5, 1995

DIARY AND WORK RECORD

HRS NAME OR PROJECT DESCRIPTION

8 0800
9 0900
10 1000
11 1100
12 1200
1 1300
2 1400
3 1500
4 1600
5 1700

OC 000106

14 MONDAY
AUGUST 14, 1995
APPOINTMENTS & SCHEDULED EVENTS

W-33 • Day 226, 139 Left AUGUST 14, 1995 14

HRS

8 0800

9 0900

10 1000

11 1100

12 1200

1 1300

2 1400

3 1500

4 1600

5 1700

11 Don Fowler

OC 000107

[redacted]

17 THURSDAY AUGUST 17, 1995

APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

[redacted]

THURSDAY AUGUST 17, 1995 17

DIARY AND WORK RECORD

REDACTED MATERIAL

[redacted]

St Croix tribe
Call from David Mercer
of the D.N.C. re possible
Law suit by Wisconsin
tribes that failed to get
the Race track trust lands
from Interior agent
Don Fowler and our clients;
Dec w/ Jerry Kitto and
Tom Corcoran re same

OC 000089

ATTORNEY'S EYES ONLY

17 THURSDAY AUGUST 17, 1995

APPOINTMENTS & SCHEDULED EVENTS

HRS NAME PLACE SUBJECT

8 Call Jo Fowler

Wk 33 • Day 229 136 Left

THURSDAY AUGUST 17, 1995 17

DIARY AND WORK RECORD

HRS NAME OR PROJECT DESCRIPTION TIME

8 9 10 11 12 1 2 3 4 5

ATTORNEY'S EYES ONLY

21 MONDAY
AUGUST 21, 1995
APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

MONDAY 21
AUGUST 21, 1995

8 9 10 11 12 1 2 3 4 5

REDACTED MATERIAL

OC 000090

ATTORNEY'S EYES ONLY

22 TUESDAY AUGUST 22, 1995

APPOINTMENTS & SCHEDULED EVENTS

NAME PLACE

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

~~to call Mercer~~

TUESDAY AUGUST 22, 1995 22

Wk 34 • Day 234 T31 Left

DIARY AND WORK RECORD

NAME OR PROJECT DESCRIPTION

REDACTED MATERIAL

St. Croix trip
Call to Mercer of D.N.C.
re possible lawsuit.
Reporting to Corcoran

OC 000091

23 WEDNESDAY
AUGUST 23, 1995
APPOINTMENTS & SCHEDULED EVENTS

SUBJECT

Wk 34 • Day 235 130 Left

WEDNESDAY
AUGUST 23, 1995 23
DIARY AND WORK RECORD

HRS

8 0800
9 0900
10 1000
11 1100
12 1200
1 1300
2 1400
3 1500
4 1600
5 1700

Tuth to Kitts
1 - Tom D
2 - C to Reelect
3 - Lowesnit

TO BE DONE TODAY (ACTION LIST)

0C 000110

O'CONNOR & HANNAN, L.L.P.

ATTORNEYS AT LAW

MINNEAPOLIS OFFICE
[illegible] BAKER BUILDING
[illegible]OUTH SECOND AVENUE
[illegible]EAPOLIS, MN 55402
(612) 341-3800
FAX (612) 343-1256

SUITE 800
1919 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006-3483
[redacted]

MADRID OFFICE
LA RINCONADA, [illegible]
28023 MADRID, SPAIN
(011) 341 575-0944
(011) 341 357-2251
FAX (011) 341 577-0759

FACSIMILE COVER PAGE

DATE: 5/8/95

PLEASE DELIVER TO: DON FOWLER / DAVID MERCER

FAX NUMBER: [redacted]

FROM: TOM CORCORAN

CLIENT/MATTER NUMBER: [redacted]

NUMBER OF PAGES: 4 (INCLUDING COVER PAGE)

COMMENTS:

David –
Pat O'Connor asked
me to "fax" this [illegible]
TC

EXHIBIT
TC - 2

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O'CONNOR & HANNAN, LLP
ATTORNEYS AT LAW

SUITE 900
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
[redacted]

May 8, 1995

Mr. Harold Ickes
Deputy Chief of Staff for Policy
and Political Affairs
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Proposal pending at Interior to create trust lands at the Hudson Dog Track in Hudson, Wisconsin for an Indian Gaming Casino

Dear Mr. Ickes:

I appreciate your calling me concerning the above subject on Tuesday, April 25, and again on Wednesday, April 26. I assume these calls were prompted by my discussions with the President and Bruce Lindsey on April 24 when they were in Minneapolis. I returned your calls and talked to your assistant, Mr. Suttan, who advised that you were not in the office when I called. Since I had an appointment with Don Fowler on Friday, April 28, to discuss this matter, I decided not to try to contact you until after the Fowler meeting with the chairman of five of the many Minnesota and Wisconsin tribes that oppose the creation of the trust lands for gambling purposes and the bailout of the current dog track owners.

I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. Since the Fowler memo was sent to you, the City Council of Hudson, Wisconsin, passed a resolution opposing the construction and operation of a casino at the dog track.

The Secretary of Interior has the discretion to create such trust lands if he finds:

1. it creates an economic benefit for the applicants, and
2. it does not create economic hardship for others.

The Minnesota and Wisconsin tribes who met with Interior officials explained the economic losses they would suffer if another casino were established in this area, due to the close

proximity of their casinos. In addition, Coopers & Lybrand as well as Peat Marwick recently submitted to Interior a detailed analysis outlining the adverse economic repercussions that would result from this happening.

I am concerned that those at Interior who are involved are leaning toward creating trust lands. We requested a copy of the Arthur Anderson report which the petitioners commissioned which found no adverse financial impact. The copy submitted to us "blocked out" all of the vital information relating to the size of the operation, how many machines, tables, etc., which we need to know, as well as the statistics and reasoning used in determining that the surrounding casinos would not suffer a serious economic impact. We need this data in order to put our best case forward to Interior. We have no objection to Interior's submitting the Coopers & Lybrand or the Peat Marwick reports to the petitioners.

I would also like to relate the politics involved in this situation:

1. Governor Thompson of Wisconsin supports this project.

2. Senator Al D'Amato supports this project because it bails out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Delaware North is located in Buffalo, New York.

3. The chairman of the Indian tribe in the forefront of this project is active in Republican party politics; this year he was an unsuccessful Republican candidate for the Wisconsin State Senate.

4. All of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee.

5. The entire Minnesota (Democrats and Republicans) Congressional delegation oppose this project. The Wisconsin Democratic Congressional delegation (including Congressman Gunderson in whose district the dog track is located) oppose the project.

I certainly will appreciate it if you will meet with me and two representatives of the tribes as soon as you can work it into your schedule, since a decision by Interior is imminent. We are available on a 24-hour notice.

Yours very truly,

Patrick J. O'Connor

PJO:shy
Doc 26263

blind copies:

1. Chairman Don Fowler - David Mercer
2. Larry Kitto
3. Persons attending Friday meeting with Fowler

Pat O'D

Attached are two articles on Delaware North in Indian gaming.

TR

THE WALL STREET JOURNAL.

Sins of the Father?
Concession King's Son
Fights Mob Stigma
As He Builds Empire

Delaware North's Businesses
Appear Gangster-Free,
But Regulators Wonder

Hosting You at Yosemite

By John R. Emshwiller
Staff Reporter of The Wall Street Journal
11/17/94

WALL STREET JOURNAL (J), PAGE A1

BUFFALO, N.Y. -- Settling into his private jet for the flight to his Palm Beach winter estate, Jeremy Jacobs tells a reporter along for the ride that there will be a small delay. "A surprise guest," he says with a grin.

A few minutes later, a station wagon rolls up and a magnificent German shepherd is brought aboard. She is one of the family watchdogs, trained in the former East Germany. Mr. Jacobs explains that when he is away she tends to bite the other dogs.

The pooch sits comfortably next to her master. "What other questions do you have?" asks Mr. Jacobs.

In his own way, Mr. Jacobs also does guard duty. He is the fierce protector of a remarkable 75-year family-[illegible] legacy, [illegible] Auger story but has contacted [illegible] as well.

The 54-year-old Mr. Jacobs owns and runs Delaware North Cos. here. If you stay in a hotel at Yosemite National Park, watch an event at Boston Garden, place a bet at Arkansas's only dog-racing track, gulp a hot dog and beer at Detroit's Tiger Stadium or peruse an in-flight magazine on a Delta jet, you have encountered one of the dozens of faces of Delaware North. The company has more than 200 operating units in 39 states and six countries. Annual revenue tops $1 billion. More than 15,000 people work for the concern. All, unequivocally, answer to one man.

He, in turn, answers to the memory of another: his father, Louis Jacobs built the company literally from peanuts, which he and two brothers sold as a boys. He lived for his firm and died for it, succumbing to a heart attack one night at his desk in 1968 while putting in yet another 16-hour day.

The 68-year-old patriarch left his then-28-year-old son with a rich but embattled empire. At the time of Lou Jacobs's death, investigators were probing the intensely private company for evidence of organized-crime ties.

Mr. Jacobs vociferously proclaimed his firm's and his father's innocence. But in 1972, the company, known then as Emprise Corp., was convicted of a felony stemming from mob-related business deals. That same year, Sports Illustrated magazine put the late Lou Jacobs on its cover under the headline "The Godfather of Sports."

The conviction threatened the existence of the company. As a felon, it faced the possibility of losing the hundreds of contracts and licenses that formed its foundation.

So Jeremy Jacobs launched a campaign to defend his company that continues to this day. He has sought help from local politicians and a president of the U.S., while using his vast wealth -- estimated at half a billion dollars -- to reward allies and punish enemies. His battlefields have included the halls of Congress. He has changed the company's name and even jettisoned a brother from the executive suite.

Richard Stephens, Delaware North's president, likens the Mafia stigma to "a ghost that won't go away." Competitors still regularly send would-be customers the old press clips about Emprise and the mob; some business opportunities "we don't hear about until after they are done," he gripes. Mr. Jacobs proclaims his company is clean and says he has spent a "horrific amount of money and years" in the struggle to prove it.

[illegible] regulators say they [illegible] wrongdoing since the 1972 conviction, they still wonder: Has Mr. Jacobs engineered a cleanup or a whitewash? It is a question that seems destined to plague the company for at least another generation.

Mr. Jacobs doesn't deny that his father traveled in a rough-and-tumble world. Lou Jacobs built the company by obtaining lucrative concession contracts at sports facilities and other locations in return for providing millions of dollars in upfront payments and loans to stadium and team owners. Such were his financial contributions to major-league baseball -- where Delaware North is concessionaire to a quarter of the 28 teams -- that when Lou Jacobs died,

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594-001-6

the Sporting News suggested a special commemoration be set up at the Baseball Hall of Fame.

Some of those loans went to horse tracks, dog tracks and jai alai arenas. Besides concessionaire, the company also became owner and operator of a number of such facilities. Mr. Jacobs says his father's forays into the gambling world unavoidably put the company into contact with questionable characters. "It went with the territory," he says.

But some federal officials viewed the contacts as hardly innocent. In 1973, five years after Lou Jacobs's death, a report by the House Select Committee on Crime concluded that "Emprise knew, or should have known," that it was the financier or business associate for operations with alleged mob connections stretching from New England to Nevada.

That report came on the heels of the April 1972 conviction of Emprise in Los Angeles federal court. A jury found that the company had conspired to hide its ownership interest and the interests of two reputed mob figures in the Frontier Casino in Las Vegas. According to the jury, Emprise had made hundreds of thousands of dollars in loans to front men for the alleged mobsters at the casino. The late Lou Jacobs and his son Max were named as unindicted co-conspirators.

By this time, Jeremy Jacobs was already firmly in charge of the company. Following the conviction, he held Emprise's first news conference to denounce "a vicious and deliberate effort to smear" his father and the company. He vowed: "We will not allow either political opportunists or business competitors to profit at the expense of my late father's good name." Emprise appealed the conviction all the way to the Supreme Court, which refused to consider the company's entreaty.

The conviction immediately gave Emprise and the Jacobs clan a certain notoriety. "I remember coming home and my mother telling me I worked for the Mafia," says Jessica Rabuba, then a fledgling company employee and now assistant to the president of Delaware North.

To [illegible] his critics. One was a congressman from Arizona, Sam Steiger, who sparked a 1973 House investigation of Emprise and traveled around the country speaking against the company. The firm sued the Republican and one of its lawyers denounced him in congressional hearings as an "evil man."

In 1976, Mr. Jacobs and Mr. Steiger met for the first and only time in Buffalo and came to an agreement. Emprise would drop its suit if Mr. Steiger wrote a letter praising current management and supporting the company's petition for a presidential pardon.

Today, Mr. Steiger says he did so because he was about to leave office and was nearly broke from the costs of Emprise's libel suit. The pardon was eventually turned down by President Carter. But, Mr. Steiger says, "Emprise used that letter in every regulatory hearing from then on" as evidence that even its strongest critic had seen the light.

Meanwhile, Mr. Jacobs hired former top federal law-enforcement officials to check for any connections the company might have with questionable characters. As a result, the company stopped dealing with some firms. "We've made absolutely certain that everyone is cleaner than Caesar's wife," says Edward F. Foley, a Delaware North consultant and former head of a major Federal Bureau of Investigation organized-crime unit in New York.

One casualty was the grand moniker "Emprise," which means a venture involving prowess or daring. Mr. Jacobs formed a new parent company in 1980 and, for a name, looked no further than the nearby intersection of Delaware and North streets in Buffalo.

Another casualty was brother Max, an executive vice president. State regulators expressed concern over having an unindicted co-conspirator -- even one who proclaimed his innocence -- tied to the firm. In 1974, Max resigned and, like his other brothers and sisters, eventually sold his share in the company to Mr. Jacobs. Removing his brother "was very tough," but necessary, Mr. Jacobs insists. Max, he says, had become "excess baggage." Max Jacobs didn't return repeated phone calls for comment.

Of course, there was one tie to the past: Mr. Jacobs wasn't about to sever himself. Mr. Jacobs had been an officer and director and far more involved in the company than Max Jacobs ever was. Yet he insists he knew nothing of mobsters or criminal acts. He also defends his father's integrity. At the same time, he and other company officials note that, if there is blame to be allotted, it rests with the dead man. "Louis M. Jacobs alone was responsible for the transactions resulting in the conviction," says a 1984 company letter to Iowa regulators.

In a move he admits was spurred by all the negative publicity, Mr. Jacobs became more involved in the community and quickly emerged as a major philanthropist. He and his family also [illegible] friendships, contributing to politicians ranging from former Rep. Jack Kemp, a conservative Buffalo Republican, to Bill Clinton, who since 1990 has received about $20,000 from the Jacobs clan.

Last year, critics unsuccessfully challenging a Delaware North racing license in Wisconsin saw the extent of the company's connections. While there is no evidence that any official acted inappropriately, the critics note that two top Wisconsin gaming-commission officials had been employees of a senior Delaware North executive when the three worked in state government. One of the company's local law firms had former partners in senior positions in the administration of Gov. Tommy Thompson, who

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appoints the gaming commission and had to approve the hearing examiner in the case. The hearing examiner was the governor's former chief of staff and a partner in a law firm that had previously done work for Delaware North.

Mr. Jacobs hasn't won every round. In 1984, for example, the Vermont Racing Commission ruled that "Jeremy Jacobs knew or should have known of Emprise's illegal activities and should have attempted to stop them." Delaware North withdrew a license application there.

In the early years of Mr. Jacobs's reign there were still questions about continuing mob involvement. It took the company years, even after the conviction, to sever ties with some questionable suppliers and business associates. For example, it wasn't until 1979, after the hiring of Mr. Foley, the ex-FBI agent, that a Detroit bread supplier with ties to a reputed mob family was dropped. A Delaware North spokesman blames such relationships on contractual commitments and the press of other business that didn't allow the company to focus on possibly questionable contacts.

Or consider the testimony of Gary Bowdach, a confessed Mafia hit man, arsonist, and federal protected witness.

In a 1980 deposition to Florida state regulators and subsequent testimony in a civil trial, Mr. Bowdach claimed that a 1974 fire at a Delaware North jai alai arena in Florida had been arranged by a mob boss in New England, supposedly in return for a cut of the insurance proceeds from Delaware North. Mr. Bowdach claimed he was offered the arson job by a mob associate but turned it down. General Electric Co. even used Mr. Bowdach as a witness to defend itself against a lawsuit in which Delaware North was claiming defective GE materials had contributed to the fire.

Delaware North denies Mr. Bowdach's allegations and says insurance payments didn't cover its losses from the blaze. The jury in the civil case absolved GE of any financial liability. According to Delaware North, the jury also found that the fire was intentionally caused but that [illegible]

Then there is the case of Don Bolles, an investigative reporter for the Arizona Republic and a longtime critic of Emprise's operations in Arizona. In 1976, Mr. Bolles was killed by a bomb under his car in Phoenix. According to local press reports, his last words included, "They finally got me. The Mafia, Emprise . . ."

Two men, neither of whom had any known ties to the company, were convicted in connection with the killing. But over the years, strange bits up evidence have surfaced in court proceedings arising from the killing. These include a Phoenix policeman's claim in a deposition that local authorities ordered the removal of information from a police file that might have linked Emprise and others to one of the killers. The company has denied any involvement and notes that official investigations have consistently cleared it of any role in the slaying.

Indeed, for well over a decade, no evidence has surfaced to suggest continuing relationships between mobsters and the company. So why are some regulators still uneasy?

In part, the concerns seem to stem from the widely held belief that once in the mob, always in the mob. At the same time, both the company and its owner are very private. That is a trait that, rightly or wrongly, may help breed distrust.

Causing raised eyebrows among some regulators, for instance, is the way Delaware North handles the tens of millions of dollars in cash generated annually from its wagering operations and food-and-drink sales. Each day, the operating units send their cash receipts to headquarters in Buffalo, which the company says is done simply to improve cash management. But it worries some officials in other states. "We need to know where the money in parimutuel operations goes and comes from. Here, we run into a black hole," says one state racing regulator, who adds that his agency doesn't have the authority to go through the financial records of Delaware North in New York.

Earlier this year, Mr. Jacobs faced a new potential embarrassment when Max Margulis, a veteran Delaware North official, was indicted in state court in Tampa, Fla., for his role in an alleged investment fraud in which the company isn't accused of having a role. A co-defendant was identified in the local Tampa press as the suspected head of the city's organizedcrime family.

Mr. Margulis has pleaded not guilty and the case recently was dismissed when prosecutors refused to comply with a court order to be more specific in their charges. That dismissal is being appealed. Delaware North officials say they believe Mr. Margulis is innocent and have kept him on the payroll.

Yet the specter of the mob remains a seemingly eternal source of public-relations headaches. Earlier this year, Delaware North was looking to join the New York Times Co. in a bid for Madison Square Garden. Its involvement prompted a New York Post story under the headline, "Mob-case firm joins Times in Garden bid." The story described Delaware North as a "controversial" company with "a history of ties to the mob," and erroneously reported that Mr. Jacobs had been one of the unindicted co-conspirators in the 1972 criminal case. After the company threatened to sue, the Post printed a correction and wrote a letter of apology to Mr. Jacobs.

The Times ultimately decided against proceeding with a joint offer. Both sides say the bad press about Delaware North had nothing to do with that decision.

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The past also intruded on what may be Mr. Jacobs's biggest triumph to date: Delaware North's selection last year as concessionaire for Yosemite. Numerous stories about the company's bid for the 15-year, $1.5 billion contract mentioned the mob -- hardly the best advertisement for a firm seeking to run one of the nation's crown jewels. "Can it outrun its past?" asked the Fresno (Calif.) Bee in the article.

In this case, Mr. Jacobs's political connections helped. The company had friends in the Bush administration. Mr. Kemp, who at the time was secretary of Housing and Urban Development, wrote a letter to the Interior Department praising Mr. Jacobs. "I suggested that he should be given every consideration," Mr. Kemp recalls.

Delaware North was tentatively selected. However, losing bidders and some in Congress questioned the fairness of the selection process. So the final decision was left to the incoming Clinton administration and Interior Secretary Bruce Babbitt.

As it happened, when Mr. Babbitt was attorney general and later governor of Arizona in the 1970s and early 1980s, he had helped work out arrangements allowing Delaware North to remain in the racetrack business there despite the 1972 conviction. Mr. Babbitt also initially headed the Bolles murder investigation that cleared Emprise. Over the years, the Jacobs family and its business arms have given thousands of dollars to Mr. Babbitt's campaigns. (Mr. Babbitt has consistently said those contributions never influenced his treatment of the company and noted that he has, at times, been a critic of the company.)

In June of last year, the Interior Department gave the green light to Delaware North's selection. Ultimately, the mob stigma "didn't make a difference," exults Mr. Jacobs. He says the firm now plans to go after other national-park contracts. Such an expansion could help offset the decline in the firm's troubled racetrack operations, which have been hurt by the spread of casino gambling.

Indeed, despite all the bad publicity, business is good. Under Mr. Jacobs's reign, Delaware North's annual revenue has risen more than 20-fold (it doesn't disclose earnings), and operations stretch from Australia to Hungary. Despite temporary banishments in the past, no state's doors are closed to Delaware North.

Though Lou Jacobs rarely allowed himself outside indulgences, his son hasn't let the family business eclipse other aspects of his life. He splits his time between a 225-acre estate in East Aurora, N.Y., and a 200-acre horse farm near Palm Beach, Fla. He has become a health enthusiast and an accomplished horseman. In 1992, when one of Jeremy Jacobs's daughters married the son of former American Express Co. Chairman James Robinson, Mr. Jacobs and his wife, Margaret, put on what one family friend only half-jokingly calls the "wedding of the century" for more than 600 guests at the East Aurora estate.

Now he is planning for his own succession. Two of Mr. Jacobs's three sons are executives at Delaware North and are being groomed to receive the torch. Says the oldest, 32-year-old Jeremy Jr.: "In our house, my father and grandfather are legends."

(See related letter "Letters to the Editor: We've Been Scrutinized And Re-Scrutinized" -- Dec. 16, 1994.)

(See related letter "Letters to the Editor: Expunged, Permanently" -- WSJ Dec. 20, 1994.)

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594-001-8

MJS 5/29/

Tribe approves buying Fox Valley track

Stockbridge-Munsee would operate casino, greyhound park

Associated Press

Shawano — The Stockbridge-Munsee tribe has approved purchasing the defunct Fox Valley Greyhound Park in Kaukauna for a proposed casino and dog track.

Tribal members approved the referendum 152 to 64 in a weekend vote.

The vote was the first step in the project, which requires state and federal approval. The Stockbridge-Munsee operate the North Star Casino.

Tribal Chairman Virgil Murphy was unavailable for comment Sunday. Murphy has said the revenue the tribe would reap from a track and casino would easily exceed start-up costs.

The Stockbridge-Munsee reached an agreement in principle with track owner Delaware North that would transfer the property to the tribe. The deal followed four months of negotiations.

Delaware North had loaned $17 million to Gary and Carole Van Zeeland of Little Chute to build the track. A federal bankruptcy judge ordered the track closed in 1993 after it lost $3.6 million.

AA 0000008

WEDNESDAY, April 26 1995

Secretaries Day
116th Day, 249 Days Left • 17th Week

TO BE DONE TODAY (ACTION LIST)

Kenny
Danielle
Vato
Sabo
[illegible]
[illegible]

APPOINTMENTS & SCHEDULED EVENTS

HRS	NAME	PLACE	SUBJECT	TAX
7				
8				
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DIARY AND WORK RECORD

PAT
LARRY
LEWIS TAYOR
JOANNE JONES
CONIDA
SHAN CROOKS
GEROLD BLUE
DANYLEN LANTS
MARY ANDERSON
FRANK [illegible]

Jose [illegible] 5

25 Pages of 1,000 Each

Pres P - 11 & 20 [illegible]

EXHIBIT
TC - 4

EXPENSE & REIMBURSEMENT RECORD:

PNC

Committee to be [illegible] -

50 [illegible]

0020

2/8/95

Jay Kitle - a "BS" meeting

Oberstar + Vento, Wellstone, Mayne, Sarah
in attendance
argument by Tribe re no consult for
and what is your procedure??
"we are going to look at this and
then decides -" Cut B says that
balony had it in Mammoth and same
here Cut B a bogus process

tried to assure us otherwise,
but not satisfactory
"100% go but now
better take a look at it"

we don't have a procedure....
what does Tribe mean by:
eg surrounding community ???
criteria re impact is
it environmental, social or
economic

"they have thrown out our argu-
ments on all of these said Tribe

CAHTC
Action:
communicate to Babbitt
(1) [illegible] or
(2) they need to tell us what
their process formally ask Tribe
in writing what is your process
and we need it in order to feed
into it our views

EXHIBIT
TC - 5

(2)

(3) "Meeting for Jean Taylor – LK –
(4) outline a plan as to how
we are going to move forward
for LK + TC and, of course,
for [illegible]

George Shibine – 3 days or job from
Dept of Intern for Dim of Indi Affr
now in Indian gaming, he is B/A
lawyer ~~at~~ on it

"I Duffy all over the place" 1st "going to
rely on the Gov" answer "then" we won't
rely on the gov since as you say his
history is he changes his mind

What is the process – what are the
criteria – real answer is they
don't have any criteria, no set
procedure, going by the seat of their
pants because mind already made
up to ignore this application

REDACTED MATERIAL

IV. HUDSON DOG TRACK UPDATE

At last week's NIGA conference in Green Bay, WI, the following Tribal Officials met jointly to plan a strategy to defeat the Hudson Dog Track proposal.

Minnesota Tribes attending	Wisconsin Tribes Attending
Shakopee	St. Croix
Prairie Island	Oneida
Mille Lacs Lake	Ho-chunk

We are arranging meetings for Tribal Officials to meet with the Chairman of Democratic National Committee, and representatives from the White House on Thursday, April 28th. Please note: We will forward a schedule as soon as it is available.

REDACTED MATERIAL

EXHIBIT
TC - 6

REDACTED MATERIAL

III. HUDSON DOG TRACK UPDATE

On Friday April 18, a delegation of tribes from Minnesota and Wisconsin met with DON FOWLER, CHAIRMAN OF THE DEMOCRATIC NATIONAL COMMITTEE (DNC). The purpose of the meeting was to request the DNC and the Committee to re-elect the President, to help communicate with the White House and the President about why the Department of the Interior should not approve the fee-to-trust land transfer for the Hudson Dog Track. The message was quite simple: all of the people against this project, both Indian and non-Indian are Democrats who have a substantially large block of votes and who contribute heavily to the Democratic Party. In contrast, all of

Tr and George Shibine 4/25

I called him at suggestion of H Sibbison and he said they are putting it together and he would mail me a copy - "I think his FOI person is putting editing into it to protect property infinity" I said timetable is short so I'd like to pick it up, he said fine how about sending a messenger over for it OK - but call first, need he or someone will call O/H when it is ready tomorrow morning i.e. Wed 4/26 probably be ready in afternoon

He said a member of Arthur's want it.

In room 2070 Interior

To: TC File #

M: Heather J Gibbs[illegible]

Phone #: Ext.

MESSAGE

Re: Does you want —

Call George Shibine

[redacted]

[illegible] call

unassigned call forward

By: Date: Time: AM PM

	Telephoned
	Came In
	Returned Call
	Please Return Call
	Will Call Again
	Wants To See You
	Discuss With Me
	URGENT

EXHIBIT

TC - 7

AA 0000080

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
[redacted]

July 20, 1995

The Honorable John McCain
United States Senate
241 Russell Senate Office Building
Washington, D.C. 20510-0303

(meeting at 2:30PM 6/7/95)

Dear John:

As you will recall, last month we met with you regarding the proposed conversion of a dog track in Hudson, Wisconsin, to an Indian gaming casino which would bail out the dog track owner, Delaware North of Buffalo, New York. Enclosed is the announcement by the BIA about their decision to deny this application.

Many, many thanks to you for your help with the Department of Justice. Without your assistance, we do not believe BIA Headquarters would have overturned its Minneapolis area office on this matter.

Sincerely,

Thomas J. Corcoran

Patrick E. O'Donnell

jjj
enclosure

EXHIBIT
TC - 8

(594-001-1)

Post-it™ brand fax transmittal memo 7671 | # of pages ▸

To Tom Lawson	From Larry K. [illegible]
Co.	Co. MFA
Dept.	Phone # [redacted]
Fax # [redacted]	Fax # [redacted]

EXHIBIT

TC - 9

AA 0000120

M P A

MANAGEMENT & PUBLIC AFFAIRS CONSULTANTS
1227 MARION STREET
ST PAUL MN 55117

LARRY KITTO
Phone [redacted]
Pager [redacted]
Fax [redacted]

DATE : June 5, 1995
MEMO TO : Tribal Clients
MEMO FROM : Larry Kitto

REASON : HUDSON DOG TRACK ISSUE

Recent communications with the BIA lead us to believe that a decision about the fee-to-trust transfer of the Hudson Dog Track will be before the Secretary of Interior for a decision before the end of June. We are recommending the following strategies:

1. Have the Minnesota Congressional Delegation send a letter to Herold Ickes, President Clinton's Deputy Chief of Staff for Policy and Political Affairs requesting that the White House meet with elected tribal officials who are opposed to the transaction. THE LETTER HAS BEEN DRAFTED AND IS BEING CIRCULATED FOR SIGNATURES.

2. Have each of the Tribes who are opposed send a letter to Secretary Babbitt requesting a meeting before he makes a decision. THE LETTER HAS BEEN DRAFTED AND SENT TO THE TRIBES FOR SIGNATURE.

3. Ask Congressman George Miller, democrat from California and the ranking member of the House Natural Resources Committee to take an opposing position and meet with Secretary Babbitt. JERRY SIKORSKI WILL PURSUE THIS.

4. Ask Congressman Don Young, republican from Alaska to take an opposing position and express reasons for such opposition to Secretary Babbitt. TOM CORCORAN AND FRANK DUCHNEAUX WILL PURSUE THIS.

5. Arrange for Marge Anderson, Chairwoman of the Mille Lacs Lake reservation, Debbie Boxleitner, Chairwoman of the Oneida reservation, and Joanne Jones, Chairwoman of the Ho-Chunk reservation to meet with Senator Danial Inouye, democrat of Hawaii and ranking member of the Senate Committee on Indians. JERRY SIKORSKI AND SCOTT DACY WILL PURSUE THIS.

6. Have Frank Duchneaux, Tom Corcoran, and Pat O'Donall meet with Senator John McCain, republican from Arizona and Chairman of the Senate Committee on Indians. THIS MEETING IS ALREADY ARRANGED.

7. Increase pressure and communications with the White House through Vice-President Gore's office, the National Democratic Committee and The Committee to re-elect the President. LARRY KITTO AND PAT O'CONNOR WILL PURSUE THIS.

8. Ask Congressmen Sabo, Vento, Oberstar, and Senator Wellstone of Minnesota to have a Meeting with Secretary Babbitt. LARRY KITTO WILL PURSUE THIS.

9. Send a joint letter from the St. Croix, Oneida, and Ho-Chunk tribes to the Wisconsin delegations asking, once again, for support in opposing the transaction. LARRY KITTO AND TOM CORCORAN WILL PURSUE THIS.

10. Get Congressman Obey and Senator Feingold of Wisconsin and Congressman Vento of Minnesota to keep pressure on the Department of Interior and Secretary Babbitt. SCOTT DACY WILL PURSUE THIS.

11. Have Congressman Martin Sabo of Minnesota keep the pressure on the White House through Chief of Staff Leon Panetta. LARRY KITTO AND JERRY SIKORSKI WILL PURSUE THIS.

12. Get a story in the Washington Post about Delaware North and their relationship with the tracks in Wisconsin. TOM CORCORAN, LARRY KITTO, SCOTT DACY, AND JERRY SIKORSKI WILL PURSUE THIS.

13. Publicly expose the conflict of interest that Ada Deer, Assistant Secretary of the BIA and gaiashkibos, President of NCAI have in relation to their ability to use their positions to work the process and influence the decision.

from MAY 8

MONDAY, MAY 8 128/237	TUESDAY, MAY 9 129/236	WEDNESDAY, MAY 10 130/235
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EXHIBIT

TC - 10

AA 00001782

MEMO TO : TRIBAL CLIENTS
MEMO FROM : LARRY KITTO & TOM CORCORAN
DATE : 12 NOVEMBER 1995
REASON : HUDSON DOG TRACK UPDATE

1. Federal officials have until the end of November 1995 to respond to the lawsuit filed by the Lac Courte Oreilles, Red Cliff and Sokaogon bands of Chippewa. It appears that the options they are considering include:

- Vigorous defense of the Secretary of Interior's right to make such decisions
- Giving the issue limited attention and put up a luke-warm defense
- Suggest that the issue be sent back to the Interior Department for review

2. We have been informed that the U.S. Attorney's office in Madison, WI, is considering a request that they be allowed to argue the case there, rather than it being argued by attorneys from the Justice Department in Washington, D.C. She may also suggest that the Department of Interior review the issue again.

3. The case is further complicated by the fact that the three Tribes filing the lawsuit have hired large, well-connected law firms to represent them. One of these firms has contributed heavily to the U.S. Attorney in Madison when she ran for public office.

4. The Indian Rights office within the Justice Department, indicated that

- This is not an issue that the Secretary of Interior will want to review

EXHIBIT
TC - 11

However, there may be some reluctance in the Indian Rights Office to become involved because this is a case of one group of Tribes vs. another group of Tribes.

5. For the Minnesota and Wisconsin Tribes who were against turning the Hudson Dog Track into a casino, it is in their best interest to see that:

- The case is defended vigorously by lawyers from the Department of Justice in Washington, D.C. who are experienced and learned in Indian law.
- That this case not be sent back to the Department of Interior for review and reconsideration.

6. As we know, this issue became very political and neither the White House or those in Congress who supported us, will want this issue to come up again during the 1996 election year.

7. We have begun to make contacts with the Congress, the Administration and the White House to alert them about our concerns. Additionally, we suggest that Tribal attorneys, on behalf of their clients, contact the Department of Justice and the Department of Interior to:

- Find out the status of the situation
- Ask that the case be handled by Department of Justice lawyers
- Convey that you do not want the case returned to the Secretary of the Interior for a second review.

8. Finally, if and when this case goes to court, Tribes need to decide how they will support the Government and the defense of the prior ruling.

[The deposition of Ada Deer follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: ADA DEER

JANUARY 12, 1998

The deposition in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 1:00 p.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: James C. Wilson, Senior Investigative Counsel; Barbara Comstock; Senior Investigative Counsel; Robert Dold, Jr., Investigative Counsel; Michael Yeager, Minority Counsel; and David Sadkin, Minority Counsel.

Also Present: Representative Stephen Horn.

For MS. DEER:

TIMOTHY S. ELLIOTT, ESQ.
Deputy Associate Solicitor-General Law
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Mr. WILSON. Let's go on the record if we may. Good afternoon, Ms. Deer. On behalf of the Committee on Government Reform and Oversight I thank you very much for appearing here today. I am aware that you are appearing here voluntarily, and we appreciate that very much.

This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter and notary public, and I will now request that the reporter place you under oath.

THEREUPON, ADA DEER, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. WILSON. I would like to note for the record those who are present at the beginning of this deposition. My name is James Wilson. I am the designated Majority counsel, and I am accompanied today by Robert Dold. Minority counsel today are Michael Yeager and David Sadkin. Accompanying Ms. Deer is Timothy Elliott of the Department of the Interior. Also present today is Congressman Steve Horn of California.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a courtroom. If I ask you about conversations you have had in the past and you are unable to recall the exact words used in that conversation, you may state that you are unable to recall the exact words and then give me the gist or any substance of any such conversation to the best of your recollection.

If you recall only part of a conversation or only part of an event, please give me your best recollection of that conversation or event.

If I ask you if you have any information about a particular subject and you have overheard other persons conversing with each other regarding that subject or have seen correspondence or documentation about that subject, please tell me that you do have such information and indicate the source from which you have derived such knowledge.

Majority and Minority committee counsels will ask you questions regarding the subject matter of this investigation. Minority counsel will ask questions after Majority counsel has finished. After the Minority counsel has completed questioning a new round of questioning may begin. Members of Congress, and specifically Mr. Horn who is here today or any others that would choose to attend, will be given an immediate opportunity to ask questions at any time if they so desire. When they are finished, committee counsel resumes questioning and we resume from where we have left off.

Pursuant to the committee's rules, you are allowed to have an attorney present to advise you of your rights, and I actually may ask you a question clarifying the

relationship of Mr. Elliott and yourself, but it is true that you are accompanied here today by Mr. Elliott of the Department of the Interior.

The WITNESS. That's true.

Mr. WILSON. Is Mr. Elliott representing you in any capacity?

Mr. ELLIOTT. You want me to answer.

Mr. WILSON. We may as well discuss this now.

Mr. ELLIOTT. Yes. Ms. Deer is here to testify so far as we know about matters that arose as part of her official duty and from her official position, and therefore her views in my judgment converge with those of the Department of the Interior, and insofar as they converge and stay the same, I am representing her, even though I am a representative of the Department of the Interior. When those views diverge, it would be my duty as an attorney to advise her that her interest and those of the department have diverged, and we will then undertake to straighten the situation out if that occurs. It has not yet.

Mr. HORN. If I might ask, are you from the Office of the Solicitor?

Mr. ELLIOTT. Yes, sir, I am.

Mr. HORN. Are you a career civil servant or a political appointee?

Mr. ELLIOTT. I am a career civil servant.

Mr. HORN. Thank you.

Mr. WILSON. Thank you very much, and if there is any need to ask anything, obviously we will do that at the appropriate time.

If there are any objections to questions asked during the course of this deposition, the objection will be stated for the record, and if the witness refuses to answer a question, Majority and Minority counsel will confer to determine whether the refusal is proper. If Majority and Minority counsel agree that the question is proper, then the witness will be asked to answer the question. If an objection is not withdrawn, the Chairman or a Member designated by the Chairman may decide if the objection is proper. This deposition is considered as taken in executive session of the committee, which means that it may not be made public without the consent of the committee pursuant to clause 2(k)(7) of House Rule XI.

No later than five days after your testimony is transcribed and you have been notified that your transcript is available, you may submit suggested changes to the Chairman. Generally, the reporters have been unbelievably productive and the transcripts get turned around within a day or so, and recognizing that you have circumstances that are out of the usual, we generally ask people to review transcripts in the offices here. We will make whatever accommodation we need to make to reduce the inconvenience to yourself, and I anticipate that we will either send directly to you or arrange with Mr. Elliott a method of getting the transcript to you and allow you to review the transcript when you are back in Wisconsin.

Committee staff may make typographical and technical changes requested by you. However, substantive changes or modifications to the deposition transcript submitted by you must be accompanied by a letter requesting changes and a statement of your reasons for each proposed change. A letter requesting substantive changes must be signed by you and any substantive change will be included as an appendix to the transcript conditioned upon your signing of the letter.

Do you understand everything I have said so far?

The WITNESS. Yes.

Mr. WILSON. If you don't understand one of my questions, please say so and I will repeat it or rephrase it so that you do understand the question. Do you understand that you should tell me that you don't understand my question if that's the case?

The WITNESS. [Nodding affirmatively.]

Mr. WILSON. The reporter will be taking down everything we say and will make a written record of the deposition. So please do give verbal, audible answers in order to assist the House reporter.

The WITNESS. [Nodding affirmatively.]

Mr. WILSON. Your testimony is being taken under oath as if we were in court, or before the committee, and if you answer a question it will be assumed that you understood the question and the answer was intended to be responsive to it. Do you understand that?

The WITNESS. Yes, I do.

Mr. WILSON. Again, I will note that you are here voluntarily, and the committee appreciates that very much.

Do you have any questions about this deposition before we begin the substantive portion of the proceeding?

The WITNESS. No. I think your instructions are clear.

Mr. WILSON. Okay. If anybody has a statement or observation to make, this is an appropriate time. Mr. Elliott?

Mr. ELLIOTT. Ms. Deer is here, as you mentioned, voluntarily. As she will tell you, her personal and professional life is in a state of flux at this time. She is packing up her goods and moving back to Wisconsin. She has recently left her position as an Assistant Secretary of Indian Affairs for the Department of Interior and is taking up a position with the University of Wisconsin. She was deposed by the Senate staff in September and we believe that she testified to everything that she knows about the application of three Indian tribes in Wisconsin to take land off their reservations into trust. She was recused, as that deposition shows, from making the decision, and involving herself in the decision from the time of her recusal. I think, therefore, that the redeposition of her is of little or no use. I think she has nothing to add to a record which she has already made through her deposition. We understand from the Chairman of the committee that it is the intent of this redeposition to depose her on facts and documents which were not before the committee, the Senate committee, when they had her deposition taken. There are very few, if any, of those documents, and there are certainly no facts that have not been brought to light by other testimony in this case. We object to the redepositions, but all of the people that you have asked to redepose have volunteered to come down here.

Mr. WILSON. I generally don't respond at this time, but just for the record I would make a couple of points.

As Mr. Elliott is well aware, we have received over 6 boxes of information that had not been furnished to the committee. Some of the material in the boxes had been furnished, but there are within material furnished after the Senate's deposition, after testimony was taken by the Senate, a number of significant documents that have not been discussed as far as I can tell by anybody, and consequently, it is an unfortunate by-product of a delayed production of documents that witnesses are subjected to something that we understand is a difficult process, another deposition. Having said this, because substantial new information has come to light, it's necessary, and we regret that, and we regret having had to subpoena the Department of the Interior for the information that was subsequently furnished to us.

Also, hoping to avoid unnecessary squabbling during the deposition, it is very difficult to separate information that is commingled. Certainly there will be some duplicative questions. That is just an unfortunate by-product of being unable to separate what is new and what is old, and when information was originally discovered.

Mr. Yeager?

Mr. YEAGER. On behalf of the Minority, I would just join in Mr. Elliott's observations and concerns about the duplicative nature of this deposition. We do have the benefit of the Senate deposition. I thank counsel for his courtesy in providing us a copy. I trust that the questions today will be limited to new documents produced by the Department of the Interior. To the extent there is some overlap, that's understandable, but I would certainly hope that counsel would take great pains not to go over ground that has already been gone over in the Senate.

Mr. WILSON. We are more or less prepared to start, but I will say at the beginning, it is obviously very difficult. We will be speaking about documents that have been presented to Ms. Deer before, and the reason for this is that her answers, in light of the new material that has been discovered are very significant. So unfortunately, that is just the nature of this process.

EXAMINATION BY MR. WILSON

Question. Having said that, Ms. Deer, could you please state and spell your name for the record?

Answer. My name is Ada Elizabeth Deer, A-D-A, E-L-I-Z-A-B-E-T-H, D-E-E-R.

Question. And I understand that you are about to take up a new professional position. Where will you be employed when you begin your new employment?

Answer. This is a resumption of my previous position. I am a senior lecturer at the University of Wisconsin, Madison. It was a joint appointment in the School of Social Work and American Indian Studies Program.

Question. And bearing in mind that you are in Washington and you are about to be in transit to Wisconsin, what will your Wisconsin address be?

Answer. My home address is [REDACTED].

Question. Apart from with Mr. Elliott, and that's making an assumption you have discussed this deposition with him, have you discussed this deposition with anybody else?

Answer. I have mentioned to a few of my colleagues that I would be up here, but in terms of discussing it, no, just that I would be here.

Question. Is it fair to say that you have had no substantive discussions with anyone?

Answer. That's right, no substantive discussions.

Mr. YEAGER. You are excluding counsel?
The WITNESS. Yes.

EXAMINATION BY MR. WILSON:

Question. Have you given documents regarding the Hudson Dog Track to the Department of Justice?

Answer. Have I given documents? I recused myself from this, as I stated in my previous deposition, and I wasn't involved in any of the main actions or, you know, decisions. So no, I, myself have given no documents.

Question. Has anybody from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. Yes. There were, I believe, two Justice lawyers and one staff member of the FBI who talked to me, but I don't have their—I don't have the information.

Question. Was that in conjunction with the civil litigation that is ongoing in Wisconsin?

Answer. I don't know if it was in conjunction with the litigation. All I know is that they were from the Justice Department and the FBI, and it was in regard to this general matter.

Question. When did they speak with you?

Answer. I think it was early December or late November. I would have to check and see. I don't know exactly, but within the past couple months.

Question. But approximately November of 1997?

Answer. Yeah, it was either November or December. It might have been early January. But I know that it was within, you know, that time frame.

Question. Do you recall the names of the individuals that spoke with you? Let me—I am just trying to eliminate, or trying to determine who spoke with Ms. Deer. Do you know whether it was Mr. Pascarelli and Mr. Jones?

Answer. I am sorry, I don't have their—I don't remember their names. I just had an interview with them, and I think they might have given me a card or something.

Mr. YEAGER. I can only assume that the committee isn't interested in interfering with the Justice Department's investigation of this matter, and I can't see the relevance of who questioned Ms. Deer.

Mr. WILSON. Well, your assumption is correct. We obviously have no interest in impinging upon or interfering with the civil litigation, and I am merely trying to determine whether the Department of Justice individuals investigating the issues and throughout the deposition, and I will just refer to this as the Hudson Dog Track matter or issue for convenience of a shorthand term, just determining whether individuals from the task force investigating this matter had spoken with Ms. Deer. And I do so, as you well know, because they have not spoken with many witnesses.

EXAMINATION BY MR. WILSON:

Question. Apart from this deposition, in arranging the logistics of this deposition, have you spoken with any congressional personnel about the Hudson Dog Track matter?

Answer. No.

Question. Under section 465 analysis, CFR, Part 151, the secretarial discretion analysis, how many decisions have been made since the passage of the Indian Gaming Regulatory Act to deny an application to take land into trust for gaming?

Answer. I don't know for sure.

Question. I am trying to focus exclusively on usage of section 465 to reject or approve an application to take land in trust.

Are you aware of any examples since the passage of IGRA of the use of section 465 exclusively to accept or deny a proposal to take land into trust?

Mr. YEAGER. Are you talking about for any purpose or for gaming purposes?

Mr. WILSON. Well, right now, for any purpose, and I was going to go and refine my question later and then ask for gaming purposes.

The WITNESS. Well, let me say that the Department does take land into trust for tribes for various purposes. Tribes are working to improve their socioeconomic status, and one of their goals is to increase their land base. So there are requests to take land into trust. In terms of the number and so on, you would have to check the records on that, because I wouldn't have that information, you know, off the top of my head here.

Mr. HORN. Counsel, if I might ask, how long have you served as Assistant Secretary? From what date to what date?

The WITNESS. From July 16th, 1993 until November 12th of '97.

Mr. HORN. So in essence, you have been the principal Assistant Secretary here for the whole period of the Clinton administration, with the exception of say January 20th to July?

The WITNESS. I was brought on in July, and that would have been basically six months later, or seven months later.

Mr. HORN. Did you ever have any other recusal during that period?

The WITNESS. No.

Mr. HORN. So this is one recusal.

The WITNESS. Right.

Mr. HORN. Okay. And it was because why?

The WITNESS. As I mentioned in my previous deposition, I stated that I had made a contribution to the political campaign of the Chair of the Lac Courte Orielles Band of Chippewa Indians, who was at that time running for State office, and I felt that it was the appropriate thing to do because no matter what the decision was, it would be, you know, misinterpreted.

Mr. YEAGER. If I might clarify, Congressman. Lac Courte Oreilles, they are one of the tribes applying to place land in trust?

The WITNESS. Yes.

Mr. YEAGER. So they were involved in this decision?

The WITNESS. That's right.

Mr. HORN. Did you ever deny any gaming requests during your period as Assistant Secretary?

The WITNESS. Well, I'd like to state that there are many—there are a number of levels involved in these applications, and even though the Assistant Secretary's name appears on these letters, there are a number of levels of process that these go through. I can't recall at this point if there were, but there may have been.

Mr. HORN. In other words, in your name; is that correct, or did you remember that?

The WITNESS. Well, like I say, there are many letters that come across my desk and I also sign many letters after I have looked to see who surnames them, but four years in this high-pressure job is a lot of work, and so therefore I can't remember every issue in as much detail as one would like. But I know that the tribes are trying to improve their economic status through increasing economic development, and one is through gaming.

Mr. HORN. But to your best of knowledge, you don't recall one, any other recusal, you are very clear on that; and number two, a turning down of a permit from any Indian tribe to engage in gaming during your term of office?

The WITNESS. There was only one recusal, the one I have mentioned.

Mr. HORN. This one, right.

The WITNESS. I really can't recall what other action might have been in terms of denial. But one could assume that there were. I mean it would be logical that there were, because not everything, not all of the requests that tribes put forth are acted on in a positive way. Some projects are refused and some are approved.

Mr. HORN. Now, we are talking gaming when you use the word "projects"?

The WITNESS. Well, I am putting this also in a larger context of economic development, and gaming is one of the methods, but there are other efforts that the tribes engage in to improve their economic status. So not every economic venture that the tribes want to get into is approved for various reasons, and it would seem logical to me that gaming enterprises would also be under that rubric.

Mr. HORN. But you can't recall ever having denied an Indian gaming petition; is that correct? But you are saying down the hierarchy somewhere, that might have been advice of a career servant or something to say gee, that isn't fully developed, we shouldn't send that forward; you are saying you would know about it or wouldn't know about it, and could they appeal to you?

The WITNESS. I can't recall any specific declination of gaming, but I again want to say that there are a number of levels here and when it arrives at my desk many people have reviewed it and evaluated it and examined it, and it's not like, as you well know, that I am—the Assistant Secretary is not the only person involved in these matters.

Mr. HORN. Who else is involved in these matters that are parallel to you in rank? Are there any other assistant secretaries?

The WITNESS. Well, let me state that the tribes, and I mentioned this in the previous deposition, they put their application in, it goes then to the area office and then gets sent to the central office, and in the central office we have a director of the office of gaming and his staff, or her staff, and we have the deputy commissioner, we have the counselor to the Secretary. If you recall, I am not sure if you have read the deposition, but the counselor to the Secretary was the lead person

on gaming, on land and on water issues. This is the way it was structured when I arrived in my position.

Mr. WILSON. That was John Duffy, correct?

The WITNESS. Right. And he has various—and he and the Secretary have various staff people working with them on these issues.

Mr. HORN. When you use the term "counselor to the Secretary," you mean the chief of staff to the Secretary?

The WITNESS. No, counselor to the Secretary.

Mr. HORN. Is he a lawyer?

The WITNESS. Yes. That was Mr. Duffy.

Mr. HORN. Okay. And he has outside—oh, is he what, the Secretary's counsel, could we say, as opposed to the department's counsel, which is the solicitor? How do we define it? I would just like to know how we define it.

Mr. ELLIOTT. There are—I can't tell you at any given time how many counselors there are to the Secretary, but a counselor to the Secretary may or may not be a lawyer. Generally speaking it is a lawyer, but it is outside the Office of the Solicitor, which provides legal counsel to the Secretary. Counselor, generally speaking, will have, as Ms. Deer has testified, cognizance over an area or areas in which he or she will provide advice to the Secretary, sometimes from a legal standpoint, but generally speaking from a policy standpoint.

Mr. HORN. Well, am I correct in saying, having been in the Eisenhower administration and watching every single evolution, it used to be called executive assistant to the Secretary and I was the administrative assistant to the Secretary of Labor, in this case, and then it got very fancy with Nixon on up. They started calling them counselors to the Secretary, but basically they were the Secretary's principal staff support, and obviously the Secretary can assign different functions anywhere they like, but usually when they assign it, this is a political appointee, he is watching out for the Secretary's political interests. Am I wrong on the definition within Interior?

Mr. ELLIOTT. I can't speak to whether he is watching out for the—I mean in this case or in any other case, a counselor is watching out for the Secretary's political interests as opposed to the political interests and what the Secretary wants to get done. There is a chief of staff, as you have pointed out, and there are others in the Secretary's office, but the primary advice that is coming from his immediate office, other than that from the Solicitor's office or the Assistant Secretary's or Deputy Secretary's is coming from counselors.

Mr. HORN. Okay. So he has the gaming responsibility then, is that correct?

The WITNESS. Well, as I understand it, he has the lead on those issues, whatever—however you want to interpret that. But he also has staff help there.

Mr. ELLIOTT. I think it would be proper to say "had." Mr. Duffy has left the Department of the Interior.

Mr. WILSON. Actually, if I may, I will ask a couple of questions and then defer back, because there is a whole strain of questions about Mr. Duffy, and maybe it is an appropriate time to ask those now.

EXAMINATION BY MR. WILSON:

Question. Was it your understanding in 1995 that Mr. Duffy was the—and I don't want to mischaracterize what you said before, but one of the principal decision-makers on the Hudson Dog Track issue?

Answer. Yes. And as I stated, he, as counselor to the Secretary, had the lead on those major issues.

Question. And are you aware of—it's my understanding, and I won't testify on your behalf, but Mr. Duffy left the Department of the Interior and went to work for Secretary of the Interior Babbitt's old law firm, Steptoe & Johnson.

Are you aware of any of Mr. Duffy's representations at Steptoe & Johnson?

Answer. No. All I know is that he has there.

Question. Do you have any knowledge of his representation of the Shakopee tribe in Minnesota?

Answer. I don't have any specific knowledge, but my assumption would be, since he left, that there would be some involvement or some representation with the tribes. But this is a practice in D.C. of people moving from the Federal side over to the private side.

Question. Just to clarify for the record, the Shakopee tribe is one of the tribes that was opposed to the Hudson Dog Track application. Do you know that to be correct?

Answer. From my general knowledge, I would assume that.

Question. Has Mr. Duffy had any matters that have come before you from the time that he left the department until the time that you resigned your position?

Answer. Well, not that I am aware of. He hasn't talked to me on anything specific. There may have been meetings with some of the tribes, but that's the responsibility of the Assistant Secretary to meet with tribes at their request.

Question. Just returning to the very narrow point that I was focused on earlier, and to avoid asking a lot of questions, I will sort of provide some brief background to give you an indication of where I am going with these questions. It's my understanding that there can be two types of analyses when land is considered for taking it into trust for gaming purposes. There's the Indian Gaming Regulatory Act analysis, and then there is section 465 Indian Reorganization Act analysis. It is my understanding, and I'd like you to correct me if I'm wrong, that when tribes seek to have land taken into trust for gaming purposes that the Department of the Interior uses a IGRA analysis, and when I say that, they determine whether there is detriment to the surrounding community and whether it is in the best interests of the tribe to take that land into trust. Is that your general understanding of the practice, since IGRA has been passed?

Mr. YEAGER. That's a lot, counsel, to digest.

Mr. WILSON. I am happy to break it down, but is that—but for the witness, is that your understanding.

Mr. YEAGER. Yeah, that might be better.

The WITNESS. Well, we are a Federal agency, we operate under Federal law, and this is the general way we would proceed, according to the law, under that type of application from the tribes.

EXAMINATION BY MR. WILSON:

Question. So is it correct to say that the Indian Gaming Regulatory Act, and I am going to say IGRA from now on, and that's I-G-R-A, that IGRA has been the standard used to determine whether land should be taken into trust for gaming purposes since passage of IGRA in 1988?

Mr. ELLIOTT. I am going to have to object to that question. She wasn't in the Department of the Interior for five of those years.

Mr. WILSON. That's a fair objection.

EXAMINATION BY MR. WILSON:

Question. In your experience as the Assistant Secretary, and given your responsibilities for all Indian gaming matters, was IGRA the standard used to determine whether land should or should not be taken into trust for gaming purposes?

Answer. Well, that's the Federal law and that's what we would be following.

Question. Would it be your understanding that if another standard was used, that that would be inappropriate?

Answer. Well, you have to make the distinction, not every piece of land that is requested to be put into trust is for gaming purposes. Tribes——

Question. Certainly?

Answer [continuing]. Want land for——

Question. Specifically want land to be taken into trust for gaming purposes.

Answer. I want to finish my thought. The tribes ask for land for other economic purposes and social purposes such as housing and things like that. Schools and such. But if it's for gaming, then it has to be done according to I-G-R-A, IGRA.

Mr. ELLIOTT. Mr. Wilson, I need to consult with my client for a minute.

Mr. WILSON. Certainly.

[Counsel and witness conferring.]

Mr. WILSON. Back on the record.

Mr. ELLIOTT. I think Ms. Deer would like to make a clarification.

The WITNESS. I would say that I am not a lawyer, as you may know. I am a social worker. I am a law school dropout, however. Anyway——

Mr. WILSON. Some people choose the right path early in life.

The WITNESS. My sister's a lawyer and I have many good friends that are lawyers. At any rate, there are different—there are analyses made by the gaming staffs and the area directors' staffs and so on, and I am not part of the analysis, so your particular question should be actually referred to one of our lawyers for more clarification.

EXAMINATION BY MR. WILSON:

Question. Well, I understand that, but just as in your position as Assistant Secretary and your oversight responsibility for Indian affairs and Indian gaming affairs, what was your view of the standard that would be used by your staff to determine whether land would be taken into trust or land would not be taken into trust?

Answer. Well, like I have said, we follow the Federal law and IGRA is the law governing this matter, and so it would be done according to IGRA.

Question. Is it your understanding, then, that the Department of the Interior, when analyzing an application, would make a determination as to whether the application was a detriment to the surrounding community?

Answer. The Department consults with the tribes, and there is also consultation with the surrounding communities so that the views of the community would be known.

Question. Right. But specifically, looking at the standard here, is the standard that the department makes a determination as to whether a particular proposal is a detriment to the surrounding community or is not a detriment to the surrounding community, as one of the fundamental decisions that has to be made?

Answer. Well, that's a factor that has to be taken into account.

Question. And you believe that this must take place?

Answer. Well, under the law, that is one of the provisions that's stated, and like I say, we try to—well, not try to, we do follow the provisions of the Federal law in carrying out our responsibilities.

Question. If—and I ask this in a more hypothetical vein than anything else, if somebody were to say to you, we are unable to determine that the application is a detriment to the surrounding community, would you require—if somebody made that statement to you, would you require them to make a decision one way or the other, is there a detriment or is there not a detriment?

Mr. YEAGER. Counsel, I am going to object, because she has indicated to you that in her capacity as Assistant Secretary, she relies on counsel and is not intimately familiar with the standards, and it appears to me that you are trying to pin her into a position on standards, and it doesn't shed any light really on this investigation.

Mr. ELLIOTT. And I would further state, Mr. Wilson, that she has testified she hasn't rejected any. She did not act in this case to reject or approve the application. So to ask her to speculate on what she would do in a case which you haven't laid the foundation that has come before her is patently unfair.

Mr. WILSON. Well, I certainly don't mean to be unfair to any witnesses. I have never tried to do that.

EXAMINATION BY MR. WILSON:

Question. I think you probably pretty much established what your view on this was. I will ask the question again, because I think it's very important for us to understand on the committee whether the senior official with responsibility for matters relating to Native Americans, understands whether there is or there is not a standard, and I asked a very clear question, I thought, and you indicated very clearly that the law provides a standard. Is that correct?

Answer. Yes.

Question. And you understood what that standard was, is that correct?

Answer. I am not, like I say, a lawyer, and so I am not intimately familiar with all of the detailed criteria that are contained in all of these statutes, because I am a policy person and I rely on my staff to give me direction. And when decisions arrive at my desk, I look to see what the surnames are and then, using the guidance that I am provided, you know, make a decision.

Question. Okay. Is it fair to say, then, that—I mean, I don't mean to say that you have concerns for Native Americans, but I think, and I apologize if I am wrong, correct me if I'm wrong, but you do have concerns for the welfare of Native Americans, correct?

Answer. Well, of course.

Question. Personally and professionally?

Answer. Yes.

Question. And did you take care to ensure that decisions were made—were not made that were arbitrary?

Answer. When decisions arrive at my desk, I try to use all information that I have, as well as my own best judgment in making the decisions.

Question. Okay. Actually, we'll return a little bit to this in a bit, but I just want to set a little bit of a foundation, because whenever I don't set a foundation, somebody objects for not setting a foundation, and then when I do, they object for going over ground that's already been covered. So I'm a bit betwixt and between on this.

The WITNESS. Well, you are all lawyers, right?

Mr. WILSON. Well, but this is the thing.

EXAMINATION BY MR. WILSON:

Question. When did you first hear about the three tribes cooperating to perfect an application to take land into trust in Wisconsin at the Hudson Dog Track?

Answer. There are many means by which I get information. People talk to me, I get—I read about it in the news clips or news items. Probably sometime during that spring, but I don't know the exact date.

Question. If you could provide it approximately, if you're able to?

Mr. ELLIOTT. Mr. Wilson, can't we refer to the prior deposition?

Mr. WILSON. I am perfectly prepared for—well, actually, no, we cannot refer to that part.

Mr. ELLIOTT. She has answered that question under oath.

It is troublesome that you are asking the same question that was asked over several times in the prior deposition under oath. If she gives a different answer because she can't recall what she said before or can't recall as she couldn't recall then when she did when the other deposition was taken, she runs the risk of being charged with perjury. I just think that's—I can't allow my witnesses to be—my client here to be subjected to perjury when you have this information.

Mr. WILSON. Let me ask a very direct question here.

It is your representation to me that she was asked about tribes cooperating, specifically cooperating, not the fact of the dog track application, but the fact of three tribes in Wisconsin, Red Cliff, Mole Lake, Lac Courte Orielles, cooperating.

Mr. ELLIOTT. She testified that she was—I don't have the exact page, but she testified that when she first heard about it, she was very interested in the fact that three tribes were cooperating, which is something that had not been done before. So she has testified under oath to that fact.

EXAMINATION BY MR. WILSON:

Question. Then, I mean, I perhaps missed this, but I am looking at the cooperation aspect. Is it true to say—I am not sure this was asked, I would not have asked this, but is it fair to say, then, that when you first heard about the application that is when you heard about the fact of cooperation between the tribes?

Answer. That is basically true, yes.

Question. Bear in mind, it is in no one's interest to try and quibble over small details of minutia, we are not going to do that, so if you don't remember something, just tell me that.

Did the three tribes have a history of cooperation?

Answer. Well, that is a long answer, because they are three Chippewa tribes, so they are basically the same tribal affiliation with the language and ceremonies and so on, and my first knowledge of actual cooperation of the Wisconsin tribes would be during the sixties, when they formed the Great Lakes Intertribal Council, which is basically the Wisconsin Intertribal Council, and that was a state tribal organization formed to improve the socioeconomic well-being of the tribes, and so therefore there would have been cooperative efforts of this group for all of the tribal members.

Question. And what did you—I mean, what was your personal view on the cooperation between these three tribes?

Mr. YEAGER. Are you referring to their cooperation generally?

Mr. WILSON. Well, I should be more specific.

EXAMINATION BY MR. WILSON:

Question. In the Hudson Dog Track application?

Answer. Well, it seemed like an interesting or logical extension of some of these earlier efforts, and so it was of interest to me.

Question. Did it appear to you to be potentially beneficial to those three tribes?

Answer. Potentially beneficial, but I didn't have any knowledge of the underlying economic impacts and all these other things that have to be done before you get into—before one gets into these types of efforts. I mean, I didn't know anything about the financing and all that. To me, I was reacting more on a conceptual level.

Question. And, in 1995, did you consider the three applicant tribes to be financially poor?

Answer. They are.

Question. And, I mean, this is a general question, and maybe you can just provide for me your understanding of the three tribes. The Mole Lake, Red Cliff and Lac Courte, in terms of their financial condition, for example, are you aware of per capita income for these tribes?

Answer. I don't have that specific knowledge readily in my head at the moment, but you should all know that the American Indians and Alaskan natives are at the

bottom of the socioeconomic ladder in this country and this is outlined in every census, and tribes in Wisconsin are also poor. Not every single tribe is poor, but in general Indian tribes are at the bottom of the socioeconomic ladder wherever they are at.

Question. I am trying to get a sense of the rungs on that particular ladder. The three applicant tribes vis-a-vis other tribes in the Minnesota and Wisconsin area, how do they compare?

Answer. Well, the three applicant tribes are very poor, and some of the other tribes are in a better economic situation.

Question. Now, just to go from the conceptual to a little bit more concrete, it is my understanding, in one of the reports prepared at the time it was indicated that one of the opponent tribes of the application, the Shakopees, had an average per capita income of as high as $390,000 per person. How do the Lac Courte, the Mole Lake and the Red Cliff compare when one puts that number on the table?

Answer. Well, there is no comparison.

Question. When the application was first being talked about, were you aware of any discussion of the comparative financial well-being, or lack thereof, of the applicant tribes and the opponent tribes?

Answer. Well, my general knowledge, not specifically from the discussions, because, as I mentioned, there are various levels of discussions that go on that I am not generally involved with, so that information is available.

Question. Now, I don't want to assume, you know, we will get to that, to your involvement, but I am trying to be very specific here because I am interested in the literal aspect of whether you were aware of any Department of the Interior employees discussing the relative incomes of the tribes?

Answer. I wasn't aware of it. But I also, you know, again want to emphasize that discussions go on at different levels all the time on all the various issues, and it's not possible for the decision maker to be involved in all these.

Question. Is it a factor that you think is worth considering in the application process?

Answer. Well——

Mr. YEAGER. You are talking about just generally.

Mr. WILSON. That is fair, I will talk about it generally and then I will talk about it specifically.

EXAMINATION BY MR. WILSON:

Question. In a general sense, if there is an application to take land into trust for gaming purposes and it is opposed by tribes or tribal representatives who are much better off financially than the applicant tribes, and you are trying to do an assessment of opposition, community opposition, is that a factor that you think should be considered?

Answer. Well, the economic and social status of the applicant tribes certainly should be considered.

Question. Now, I mean, I will just go to a very global question.

Mr. HORN. I didn't really hear an answer to that last question. As I remember, counsel, you asked about community opposition.

Mr. WILSON. That is correct.

EXAMINATION BY MR. WILSON:

Question. Specifically, one of the things that is before us, and I will try and cut through a lot of the questions and go right to the heart of the matter, one of the reasons that has been advanced for the rejection of the specific Hudson Dog Track application is the opposition of surrounding native American tribes, and it has been used as an example of community opposition, so, specifically, is it a——

Mr. ELLIOTT. You are making a representation to that.

Mr. WILSON. I am making the representation, correct.

Mr. YEAGER. And I would also make the observation that Ms. Deer has been pretty clear that she recused herself from the matter and had no substantive involvement in the Hudson casino application. I apologize for interrupting your question, but I am just wondering when you are going to get to something that she actually has personal knowledge of.

Mr. HORN. Well, let me just say, counsel, it seems to me you are now a free person to voice your opinion and you might not have been free as an Assistant Secretary, but I am curious, by the definition of community opposition, is it the surrounding community in Wisconsin, or if you had another gaming proposal where you did not have to recuse yourself, because you are not from that state and had not been in the politics of the tribes, would you take into account, when we say commu-

nity opposition, the surrounding communities, and would it be a legitimate thing—when you have gambling in any city, there is always concern about will prostitution come, will the mob move in, et cetera, or is this to be the community opposition broadly construed of other tribes that also have a right to gaming, and would this be in competition with those tribes? Either definition, it seems to me, would be an appropriate thing to rule on, or to have data on, or to hold a public hearing on. When we are dealing with the surplus Federal property, let's say by the Department of Defense, the relevant service that had the property comes out and holds a formal hearing, and everybody gets their chance to talk until midnight or 3:00 a.m. and get it out of their system. What is your feeling on this now, in terms of that community opposition criteria? Are we talking Indian tribes, or are we talking surrounding non-Indian, primarily community? What are we talking about? Could we talk about both of them.

Mr. ELLIOTT. And we are not talking about the specific application.

Mr. HORN. No, I am just curious, what is the feeling for the people that have—well, let's put it this way. Did you ever talk to any of your predecessors who were Assistant Secretaries under the Carter administration or the Reagan or Bush administrations?

The WITNESS. Well, in general.

Mr. HORN. It seems to me when I held various Federal jobs, the first thing I do is phone up the person who held it before me and say, hey, give me a rundown on what the heck goes on here, or you go over and see the budget examiner in OMB, you go over and see General Accounting Office people and they will tell you the truth because a lot of the people in the department won't tell you the truth. That is just life around here, and what your hot spots are. Did you ever talk to the predecessors and say hey, Joe or Sam or Suzie, what did you do in this case, or this type of case?

The WITNESS. Well, to answer your last question, I have had, I mean, very brief discussions with the previous Assistant Secretaries, but it is very brief, almost like a polite thing. One is too busy to do that.

Mr. HORN. You never discussed how would you handle an Indian gaming request?

The WITNESS. No. To get to your point about the community, community is community, whatever kind of community it is.

Mr. HORN. So it could include both definitions that I made, rival, shall we say competitive, Indian tribal groups that want to also have a casino, or it could be the surrounding community that will impact traffic, lots of people coming, and all the other things that are traditional with gaming in many ways?

The WITNESS. Depending on how one would want to interpret community, but, yes.

Mr. HORN. So you think both could be under that consideration?

The WITNESS. I think that is a logical interpretation.

Mr. HORN. Okay. Now, in other gaming proposals that you considered and did not recuse yourself, was that a factor, ever, forever, in any of those, community opposition?

The WITNESS. Well, we have to consult with communities, and there are always very different viewpoints from the communities regarding the establishment or continuity of a gaming operation, because communities have collections of individuals, as you well know, and they all have their own thoughts.

Mr. HORN. Now, apparently the community opposition and things you had signed off on earlier was not enough to cause you to refuse a gaming permission under the law.

Mr. YEAGER. Congressman, I don't believe she testified to that.

Mr. HORN. I am just saying, it is clear, you never denied a gaming proposal before this one, you didn't consider this one, you never recused any other, and am I right that you never denied a gaming proposal?

The WITNESS. Not that I recall.

Mr. HORN. Okay. And if there was community opposition, it obviously wasn't significant enough for you to overrule it?

The WITNESS. Well, as I mentioned, the Assistant Secretary gets many, many letters from various communities on all kinds of topics, and whenever a gaming enterprise was considered—I didn't see all these, I have been told this, and I have also encountered people in my travels that have differing views on gaming.

Mr. HORN. Well, you were a tribal chief, right? Why don't you state for the record what the tribe was you were chief of?

The WITNESS. I was the Chair of the Menominee Restoration Committee, which was the interim tribal governing body of the Menominee Indian Tribe when we were going from termination to restoration.

Mr. HORN. What would you say the average annual income of the members of your tribe was? You have noted Indians are at the bottom of the socioeconomic scale?

The WITNESS. Average, 15 or 20,000. It depends on when you are talking about, but people there are also poor.

Mr. HORN. 15,000 a year, maybe, average income or is that family income?

The WITNESS. Well, it depends on how you want to define this. We have a very high unemployment rate. I don't know exactly what the annual income is at this point, but it would still be poor.

Mr. HORN. In other words, they would have had about the income that we call the poverty line where it triggers in aid or doesn't trigger in aid, is that right, about $14,000 you are saying, and is it family or individual?

The WITNESS. Well, let me say that there are, in my tribe, many poor people. We are probably not the poorest tribe, but we are also not the wealthiest tribe.

Mr. HORN. What is the wealthiest tribe you know of?

The WITNESS. Probably the Mashantucket Pequot.

Mr. HORN. In Connecticut.

The WITNESS. Yes.

Mr. HORN. What do you think their average income is, do we know?

The WITNESS. I don't know what it is, but it is a lot.

Mr. HORN. And the Minnesota tribes on this case that you recused yourself, isn't theirs a lot? I used the figure in the hearing that was given to me, $400,000 a person.

The WITNESS. That is a lot of money.

Mr. HORN. Yes, it is more than I have ever seen.

Now given that situation and given other situations, you mentioned the Pequots in Connecticut, which I always point out when I show tourists the Westward expansion corridor in the Capitol, Pequots are right up there, fifth tribe down, when the first people came from Europe to this country, and now they are really up there, and they were thought to be an extinct tribe. It is a great story. Justice is done in a way.

Now if I were you, in that position, I would have been pounding my fist on the table to get my colleagues in the Department of the Interior to know, hey, you got an opportunity here, the law is very clear now due to various judicial rulings and the law, and we can help bring people into the 20th century in terms of income by granting them gaming permits, or whatever the word is under the law, and I would think that is a great opportunity, and you as a former chairman of your tribe would sort of relish administering that. Did some of those thoughts go through you, that, hey, they are at 6,000 income, which I am told the Wisconsins are, and you are giving me a figure of 14,000 for perhaps your tribe, and at last I can do something about it?

The WITNESS. Everyone who knows me knows that I am an advocate and I work hard to improve the quality of life for Indian people in many different arenas, education, economic development, legislation.

Mr. HORN. But given your background, given your opportunity, I would be pounding my fist on the Secretary's desk, and say, hey, we can do something here, we can solve a problem. Did you ever do that, did you ever tell the Secretary that?

The WITNESS. The Secretary knows of my advocacy and he has mentioned it numerous times.

Mr. HORN. But he obviously didn't consult you on this, because you recused yourself, right?

The WITNESS. Correct.

Mr. HORN. So who did he consult, do we know?

The WITNESS. I recused myself, so I don't have any way to answer that.

Mr. HORN. Well, go ahead, counsel.

EXAMINATION BY MR. WILSON:

Question. Actually, I am interested by the Menominee connection. My understanding from Mr. Chapman was his mother was a chair of the Menominee tribe at one point. Did Mr. Chapman ever discuss with you the Hudson Dog Track application process?

Answer. In general, we talked about this prior——

Question. What——

Answer. Prior, because he was on my staff, and was involved in meetings and things.

Question. He was involved in meetings that involved the Hudson Dog Track matter?

Answer. No, in meetings that I as Assistant Secretary was involved with, he was a staff assistant there with me.

Question. What views did he express to you about the Hudson Dog Track application?

Answer. Well, we didn't have a lengthy discussion, but it was his suggestion that I recuse myself, and then when I thought about it, I agreed.

Question. It is my understanding that you knew about the Hudson Dog Track proposal in advance of your recusing yourself. How did you first come to recollect or decide that the contribution to Gaiashkibos was sufficient grounds for recusal?

Answer. I am involved in the political process, and I know that there is a lot of scrutiny of people in high positions, and having been then in that position for a while, I knew that this could be a possible source of focus, and so I thought that it would be appropriate to recuse myself, which is what I did.

Question. Just returning for a minute to where you left off a little while ago, do you think opposition to the Hudson Dog Track proposal would have been valid if it were based on economic grounds by opposing tribes?

Mr. ELLIOTT. Mr. Wilson, as you say, you have been over this ground before, she did not participate in the Hudson Dog Track decision. She didn't do an analysis of any of the documents that were submitted to the department from the area office. She doesn't have the knowledge that gets you to where you want to go with her.

Mr. WILSON. Well, if you instruct your client not to answer the question, that is one thing, but Ms. Deer does have intimate familiarity with the policies and considerations that go into matters involving Native Americans, and if she doesn't have any basis for knowing what I am talking about, she can say so, but I will ask the very specific question again.

EXAMINATION BY MR. WILSON:

Question. And I am not saying that you had any input in this, I am just saying now as you sit here, knowing the laws you have had to apply for the last number of years, do you think opposition to the Hudson Dog Track proposal by tribes would have been valid if it were based on economic grounds?

Mr. YEAGER. I guess I have an objection on relevancy grounds. I don't see how her answer to that question gives you any information that is prohibitive or useful in your investigation.

Mr. WILSON. Mr. Yeager, not to be argumentative here, but in some respects Ms. Deer is one of the best experts we will have appearing before this committee. I am criticized often for not trying to get at fundamental facts behind decisions that are made or not trying to get to the truth. I perceive Ms. Deer, and I say this with great respect, to be an expert, and this is a wonderful opportunity for our committee to speak with an expert. I am asking an individual who was there, as we were not, has been part of the process, who knows more than we know about the process, to provide an answer about a common sense question that relates to this bottom line issue.

Mr. YEAGER. I think that would make sense if this were the Committee on Resources and we were conducting an inquiry into the Interior Department's policy, but as I understand, this is an inquiry into a specific decision, and she has testified here and in the Senate that she had nothing to do with it. So I think we would move along a lot faster if we stuck to what she knew.

Mr. HORN. Well, I would say, counsel, that you are absolutely correct in questioning this witness. I regard her as an expert. You have been a tribal chair, you have held this position for almost 5 years, and it just seems to me you recused yourself, you did what you felt was the right thing there, and may I ask, did somebody ask you to recuse yourself or did you voluntarily initiate the recusal?

The WITNESS. As I just indicated, I had a brief discussion with Mr. Chapman, and I thought about it, and agreed that this was the appropriate thing to do.

Mr. HORN. Did Mr. Chapman ask you to recuse yourself?

The WITNESS. No, it was only a suggestion, something for me to consider.

Mr. HORN. Well, who made the suggestion, Mr. Chapman?

The WITNESS. Yes.

Mr. HORN. Give me a little definition of who put him where he is. Is that a secretarial appointment?

The WITNESS. No, he was a staff assistant to me.

Mr. HORN. Career civil service?

The WITNESS. Well, I'm not sure at that point. See, he came in as a consultant.

Mr. HORN. Usually they are Schedule C. Those are political appointees.

The WITNESS. And then he changed to career, but I don't recall the time frame on that.

Mr. HORN. You say he came into Interior about the time you did?
The WITNESS. Yes, or he came in maybe a little later, but that is about right.
Mr. HORN. Was his background in Indian affairs?
The WITNESS. Yes.
Mr. HORN. Okay. On the recusal, did you ever consult with either the Solicitor or Labor on it?
The WITNESS. No.
Mr. HORN. Or the Department of Justice?
The WITNESS. No.
Mr. HORN. You didn't, you just said I am going to do it?
The WITNESS. Yes.
Mr. HORN. So no one asked you, Mr. Chapman suggested you think about it, though?
The WITNESS. Yes.
Mr. HORN. Do we know who asked him?
The WITNESS. No.
Mr. HORN. Do we know, counsel, is he on our list of people to depose or has he been deposed?
Mr. WILSON. Yes.
Mr. HORN. It just seems to me that you have done your duty in the recusal, now you are being asked questions as an expert, you sat in that chair, you sat in a chair where not one single gaming proposal was rejected, except for this one, when you recused yourself, and that was done by people above you in the hierarchy, and you have been a tribal chief—or tribal chairman now. As I mentioned earlier, it seems to me you have a lot of knowledge on this and you are free to comment now. You might not like the decision, it wasn't your decision, so as an expert, going back to the Indian studies department at the University of Wisconsin, it seems to me you have a lot to say on the subject of what is fair and what isn't, and how we approve or don't approve a particular gaming proposal.
Mr. ELLIOTT. Congressman, I would take issue with your and Mr. Wilson's characterization of Ms. Deer as an expert on this matter. She is clearly not an expert on the Hudson Dog Track matter, she has testified that she, in a prior deposition of her knowledge of the process, which is not a detailed knowledge of the process, and she did not analyze the documents here, therefore nor does she have detailed knowledge of what analysis goes on by the staff, or in this case by the decision maker, because she wasn't the decision maker. The person who rendered the decision was her deputy because she recused herself.
Mr. HORN. You are telling me that an Assistant Secretary, that spends 4 to 5 years in the job reviewing these proposals and putting her signature to it, you are telling me they don't learn anything over 4 or 5 years?
Mr. ELLIOTT. I can't even tell you how many she has reviewed, but I don't think it was a lot, Mr. Horn.
Mr. HORN. Well, all I know is whatever she reviewed was approved, and this one wasn't approved and she wasn't reviewing it, and therefore I would think she has been exposed to the various types of analysis that Majority counsel has been asking her about.
Mr. ELLIOTT. Well, I would also dispute your characterization of whatever she reviewed was approved. It wasn't.
Mr. HORN. Well, can you cite one?
Mr. ELLIOTT. Yes, sir.
Mr. HORN. Really?
Mr. ELLIOTT. Yes, sir, she sent one back to the area office because a NEPA analysis hadn't been done.
Mr. HORN. But eventually it was approved?
Mr. ELLIOTT. No, sir, it is not back yet.
Mr. HORN. What tribe is it?
Mr. ELLIOTT. I can't tell you that right now.
Mr. HORN. Why not, is it a secret?
Mr. ELLIOTT. No, I don't have it in my head. There have only been nine, I know that much, off reservation requests to take land into trust for gaming since 1987, this being one of them.
Mr. HORN. And what happened to those?
Mr. ELLIOTT. I don't have the detailed knowledge on all of that.
Mr. HORN. I am sure counsel will get it.
Mr. ELLIOTT. Some were rejected and some were approved and then when they are approved by the Secretary, they get sent to governors under the Act for their concurrence, and in at least one case that has been testified to before the staff, the so-called Greektown case, which is the Sault Ste. Marie tribe in Michigan, the com-

munity in Detroit was in favor of the tribe coming all the way to Detroit to set up a casino. The city was in favor of it, and the governor has not approved that.

Mr. HORN. But at this point, the person sitting in the Assistant Secretary Indian Affairs slot has not taken final action on one, it has been sent back for further analysis and every one has been approved that has met the test of the staff on the way up?

Mr. ELLIOTT. I can't tell you that. I can tell you Secretary Lujan sent one back.

Mr. HORN. I am talking about this Secretary. Everything during her 5 years has been approved, one has been sent back for analysis, one in which she recused herself was turned down.

Mr. ELLIOTT. Well——

Mr. HORN. It seems to me that is a fair history of it.

Mr. ELLIOTT. Well, I also take issue of your characterization of my general statement when I said I did not have detailed knowledge of all the applications.

Mr. HORN. This was before her.

Mr. ELLIOTT. Before or during?

Mr. HORN. How long have you been with Interior?

Mr. ELLIOTT. 23 and a half years.

Mr. HORN. You are assigned to the Indian Affairs.

Mr. ELLIOTT. No, sir, I am not.

Mr. HORN. What is your assignment?

Mr. ELLIOTT. My assignment is in the General Law Division.

Mr. HORN. General Law.

Mr. ELLIOTT. Yes, sir.

Mr. HORN. So who consults you, the Secretary primarily or what?

Mr. ELLIOTT. Consults me?

Mr. HORN. I mean, we all go to lawyers.

Mr. ELLIOTT. The General Law Division provides legal advice to all the bureaus and offices of the Department on an umbrella of different subjects.

Mr. HORN. Okay. So you are sort of utility outfielders and infielders?

Mr. ELLIOTT. Fair enough.

Mr. HORN. If something comes up, you master that and advise your clients?

Mr. ELLIOTT. Fair enough.

Mr. HORN. But you are not the regular staff that deals with Indian Affairs then?

Mr. ELLIOTT. That is correct.

Mr. HORN. Okay.

Mr. YEAGER. If I might interject, I am looking at Page 167, which is the resolution that authorizes this investigation, and the section 1 reads, this resolution shall apply to the investigation by the Committee on Government Reform and Oversight of political fund-raising improprieties and possible violations of law. I have been sitting here for an hour and a half, and I am not quite sure we have gotten near political fund-raising improprieties and possible violations of law, so I guess my question to counsel is when are we going to get there, if at all.

Mr. WILSON. Well, that is a good time for me to restate my question, but I will restate it in a different way.

EXAMINATION BY MR. WILSON:

Question. Do you think opposition to the Hudson Dog Track proposal would have been valid if it was based purely on racist reasons; for example, the local community did not want Indians to be in a gambling facility near the Town of Hudson?

Mr. ELLIOTT. I'm not sure that is a racist reason.

EXAMINATION BY MR. WILSON:

Question. Well, if they did not for that reason, would that be appropriate grounds for opposition, in your view?

Answer. There are a lot of comments and viewpoints that are expressed in these types of enterprises, and we consider all of these in the decision making. I don't think you can isolate one element and hinge the decision on that. The decision involves a number of factors that you are aware of, and so that would only be one, whatever it was.

Question. But if it were the one factor that was identified, if Interior officials had done their analysis and determined that the community was opposed to an Indian gaming facility, and they determined that the community had no reason to oppose a facility, apart from the fact they didn't want Native Americans in their community running a business, would that be valid grounds for community opposition, in your view?

Answer. Well, I think this is somewhat speculative. And, again, I think that when you make decisions, you have to take all these factors into account, and I wouldn't only look at one of these. One would certainly try to understand the community viewpoint, whatever it is, and take it into account, but I don't think you can base your decision just on that one element.

Question. But if it were the one element, what would your response be?

Answer. There has been, in the history of Indian affairs, both positive and negative views in the surrounding communities, and so I think that to follow the law, you have to look at the community viewpoints and take it into consideration, but I don't know, I don't think that looking at one element is the way to make this decision. You have to have knowledge of the economics of the enterprise, because sometimes tribes get into economic enterprises with so-called consultants and experts and maybe they have convinced the community, whatever it is, that they should do this, and as a decision maker, I look at all the elements. I don't look just at one, and I try to understand the interrelationships, and so——

Mr. YEAGER. But you didn't look at any elements in this case, the casino matter?

The WITNESS. No, that's right, I didn't, and so what I am describing to you is my general approach in making decisions, trying to understand all the components and the interrelationships of them.

EXAMINATION BY MR. WILSON:

Question. Well, I mean, sort of the hub of this matter, and I will find some questions to ask, but community opposition was such that the application was denied, and so we are trying, in a legitimate and fair fashion, to try and understand what community opposition means and what the standards are, and not to be difficult, but you are the first person we have spoken to that has had a difficulty in answering a question that a single community rationale for rejection of an Indian gaming application, that of pure unadulterated objection to Indians being in the community, or a racist rationale, would not be prima facie reason to reject that reasoning?

Mr. YEAGER. I object, your question is argumentative.

Mr. WILSON. Very much so, but, I mean, I make that characterization, and I am just making a statement. I am somewhat surprised that you would find that a racist grounds for a community opposition to an application might be any grounds at all for the Department of the Interior to side with community opposition, and that has been your position.

Mr. ELLIOTT. I don't believe she said that.

Mr. YEAGER. I don't believe she said that either.

Mr. WILSON. Well, let's put the question again as clearly as possible because it relates to my next question.

EXAMINATION BY MR. WILSON:

Question. If the sole grounds determined by the Department of the Interior for a community's objection to a gaming facility were pure, unadulterated racist objection to Indians being in the community, would the Department of the Interior reject that rationale in their assessment of community opposition?

Mr. ELLIOTT. You are asking her whether she would?

Mr. WILSON. I am asking whether she understands whether the Department of Interior would or would not reject that rationale as a grounds for denying an application.

Mr. ELLIOTT. I don't think she can answer for the Department of the Interior.

Mr. HORN. Well can she answer for the Assistant Secretary of the Interior in her role?

Mr. ELLIOTT. I would think she could from her role.

Mr. HORN. All right. That is all we are asking.

The WITNESS. I am not trying to avoid your question, I am trying to be helpful in helping you understand my view. The community, the general public in the history of Indian affairs has had a lot of different reactions to Indians, depending on what it is, and Indians have tried a number of economic enterprises, and at first—and I will cite one as an example of how this changes. There is a very successful Choctaw Tribe in Philadelphia, Mississippi, and they were at the bottom of the socioeconomic ladder for many, many years, and they were—now when I say Mississippi, I think we know the history of Mississippi, and over a 30-year period, that tribe has encountered a range of reactions from the surrounding communities, starting from an extremely negative one, and now, through the hard work and determination and strong leadership of the tribal leader and the tribal council, has become a major factor in the community and in the State, an economic factor. And so when you talk about the reactions of the community, if the tribe and the Bureau

had only reacted to this negativism early on, very little would have happened, but this all got worked through over this long period of time, and so, as a decision maker, I tried to assess and look at the entire situation and understand the interrelationships.

EXAMINATION BY MR. WILSON:

Question. Okay. I mean, that answer is very helpful, and I will return a little bit to the previous question, but you mentioned something that I think is very important for us to understand what happened here. You used the words "got worked through," and that indicated a cooperative endeavor by, in this case, a Native American tribe and the Department of the Interior, to reach a goal, and there was work——

Answer. And the surrounding community.

Question. And other individuals as well. I am not trying to forget anybody else, but there was a cooperative effort.

Now I will return to the question I asked initially, and that was objected to so strenuously. Do you think opposition, and this is you now—based on what you know and where you sit, do you think opposition to the Hudson Dog Track proposal by tribes would be valid if it were based on economic grounds?

Answer. Tribes are entitled to their viewpoints.

Mr. YEAGER. You are also asking her to speculate about a factual scenario. You know, if you have specific questions about the Hudson Dog Track matter, by all means ask her the questions, but you are engaging in very complex hypotheticals and I am not certain where it goes.

EXAMINATION BY MR. WILSON:

Question. I understand that tribes are entitled to their own viewpoints, but the Department of the Interior has to use an articulable standard, and correct me if I am wrong, the Department of the Interior should use an articulable standard to make a decision. Is that a fair characterization?

Answer. That is accurate.

Question. There should be a standard?

Answer. That is accurate, yes.

Question. And practically every question I ask today is going to be directed to try and conclude or to try and understand, help everyone understand, what standard was used in the particular example of the Hudson Dog Track. Now I understand that you have made representations of your involvement, but you certainly have exposure to the standards that were used within the Department of the Interior in cases involving Native Americans, gaming, and off reservation applications for gaming. So, I mean, we are trying to get at something that goes to the heart of the matter here. There are representations that the opposition of tribes in Minnesota have a direct impact on the denial of the application. And I understand that it can be a factor, and I noticed that you have said there are many factors that take place.

Question. But I am asking your view on if opposition to the Hudson Dog Track proposal by tribes would have been valid if it was based on economic grounds; how would you factor that into the mix.

Answer. Well, one would take this into consideration as one would take other factors into consideration, and that would be according to IGRA, under the community standard.

Question. But you believe that that should be analyzed in terms of the IGRA standard, the detriment of the surrounding community?

Mr. YEAGER. Counsel, I think we have gone through this to try to pin her down to a particular standard, she has testified——

Mr. WILSON. I agree, she testified IGRA is the standard, that is correct. I apologize for belaboring that.

EXAMINATION BY MR. WILSON:

Question. So, just to conclude the whole line of questioning then, for example, with the Shakopee, and there is an economic study that says the average per person income would have dropped from $390,000 to $360,000-plus. You perceive that to be a valid consideration in the detriment to the community standard?

Answer. Depending on how you wanted to interpret valid. We talked earlier about 390,000, 360,000. I think this is somewhat speculative again.

Mr. HORN. Well, would you say it is de minimis, in the lawyer term? In other words, what does it matter? You can state this as a hypothetical or a factual. The data we were given was the Wisconsin tribes averaged 6,000 a year in individual income, the Minnesota tribes, 390- to 400,000 a year, so they go down to 360. I

mean, is that enough to say, gee, there is a terrible economic impact on the Minnesota tribes, we better not approve the application of the people that are getting 6,000 per year? Would that make any sense in an economic standard?

Answer. That does not follow common sense.

Mr. HORN. Yes, you wouldn't follow it and I wouldn't follow it, you are absolutely right.

EXAMINATION BY MR. WILSON:

Question. Based on your own knowledge, do you think the Hudson Dog Track proposal would have significantly lowered the living standards of other tribes in Wisconsin and Minnesota?

Answer. I think it's difficult to say because you would need more economic information to answer that accurately.

Question. Okay.

Mr. YEAGER. Ms. Deer, did you receive the reports that were written about the Hudson casino proposal?

The WITNESS. Did I receive them?

Mr. YEAGER. Were you involved, did you read them?

The WITNESS. No.

Mr. YEAGER. Did you make that part of your job?

The WITNESS. I recused myself from this, so I didn't get any information, but the department does have to get, you know, basic information under the law in order to process the applications, so at some level, there would be information.

Mr. YEAGER. It would seem sensible to me to talk to the people who reviewed the information and are familiar with the facts of the Hudson casino case.

Mr. WILSON. And notwithstanding the ultimate objection we will receive when we try to do that, we hope to do that.

[Deer Deposition Exhibit No. AD–1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

Mr. WILSON. I have provided Ms. Deer with a document that has been marked for the record AD–1, and I will give you a moment to review this. It is dated July 14, 1995. It is a letter to Ms. Rose Gurnoe, Mr. Alfred Trepania and Mr. Arlyn Ackley, and it is signed by Michael Anderson, Deputy Assistant Secretary of Indian Affairs, and I represent this is the letter of rejection for the application, and I will ask questions to eliminate further questions.

EXAMINATION BY MR. WILSON:

Question. Have you ever seen this letter before today?

Answer. Well, I must have seen it after it went out, or somewhere after the decision was made.

Question. Do you recall having seen it at the time that it was—before it was released, before it was sent to the three tribal chairs listed on the top of the letterhead?

Answer. No, I don't recall that.

Question. Now, just by way of background, I wanted to ask you about a conversation you are purported to have had with one of the individuals who is listed on this letter, Ms. Rose Gurnoe, and I will characterize this by what I have been told. I have been told you were going up to a tribal meeting in Wisconsin, in July—actually, let me establish a little bit of foundation. Do you recall having gone to any tribal meetings in Wisconsin in July of 1995?

Answer. I had promised Mr. Gaiashkibos that I would attend one of his powwows, and I think I went to that powwow, the Lac Courte powwow.

Question. And do you remember when that was?

Answer. Well, they are usually in July.

Question. Okay. Is it true or not true that in July of 1995 you called Ms. Gurnoe, the chairperson of the Red Cliff Tribe and told her you would be bringing, quote, good news, unquote, with you when you came up to Wisconsin for the meeting you planned to attend?

Answer. I don't recall making a call. I do know that I have had communication with her. I tried to maintain good communications with the tribal leaders, but I don't recall. I would have to look at the telephone logs, I guess.

Question. Okay.

Answer. And if it was a powwow, it might have been in relation to something with the powwow. You ought to know, powwows are quite significant to some of the tribal people or to many of the tribal people, and there are regular powwows that every-

body goes to, and there is a lot of tribal, you know, celebrations that occur, drumming scenes, dancing and visiting among family and friends and people.

Question. You have testified that you recused yourself. When were you first aware that the Hudson Dog Track application would be rejected?

Answer. Well, I knew it was under discussion, but I didn't really know what the—I would have to look at my schedule or something, but since I recused myself, I wasn't keeping track of what was going on. I just know that it was under review and it was out of my area, and as Assistant Secretary I had a lot to deal with and so since I had delegated that out. I didn't monitor it.

Question. Did you know of the rejection before the fact of the actual letter being disseminated to the three tribes?

Answer. I might have heard something about it, but, again, like I say, since it wasn't my action and I had delegated it, I just let the process then proceed.

Mr. YEAGER. Do you recall hearing something about it before?

The WITNESS. There might have been some, you know, general discussion, because our offices are adjacent, and some of the staff people go in and out, but it is not like somebody sat me down and said, you know, this is what it is going to be. It would have only been, in my recollection, something in kind of general discussion or general comments among people.

Mr. HORN. Michael Anderson, Deputy Assistant Secretary of Indian affairs, is he your principal deputy?

The WITNESS. Yes.

Mr. HORN. Do you have other deputy assistant secretaries?

The WITNESS. No.

Mr. HORN. Just one?

The WITNESS. Correct.

Mr. HORN. He is it?

The WITNESS. Yes.

Mr. HORN. And you say the offices are adjacent?

The WITNESS. Yes.

Mr. HORN. Is that his office or his staff office adjacent to you; in other words, you share a common reception room with him on one side and you on the other?

The WITNESS. No. As the offices are situated now, there is a door between the Assistant Secretary's office and the Deputy's office, and so oftentimes——

Mr. HORN. So he can come right through your door?

The WITNESS. Right.

Mr. HORN. And fill you in on this meeting he has been to?

The WITNESS. And he would, occasionally, but I have a door, he has a door. So we respect the doors. When his door was closed, I knew that. When my door was closed, he knew that. But other times both doors would be open, and, also, there would be other staff people, you know, coming in and out like a regular office.

Mr. HORN. Is he an Indian by background?

The WITNESS. Yes.

Mr. HORN. Is he a political appointee, or a senior civil service?

The WITNESS. He is political.

Mr. ELLIOTT. He is political.

Mr. HORN. Okay. He came in with the Clinton administration?

The WITNESS. Yes.

Mr. HORN. Okay.

EXAMINATION BY MR. WILSON:

Question. In July of 1995, do you recall any issues that you were dealing with that could have resulted in the characterization of you bringing good news to the chairman of the Red Cliff Tribe?

Answer. I would have to review and see what was under consideration then. There are a number of issues that various tribes have, and some relate to—well, tribal government, their environmental issues, I don't know.

Question. Okay. Would the Department of the Interior have dominion over tribal government issues in the Red Cliff tribe?

Answer. Yes.

Question. How? I mean, how possible in this case?

Answer. Well, there are always budget issues. Tribes are often asking for additional monies. That is on Lake Superior, so they are very involved with fish and the environmental issues, so it could have been several.

Question. So, I mean, to be clear for the record, you have not testified that you remember telling Ms. Gurnoe that you would be bringing good news when you came up to the meeting in Wisconsin?

Answer. No, I don't recall that.

Question. But your testimony now is that if you said that, you could have been referring to any number of issues pertaining to the Red Cliff Tribe?

Answer. Right.

Answer. Right.

Question. Just sort of a little bit of background on the recusal issue, how did you communicate to others in the Department of Interior that you were recused from this matter?

Answer. I told Michael Anderson that that's what I was doing.

Question. Did you communicate with anybody else the fact of your recusal?

Answer. Well, I thought telling him was the appropriate thing to do, and that I just assumed that he would take care of whatever else needed to be done.

Question. But other individuals within the Department of Interior, you did not inform them of the fact of your recusal?

Answer. No. He was the main one that I told, and then I assumed that the word would get out through him if it was—or whatever was necessary in that respect.

Mr. HORN. What is the regular mail flow through your office? Does Mr. Anderson as Deputy Assistant Secretary handle all of the mail going to your desk, or does a staff assistant, administrative or executive assistant handle the mail going to your desk?

The WITNESS. He sees some of the mail. The mail comes in and then whoever—there are a couple of people there that open up the mail, and then they refer the letters to whoever they think they pertain to.

Mr. HORN. I think on the route coming back, saying something has been referred to the solicitor, something is being coordinated with other assistant secretaries such as this letter that the counsel is referring to, who in your office sees that and prepares it and brings it to your attention on either an urgent basis, or, if they knew you had recused yourself, shifted over to the Deputy Assistant Secretary?

The WITNESS. Well, Michael Anderson handles a number of the issues like this. There's another staff person who works on the environmental issues if it has to do with environment and she often deals with it.

Mr. HORN. Who brings you the stuff to sign at the end of the day?

Mr. ELLIOTT. Just a minute, Congressman.

The WITNESS. Well, that's a good question. Did I mean Michael Anderson or Michael Chapman? For a while, Michael Chapman also saw the mail. We——

Mr. HORN. And he was the one that suggested that you might recuse yourself?

The WITNESS. Yes.

Mr. HORN. So he would see the mail?

The WITNESS. He would see the mail at that time, as I recall. Well, let me say, this is the Assistant Secretary's office. We have an Executive Secretary down the hall. There are two women there that handles the mail. Then a lot of the mail comes up to our end of the hall, and then there are two people there, two women that handle some of the mail. So one of the problems is we get a lot of mail and the system is sort of fluid. It's not rigid.

Mr. HORN. So you don't have an executive assistant, administrative assistant or special assistant that processes that mail for you and would take it in to you to say, here, chief, here's what you have to sign at the end of the day.

The WITNESS. Michael Chapman did that for a while, and then with this issue, people knew that he was handling it, and so it would go directly to Michael Anderson.

Mr. HORN. Okay. And then nobody else would be seeing it. Chapman might, but he has a special assistant, I take it. What is his title?

The WITNESS. Special assistant, yes.

Mr. HORN. Is he a special assistant to you?

The WITNESS. At that point he was, yes.

Mr. HORN. So he would be the only other policy formulating type that would see it, I take it?

The WITNESS. Well, there might be—with this it would be information in the gaming office; there would be involvement in the solicitor's office. I don't keep track of all of the—the flow of all the mail.

Mr. HORN. No, no, they are bringing you a finished product, I assume, and if you have recused yourself, that went over to Deputy Assistant Secretary Anderson.

The WITNESS. Right.

Mr. HORN. Okay.

EXAMINATION BY MR. WILSON:

Question. Did you have any conversations with Mr. Anderson about the Hudson Dog Track matter?

Answer. Well, once I recused myself, he had the main responsibility for it, and he might have said something in general that he has working on it, or they've got more information or something like that, but I don't recall any other substantive discussions.

Question. But do you recall anything specific about communications between yourself and Mr. Anderson on the Hudson Dog Track issue?

Answer. I don't recall anything at this point. He was and is the deputy. We would have, like I say, some general comments occasionally. Like I said, he was working on it or he had received some information or something, but I would say, well, go to it. But nothing substantive, as I recall.

Question. Did he ever express any concerns to you about the information that was being presented to him on the Hudson Dog Track matter?

Answer. No. In general, he really handled it.

Question. Did he ever tell you that he had received any information on the Hudson Dog Track matter?

Answer. Well, he may have, but it would only have been maybe a comment or so.

Question. That's what I'm looking for, just whether he said I got such and such analysis prepared. Did he ever make any comments like that to you about having received any analyses about the Hudson Dog Track matter?

Answer. Well, he didn't use the word "analysis." He might have said he has gotten some, I don't know, reports or information, but again, we didn't carry on a conversation on this. He basically handled it.

Question. Did Mr. Anderson ever discuss with you whether he had received enough information to make an ultimate determination on this matter?

Answer. No.

Question. During this time, did you have staff meetings? And when I say "this time," I'm looking at the June, July period of 1995, did you have staff meetings?

Answer. Well, we have general staff meetings on Mondays. I assume that they had been held at that time.

Question. Who participates in the staff meetings? Who did participate in the staff meetings?

Answer. These are all the program directors of the bureau: director of Economic Development, Education, Tribal Services, all the program directors.

Question. And referring specifically to your staff, yourself, Mr. Anderson, Mr. Chapman, others who might be involved in your more immediate staff, did you have staff meetings?

Answer. We don't have regular staff meetings. We would—whenever we needed to discuss, we would get together.

Question. Now, it's my understanding that the first recommendation from the area office that the application should be approved came to the Department of the Interior on November, November 15 of 1994, and you have testified that you recused yourself in 1995.

In the interim, before you recused yourself, and after the area office had transmitted material to the Department of the Interior, had you ever reviewed any documents or received any documents about the Hudson Dog Track matter?

Answer. Not that I recall.

Question. Did you ever see at any time a written analysis or a written discussion of why the application should be rejected?

Answer. No.

Question. To your knowledge, who was the first person to think that the application should be rejected?

Answer. I don't know.

Mr. YEAGER. If I could interject, did you ever see any analysis that favored accepting the application?

The WITNESS. Not that I recall.

[Deer Deposition Exhibit No. AD–2 was marked for identification.]

Mr. WILSON. I have provided Ms. Deer with a document that has been marked for the record Exhibit AD–2. It is a letter from the Secretary of the Interior, Bruce Babbitt, to the editor of the New York Times. It's dated January 4th. If you could take just a moment to review that, please.

EXAMINATION BY MR. WILSON:

Question. Now, the first statement I wanted to discuss for hopefully a brief while is in the second paragraph, and it's the second sentence that reads: "This department does not force off-reservation casinos upon unwilling communities."

Now, we have already discussed that the standard to determine whether an off-reservation application for gambling purposes is that of the Indian Gaming Regulatory Act, a detriment to the community. This seems to indicate that the standard is the willingness or unwillingness of the community to accept a gaming facility within the confines of their community.

When you were at the——

Mr. YEAGER. That's your characterization.

EXAMINATION BY MR. WILSON:

Question. When you were at the Department of the Interior, was it Department of the Interior policy that any opposition to off-reservation casinos would be sufficient to have an application rejected?

Mr. ELLIOTT. Just a minute. Mr. Wilson, we have had this discussion before. That goes to the heart of the litigation that is now in court. You have asserted at least half a dozen times to me that you have no intention of getting into that litigation. One of the issues in that litigation, one of the primary issues in that litigation is the level of opposition in a local community and whether that is sufficient to deny an application.

Mr. WILSON. And similarly, one of the central, central issues of us being here today and of us holding hearings is that issue, and, unfortunately, there is no way around the fact that this is a central aspect of the investigation that we are now conducting in the hearings that we will ultimately hold.

Mr. ELLIOTT. So is it your intention to get into the litigation, because if so——

Mr. WILSON. Absolutely not. As far as I'm concerned, this has—you are representing to me it is a central aspect of the litigation. I am representing to you that this is an issue that is of concern to us.

Now, there are two parallel tracks, and they will not diverge because the litigation is somewhere else and we are here, and that's the bottom line. We are trying to find out what Department policy was to determine whether a matter was handled properly, appropriately or—I mean, you can move down the food chain to even, wisely.

Mr. ELLIOTT. Oh, I thought you were trying to handle it to determine whether there had been a violation of law.

Mr. WILSON. And if you force me to waste more time talking about this, then yes, if it was handled inappropriately, then it was perhaps yes, a violation of law or a matter of impropriety or campaign financing.

As you well know, there has been a great deal—and I shouldn't rise to your bait, because it takes more of Ms. Deer's time and more of our time, which is I think less valuable than Ms. Deer's time, but you're well aware of the background of all of the issues that have brought us here. And for you to make a representation that this has nothing to do with our investigation is—I mean, it's obviously at best frivolous.

Let's try and go back to the question at hand.

EXAMINATION BY MR. WILSON:

Question. And it was, when you were the Assistant Secretary at the Department of the Interior, was it Department of the Interior policy that any opposition to an off-reservation casino was sufficient to caution an application to be rejected?

Answer. I don't know if you can say any opposition, because as I mentioned, the community's viewpoints were taken into consideration, but as you can see from the Secretary's letter here, he states the policy. This is the first time I've seen this letter, so.

Question. And it's your understanding this is a correct representation of Department of Interior policy?

Answer. That's right. It's the Secretary of the Interior.

Mr. HORN. Well, policies come and policies go. When you read this letter now, this is the first time you have seen it, is that your understanding of the policy that existed when you were Assistant Secretary?

The WITNESS. That's correct.

Mr. HORN. You're saying he correctly reflects the policy that you acted on as Assistant Secretary, even though you didn't act on this case, you had other cases during your time and tenure there?

The WITNESS. That's right. I am the Assistant Secretary, he is the Secretary.

Mr. HORN. Well, you know, but secretaries sometimes change what they have to say to protect themselves from other people, and policies change. I guess what we are after is is this the consistent policy from your knowledge, July 1993 on, or was it a different policy?

The WITNESS. That's my understanding of the policy.

EXAMINATION BY MR. WILSON:

Question. So I mean I perceive here, in all due respect, that there is a contradiction between a standard articulated in law which is that an analysis of detriment to a community be established, and another standard, which is the willingness of a community. I mean a community—and I won't speak on this too much, because we are here for your testimony, but the willingness of a community may not reflect detriment to the community, they just simply might not want something with no reason whatsoever, no rationale. This indicates that if a community is unwilling, there will not be an off-reservation casino.

Mr. YEAGER. Counsel, are you trying to persuade her that——

Mr. WILSON. And I'm asking, is that your understanding of the way——

Mr. YEAGER. She has testified twice by my count that that is the policy, was the policy, and I think we should move on.

EXAMINATION BY MR. WILSON:

Question. So that is a fair characterization?

Mr. ELLIOTT. What's a fair characterization, Counsel?

Mr. WILSON. That the willingness of a community was the criteria used by yourself and others at the Department of the Interior in 1994 and 1995 to determine whether land should be taken into trust for a gaming enterprise by an Indian entity.

The WITNESS. This is the first I have seen of the word "willing"; okay? My interpretation would be the—you have to take into consideration that, you know, the community standards.

EXAMINATION BY MR. WILSON:

Question. And it's my understanding that's what the law indicates you should do.

Answer. That's right.

Mr. HORN. I just want to make sure, Counsel, I'm in the right place. Second paragraph, fifth line down, the Secretary says, "This department does not force off-reservation casinos upon unwilling communities." Is that correct?

The WITNESS. He's the Secretary. I'm the Assistant Secretary.

Mr. HORN. But if you followed that policy when you mentioned the Mississippi situation, you wouldn't have granted a casino.

The WITNESS. No, I——

Mr. HORN. And you did.

The WITNESS. I think that's——

Mr. HORN. In other words, you have got suddenly all of these unwilling communities, and I read that letter of July 14th that your Deputy Assistant Secretary prepared, and I must say I can't believe it. They ought to have gone behind some of them.

Well, why are you opposed? Now, I can understand traffic. They are also going to get rich with all of these people coming to a casino. They are going to eat lunch, they might stay overnight, et cetera, et cetera.

Mr. ELLIOTT. Congressman, Ms. Deer was recused from this and she has not testified, nor can she testify, as to whether anybody went behind the opposition. That's for other people who have testified before the staff.

Mr. HORN. I agree with you completely. But she can say as a formal tribal leader, as a person confirmed by the Senate to administer Indian affairs, she can say would she have followed the unwilling criteria? Knowing her, I can't believe that she would follow that and let some bunch of bigots keep an Indian casino out of the way. I sure wouldn't. I'd nail them so fast they wouldn't know what hit them. And yet here suddenly, we listen to unwilling communities. I can't believe any administration following the civil rights laws, not to mention the Indian laws, would permit that.

So I'm just curious. Is this a new criterion suddenly? I mean, let's face it. If it's in The New York Times, it must be the truth. It must be the policy of the Government, or it doesn't occur.

EXAMINATION BY MR. WILSON:

Question. Just a follow-up question. I don't want to get into the Mashantucket Pequots, but they are currently involved in a dispute with the townspeople of their town in Connecticut over a piece of ground being taken into trust. It is a parking lot.

Is it your understanding that there's a legal distinction between the casino and the parking lot in terms of land being used for gaming?

Answer. I'm sorry, I don't think I can really answer that question. There are people in the community who have jobs and who are strongly in favor of the whole enterprise, and there are others that are opposed. And this is not new. Maybe this is the newest of it, but it is not a new controversy.

Question. Is it fair to say that the manifestations of the community are unwillingness to take that land into trust? I mean, there's a lawsuit in progress, for example.

Answer. It depends on how you define "community." You have got community people up there that work and that are fully supportive of this, and then you have members of, I forgot the ruling groups there, the town council or whatever it is who——

Mr. YEAGER. Are we talking about the Pequots now? I'm confused.

Mr. WILSON. Yes, yes.

The WITNESS.—who are opposed to it, I think. I haven't reviewed this in a long time, but I know that I have been up once, ions ago, I mean a long time ago, and I'm surprised that some of this hasn't been solved.

EXAMINATION BY MR. WILSON:

Question. But I mean is it true or is it not true that the community is manifesting unwillingness to take this land into trust?

Answer. From the—just my general knowledge of the situation, the town council, or whatever the ruling body is, I think they are opposed to it, but I haven't reviewed this in a long time, so I don't know exactly what the details are, but I know that there has been some opposition from the town council. But I myself visited only once, so I want to say this community business, I talked to workers there who were from the community, and it has been very beneficial for those employees to have jobs and be able to support their families. So they were quite supportive of this. So this is why I say it depends on how you want to define "community."

Mr. YEAGER. If I could just interject, just so I can keep track of where we are, I think we are talking still about Secretary Babbitt's January 2nd statement that this Department does not force off-reservation casinos upon unwilling communities, and I emphasize the word "off-reservation."

Ms. Deer, are you aware that the Pequot parking lot is contiguous to the Pequot reservation?

The WITNESS. Well, I knew it was near. I didn't know how close it was.

EXAMINATION BY MR. WILSON:

Question. Were you part of the Department of the Interior initiative that resulted in the hiring of a mediator to try and resolve the issues in dispute between the community and the tribal officials who wanted to take land into trust for the gaming facility?

Answer. That was basically under the counselor. I knew about this, but I wasn't, I wasn't deeply involved in it.

Question. But let me try and, for the record's clarity, get this right. You did know of it?

Answer. Yes.

Question. Did you object to that?

Answer. No.

Question. And why did you not object to hiring a mediator to try and resolve the conflicts of the unwilling community?

Answer. This was the—under the counselor to the Secretary, and it was my assumption that this is what the Secretary wanted to do.

Question. Did it seem to you like a good idea?

Answer. Yeah, it sounded like a good idea, mediation rather than conflict.

Question. And what was the point of the mediation?

Answer. To mediate.

Question. And I mean——

Answer. So I don't know.

Question. Is it fair to say—is it correct to say that it was to solve the problems between the local—those opposed locally and those who were seeking to take land into trust?

Answer. Well, the purpose of a mediator is to mediate, and hopefully one would resolve the situation, whatever it is.

Question. Did you ever hear any discussion while you were an employee of the Department of the Interior about perhaps having a mediator work with the—what Secretary Babbitt here characterizes as the unwilling community and the tribes in the Hudson Dog Track case?

Answer. No. This is only the situation, that is, with the Pequots, where I'm aware that a mediator was involved.

Question. Do you know who paid for the mediator in the Pequot case?

Answer. No, I don't know.

Question. Do you know if the Department of the Interior at all underwrote, and I ask that because I don't know the answer?

Answer. I don't really know, but it's possible.

Question. It's possible that the Department of the Interior actually helped pay for the mediation process?

Answer. Yes.

Question. And do you consider that to be a reasonable thing for the Department of the Interior to be doing?

Answer. Government agencies often use mediators.

Question. And I ask that because it seems to me that the common goal in these two cases is to solve problems and promote economic benefit amongst impoverished Indians. Now, I hesitate to use the word "impoverished" in the same sense as the Pequots. I have no hesitation in using it in the same sense as Mole Lake, Red Cliff or Lac Courte Orielles, but they are somewhat similar situations where there is a goal, which is to improve the lives of Native Americans, and there were different means used to achieve these goals in these two cases. Does that strike you as being somewhat inconsistent?

Answer. No. As I said, I was recused, but also different methods are used in different situations.

Question. It's understood, but I mean generally when—you know, you use methods to achieve an acceptable goal, and here methods were not used to achieve the goal. If a mediator had been used, maybe the perceived, and we will get to the fact as to whether the opposition is valid at all, but the perceived problems might have been solved. Is that a fair characterization?

Answer. Well, let's say it's a possibility

[Deer Deposition Exhibit No. AD–3 was marked for identification.]

Mr. WILSON. I have a document here which I have marked for the record as Exhibit AD–3. It's two pages; it's lengthy. I will refer to two specific sections in that document. I apologize, the copies that have been passed around were used as an exhibit in a previous deposition. The Xeroxing reflects the fact that they were used for that purpose. The witness' copy does not have that marking.

EXAMINATION BY MR. WILSON:

Question. Specifically, I would like to refer to the (b) paragraph. This is a document. It is a memorandum from the President of the United States. It's dated April 29, 1994. It's titled "Government-to-Government Relations With Native American Tribal Governments." It's a memorandum for heads of executive departments and agencies. I suppose the threshold question is, are you aware of this directive from the White House?

Answer. Yes.

Question. Paragraph (b) in this reads: "Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals."

Now, do you know if, and I'm again trying to understand the standard here. If the Secretary of the Interior's standard is that the Department does not force off-reservation casinos upon unwilling communities, and that's the standard, not the standard of the Indian Gaming Regulatory Act of the determination of detriment to the community, do you know if the standard as articulated here has ever been brought to the attention as this directive indicates it should with tribal governments?

Mr. ELLIOTT. I'm going to object to the premise of the question, Mr. Wilson, in that you are characterizing the unwillingness as being, in effect, in violation of the Indian Gaming Regulatory Act. I don't think you can characterize it that way. That is a legal argument; it is a legal question that will be decided, if indeed it has to be decided, but it's not something that ought to be premised in the question.

Mr. WILSON. Well, I mean I'm taking this as a matter of somewhat common sense. We can dance around on the head of the pin for a while, but there is a very clear statement here, that if a community is unwilling, we will not permit an off-reservation casino to be put in that community.

Mr. YEAGER. Counsel, I am at a loss to understand why you are trying to persuade this witness to accept an argument that you are making in this deposition.

Mr. WILSON. I think the witness has testified that she perceives that to be the policy of the Secretary of the Interior. She stated that on the record.

The WITNESS. I was speaking of the New York Times letter. Did you see that?

Mr. YEAGER. Yeah, I saw that. What I see is counsel trying to walk the witness through an argument, and I just don't see that being a proper purpose of this deposition.

Mr. WILSON. Something that's never happened before in a deposition. Well, I'm trying to get to the understanding of what the policy and the standards are. We will spend a lot of time if we can't understand the rationale for various decisions that were made, and so we are spending valuable time now with a very knowledgeable witness discussing what the value—what the witness knows about Government policy. It takes me to this paragraph in the Presidential directive.

Mr. ELLIOTT. But Mr. Wilson, we are trying to get to the rationale for the Hudson Dog Track application decision, one with which she was not associated.

Mr. WILSON. But I'm asking about a statement of policy by the—this doesn't say, the Department rejected the Hudson Dog Track because; it says the Department does not force off-reservation casinos upon unwilling communities. The statement stands by itself.

Mr. ELLIOTT. And I believe the witness said that she believed that that was the policy of the Department of the Interior, and that she also said that she would interpret that as looking into what it is that's behind what the community is saying. Now, to then translate that into a question premised on this is a violation—this letter says that the Secretary of the Interior is advocating violation of the Interior Gaming Act is not proper.

Mr. WILSON. Okay.

Mr. HORN. Counsel, if I might, I would just like to ask a couple of questions about this document.

Were you, as Assistant Secretary, consulted on this April 29th, 1994, memorandum the President wrote, "Government-to-Government Relations With Native American Tribal Governments"? Were you or your staff consulted?

The WITNESS. I wasn't, but my staff probably was.

Mr. HORN. Well, I'm sort of shocked. Usually the President, under any President that had a staff system, which isn't too many of them, would go down to the Department that is relevant, in this case in the Interior, and ask the Secretary to convene the best people he could get that know something about the problem to help formulate the policy.

Now, to your knowledge, was this basic draft, or a draft that might be completely different from this, ever drafted within the Department of the Interior and submitted to the White House where it would be reviewed by counsel and whoever they have over there dealing with Indian matters? Had you ever seen a draft document like this before April 29, 1994, and asked for your opinion?

The WITNESS. No, I wasn't asked for my opinion.

Mr. HORN. Well, I'm rather shocked the administration would issue something and they wouldn't go to the source; namely, the Assistant Secretary for Indian Affairs, and you're saying some of your staff might have been involved?

The WITNESS. There are several people that are really good writers and are extremely knowledgeable and they are known—these people all know each other, and so they are often contacted on this type of a communication.

Mr. HORN. Are these people on your staff or the Secretary's staff?

The WITNESS. I have one person on my staff, and then I assume that there are—well, I know that there are good writers on the Secretary's staff that are consulted on these types of situations.

Mr. HORN. Well, good writers are to be appreciated, but somewhere people that know something about the policy and what the experience with the policy have to be consulted. Now, presumably that would be you; it would be the people that are your sort of division chiefs by whatever name you give them; it would be your Deputy Assistant Secretary; it would be the head of the Gaming Commission if this has

anything to do with the gaming operation. It seems to me they would get them in a room and say, hey, what kind of problems are we having, because I'm curious what led to this. Was it supposed to be an Executive order, and they couldn't get away with that so they put a memorandum out?

The WITNESS. Well, let me say that on this day this was the meeting convened at the White House by President Clinton of all of the tribal leaders in the country, and there were about 300 of them present, and so this was issued, and there was another memorandum issued, and so it was felt that it would be appropriate to have some statement from the President.

He also made us—there were also presentations there. It was a very, very historic meeting. All the cabinet was there, Vice President and Mrs. Gore, Mrs. Clinton, as well as the President, and various tribal leaders. And so that's the background for this statement.

Mr. HORN. When was it first known in Interior that there would be this meeting of tribal leaders? Did suggestions go in from your shop and others as to what the President might say on the subject?

The WITNESS. I don't know what the whole process is of drafting statements at the White House, but they do utilize various sources within the Government.

Mr. HORN. Not necessarily within the hierarchy, but within the Government. In other words, you're saying there's a group of bright young people that are sort of pulled up to give them their ideas and write well?

The WITNESS. I'm not privy to how all of that transpires.

Mr. HORN. Okay.

The WITNESS. I want to say that there are people within the Department of Interior, the Assistant Secretary of Indian Affairs staff, and solicitors. There are various people that have expertise in many matters that are then utilized, and consulted on times like this.

Mr. HORN. Now, did anybody of that staff that you talk about consult you, say, what do you think of this idea?

The WITNESS. I knew that there were preparations being made for this meeting, but I wasn't directly consulted on this.

Mr. HORN. And did you attend the meeting?

The WITNESS. Of course.

Mr. HORN. Did this come as a surprise to you when it was issued?

The WITNESS. No.

Mr. HORN. Was it not a surprise because you had already seen a draft?

The WITNESS. Let me say I think we are getting a little far afield here from your discussion, but I knew that there would be some statements; I didn't know exactly what would be in it, so it was all part of the formality of the day.

Mr. HORN. Right. The atmosphere.

The WITNESS. Yeah.

EXAMINATION BY MR. WILSON:

Question. Just, I have another question about this letter, but we have labored over this and I will try to encapsulate as much as possible. Do you consider to be a contradiction between an articulation of the Department not forcing off-reservation casinos on unwilling communities and a standard that requires the establishment of a detriment to the community?

Answer. Depending on how you want to interpret these.

Question. But just in a commonsense, basic understanding of words that are very clear on their face, how would you interpret that?

Answer. Well, knowing what I know, and having associated with lots of lawyers, I again get back to my old point of how you want to interpret it. Is unwillingness detrimental to the community? It depends on how you want to interpret it.

Question. Well, I will—I mean, everything I have seen that's come out of your department has shown that people are trying to establish a detriment to the community have to come up with an articulated detriment. It's not—and we have had people's testimony to say we have a racist reason or we don't like Indians or we don't like gambling. There has to be a reason that it is a detriment to the community, like the parking lot will be too big and too many cars will come in and there will be traffic jams and the school buses will back up and the lights are too bright. Those are articulated detriments to the community. And I'm characterizing what we have heard in testimony so far and we have seen them in documents we have reviewed. Detriment to the community is something that you can articulate and say that this is the problem to the community. Detriment to the community, in terms of the Department of the Interior's own characterization, is not we don't like gambling or we

don't like Indians or, you know, we don't want to do it until the new millennium. There's a difference between those two standards.

Mr. YEAGER. Perhaps counsel should be sworn by the House reporter.

EXAMINATION BY MR. WILSON:

Question. And so my question is, do you perceive there to be a contradiction between those two articulations of standards?

Mr. ELLIOTT. I think she's already answered that question, Mr. Wilson. She said, it depends on how you interpret it. It is up to members of her staff and decision-makers when they have the decision. She said she had never seen——

Mr. HORN. Shall we take counsel to have the oath? I mean the question was to the witness, not to the counsel. I think she can remember.

Mr. YEAGER. He is continuing to ask the same questions.

Mr. HORN. I think she can remember what he said and not, and she can easily refer without being coached by the Minority counsel or the Department of the Interior counsel. So I would just—we could save a lot of time if we would let her answer the question.

Mr. ELLIOTT. But Mr. Horn, she has answered the question a couple of times already. My objection is that she was asked the very same question.

Mr. HORN. Well, maybe there is a nuance. That is not unusual in depositions, and you know it if you have been in any depositions, and I would think with all that is going on in Interior, you might be in a lot of depositions, so you should know that.

EXAMINATION BY MR. WILSON:

Question. What is your understanding of detriment? What does the word "detriment" mean given the statute that you have been in charge of enforcing for a number of years?

Answer. Negative impact.

Question. Negative impact, okay. And negative impact has a specific meaning; does it not?

Answer. It should have, yes.

Question. Just another thing from this letter here, it states that the Republican Governor of Wisconsin opposed the casino. Do you know that to be a correct representation of fact?

Answer. I have probably seen this in the newspaper or something. I mean, I don't have a sheet in front of me with that information on it.

Question. Now, do you recall seeing these materials in the record prior to your recusal on this issue? And I'm asking because I am trying to find in the record the articulation of the statement made in this, and I can't find that in the record.

Answer. I don't know about the record, but I have various friends in Wisconsin who send me materials, and there's just all kinds of ways that people communicate to me. So it's not surprising to me that the Governor of Wisconsin would oppose this.

Question. Do you have knowledge that he did oppose it?

Answer. Other than just the general information, either from the newspapers or from communications that people have sent me, or, you know, telephoned to me, no. I don't, like I say, have a sheet with that particular information on it.

Question. Were you aware, or are you aware now, of a meeting between the Governor and tribal representatives where he indicated that he would not oppose the casino if they agreed to a deal where they would each have only one casino instead of the two casinos allowed by law in addition to the Hudson Dog Track proposal?

Answer. I don't remember that, or I don't have any recollection of it.

Question. What's—going back to the definitional standard, you were in charge of the handling of many applications for off-reservation gambling issues. What is your understanding of the meaning of "community"?

Answer. The people or the entities that are surrounding or next to or nearby the facility.

Question. Would you accord any weight to popular expressions of opposition or support for a proposal, for example, letters or petitions? Would that be of any consequence?

Answer. Well, that all has to be taken under consideration.

[Deer Deposition Exhibit No. AD–4 was marked for identification.]

Mr. WILSON. I will provide the witness with a document that's marked AD–4. It's a lengthy document and there are some threshold questions I will ask.

Just for the record, while you're taking a look through it, it is a document marked "Draft." It is to Assistant Secretary, Indian Affairs, through Deputy Commissioner

of Indian Affairs. It's here from George Skibine, and the subject is the subject we are discussing today in the deposition, the Hudson Dog Track application.

EXAMINATION BY MR. WILSON:

Question. First, have you ever seen this document before?

Answer. Not that I recall.

Question. Okay. I wanted to ask you about some specific issues discussed in this letter, and I want to discuss these to try and determine your views on the standards that were used to determine whether the application should be rejected or approved.

If you could just refer to page 4. There's a section marked "Consultation with State," and a letter is discussed, a letter from an individual named Sheila E. Harsdorf, State Representative, and 28 other Representatives, and State Senators and the letter was, as referred to in this memorandum, dated March 28 of 1995.

I just wanted to discuss this, and the terms of—we are looking at community opposition and the standard that the Department of the Interior used to analyze these types of applications, and I understand you said you recused yourself from this, you have not seen this document, but we can talk about the standards employed when it comes to community opposition, community unwillingness.

The letter referred to in this application identifies four areas of detrimental impact, and at the bottom of page 4 the first one identified is the removal of land from local property tax rolls.

Now, to you, is that a legitimate subject to consider when approving one of these types of applications?

Answer. That's usually cited.

Question. Okay. Now, do you have any specific knowledge of the proposed solution to this problem in the specific Hudson Dog Track case?

Answer. No.

Question. If, and I will make a representation to you that there was an agreement in this situation where the land on the tax rolls generated approximately $800,000 a year in tax revenue, and the agreement called for paying the community over $1 million a year in lieu of the tax revenue.

If that were true, and I'm not making a representation, you don't have to agree whether it's true or not, but if it were true, would that in your view sufficiently mitigate the concern raised in this letter?

Answer. Well, common sense would show that it should.

Question. The second, on page 5, the second rationale behind the opposition is pinned on expansion of gambling being contrary to the popular will—the public will in Wisconsin.

Is it your experience that the expansion of gambling is contrary to the public will in any State in which casinos, Indian casinos have been established in the last 10 years?

Answer. Well, that's a big question. I know there's been some opposition from the groups that have bingo and this kind of charity operation. On the other hand, there's been some demonstration through economic reports commissioned by tribes to show their impact, and it's been demonstrated that a number of these casinos have had a very positive impact.

Question. Well, I'm just trying to get at if the representation is that the people don't like gambling, is that in itself, in your view, a reason to reject an application that ultimately would result in Indian gambling? Parenthetically, there is already gambling going on here.

Answer. Let me say, if people don't like gambling, how come all of the people go to the gambling establishments? I probably shouldn't smile at this, but it does seem a little contradictory on the part of the people or the public. On the one hand, some people object; on the other hand, lots of people go. So which public do we want to talk about?

Question. So I mean in your view, the sort of underpinning of this statement may be questionable?

Answer. Yes.

Question. The third reason here, it says that off-reservation——

Answer. But I want to pay due deference to the elected people, so I want that understood.

Question. Understood. Although you're not prepared—I mean, are you prepared to say that you would pay due deference to elected officials when they say something that's purely wrong or inappropriate?

Answer. Well, they are only human and nobody is perfect.

Question. The third rationale here says, and I will read from it, the letter says that off-reservation gambling may not foster economic development within the tribal nations.

Well, returning to our specific example, which is what this is about, was it your opinion that the Hudson Dog Track proposal would have fostered economic development within the Red Cliff, Mole Lake, Sokaogan, and Lac Courte Orielles tribes?

Answer. Well, any——

Mr. ELLIOTT. She didn't review those documents, the economic analysis, or any of those documents, Mr. Wilson.

Mr. WILSON. I'm asking for what she thinks.

The WITNESS. Well, any successful business venture of a corporation or tribe would be beneficial to the investors or to the tribal governments. So if it were successful, it would have a positive impact on the tribe.

EXAMINATION BY MR. WILSON:

Question. No, I understand the representation from—the representation has been that you did not necessarily review documents in this case. You did not review documents in this case, but given the situation of this particular casino that you are aware of, do you know where Hudson is?

Answer. Yes.

Question. In your opinion, and this is just your opinion without economic analysis, do you think that there was a possibility that that could have been a successful gaming establishment for the three tribes that were seeking to take land into trust?

Answer. Well, in this capitalist society, all kinds of things are possible, and again, I think we need to understand, and which I don't, the economic and business structure and plans, and I don't know what the market feasibility studies were, and all of these things. And I don't have that information on this.

Question. Fair enough. But you're not aware of any study that said this would not be—this proposal would not foster economic development within the tribal nations that were making the application?

Answer. I'm not aware of that, no.

Question. Fair enough.

The final representation in this letter is that many municipalities feel that the expansions have created tense racial atmospheres and that crime rates have increased. It is also unclear whether all tribes have benefited from the IGRA. There are a number of issues that come up within the space of this one sentence, but do you have a view on whether this sentence is correct or incorrect?

Answer. I think they make some general statements without sufficient data to base it on.

Question. If you were in charge of or supervising an application and somebody made this statement, would you consider it necessary to do some further research to determine whether this had a basis in reality or not?

Answer. Well, I think it's important to try to get as much accurate information as possible, and there would be different ways of doing this.

Question. Now, you know, again, I know you testified that you did not review a lot of documents, but are you aware of anybody from the Department of the Interior actually visiting Hudson, Wisconsin, to attempt to determine whether these types of statements were valid or invalid?

Answer. I'm sorry, I don't know anything about that.

Question. Fair enough. And based on your testimony I do not have any reason to believe that you would.

Based on your position in the Department of the Interior in 1994 and 1995, your position before recusal in this matter, and the knowledge that you acquired after the decision was made, what is your understanding of the concerns that the surrounding community had about the dog track proposal?

Mr. YEAGER. Do you have any understanding about the concerns?

The WITNESS. No, I don't know much about it, other than I have read in the paper that it was—the dog track had problems and that this might be a way to resolve whatever those problems were and be of some assistance to the tribes.

EXAMINATION BY MR. WILSON:

Question. Did you ever have any conversations—well, did you ever have any conversations with anybody at Interior during which they told you about a specific concern in the Hudson Dog Track matter?

Answer. No, not that I recall.

[Deer Deposition Exhibit No. AD–5 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I have a document here for Ms. Deer that has been marked for the record as Exhibit AD–5. It is a cover sheet attached to a letter from a Member of Congress, Steve Gunderson, to Secretary Babbitt. It is dated April 28, 1995. I have a very specific question to ask you about a statement made in this letter, if you want to take just a moment to look at it.

Actually, there is just one sentence I wanted to ask about, and I will direct your attention to it instead of forcing you to read the whole thing.

At the bottom of the first page of the letter, it states—and it is the second sentence, full sentence, from the end—"According to your office, since Congress passed the IGRA in 1988, the Secretary of the Interior has never"—and that is underlined—"approved the acquisition of off-reservation land to be used for casino gambling."

Leaving out the "according to your office" part, because I recognize you have no knowledge of what was communicated, but the statement of fact in here, the statement that since Congress has passed IGRA, the Secretary of the Interior has never approved the acquisition of off-reservation land to be used for casino gambling, is that true or false?

Answer. Well, I would assume that the Congressman has accurate information.

Question. Do you know—I mean, do you have recollection of——

Answer. No, I don't.

Question [continuing]. Whether the disposition of off-reservation gambling requests were made?

Answer. No, because that is—we are talking about since 1988 and I came on in 1993, so I am not familiar with all of the history of this.

Mr. HORN. Well, has this been the policy that guided you? Because what Gunderson is saying is Babbitt's office, and we don't know if it is Babbitt's immediate office or someone in the gaming commission or the bureau, and I am curious, was that the policy that guided you, which is Gunderson quoting Babbitt or staff of the Interior, the Secretary of—put in the Interior—has never approved the acquisition of off-reservation land to be used for casino gambling? Was that one of the policies that guided your office, even though in this case you recused but the deputy assistant secretary didn't? I mean, is that a basic policy?

The WITNESS. I think that there has been some discussion about off-reservation gambling, but it wasn't in a consistent way, it was kind of sort of in an ad hoc way. And I remember in one of the meetings that this issue of precedent came up, that if we did this, this would set a precedent, and then everybody would say, wow, you know, we can't do that, you know, that will set a precedent, and then I would say, well, maybe we can look at this, and, of course, then we would sort of get into a discussion. But it wasn't the focus of a meeting, it would be part of another meeting in regard to some other issue, perhaps——

Mr. HORN. So you are saying it was never really decided in the Office of the Assistant Secretary that——

The WITNESS. So I don't think that there was a—you know, a written statement on this. I mean, I haven't seen one, but the impression that was obtained from these kinds of comments is that this is not something that should be done or could be done. And this was way before this; this was in some other meeting.

Mr. HORN. Was this when you first arrived as assistant secretary?

The WITNESS. Well, I would say probably early in my tenure. But, anyway, the point of it is that it is a precedent, and they were saying we have to be careful about setting precedents, you know, others might follow, and then we will have a lot of these other requests coming in and it will mean more work.

I really shouldn't be this way on a deposition, but I have a great sense of humor and every now and then it comes out. I have nothing against lawyers, but I did ask; I said, what is wrong with precedent? And, of course, they didn't know if I was really asking them this question or just teasing them, which is part of our Indian humor.

I'm sorry, I am interrupting your point here.

Mr. HORN. No; I think you made it very clear. Really, it might have been a precedent, but it was unwritten. Did that guide some people in their decision-making?

The WITNESS. Let me say that this is not only in relation to this particular thing, but this often comes up, and if you use the word "precedent," then this kind of like supposed to stop the discussion, and of course with somebody like me it doesn't. But nevertheless, in my opinion, the idea that it was a precedent then made it—well, you would have to have a longer discussion then, and that was sort of a negative for other requests.

Mr. HORN. Really, isn't the Pequot case an example, where they won a settlement from the State of Connecticut? And they were not on a reservation, they were off the reservation and scattered among different towns, and in essence, with that money, and the land that was given them, that is where they established their casino. Technically, it was off the reservation, because there was none.

I mean, so the policy, I just wonder how real that is, if somebody told Steve Gunderson it is never approved, the acquisition of off-reservation land to be used for casino gambling. It seems to me the first major one defies that.

EXAMINATION BY MR. WILSON:

Question. Actually, another example—and you can elucidate on this—the Potawatomies in Milwaukee, it is my understanding there is a Potawatomie casino in Milwaukee, and that is an off-reservation casino; is that correct?

Answer. Yes, but it is the ancestral land of the Potawatomies.

Mr. WILSON. Off the record, please.

[Discussion off the record.]

EXAMINATION BY MR. WILSON:

Question. You made a distinction there, and you noted that the Potawatomie casino is located on ancestral land. Does that change the distinction that that is off-reservation land?

Answer. Well, I was going to say, I would like everyone to remember that this entire Nation was once Indian country and that these are legal terms that have been developed by the dominant society, and so we should not get lost in all these legalisms.

Question. I was going to go there, actually, so that is why I am concerned, that perhaps there is some significant legal distinction that I don't fully understand here. I mean, my assessment was, I mean, perhaps pointy-headed lawyer types have made very, very narrow distinctions on these issues, but if I were communicating, maybe prior to today—if I were communicating to somebody and they said, are there examples of off-reservation casinos being approved since the passage of IGRA? I might have said, well, there is, for example, the Potawatomie casino in Milwaukee, and that would be me trying not to be a lawyer and split hairs. So I just want your sense of, is that a fair characterization?

Answer. Yes.

Question. Are you aware that any of the tribes that were opposed to the Hudson Dog Track matter had ever made political contributions?

Answer. I would assume that they did.

Mr. YEAGER. Are you talking about at the time the decision was pending?

The WITNESS. I am talking about the general participation of tribes in the political process, that with the income, it has been possible now through gaming that tribes have done the great American thing and have taken part in the American processes and have made contributions. And some have attended political conventions, and some have worked to run for office and have supported candidates at the various levels.

EXAMINATION BY MR. WILSON:

Question. Were you aware that Marge Anderson and Debbie Doxtator had been invited to attend White House coffees?

Answer. No, but not specifically, but this is—it seems like the election cycles get longer and longer for both parties, and it is not surprising; they are both chairs, leaders of successful tribes, and have utilized their positions to benefit their tribes, and I think they should be—it should be understood in that context.

Question. So is it fair to say, then, you had a general understanding that Ms. Anderson and Ms. Doxtator, for example, had been politically active?

Answer. I know they are politically active. I don't keep track of all of their activities.

Question. Did you have a general understanding that the Shakopee were politically active?

Answer. I would assume that, because of their income.

Question. Were you aware of any communications about the Hudson Dog Track between the Department of Interior and either the White House or the DNC?

Answer. No.

Question. Were you ever aware of any discussions about political participation between the Department of the Interior and the White House?

Mr. YEAGER. I am not sure I understand the question. Could you restate it.

EXAMINATION BY MR. WILSON:

Question. Sure. When you were at the Department of the Interior, did you ever participate in any communications during which the political participation of Native Americans was discussed?

Answer. Probably, because I am a political appointee and I have maintained some of my communications with the party, but not much, because I am too busy. But one of my goals has been to further the political involvement of Indian people in the political process, and I was involved in a couple other campaigns, I made contributions during the cycle—this is in this whole general process. There was a person that ran for Congress in Montana; there was a Native person that ran for Congress in Alaska; they all know who I am, so I get information from them, and so I am involved in that way. I get information from the party, you know, as I am sure any political appointee would, various functions and things like that.

Question. Did you ever see, during the time you were at the Department of the Interior, any lists that indicated how much tribes, individuals, or PAC's associated with tribes or casinos had ever contributed to any political party?

Answer. I am sure that information is available, but I don't have a specific knowledge of the amounts or anything. I mean, I know they have contributed, and there would be that information, well, through the regular channels.

Question. And at the time you were at the Department of the Interior, were you ever aware of which tribe made the greatest political financial contributions?

Answer. No.

Question. Did you ever discuss or did you ever have any information on voter turnout among the tribes?

Answer. During this last election cycle, I assisted in the political process in Minnesota and South Dakota, and during those activities I received some information about, I think it was either voter turnout or maybe it was registration or maybe it was both, and I went to both States, to Minnesota and to South Dakota.

Question. What was the source of the information you received?

Answer. Well, some of them, when I decided I would do this, then people I know—my friends, they would send me—I spend a lot of time in the Midwest and in South Dakota, too, and Minnesota. People sent me information; I also got information from the campaigns of—some information, I don't know exactly what, I can't remember all the detailed information, but from Senator Wellstone's campaign and from Mr. Johnson's campaign. I may have gotten some from the State party, too; I am not sure; I just put it all together in one folder.

Question. Did you ever receive any such information from the White House?

Answer. No.

Question. Did you ever send any such information to the White House?

Answer. No.

Question. Did you ever receive any such information from the Democratic National Committee?

Answer. If I received information, it was generally on the campaigns of Mr. Wellstone and Mr. Johnson.

You know, there are only about 2 million Indians in the country, and it is the smallest group, and so therefore it is extremely hard to get detailed information on this. So they wouldn't have as much information as we would all like in these situations, where people are working on it.

There are increasing efforts by the tribal leaders to get information out, and they use whatever methods they can. But there is not the resources for the staff to give the kind of detailed information that one would like. It is getting better. I think there are some efforts by the tribes to improve their participation in this, but it is sort of inconsistent.

Question. Did you ever provide any of this type of information to the Democratic National Committee?

Mr. YEAGER. What type of information?

Mr. WILSON. Information on voter turnout or political participation of Native Americans in the political system.

The WITNESS. The only information I had is what was printed in the newspapers during the campaign. The tribal leaders themselves might have some information on their own areas.

EXAMINATION BY MR. WILSON:

Question. Prior to your——

Mr. HORN. Are you finished in that area of questioning?

Mr. WILSON. Please.

Mr. HORN. I am just curious; normally among political appointees in most administrations, Democratic and Republican, when party dinners come up and other things, the Secretary or the Assistant Secretary gets all the appointees together and says, look, we are competing here with Labor, or HHS; what can you do to help us on that? And they might do it in the Secretary's home, they might do it off somewhere else. Does any of that occur within the Interior? You were never asked to donate to a $1,000-a-plate dinner or anything?

The WITNESS. No, I don't have that kind of money.

Mr. HORN. Or even a $100-a-plate dinner?

The WITNESS. I get the usual solicitations from the party.

Mr. HORN. Those would be direct mail or phone call?

The WITNESS. Direct mail.

Mr. HORN. Did anybody in the Vice President's Office or the President's Office ever call and say, look, we really need some help in South Dakota, can you tell us who are some of the well off tribal chairs that might be able to help us on this?

The WITNESS. No. I have decided to volunteer my services to both campaigns. I just went directly myself, decided it was easier to do it that way.

Mr. HORN. How about the Secretary of the Interior, any of his political staff, or any career staff, for that matter? Does anybody in the Department of the Interior ever ask Assistant Secretaries to give us some advice on who we can see in a particular area to raise money for the party, et cetera?

The WITNESS. Mr. Babbitt has never asked that of me, and I wouldn't know about his other conversations.

Mr. HORN. So whether it is the President, the Vice President, the Secretary, you are telling me they have never asked any of the political appointees to help out the party and get themselves reelected and thus continue their term?

The WITNESS. They haven't asked me that, and I would not want to speculate on other conversations. My opinion is that they are quite aware of the rules and the regs, and I feel that we have worked strenuously to maintain the integrity of our offices. We all have ethics counselors that we consult, and I feel that, as a political appointee, I have not been unduly contacted. As a matter of fact, I feel neglected that there has not been the contact that I thought there could be and should be, in terms of just ongoing regular party efforts, and I feel that the political appointees that I am aware of, we are all so involved in our work that we have very little time to be involved in what you would call partisan efforts. We all take our oaths of office very seriously and work to uphold our oath.

Mr. HORN. Did you ever go out and make a partisan speech during your tour of duty as Assistant Secretary?

The WITNESS. When I campaigned for Senator Wellstone and Mr. Johnson.

Mr. HORN. Just Johnson and Wellstone?

The WITNESS. I think I attended a couple meetings once—well, I think I went to one small committee meeting in Arizona once, but, like I say, we are all so busy that maybe other people have a better use of their—not better, but a more improved scheduling, but I always felt very heavily scheduled, and there was very little time for partisan activity.

Mr. HORN. Go ahead, Counsel.

EXAMINATION BY MR. WILSON:

Question. Were you aware of Secretary Babbitt attending fund-raising events during your time at the Department of Interior?

Answer. In general, as a Cabinet Officer, I knew he took part in a number of these things, but, again, I focused mostly on my efforts.

Question. And what events do you recall him attending?

Answer. I don't know about specific events, but the Secretary's calendar is available, and from time to time there would be notations of various events. He has been involved in—as a Cabinet Officer, in a number of high-level activities.

Question. Do you have a recollection of him attending DNC events?

Answer. No, I'm sorry, I don't have any recollection of that.

Question. Prior to your recusal, were you aware of any documentation or discussion of documentation originating in the area office recommending approval of the Hudson Dog Track application?

Answer. Documentation, generally, I don't really have knowledge of a lot of these situations until they get to my desk.

[Deer Deposition Exhibit No. AD–6 was marked for identification.]

Mr. WILSON. I have provided for Ms. Deer a document that has been marked for the record AD–6, and it is a lengthy document.

EXAMINATION BY MR. WILSON:

Question. I will ask general questions about it, if you want to take a quick look through it for the record. Although the date is obscured in the copy that we received in production, the date is apparently November 15, 1994. It is a memorandum to Assistant Secretary of Indian Affairs, from the Office of the Area Director, and it discusses the request for off-reservation gaming in Hudson, Wisconsin. Have you ever seen this document before?

Answer. They might have shown this to me in the previous deposition. That is what I think I recollect.

Question. Were you aware of the existence of this document at the time you were at the Department of the Interior?

Answer. Let me say that lots of information comes into the Office of Assistant Secretary, but I wouldn't necessarily see it, so even though this is addressed to the Assistant Secretary, I would assume this went to the gaming office.

Question. On page 33 there is a recommendation, and it reads as follows: "Based upon the discussion and conclusions provided above, we recommend that the Secretary of the Interior find that the proposed action will be in the best interest of the Lac Courte, Red Cliff, and Sokaogon Tribes and that it will not have a detrimental effect on the surrounding community. We also recommend that the decision be made to take this particular parcel into trust for the three tribes for gaming purpose."

And it appears to me—oh, you do have the last page.

Mr. ELLIOTT. It is page 32; you said 33.

EXAMINATION BY MR. WILSON:

Question. Obviously, to recapitulate, this does indicate that there was a finding at the area office level of the proposed application being both in the best interest of the three tribes and of it not having a detrimental effect on the surrounding community.

Prior to your recusal from this issue, did you ever hear anybody take issue with this recommendation?

Answer. Well, this wouldn't have been—I wouldn't have been involved in it. Like I say, even though it is addressed to me, they would have put it into the gaming office, and once I recused myself, then I wouldn't be involved in the discussion.

Question. But I am looking at before the time you recused yourself. Did you ever hear any talk, conversation, or discussion about the application process and that there had been a recommendation from the area office in Minneapolis?

Answer. There might have been some announcement of this at the general staff meeting, the program directors meeting. We go around, okay, what is going on in education, what is going on in economic development, and gaming, the director might have said, well, we have got, you know, several issues before us, and we are working on them. I mean, it would have been in the general discussion of the staff, but it wouldn't have been a detailed discussion. These are mostly informational announcement type sessions, our Monday staff meetings, and then sometimes we get into discussions on a particular issue if a program director requests it.

Question. Did the Menominee Tribe ever take a position on the Hudson Dog Track application?

Answer. I don't think so.

Question. Did anybody from the Menominee Tribe ever communicate to you in support or opposition?

Answer. No. No. As a matter of fact, my tribe is very sad, because they knew once I went to Washington, they wouldn't hear from me for 4 years, because they knew everyone would be watching them to see if I was giving them special attention, so I had to basically ignore my own tribe for a long time.

Question. Have you ever had any conversations with Denise Homer about the Hudson Dog Track application?

Answer. No.

Question. Based on your contemporary knowledge of information pertaining to the Hudson Dog Track matter, do you personally have any reason to take issue with the conclusions of the area office recommendation?

Mr. YEAGER. Say that once more, please.

Mr. WILSON. If you can read the question back.

[The reporter read back as requested.]

The WITNESS. Well, I feel that without the information on which they—what all the analysis, that it would be difficult to make a judgment.

My philosophical approach is to assist the tribes in their economic ventures. On the other hand, we are trustees, and we need to use caution in assisting the tribes

so that they don't get harmed from the actions of the trustee. So, one would have to have more—at least I would have to have more information in order to adequately and accurately respond.

EXAMINATION BY MR. WILSON:

Question. Was your understanding at the time you were Assistant Secretary of the Department of the Interior that the area office would handle all matters pertaining to consultation with the surrounding communities for an application?

Answer. That would be the general practice, in my opinion. But these are the nineties, and so we are trying not to be, in my opinion, just a rigid operation, and so the Secretary has had meetings and sessions, you know, with all kinds of individuals and groups across the country on a number of issues. I myself went to Pequot with a Congressman; I forgot his name now; Gejdenson, I think his name is.

Mr. HORN. Yes, Gejdenson, Sam.

The WITNESS. Yes, we had a session up there with various people. So we tried to be, in my opinion, helpful to the tribes and assist them as we proceed with our responsibilities, and in the olden days, in the "Great White Father" days, there would be like one way of doing it their way, and now we have, in my opinion, more freedom.

EXAMINATION BY MR. WILSON:

Question. Do you know, specifically, of any examples of consultation with local communities being handled prior to decision or rejection anywhere other than at the area office?

Answer. No, I'm sorry, I don't know.

Question. Do you have any understanding of deadlines for comments that were established and other application processes? If I get around to it, I will think of a question. Do you know of any examples where the deadlines for comment about a particular application were changed at the level of the Department of the Interior in Washington?

Mr. ELLIOTT. Are you talking about applications——

EXAMINATION BY MR. WILSON:

Question. Taking land into trust for gaming purposes?

Answer. I don't know about that specifically, but I know from time to time deadlines are extended on various issues, you know.

Question. But do you know that for the level of the office in Washington, or do you know that to be the case in area offices?

Answer. I'm sorry, I don't know. I know this has to be done according to the Federal rules, the Federal Register, and sometimes the area offices get consultation from the regional solicitor's office there. So I suppose that would be done there; is that right?

Mr. ELLIOTT. They get their legal advice from the regional office, yes, or field office, one or the other.

EXAMINATION BY MR. WILSON:

Question. To characterize what you said, you are not aware of any situations where a consultation or comment period closed at the regional level has been reopened at the national level?

Answer. It is a detail that I wouldn't know about.

Mr. YEAGER. Those deadlines, to your knowledge, aren't set forth in the regulations, are they?

The WITNESS. You can always get around regulations, I guess. I shouldn't say "always." I know that deadlines have been extended, but I don't know what the rules are for extending them.

Mr. YEAGER. I don't mean to ask that question and put it on the record, so I will withdraw it.

EXAMINATION BY MR. WILSON:

Question. Were you aware at the time before you recused yourself that the comment deadline in the Hudson Dog Track matter had actually been extended?

Answer. No, I didn't know that.

Mr. WILSON. If we could go off the record.

[Off the record.]

[Deer Deposition Exhibit No. AD–7 was marked for identification.]

Mr. WILSON. Back on the record.

I have provided Ms. Deer with a document that has been marked for the record Exhibit AD–7, and it is an e-mail from George Skibine to a number of individuals: Hilda Manuel, Robert Anderson, Heather Sibbison, Michael Anderson, Scott Keep David Etheridge, Tom Hartman, Nancy Pierskalla. It is dated, I believe—I know it is 3; I think it is 17, 97. It is definitely March of '97.

And if you could take just a moment to review this, I recognize that this document does not indicate that it went to you at any time.

Mr. YEAGER. The date also indicates the e-mail was generated long after the decision was made in the case.

The WITNESS. Yes, I haven't seen this, but, okay.

EXAMINATION BY MR. WILSON:

Question. The document—and I will try and keep my representation as short as possible—the document states, in the second paragraph, "Plaintiffs informed us that a pivotal question in their decision to resubmit an application is whether the Department will again stand by its position that the 'naked' political opposition of the surrounding communities, without factual support, is enough for the Secretary to refuse to make a finding that the proposed acquisition is not detrimental to the surrounding community."

Now, bearing in mind that this is a representation of what the plaintiffs in the Hudson Dog Track case have informed, presumably, the author, George Skibine, and others, of their position, in the final paragraph Skibine says, "We told them we would confer with policymakers within the Department and let them know the outcome." The final sentence says, "I think it is a fair question for plaintiffs to ask."

Now, to establish a foundation would take a long time, and I am trying to save you time by doing this.

My interest in this document is that there is no rejection of the offering of the plaintiffs as to what happened here. It is presented in a document and ultimately Mr. Skibine says, I think it is a fair question for plaintiffs to ask.

My question to you is, in 1997, 2 years—nearly 2 years after the application was denied, were you part of any conversations, discussions, or communications during which people were talking about why the dog track application was denied?

Answer. No.

Question. Were you aware that there were any settlement negotiations in process in this case?

Answer. No, I didn't expect that the tribes would accept the decision, but other than that, I didn't know.

Question. My assumption is that you had recused yourself, and the recusal didn't come to an end at some point, so I wouldn't expect there would be any reason for you to know.

Do you know? I mean, you, by virtue of your position as Assistant Secretary, were still on the front line of the implementation of policy vis-a-vis off-reservation gambling. Were you ever part of any conversations where individuals indicated to you that—not to use the dread word "precedent," but that the Hudson Dog Track had any implications for any other issues that did come across your desk?

Answer. No.

Question. Do you know whether the policy that was followed in the Hudson application has been followed in other cases since 1995?

Answer. No, I don't.

Question. In your estimation, in your understanding of the policy that you were charged with overseeing, is political opposition rebuttable?

Answer. I would say yes.

Question. Do you have any personal knowledge of whether the three applicant tribes in the Hudson Dog Track situation were given an opportunity to rebut the aspects of political opposition?

Answer. No, I don't know

[Deer Deposition Exhibit No. AD–8 was marked for identification.]

Mr. WILSON. I have provided Ms. Deer with a document marked AD–8 for purposes of the record.

EXAMINATION BY MR. WILSON:

Question. And I will give you a moment to review it. It does have your name in it. It is an e-mail that indicates that the author is George Skibine. The date is July 8, 1995. It is to four people: Miltona Wilkins, Tom Hartman, Paula Hart, Tina LaRocque. And the statement I am most interested in is in the middle of this e-mail message, and it is the sentence that reads, "The Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes area."

Do you have any personal knowledge of whether the Secretary made that representation to anybody?

Answer. No, but it would be somewhat surprising to me.

Question. Do you know whether anybody made any representations that the release of the decision and your trip to the Great Lakes area should be tied for any reason?

Answer. I had promised Gaiashkibos during my tenure that I would come to his powwow, and I couldn't come the first year that he asked me to, and so I told him that I would come, you know, this year. And people are aware of my schedule, and I don't remember who stated this, but, but they felt that since I was going to Wisconsin to this powwow and since the tribes were waiting for this, that it would seem appropriate to have some decision on this. So I said, well, okay. I mean I wasn't, I wasn't involved, like I said, because of my recusal in this whole process, but that sounded appropriate and logical to me because I wanted to honor my previous promise to Gaiashkibos, who was the chair of Lac Courte Orielles at that time, and it was felt that with this decision made, then that would be one item off of the plate and we could proceed with the powwow.

Question. And who told you this information?

Answer. I think that there was some discussion with Michael Chapman on this, and I think also with Michael Anderson. Those would be the two main ones.

Mr. HORN. Could you help me a little understand to whom Mr. Skibine gave the e-mail? You have Miltona, R. Wilkins. She is on whose staff? Do you know that?

The WITNESS. I don't know who she is. I have to say I don't know every BIA employee. I assume that she's on or was on the BIA staff at that time.

Mr. HORN. Yeah. Tom Hartman?

The WITNESS. He is in the gaming office.

Mr. HORN. Paula Hart?

The WITNESS. In the gaming office.

Mr. HORN. Tina LaRocque?

The WITNESS. In the gaming office.

Mr. HORN. Maybe the staff, without objection, can insert in the deposition who these people are. It might help us all, what their titles are, who do they report to.

Mr. WILSON. For clarification, my understanding, and Mr. Elliott can correct me if I'm wrong, but Ms. Wilkins is, I think, a secretary or a personal assistant to Mr. Skibine, or in the IGMS office.

Mr. ELLIOTT. She was at the time, yeah. I mean she's not there any more. The Miltona Wilkins, I believe is the Miltona that is referenced in the first line of the body of the e-mail.

Mr. WILSON. And Tina LaRocque, I actually have no idea.

Mr. ELLIOTT. I believe she is also a secretary, but I do not know.

EXAMINATION BY MR. WILSON:

Question. So just to characterize what you said, I think you had a conversation with Mr. Anderson and Mr. Chapman about the decision and your visit to the Great Lakes area; is that correct?

Answer. Yes.

Question. And I think, it being late or being obtuse, I didn't fully understand the rationale for the need to get the decision out before or at the time you went there.

Answer. Well, generally, the staff knows what my schedule is and they try to give me a heads-up so that when I go there I don't get inundated with requests and all of these things. So since that was in process, they thought that it it could be done prior to my going there, it would be a more enjoyable, positive visit for me as well as for the tribe.

Question. Obviously, it's bad form for me to speculate, but the two options were for you to go up there and simply say, I don't know what the decision is, it hadn't been made; and the other option was for you to go up and have some very disappointed people who had been living for a long time under the hope that they would have this application approved, which I'm not sure—I'm not sure how that makes for a better visit for you. But can you provide any more sort of——

Answer. Well, as I stated, I had promised Mr. Gaiashkibos that I would do this, and powwows are a mixture of ceremonial and social and both Michaels felt that it would be a better visit for me to not have to get—I don't want to use the word inundated with contacts regarding the issue, and that the tribes knew the process and that whatever the decision was, that it could be appealed, and that then I wouldn't have to deal with it at the powwow, which would—I would kind of defeat the purpose of going to a powwow to have goodwill and communication, good contact with the various tribal people and tribal leaders that were there.

Mr. HORN. Excuse me. When it says, the Secretary wants us to go out, is that Secretary Babbitt or you being referred to as Secretary?

The WITNESS. When you say "the Secretary," that means Secretary Babbitt to me.

Mr. HORN. Okay. Because sometimes the people say to you, Madam Secretary, that kind of thing, within the bureaucracy, so I'm curious. That's definitely Secretary Babbitt.

Mr. YEAGER. Is it possible that "Secretary" could refer to the Secretary's office?

The WITNESS. I don't know. That's the first time I have seen this, and I know two of the people and the other two people I don't know, so there's a lot of unknowns.

EXAMINATION BY MR. WILSON:

Question. You indicated that you had had a discussion about this with Mr. Chapman and Mr. Anderson. This is an e-mail from Mr. Skibine to other people. Did they discuss with you the substance of your visit to the powwow? Did they tell you that they had had this discussion with Mr. Skibine?

Answer. No, they didn't mention anything like that.

Question. I think—I will ask both names at the same time and I think you have answered half of the question already.

Have you had any professional contacts with either Tom Collier or John Duffy since either of them left the Department of the Interior?

Answer. No.

Question. In 1995, did you have any awareness of the Ho-Chunk tribe negotiating to buy the Wisconsin Dells Greyhound Track?

Answer. No, but that would be—they are both right there in that general area of the Wisconsin Dells, and I know that the Ho-Chunks have done—they have made some profits there, and so it's not surprising that they would consider venturing into other enterprises.

Question. Were you aware of any information about the Ho-Chunks wanting to become or considering becoming involved in the Wisconsin Dells Greyhound Track?

Answer. No.

Question. And I think by process of elimination you have answered my next question, but do you know why they broke off negotiations on the day or on or about the time of the day that the rejection letter was sent out?

Answer. Now I understand more why they were opposed, if they were going to get involved in some venture of this like of their own.

Question. Did you have any communications with the Ho-Chunks about their opposition to the Hudson Dog Track application?

Answer. No.

Question. It's my understanding that on April 8 of 1995 there was a meeting or a powwow of some type in Wisconsin that Secretary Babbitt attended. Did you attend that?

Answer. I believe I did, yes.

Question. And it's my understanding that there was considerable discussion about the Hudson Dog Track application at that event. Do you have any recollection of that?

Answer. A number of issues are usually discussed at these types of sessions, and the Secretary is very excellent at handling the questions and the issues, and he is the main respondent at these. We, the staff people, do attend as help to him.

Question. What's your recollection of the issues that were raised about the—pertaining to the Hudson Dog Track at that event?

Answer. I don't have much of a recollection, because like I say, he's the one who carries on most of the discussion with the tribes.

Question. Would you——

Answer. But there would be—it wouldn't be just for one issue. There are always numerous issues.

Question. I understand there were many issues raised and the Hudson Dog Track issue was one of them.

Would you characterize the issue as it was framed at that tribal meeting as controversial?

Answer. I don't think so. Basically, the Secretary is very skilled at these types of community meetings and handles the questions and the issues in a very professional manner, and even if some of the individuals might be more vocal or assertive or maybe even at times somewhat impolite, it doesn't get out of hand. The Secretary, as I say, is very skilled at these meetings and provides information and suggestions that meets the requests of the tribes or tries to answer their questions, and then if it's not possible, then we'll agree to meet with them later.

Question. What was the consensus of opinion about the Hudson Dog Track when it was discussed at this meeting, if there was one?

Answer. I don't think there was one; I think it came up as one of the issues.

Question. Were there proponents and opponents of the proposal at the meeting?

Answer. I don't remember exactly.

Question. In Secretary Babbitt's——

Answer. Let me just elaborate just a little bit on this. Tribes—respect is a very important cultural practice of tribes, and even if there were big differences, they would work to, in the public meeting like this, to be polite and respectful in their disagreements.

Question. Turning to a different time and a different venue, during his testimony before the Senate, Secretary Babbitt, and I represent this to be true, made the following statement: "The Department based its decision solely on the criteria set forth in section 20 of the Indian Gaming Regulatory Act."

Based on your knowledge of this issue, does that appear to be an accurate statement of the facts?

Answer. That's what he stated, he's the Secretary, and as I have mentioned, we followed IGRA.

Question. Just returning for a moment to the Indian Reorganization Act of 1934, and I think you have fully answered my question, but do you recollect any decisions that were made on the basis of section 465 of the Indian Reorganization Act and not under IGRA while you were at the Department of the Interior?

Mr. ELLIOTT. Are you still referring to land in trust for gaming?

Mr. WILSON. I am referring to land in trust for gaming purposes. Thank you.

The WITNESS. Let's see. This is a question I would refer to the lawyers and I'd say what are we talking about here in terms of——

Mr. YEAGER. I think that has been, Counsel, her consistent testimony throughout today, and this question has been posed to her in various forms many times.

Mr. WILSON. I understand, but the answer itself speaks some volumes. If it's an issue that you don't understand and you have to refer to somebody else, you might remember the next time what happened, and so I'm only asking whether you remember whether you had—I mean I will recut the question.

EXAMINATION BY MR. WILSON:

Question. Do you remember any situations where you weren't sure what was happening because there was a new element introduced into the mix, and the new element was something other than IGRA?

Answer. Okay. When information or decisions arrive at my desk, I look and see what the—who is on the surname list; I look and see what the recommendations are; I read, usually it's an executive summary, and I don't go into all elements that were taken into consideration in arriving at this. If I have some additional questions, then I will call somebody in and we will talk about it. So generally, I know that there's provisions under IGRA where you take land into trust under IGRA, and then there are requests to take land into trust for other purposes, like I said, for housing and schools.

Question. Right. But for gaming, for gaming purposes, IGRA was the standard that was applied. I don't want to belabor that, because we have already established that through your testimony earlier, so I just don't want you to——

Mr. ELLIOTT. Just a quick question. You referred a couple of times today to surname, the surname process. What do you mean by the surname process? Does that mean that your subordinates have approved or recommended a particular item to you for action or for review?

The WITNESS. It means that they have read the document, and when it's appropriate, then they make their notations on it.

Mr. YEAGER. And if you see on a surname list a person who has a particular expertise in an area, you trust that person, you may approve a document without knowing the substance of that decision with the same degree of detail as your subordinate.

The WITNESS. That's right.

Mr. YEAGER. That's all.

Mr. HORN. The document also would have a carbon as to who prepared the particular letter; isn't that correct? And then it would go through the clearance process, which might include the solicitor and other Assistant Secretary or whatever, or if it's solely within your bailiwick, I assume—I don't know who really prepared this vast memorandum here. Was it Mr. Skibine, or was it members of his staff or all of the above?

The WITNESS. Generally, you can obtain that information from the materials that are submitted.

Mr. HORN. I don't know if we have those on the deposition, whether we have actually who wrote these documents somewhere in your files, because we should have.

Mr. WILSON. I think the answer is sometimes yes and sometimes no.

EXAMINATION BY MR. WILSON:

Question. But following up on these two lines of questions, in your experience as the Assistant Secretary, when you received a decision letter, was it accompanied by an executive summary?

Answer. Well, it depends on the issue. I mentioned my previous deposition, when there is acknowledgment, it's a big, thick document, so I can't read all of that, so that's an executive summary, and other issues that are not as thick, then I will, of course, read the executive summary, as well as try to read as much as I can of the document.

Question. Do you recall a single example of a decision letter on a gaming issue coming to your desk without an executive summary of the contents of the letter?

Answer. I don't think so. I mean that—I would look at the list of surnames, because—with the topics, you know, there are certain people that have to surname it, and sometimes I have sent it back when I don't see certain surnames on it. I have to tell you that I have signed many, many letters and so to single out just a few of the gaming letters, if I had my file in front of me, I could tell you, but I don't.

Question. Would it surprise you, in the case of the Hudson Dog Track application, that there was no written work product, executive summary, or document, and this is my representation, document of any sort summarizing the contents of the decision letter?

Answer. Well, I wasn't aware of that.

Question. Would it surprise you?

Answer. I would think that it would be done. I just saw the material that you had here. In my opinion it should have some tyre of a summary.

Question. Well, just referring briefly back to the two things we have looked at, maybe I——

Mr. YEAGER. If I could just add an observation, the decision letter in the Hudson casino matter is a letter dated July 14th, 1995, is approximately, well, it's on three written pages. It's really about two pages long.

The WITNESS. There was a larger document you had there that seemed to me should have been summarized.

Mr. WILSON. I will get you that, but here's another one that goes more into the chronology of this.

[Deer Deposition Exhibit No. AD–9 was marked for identification.]

Mr. WILSON. I have provided Ms. Deer with a document that has been marked for the record as Exhibit AD–9. It is a memorandum that is stamped, as will be pointed out on the bottom right hand corner draft, it's dated June 8, 1995. It's to the Director of the Indian Gaming Management staff. It's alleged to be from the Indian Gaming Management staff. It's signed by—it was signed by T. Hartman. The subject is the Hudson Dog Track application, and at the bottom of the first paragraph it states, "Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests."

That's one document. And then I did show you, and you do have in front of you, a second document that has been marked for the record—I'm not sure, but it's stamped "Draft."

Mr. ELLIOTT. Exhibit 4.

Mr. WILSON. It's marked for the record as Exhibit AD–4. It's marked "Draft." It states at the top, to Assistant Secretary of Indian Affairs through Deputy Commissioner of Indian Affairs.

These are the two documents now that I presented to you that seem to fall in the chronology of the decision-making process, making no representations of their value. But there are no documents produced to us so far that provide a summary of the ultimate decision, and your testimony speaks for itself. I just provided you the memo from Mr. Hartman because you had a question, and just for the record, the second document marked AD–4 also at the bottom of the first paragraph says, "The staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making the determination on the best interests."

There is no date on this document. One is June 8, and the second one is undated. And then there is a decision on July 14 rejecting the application. So I merely provide those for your interest.

EXAMINATION BY MR. WILSON:

Question. Was there ever a standard format for summaries of decisional documents that would come across your desk?

Answer. I don't know about the format, but I always looked for some type of a summary or conceptual—well, not conceptual, a briefing paper, depending on the issue. But I deal with a lot of issues. For example, education has a lot of issues, and sometimes I have to have summaries of those. Any one of the subject areas that I'm responsible for, depending on the particular issue at hand, may require summaries.

Mr. HORN. I'm curious, when you have a document on your desk in the gaming area, I don't know how many cases you had during your 5 years, what was it, roughly four or five cases?

The WITNESS. I would assume so, but I'd really have to look and see.

Mr. HORN. Did you ever just pick up the phone and ask the Deputy Secretary or the Under Secretary or the Secretary, I'm going to sign these; do you have any thoughts on it?

The WITNESS. No. Generally I would look to see who signed off, and like I say, the counselor to the Secretary had the lead on many of these large issues: gaming, water and land. So the information would—a lot of the information would go to them.

Mr. HORN. I notice here, the Heather Sibbison is assistant to the counselor.

The WITNESS. Yes.

Mr. HORN. Because I notice then in the e-mail of July 8th, '95, I have left on Tona's desk the redrafted version of the Hudson letter, per Duffy and Heather's instructions. That would be presumably the counselor's instructions?

The WITNESS. Yes.

Mr. HORN. So he would be the one that then is bringing the Secretary or someone in a key position into the loop prior to the actual decision?

The WITNESS. Yes.

[Deer Deposition Exhibit No. AD–10 was marked for identification.]

Mr. WILSON. I have a document for Ms. Deer that has been marked as Exhibit AD–10. It is a page from a deposition transcript, and I wanted to refer specifically to an exchange that took place on—I will give you a moment to read it for the record. I represent that this is from the deposition of Ms. Hilda Manuel, M-A-N-U-E-L, and the section I wanted to discuss begins halfway down the box on the top left that begins, "My question to you is," and just for purposes of the record, I will read the exchange:

The questioner, which in this case happened to be me is, "My question to you is, is it Department of the Interior policy that any opposition to an off-reservation casino is sufficient to cause an application to be rejected?"

Mr. Elliott answered, "Don't answer that. Jim, that question is going to one of the central issues in litigation."

I state, "I'm asking about Department of Interior policy, though, not about the litigation or anything about the litigation. I am asking about your understanding of Department of the Interior policy. Actually, I should be more specific. I am asking about it as of 1995; 1994, 1995."

And then, I will characterize, I repeat the question, there's some more exchange, and ultimately the witness answers, "Yes."

And then further, she qualifies her answer in the middle of page 31 by saying: "So when I say yes, we don't put a casino in a community that doesn't want it, I qualify that by saying, however, that the community has to have a reason for not wanting it there. It can't be just because they don't like Indians, for example."

EXAMINATION BY MR. WILSON:

Question. Ms. Manuel's sort of characterization of policy that when she says the community has to have a reason for not wanting it there, it can't be just because they don't like Indians, for example, is that an accurate statement of Department of the Interior policy as of 1995?

Answer. Well, that would certainly be a part of the thinking in making some kind of a decision on this.

Question. Well, then, let me ask the question by eliminating the opposite. Was it Department of the Interior policy in 1995 that you could reject an application with no reason?

Answer. That would not be the situation. You have to use common sense here, and you can't make decisions with no rationale.

Question. This is the good part, when I turn the pages really quickly?

Answer. You're getting hungry too, huh?

Question. At least from your perspective.

Answer. Or else you all have cast-iron stomachs.

Question. And if you will bear with me, I'm just looking through some final things. I will go a little bit slowly, but that indicates that I'm coming to the very end.

In February of 1995, Mr. Duffy, the counselor to the Secretary, attended a meeting in Congressman Oberstar's office. Do you know that Mr. Duffy attended a meeting with Congressman Oberstar?

Answer. No.

Question. Did you have any communications either before or after indicating that any Department of the Interior representatives would be attending a meeting either with Congressman Oberstar or with anybody on the Hill about the Hudson Dog Track matter?

Answer. No.

Question. It's my understanding at that meeting Mr. Duffy made a commitment to reopen the consultation period for people interested in this matter. Do you know of any communications from Mr. Duffy with anybody else in the Department of the Interior about making this representation before it was made?

Answer. No, I don't.

Question. And to be fair, I'm not saying you even know about the representation; is that correct?

Answer. Yeah, true, I don't.

Question. Did you have a policy during the time you served as Assistant Secretary regarding consultations with applicant tribes required under IGRA?

Answer. The general policy of the Department is consultation with the tribes on all issues that are important to them, and of course, gaming would be a major issue, and so we would follow the provisions of IGRA and the policies stated in the President's memoranda.

Question. Were you aware of a 1994 area office guidance setting forth a policy limiting the time period for consultations?

Answer. No, not specifically, but it makes sense that there would be some type of a time frame.

Question. And when you say it makes sense that there would be a time frame, why would that be?

Answer. Well, there needs to be closure on the issue.

Question. If the applicant tribes were not consulted about the reasons for the July 14 decision letter by Mr. Anderson rejecting the proposal, would that represent a departure from the policy of consulting with interested parties?

Mr. ELLIOTT. You're suggesting that—I'm not sure that I understand the question, Mr. Wilson. Are you saying that once a decision has been made, then there should have been consultation, whether there should have been consultation?

Mr. WILSON. No, no, absolutely no.

EXAMINATION BY MR. WILSON:

Question. If the applicant tribes were not told in advance of why the application would be denied, in your opinion, would that be a breach of the Department of the Interior's duty to consult?

Answer. You can't consult on every decision that you make, and the appeals process is there, so there are other avenues for tribes, too.

Question. Well, my understanding, there is no appeal on this particular type of application; is that correct?

Answer. I thought there was.

Mr. ELLIOTT. Do you want me to respond?

Mr. WILSON. Yes.

Mr. ELLIOTT. When a decision is made at the Assistant Secretary level as opposed to the Commissioner level, then there's no appeal within the department unless somebody wants to go to the Secretary and say, reverse Ada Deer. They have to go to court. If it's made by the Commissioner of Indian Affairs, or in this case the Deputy Commissioner of Indian Affairs, because they don't have a Commissioner, they are entitled to go to the Interior Board of Indian Appeals.

Mr. HORN. Who? I'm sorry.

Mr. ELLIOTT. The Interior Board of Indian Appeals. There's an administrative hearing body.

Mr. HORN. Administrative law judges, are they?

Mr. ELLIOTT. Yes, that hold hearings, and then there is a board of administrative judges that make decisions from the fact-finding by administrative law judges.

Mr. HORN. And that's strictly for decisions within the Bureau of Indian Affairs or the jurisdiction of the Assistant Secretary of Indian affairs?

Mr. ELLIOTT. Well, they are coincidental jurisdictions, basically, but yes, it is the Bureau of Indian Affairs. There is another one for land appeals, and those come from——

Mr. HORN. Now, if they turned it down, is there an appeal beyond that board?

Mr. ELLIOTT. There is no formal appeal, except a court.

Mr. HORN. Okay.

EXAMINATION BY MR. WILSON:

Question. So just returning to my question, you responded, but given the point of the application process is to fairly assess the applicant's desires and the concerns of people who have an interest—a reason to be concerned about the application, do you consider it to be an important component of the whole process to tell the applicants about any problems they might have before you make a decision?

Answer. I would assume this had been done at the area level, because the area consulted with all of the tribes on this before they made their recommendation.

Question. Right. Now, bearing in mind that there was a November 15, 1994 recommendation that the land should be taken into trust and an April 30th recommendation that the land should be taken into trust, would you find it to be problematic in the application process if the application process were treated as kind of a game of "gotcha" where the Department of the Interior employees sat, listened to representations, provided affirmations that there were no problems with the application, and then made a decision to deny the application without informing the tribes of the reasons that they were going to make the denial?

Answer. Well, first of all, there was consultation with the tribes at the area level, so we would have assumed, I would assume, that everything was on the table there, and——

Mr. YEAGER. Are you talking generally, or do you have specific knowledge about this particular case?

The WITNESS. Oh, no, just general, generally. And that there are opportunities for the tribes when they disagree with decisions to appeal, or, you know, go to court, and the central office does overrule decisions made at the area levels on various issues. We don't automatically rubber stamp everything that the area offices recommend, because they may not have all of the information or some of them may be more influenced by various people within the area.

Question. Sure, sure. But I mean go with me this far: decisionmakers make decisions based on information they have available to them?

Answer. Yes.

Question. The decisionmakers, in terms of the tribal applicants, had information in front of them, recommendations from the regional office in Ashland, Wisconsin, recommendation from an area office in Minneapolis, Minnesota; those were documents that they had to refer to, and it appeared to them that everything was okay with the application process. Would you think that the application process were flawed if at no time were the applicant tribes told we have a problem with your application? It was not identified at the local level, but we have a problem with it, and first of all, let me ask you this: if they just said we have a problem with it but would not identify the problem, do you think that would be fundamentally fair to the applicant tribes to not tell them what the problem would be?

Mr. YEAGER. That's really a loaded question, Mr. Wilson.

Mr. WILSON. But central to what we're talking about.

The WITNESS. Well, I would again state that the consultation process occurs there. It would be the assumption that the tribes would give whatever information they had to the area office, and the area office would make their determinations and recommendations, and then it would be sent into the central office, and then there would be evaluations and analysis there.

EXAMINATION BY MR. WILSON:

Question. And if the central office disagreed with the area office, would it not be an element of fundamental fairness to explain to the applicants, we disagree and we will tell you why we disagree, and we will give you a fighting chance to cure the defect. Does that seem—I mean I know we are talking a little bit—we're talking about a broad issue here, but does that seem like an element of fundamental fairness?

Answer. If we lived in an ideal world, yes, but sometimes you can't do that. You have to make decisions, and I think in this decision letter it explains, it gives some information as to why the decision was made.

Mr. YEAGER. Suppose the defect weren't curable. Suppose it's not a defect that could be corrected by the applicants. Would you expect the central office to return to the applicants for consultation if it's not a curable defect?

The WITNESS. I'd have to talk to the gaming staff on that. I don't know.

EXAMINATION BY MR. WILSON:

Question. Well, just, I mean returning to the situation that we and the committee are confronted with and we as investigators are confronted with, we are trying to determine what the objective standard was used to make a decision and we are trying to determine why the decision was made. Now, the easiest way to determine why a decision was made was to go to a piece of paper or to an individual and say, they told you that if you didn't do X by Y date, we can't approve this, and I'm unable to identify, reading the record, maybe because I have missed it, but I'm unable to identify a place where a fatal flaw was dictated.

Now, you have talked about an ideal world here, but theoretically the purpose of all of this is to help poor Indian tribes. So to make it a game that's impossible for them to play because people in the Department of Interior don't want to pick up the telephone and say, Mr. Gaiashkibos, we have a problem, it seems to me a problem. So I'm trying to wade through all the thickets of paper and determine whether individuals at the Department of the Interior would consider it to be fundamentally unfair to not tell the applicant tribes what the problems with their application were?

Answer. I think that they would—whoever was involved in all of this. They go through this process and then—let me say that the consultation is a policy, but sometimes it's not followed, and it's a big bureaucracy, and people from time to time don't follow the consultation policy. So again, in an ideal world it would be good to consult on all of these matters, but I don't know what the thought process was of all of the people in the process. The consultation did occur at the area office level, and so perhaps they thought that was sufficient. I'm sorry, I just don't know the rest of it.

Question. But at the area level office, the consultation indicated the application should be approved; is that correct?

Answer. Yes.

Question. And there were a number of iterations that the application should be approved from career professionals who had actually been to Hudson, Wisconsin, so you may or may not know—I apologize for making that representation?

Answer. No, I don't know.

Question. But there were people in Ashland, Wisconsin and people in Minneapolis who had been consulting. Would it surprise you to find out, if it were true from representations that there is no memorandum or statement or letter that indicates why the application would be turned down in advance of the turning down of the application?

Answer. Well, I think it contains the information in the letter, doesn't it?

Question. Well, that's true.

Answer. So therefore, and the letter is fairly short, so therefore there wouldn't need to be additional paper.

Let me say, with all the downsizing and the budget-cutting, all of us in these offices are very pressured a lot of the time. We don't have the staff or time to do everything the way we would like to do it.

Question. Ms. Deer, I understand that, but in the Mashantucket Pequot example, the Department was signing off, and perhaps, we don't know this, perhaps helping to fund a mediator to bring the parties together, and the bringing of the parties together helps—I mean part of that is to explain what the problems are.

Mr. YEAGER. Let me just react to—I mean do you have a question for Ms. Deer, or is this—again, I think you're attempting to persuade her to take a particular position, and it's not helping the record.

Mr. WILSON. I have no hope or belief that I will be able to persuade anybody here of anything, but I am trying to get at a very difficult dialogue that's been obscured by a lot of pieces of paper and I believe a lot of smoke.

The WITNESS. And I wasn't involved in all this, and so therefore, it is hard for me to make——

Mr. WILSON. I understand, but this is the one time where this committee will be in a setting where we can have a dialogue without a lot of other distractions with

a very important policymaker, policy follower, obeyer of the law at the Department of the Interior senior level, and so I mean——

Mr. ELLIOTT. So you are not going to have the depositions the next couple of days?

Mr. WILSON. Those people are very important policy people, too. I will not demean them in any way.

Mr. HORN. But they don't have the rank of the Assistant Secretary, and the Assistant Secretary is obviously a person whose credentials are impeccable in terms of caring about the Indian people, and I guess after listening to all of this my query is, you have heard a lot of it, there was no decision memorandum on the reversal and all of this. You wouldn't have done business that way, I take it. In other words, you would have asked for people to say okay, I mean where is the summary, what is your argument, et cetera; is that correct? You sound like you would.

The WITNESS. That's probably what I would have done, yes.

EXAMINATION BY MR. WILSON:

Question. Given what you know now about the Hudson Dog Track issue, do you know of any reasons why the applicant tribes were not consulted by Mr. Anderson or anybody else at the Department of the Interior regarding the reasons for the denial?

Answer. No, but again, I think it makes the information available in the letter.

Question. But the letter is too late. There is no cure when you have sent a letter rejecting the application. There is no right of appeal because of the person signing the letter. Not to be argumentative here, but if a phone call had gone out on July 13 saying, we are going to reject the application because of community opposition, the question could be asked, what community opposition? What's our problem? If it's the Minnesota tribes, there were options on the table for compensating them. Even the $390,000 a person tribe was being offered compensation at the time.

Mr. ELLIOTT. Mr. Wilson, do you know whether that was done? You have tried to get—you have asked her a question about, you know, the broad picture, general philosophy, which I think she's answered, and then you tried to contrast the Hudson situation in which she was not involved with that of the Mashantucket Pequots, and those are two different decisions.

Mr. WILSON. Certainly.

Mr. ELLIOTT. One of which she wasn't involved. So she doesn't have knowledge, one, as to whether a phone call did go out, whether there was any consultation.

Mr. WILSON. Uh-huh.

Mr. ELLIOTT. And secondly, it is an entirely different decision that's to be made there as opposed to made in Connecticut.

Mr. YEAGER. And what seems to be lost in all of this, in the hours that we have been sitting here, is the fact that Ms. Deer had nothing to do with this application. There have been, I don't know if it's dozens, but probably close to a dozen depositions, plus hearing testimony taken from people who actually participated in the decision, who actually do this day-to-day, and who actually can give probative evidence in this area. But instead, you have decided to impose an enormous burden on Ms. Deer and pull her through myriad hypothetical situations and, from that, try to deduce what common practice is in this kind of issue.

It seems to me that the Department of the Interior either made a decision that is sustainable or did not. That is a litigable issue, it is being litigated, and it is not an investigative committee's function, particularly in this campaign fund-raising investigation, to——

Mr. WILSON. Mr. Yeager, I would like to ask you one question for the record. Is it your position that this case should have been litigated, should be litigated, given the evidence that was being made available by the Department of the Interior and the Department of Justice as of August of 1997? Is that your position?

Mr. YEAGER. I have no position about whether the case should be litigated. I'm sure the Members of the Minority will have different positions. They are entitled to their own position. But we know as a fact that this case is being litigated. This is the contested issue, and it's for the judge to decide.

Mr. WILSON. And is it your position on the record that we should not have conducted any of these depositions and that none of the information that has been produced subsequent to the beginning of the deposition process should have ever been produced?

Mr. YEAGER. I think——

Mr. WILSON. As a representative of the American people being paid for by Congress, is that your position on the record?

Mr. YEAGER. My position is this committee is engaged in an investigation into campaign fund-raising improprieties and violations of law, that there are areas of

this inquiry that could focus on that, and I think about five minutes of today's deposition did focus on that. But instead, this has been a wandering conversation into Ms. Deer's thoughts on a process she really wasn't even involved in.

Mr. HORN. Well, if I might answer that, since it's been brought up, she is the very type of person we want to hear from. She conducted herself with honor, for all we know, for the five years she was Assistant Secretary for Indian Affairs. She's had experience in this process. This committee, and I chair one of its subcommittees on government management, which has the right to go into any department on matters of economy and efficiency, and what do you look for? What does the General Accounting Office look for? What does the Inspector General look for? They look for, one, is there a law, are there regulations written under that law; what has been the procedures and the processes by which these decisions are made, and then if something different happens, and when you have this very difference of it being escalated to the Secretary of the Interior, that isn't the usual procedure. There might have been consultation with the Secretary's office, which is certainly reasonable for an Assistant Secretary to do. If you need policy guidance in an area, that might be formal, it might be informal.

The fact is, there are great irregularities in this particular decision. It was suggested she recuse herself. She did recuse herself because of her own situation in Wisconsin; made the right decision. And the result was, she has been worked around by everybody else practically down there that made the wrong decision, at least this humble Member of this committee feels that way, that we need to know what was the regular processes, what hasn't been in this case a regular process, and that's exactly what counsel is putting on the record for the majority.

Mr. WILSON. Just a follow-up.

EXAMINATION BY MR. WILSON:

Question. When you were Assistant Secretary, was it department policy to refer an application back to the area office if there was a problem that might cause the application to be denied?

Answer. I think it was probably done from time to time, but I don't know for sure if that would—that wouldn't come up to my attention.

Question. Now, there will be an objection based on my asking you to speculate, but here is a situation where there were purportedly problems with an application, and there were poor people whose lives were influenced greatly by this application. In your opinion, should the department have referred the application back to the area office to examine potential defects and see if they were able to be cured.

Mr. YEAGER. Are you asking her to speculate on the casino application?

Mr. WILSON. Yes.

Mr. YEAGER. Don't speculate.

The WITNESS. Okay, I won't speculate.

Mr. WILSON. Well, unfortunately, Mr. Yeager cannot tell you what to do or what not to do. I can ask you the question, and if your attorney tells you not to, then we might have a dispute over this. But Mr. Yeager doesn't have control of you.

Mr. ELLIOTT. Mr. Wilson, she has said that she wasn't involved in the decision. You are then asking her now to take a set of premises, which are not known to be fact, and asking her to give you an opinion based on something that is not fact.

Mr. WILSON. The premises are fact. There was a rejection of an application; there were problems identified in the rejection letter. The application could have been referred back to the area office for further determination. Those are facts, that is a possibility, but the other statements are absolute facts. There were two choices that could be made—well, many choices. One is, send the application back for further review; the other is, deny it. Now obviously the Department of Interior——

Mr. ELLIOTT. No, that is not the other. To move on to the next phase of it, that is one option.

Mr. WILSON. Given they were going to reject it——

Mr. ELLIOTT. Well, given they were going to reject it and she wasn't a part of that, you can't ask her what they should have done with the application, should it have been sent back to the area office.

Mr. WILSON. I asked for her opinion.

Mr. ELLIOTT. Well, that is what should.

Mr. WILSON. I asked for her opinion.

Mr. ELLIOTT. As to whether it should have been. She doesn't have all of the facts. You have given her some of the facts. If you give her all of the facts in the case, she may be able to give you an opinion, but I would venture to say you can't give her all the facts in this case that were in the minds of the people who were making

the decision, and they are the ones you are going to be deposing in the next couple of days.

Mr. HORN. Does it say somewhere in the regulations if they give a big campaign check, we change our decision? Is that what Interior has somewhere? To say you want the facts in the case——

Mr. ELLIOTT. No, sir; and there is no evidence that was done in this case.

Mr. HORN. 420,000 bucks, and a White House aide calls the Secretary. Come on.

Mr. YEAGER. That is why this inquiry is focusing on hypotheticals, because the committee doesn't have any evidence to support those allegations,, it has not been induced in any deposition and not supported by any document.

Mr. WILSON. I am not going to belabor this too long, but if the witness can answer the question, we will try and get to the answer.

EXAMINATION BY MR. WILSON:

Question. There are certain incontrovertible facts here. One is, on July 14, 1995, the application by three tribes in Wisconsin was rejected. Is it your opinion that the reasons for the rejection should have been communicated to the applicant tribes before their rejection?

Answer. Not necessarily. They could have been, but it is not necessary.

Question. Now, based on your personal view of what is in the best interest of Indian tribes, do you think it is a good idea to give them a fighting chance to cure perceived deficiencies? I mean, what would be the harm in communicating to them——

Mr. YEAGER. Counsel, she answered your question. You are browbeating her into changing her answer.

Mr. WILSON. It is not possible for me to browbeat Ms. Deer.

Mr. ELLIOTT. No, but you are attempting to.

Mr. HORN. He is trying to get an answer from a person that has dealt with the process.

Mr. YEAGER. He has gotten an answer.

Mr. HORN. Apparently everybody has tried to stop her from speaking that represents either the Minority or the Interior Department. Why don't we let her speak.

Mr. ELLIOTT. I also represent Ms. Deer, Mr. Horn.

Mr. HORN. I don't think you can represent Ms. Deer.

Mr. ELLIOTT. I think you were here at the beginning when I explained I was representing her, and I think her position and her interests coincide with those of the Department of the Interior.

Mr. HORN. Let me ask you, when you leave this meeting, do you go brief the White House Office of Presidential Counsel?

Mr. ELLIOTT. I have not talked to anybody in the White House Counsel's Office since 1994.

Mr. HORN. Well, I am amazed.

Mr. ELLIOTT. No, I don't.

Mr. HORN. Because usually they operate——

Mr. ELLIOTT. They don't operate that way with me. And the interest of the Department of the Interior and the interest of Ms. Deer are to get at the facts, and the question she is being asked has nothing to do with the facts.

Mr. HORN. Well, I think we need her experience. Would she have done this if she were in the position and had not recused herself? She hasn't been involved in the decision. She has now heard the facts.

I just need one fact. One tribe is making 400,000 per person; the other is 6,000 per person. I wouldn't need much more than that if I were Assistant Secretary. I would say give those poor tribes in Wisconsin a chance, and everybody who has talked to me in the last 3 months says, by George—this is probably the most watched hearing portion, is the Indian tribes in Wisconsin, and it rang a bell with the American people I tell you.

Mr. ELLIOTT. I'm sorry, the Department of Interior and Ms. Deer and her office did not make decisions based on one simple fact; they peruse the information and they analyze what is going on.

This decision would not have been approved—a lot of people have tried to make hay out of the so-called Hartman memorandum of June the 8th, that Mr. Hartman was recommending that it be approved, and whoever told the press that is wrong, they have not read the Hartman memoranda. Mr. Hartman did not recommend approval of this application.

Mr. HORN. Do you want to put in the record who Mr. Hartman is?

Mr. ELLIOTT. Mr. Hartman has been deposed by this committee, and he is a financial analyst for the Indian gaming management staff for the Bureau of Indian Affairs of the Department of the Interior.

EXAMINATION BY MR. WILSON:

Question. Let me just ask a critical policy question here. Was it Department policy to give every applicant or to give the applicant in any gaming application every opportunity to address or cure problems in their applications?

Answer. That would be a more appropriate question for the gaming director, because he is involved in the processing of these applications. The general policy of the Department, as I have stated, is to carry out a policy of consultation with the tribes, and sometimes it is not possible, but that is what we try to do.

Question. So to characterize what you just said—correct me if I am wrong—that it is your belief that when you were there, you tried to give applicants an opportunity to address and cure problems?

Answer. That is a question you have to refer to the gaming director.

Question. Fair enough.

Would Indian tribes have been consulted if the Department was considering a significant change in how it interpreted section 20 of IGRA when you were at the Department?

Answer. It's such a major provision, yes, there would have to be some type of communication.

Question. The Presidential memorandum that we were examining earlier also indicated there would be consultation with tribes on major issues of interest to the tribes. If you, as Assistant Secretary, had changed the policy of the Department from one in which opposition to a proposed off-reservation casino had to be supported by factual evidence of detriment to a policy which gave local communities a right to veto a proposed off-reservation facility, would you have consulted with Indian tribes beforehand—all Indian tribes beforehand?

Answer. You can't consult with all Indian tribes, there are over 556—well, I suppose you could if you had to do it.

Question. To the extent possible, consistent with the Presidential director?

Answer. Whenever there are major policy changes that impact the tribes and issues, they try and do this, and if you look at the record of administration, you will see that there have been numerous consultations by various officials within—from the Cabinet level on down. You have Secretary Babbitt, Attorney General Reno, former Secretary Cisneros, and various Assistant Secretaries and others who have taken this memo to heart and have consulted with the tribes. And it is a continuing issue, because it takes, you know, planning and organization, and it is a vast country, and if you look at the previous administrations—and this is not to cast aspersions, this is an evolution of Indian affairs in this country—you will see that there has been much better communication with tribes on many issues—education, environment, you know, justice issues.

Question. Was there a policy at the Department of the Interior as of July 14, 1995, that the distance between a tribe, a tribe's reservation, and a proposed off-reservation casino, should be considered in determining whether the proposed—whether the proposed casino would be detrimental to the surrounding community?

Answer. Well, it would be a factor for consideration. Again, there are numerous portions in implementing a policy. That would be one factor for consideration.

Question. Was that a policy that was ever written down?

Answer. Maybe, but I don't recall seeing it.

Question. If Mr. Duffy—and I am asking this question as an "if" question, but if Mr. Duffy made a policy decision of the distance between the reservations of the three Wisconsin tribes and Hudson, Wisconsin, was a factor to consider in determining whether the proposed Hudson casino should be approved or whether it was detrimental to the surrounding community, in your view, would that have represented a new policy?

Answer. Well, he was counselor to the Secretary, and so he would operate under the mantle of the Secretary.

Question. Is that the type of policy that you consider should rise to the level of consultation with the tribes?

Answer. That could be a possible point for consultation.

Question. When you made the campaign contribution to Chairman Gaiashkibos in December of 1994, you were aware that you were going to be the final decision maker in the proposed Hudson casino application; is that correct?

Answer. No.

Question. You weren't?

Answer. No.

Question. Were you aware, at the time that you made the decision to recuse yourself, that Mr. Duffy was recommending that approval of the proposed dog track facility be denied?

Answer. No.

Question. Did you ever tell Mr. Duffy that you didn't want to be the signatory on a letter that had anything to do with the application in the Hudson Dog Track matter?

Answer. No. I had communicated my recusal to Mr. Anderson, and I assumed he had communicated this to Mr. Duffy and to others.

Question. Did the Secretary ever sign decision letters in matters arising under IGRA?

Answer. Well, since the counselor is the lead person on gaming, water, and land, I would assume so. I don't know for sure.

Question. Do you know of any other occasion where the Deputy Assistant Secretary, Mr. Anderson, signed a decision letter in any matter arising under IGRA?

Answer. I'm not aware that I can recall at this point, but I do, when I travel, delegate my authority to him.

Mr. WILSON. Okay. At this time, I have no further questions.

Mr. YEAGER. Counsel graciously allowed me to interject questions throughout today, so I have no questions.

Thank you on behalf of the Minority for coming in today voluntarily and spending so much time for us today.

The WITNESS. I try to do my citizen's duty.

Mr. HORN. We thank you and wish you well.

The WITNESS. I wish you well, too. I appreciate the approach and manner that you have all utilized in this, and I appreciate the Minority counsel's participation.

Mr. WILSON. Actually, one thing before we go off the record, and I appreciate your kind words, but they may be revoked immediately.

Mr. YEAGER. Only if you are going for another 2 hours.

Mr. WILSON. We did send you a letter indicating that you might be called as a witness in a hearing.

The WITNESS. Where did you send it? I mean, I never got it.

Mr. ELLIOTT. They sent it to Madison, Wisconsin.

The WITNESS. Everybody thinks I am gone already.

Mr. WILSON. I wanted to just work through this with you. It's a letter that actually went to the University of Wisconsin. I will pass this out, and it is not necessarily the conclusion we need today, but it indicates that which I just said.

Mr. YEAGER. Counsel, do you know if the Minority was copied on all of these letters?

Mr. WILSON. I do not know for a fact.

The WITNESS. Listen, I feel that I have done my duty here. I have nothing more to say. I am starting a semester at the university, and I would respectfully ask you all to utilize this appearance rather than having me come back to testify.

Mr. WILSON. Before we go off the record, I will indicate we did provide Ms. Deer with this letter, and at this point we can discuss this further.

I would like to thank you very much for appearing here. You did appear voluntarily. You took a great deal of time to do this. Thank you very much.

If we can go off the record.

[Whereupon, at 6:19 p.m., the deposition was concluded.]

[The exhibits referred to follow:]

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

JUL 14 1995

Honorable Rose M. Gurnoe
Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Bayfield, Wisconsin 54814

Honorable Alfred Trepania
Tribal Chairperson
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
Route 2, Box 2700
Hayward, Wisconsin 54843

Honorable Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520

Dear Ms. Gurnoe and Messrs. Trepania and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes. Following receipt of this recommendation and at the request of nearby Indian tribes, the Secretary extended the period for the submission of comments concerning the impact of this proposed trust acquisition to April 30, 1995.

The property, located in a commercial area in the southeast corner of the City of Hudson, Wisconsin, is approximately 85 miles from the boundaries of the Lac Courte Oreilles Reservation, 165 miles from the boundaries of the Red Cliff Reservation, and 188 miles from the boundaries of the Sokaogon Reservation. The St. Croix Band of Chippewa Indians, one of the eight Wisconsin tribes (not including the three applicant tribes), is located on a reservation within the 50-mile radius used by the Minneapolis Area Director to determine which tribes can be considered "nearby" Indian tribes within the meaning of Section 20 of the Indian Gaming Regulatory Act (IGRA).

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Section 20 of the IGRA, 25 U.S.C. § 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community.

The decision to place land in trust status is committed to the sound discretion of the Secretary of the Interior. Each case is reviewed and decided on the unique or particular circumstances of the applicant tribe.

For the following reasons, we regret we are unable to concur with the Minneapolis Area Director's recommendation and cannot make a finding that the proposed gaming establishment would not be detrimental to the surrounding community.

The record before us indicates that the surrounding communities are strongly opposed to this proposed off-reservation trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to this trust acquisition for gaming purposes. In addition, in a March 28, 1995, letter, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District in whose district the St. Croix Meadows Greyhound Track is located, have expressed strong opposition to the proposed acquisition. The communities' and State officials' objections are based on a variety of factors, including increased expenses due to potential growth in traffic congestion and adverse effect on the communities' future residential, industrial and commercial development plans. Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by this proposed off-reservation gaming acquisition.

In addition, the record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin. Their opposition is based on the potential harmful effect of the acquisition on their gaming establishments. The record indicates that the St. Croix Casino in Turtle Lake, which is located within a 50-mile radius of the proposed trust acquisition, would be impacted. And, while competition alone would generally not be enough to conclude that any acquisition would be detrimental, it is a significant factor in this particular case. The Tribes' reservations are located approximately 85, 165, and 188 miles respectively from the proposed acquisition. Rather than seek acquisition of land closer to their own reservations, the Tribes chose to "migrate" to a location in close proximity to another tribe's market area and casino. Without question, St. Croix will suffer a loss of market share and revenues. Thus, we believe the proposed acquisition would be detrimental to the St. Croix Tribe within the meaning of Section 20(b)(1)(A) of the IGRA.

We have also received numerous complaints from individuals because of the proximity of the proposed Class III gaming establishment to the St. Croix National Scenic Riverway and the potential harmful impact of a casino located one-half mile from the Riverway. We are concerned that the potential impact of the proposed casino on the Riverway was not adequately addressed in environmental documents submitted in connection with the application.

Finally, even if the factors discussed above were insufficient to support our determination under Section 20(b)(1)(A) of the IGRA, the Secretary would still rely on these factors, including the opposition of the local communities, state elected officials and nearby Indian tribes, to decline to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465, to acquire title to this property in Hudson, Wisconsin, in trust for the Tribes. This decision is final for the Department.

Sincerely,

Michael J. Anderson

Michael J. Anderson
Deputy Assistant Secretary - Indian Affairs

cc: Minneapolis Area Director
National Indian Gaming Commission

FJAN 04

No Casino Favoritism

To the Editor:

William Safire (column, Dec. 31) jumps to erroneous conclusions as to why the Interior Department denied the application by three Wisconsin tribes to establish a casino 85 to 188 miles from their reservation.

It was the right decision, made for the right reasons, and I have told the truth about it. This department does not force off-reservation casinos upon unwilling communities. City councils of the towns of Hudson and Troy, as well as three senators from both political parties, seven Minnesota members of Congress, the Republican Governor of Wisconsin and many others opposed the casino.

Mr. Safire opines that Harold M. Ickes "caused heat to be put on" me to deny the application. The facts, spread across a voluminous record, prove otherwise. I did not participate in the decision, and as I have said in sworn testimony, I have never spoken to Mr. Ickes — nor to anyone else at the White House or the Democratic National Committee — about this matter.

Mr. Safire falsely asserts that a "staff recommendation" approving the casino was changed for political reasons. In fact, the draft memorandum cites only the criteria to be considered in determining local opposition, not whether the casino should be approved. The decision to deny was based on the recommendation of the senior civil servant in the gaming office and supported by his staff. They testified they were unaware of any contributions by interested tribes or of any communications between the tribes and the White House or the D.N.C.

BRUCE BABBITT
Secretary of Interior
Washington, Jan. 2, 1998

EXHIBIT
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Citation 59 FR 22951 994 WL 163120 (Pres.) ublication page references are not available for this document.)
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Memorandum

Government-to-Government Relations With Native American Tribal Governments

April 29, 1994

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal

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(Publication page references are not available for this document.)
programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM CLINTON
THE WHITE HOUSE,
Washington, April 29, 1994.

59 FR 22951, 1994 WL 163120 (Pres.)
END OF DOCUMENT

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DRAFT

Document provided pursuant to Congressional subpoena

Indian Gaming Management
MS-2070

To: Assistant Secretary - Indian Affairs

Through: Deputy Commissioner of Indian Affaris

From: George T. Skibine
Director, Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles Band, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all

[1] References are to the application documents submitted by the Minneapolis Area Office.

DRAFT

EXHIBIT
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of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables. Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period was extended to April 30, 1995, by the Office of the Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of

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other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)
2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)

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15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in stating that "it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

No consultation with other State officials was solicited by the MAO. Shiela E. Harsdorf, State Representative, and twenty-eight other Representatives and State Senators sent a letter to the Secretary, dated March 28, 1995, expressing "strong opposition to the expansion of off-reservation casino-style gambling in the State of Wisconsin." The letter addresses four areas of detrimental impact.

First, the signatories cite the removal of land from the local property tax rolls. In the Findings of Fact, the MAO cites the Agreement for Government Services as evidence that the detrimental impact of placing land in trust has been mitigated. The applicant Tribes assert that the track will close, if it is not purchased by Indians, and all revenue to the local governments will cease, a potential detrimental effect of not acquiring the land in trust.

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Second, the representatives assert that "expansion of gambling is contrary to public will in Wisconsin." Elections in 1993 are cited in support. However, the 1993 referenda were primarily technical in nature, to bring the State constitution into conformance with the State-operated lottery. The representatives' letter states, "This advisory referendum showed strong support for limiting gambling to . . . dog tracks, state lottery games and existing tribal casinos." Public policy in Wisconsin embraces a State lottery and several types of Class III gaming.

Third, the letter says that off-reservation gambling may not foster economic development within the tribal nations. "People will be unwilling to travel long distances to casinos and bingo halls located in less-populous regions," says the letter. While the competitive impact of another casino is expected to affect existing Indian gaming operations, the three applicant Tribes are among those tribes in less-populous regions, who cannot draw significant customers from the market area of tribes with more urban locations. They seek to promote economic development by improving their business location.

Last, Representative Harsdorf states, "Many municipalities feel that the expansions have created tense racial atmospheres and that crime rates have increased. It is also unclear whether all tribes have benefitted from the IGRA." The Agreement for Government Services specifically addresses the impact of crime, and its mitigation. No information on racism or the disparate impact of IGRA is supplied. It is not clear that racism is impacted either by approval or disapproval of the application.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994

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Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

The Supervisors of the Town of Troy passed a resolution on December 12, 1994 in response to the Finding Of No Significant Impact (FONSI). The resolution restated the town's "vigorous objection to casino gambling at the St. Croix Meadows Facility," and reasserted "that casino gambling at the St. Croix Greyhound Racing Facility will be detrimental to the surrounding community." No evidence of detrimental impact was included in the resolution. The resolution was not submitted to the Department Interior in the application package, but was an attachment to a letter to the Secretary from William H.H. Cranmer, February 28, 1995. Neither the Town of Troy or Dr. Cranmer appealed the FONSI.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

Several thousand cards, letters, and petition signatures have been received in support of an Indian casino at the Hudson dog track.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that

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the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

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Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1½% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all business-

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es, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota

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casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin

In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes

On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market

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of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million). Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are <u>not</u> equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

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It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to reorder its spending plans.

Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers

The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were

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received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime

Hudson Police Dept. Crime & Arrests, (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell 3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level

The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns

One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

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IV. Property Values

An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase

Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500, and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters' estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than

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currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities

St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning

According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water

The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage

The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

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V. Roads

The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94. The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

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3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

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Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

Document provided pursuant to Congressional subpoena

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in

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reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any fax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto*

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giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

DRAFT

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to Congressional subpoena

Hudson Dog Track Application

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5- 1-95 ; 2:07PM ;REP. GUNDERSON, D.C.- 202 208 4561;# 1/ 4

Fax Message From
Congressman

Steve Gunderson

Third Congressional District, Wisconsin

2185 Rayburn House Office Building
Washington, D.C. 20515-4903
[redacted]

cc: George Skibine 16 MS
Done

TO: HEATHER Sibbison
ASSISTANT TO THE COUNSELOR

FAX NUMBER: _____ PHONE NUMBER _____

FROM:

___ STEVE GUNDERSON	___ DAVE GUNDERSEN
___ FRAN MCNAUGHT	___ JOAN JACKSON
X TIM BARTL	___ KEVEN KENNEDY
___ JOHN FRANK	___ TED REBARBER
___ JANET FRENE	___ SCOTT SMITH
___ INTERN _____	___ SCOTT STAFFORD

file: Dog Track

DATE: 5/1/95 # PAGES 4 (INCLUDING COVER SHEET)

COMMENTS: COMMENT LETTER: HUDSON FEE-to-TRUST ACQUISITION.

This was delivered to 7229 @ 12:15 5/1

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STEVE GUNDERSON
3d District, Wisconsin

MEMBER
AGRICULTURE COMMITTEE
ECONOMIC AND EDUCATIONAL
OPPORTUNITIES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515–4903

WASHINGTON OFFICE
2185 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4903
202-225-5506
TDD ACCESSIBLE

DISTRICT OFFICE
POST OFFICE BOX 147
622 EAST STATE HIGHWAY 64
BLACK RIVER FALLS, WI 54615-0241
1-800-472-6812
715-284-7451
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April 28, 1995

The Honorable Bruce Babbitt
Secretary
Department of Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Secretary Babbitt:

I am writing on behalf of my constituents to express my opposition to the fee to trust acquisition of the St. Croix Meadows greyhound track by the Red Cliff, Mole Lake, and Lac Courte Oreilles bands of the Chippewa Tribe pending before the Bureau of Indian Affairs. As you know, the track is located in Hudson, Wisconsin, in the western part of my district.

The debate over adding casino gambling at the dog track has inflamed passions of Hudson residents for several years and has been a prominent issue in several local elections. Until now, I have remained neutral, in part because I believed that the residents of St. Croix county should be allowed to develop their own opinions without interference from Washington. I also remained neutral because I was unclear whether the Indian Gaming Regulatory Act (IGRA) permitted my input. However, since your office has informed me that I may comment, I have considered the historical perspectives of the debate, the national significance of this decision, and the views of my constituents. I have concluded that the most prudent course would be for the Department to reject casino gambling at St. Croix Meadows.

I oppose the expansion of gaming at the Hudson dog track because it would set a national precedent for off-reservation casino gambling facilities. Section 20(b) of the IGRA provides that the Secretary of the Interior, with the governor's approval, may acquire land outside of an established reservation for gaming purposes if the Secretary determines that the acquisition is in the tribe's best interest and would not be detrimental to the surrounding community. According to your office, since Congress passed the IGRA in 1988, the Secretary of Interior has never approved the acquisition of off-reservation land to be used for casino gambling. This appears to indicate that the section was intended to apply only in exceptional cases.

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Congress passed the IGRA in large part to promote Native American economic development through gaming. At the same time, the Act sought to protect against the abuses of a burgeoning, but unregulated gaming industry. Most tribes that have developed gaming on their reservations have succeeded in significantly improving the economic conditions of their members.

Under existing compacts with the State of Wisconsin, each of the three bands applying to develop a casino in Hudson is allowed to build two casinos with blackjack facilities on its reservation. Each presently has one casino with blackjack facilities on its reservation. To increase economic opportunities for its members, each tribe may build an additional facility with blackjack without treading into the precedent-setting waters of off-reservation casinos. If your office approved the acquisition of the dog track, a national precedent would be set to encourage the development of additional off-reservation facilities when on-reservation development options are still available. For this reason, Hudson is not the place to break new ground.

In addition to setting a new precedent, proceeding with the acquisition would be detrimental to the Hudson area by further eroding relations among residents and limiting opportunities for economic development. Area residents and their local representatives oppose casino gambling. The passage of legislation allowing the dog track created many deep wounds in the city. In 1991, when a casino at the dog track was first debated, the City of Hudson recalled its mayor because he supported gaming. A year later, the City Council adopted a resolution opposing Indian gaming at the dog track. In February, the Council again voted to reject a casino.

Voters have increasingly opposed Indian gaming at the dog track. In 1992, the City of Hudson held a referendum which asked whether residents supported the transfer of the land to an Indian tribe if unspecified financial conditions were met. The results were 1,352 voters in support of the transfer and 1,288 against. However, in a 1993 statewide referendum which asked whether residents wanted to expand Indian gaming in Wisconsin, 65% of St. Croix County residents voted against expansion. In the adjoining Troy township, from which land was annexed for the track, 85% of the residents voted against expansion.

In sum, it is my conclusion that allowing a casino at the St. Croix Meadows facility would set an expansive national precedent for off-reservation gaming where none is needed. The approval would have detrimental effects on the residents by creating further divisiveness in a city where civic harmony has already been severely damaged. Further, the recent votes provide ample statistical proof of public opinion. For these reasons, I oppose the expansion of casino gambling to the St. Croix Meadows track.

I would appreciate a status report on the acquisition at your earliest convenience. Thank you for your consideration.

Best regards,

Steve Gunderson
Member of Congress

SG:tb

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The only land transaction approved since enactment of IGRA for an off-reservation Class II gaming facility was for the Forest County Potawatomie Tribe. The property is located in Milwaukee, Wisconsin and the transaction was completed in 1990 prior to the establishment of the office of the Indian Gaming Management Staff and the established items to ascertain that the transaction meets the two-part determination required in Section 20.

Two acquisitions were approved for lands located off-former-recognized reservations in the State of Oklahoma: The Cherokee Nation of Oklahoma acquired two parcels: one in West Siloam Springs, OK for a total of 7.808 acres (approved by Central Office: 01/18/94 and the second in Rogers County, OK for a total of 15.66 acres (approved by Central Office: 09/24/93); both are for Class II gaming facilities.

Two acquisitions were approved for land "contiguous to the reservation " for two tribes in Louisiana: Tunica-Biloxi Tribe acquired 21.054 acres in Avoyelles Parish, LA for a Class III gaming facility (approved by Central Office: 11/15/93); and Coushatta Tribe acquired 531 acres in Allen Parish, LA for a Class III gaming facility (approved by Central Office: 09/30/94).

One land acquisition was approved for a tribe with no reservation on enactment date of the IGRA and the land was not in Oklahoma: Sisseton-Wahpeton Sioux Tribe of Lake Traverse Reservation acquired 143.13 acres in Richland County, North Dakota for a Class III gaming facility (approved by Central Office: 09/30/94).

Three transactions have been prepared for off-reservation acquisitions for Class III gaming facilities in the States of Oregon, Louisiana and Michigan. None received the concurrence of the Governor; consequently, none of the proposals were taken in trust.

Get it to him Monday
5/1

- mail stop 7229

Mr. Dog Track 5/3
(St. Croix)

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

MINNEAPOLIS AREA OFFICE
331 SOUTH 2ND AVENUE
MINNEAPOLIS, MINNESOTA 55401-2241

IN REPLY REFER TO

Tribal Operations

[illegible] 1994

MEMORANDUM

TO: Assistant Secretary - Indian Affairs

FROM: Office of the Area Director

SUBJECT: Request for Off-Reservation Gaming for Land in Hudson, Wisconsin

On March 4, 1994, the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes"), together, pursuant to Section 2719(b) of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988), filed an application with the Minneapolis Area Director requesting that the United States take a certain parcel of real property located in Hudson, Wisconsin, into trust for the benefit of the Tribes for gaming purposes. The Tribes do not currently own the property, but they have an agreement to purchase the land if and when the Secretary of the Interior makes the findings necessary under Section 2719. the Governor concurs in the Secretary's findings, the steps necessary to place the land into trust have been completed, the National Indian Gaming Commission approves the management contract and collateral agreements and the Tribes have amended their gaming compacts of 1991 to permit the operation of pari-mutuel greyhound racing.

This memorandum outlines the Minneapolis Area Office's review and analysis of the Tribe's application and transmits; (1) the Area Director's Findings and Recommendations, (2) the comments of the Field Solicitor, Twin Cities, and (3) the Documentary Support required for the Secretary's Determination concerning the request for off-reservation gaming on proposed Trust Acquisition of the Tribes.

I. APPLICATION INFORMATION

A. Sokaogon Tribe: The Sokaogon Chippewa Community of Wisconsin occupy a small reservation in Forest County, Wisconsin with the central community in Mole Lake. There

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are 1,528 persons enrolled in the Tribe. 512 members live on or near the reservation. According to figures provided by the Tribe, 42% are unemployed and actively seeking employment.

The Sokaogon Chippewa Community Tribal Council is authorized by Article VII, Section (e), to manage all economic affairs and enterprises of the Community. The Sokaogon Chippewa Community Tribal Council included two resolutions as part of the Tribes application package. Resolution No. 9-11A-93 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 2-4A-94 approved the St. Croix Meadows-Joint Operating Agreement and authorized the Tribal Chairman to sign the agreement.

B. Lac Courte Oreilles Tribe: The Lac Courte Oreilles Band of Lake Superior Chippewa had a reported enrollment of 5,431 people in 1991. In 1991, 1,923 of these people lived on the reservation and another 1,126 lived within 150 miles of the reservation.

The Lac Courte Oreilles Tribal Governing Board is empowered by Article V, Section 1(f) of the Lac Courte Oreilles Constitution to purchase lands within or without the boundary of the Tribe's reservation. The Tribal Governing Board is empowered by Article V, section 1(h) to engage in any business that will further the social or economic well-being of members of the Band. The Lac Courte Oreilles Governing Board submitted three resolutions as part of the Tribes application package. Resolution No. 93-82 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 94-08 approved the Joint Operating Agreement and directed the Tribal Chairman to execute the agreement on behalf of the Lac Courte Oreilles Band of Lake Superior Chippewa. Resolution 94-09 created the Lac Courte Oreilles Economic Development Commission to act on behalf of Lac Courte Oreilles.

C. Red Cliff Tribe: The Red Cliff Band of Lake Superior Chippewa occupy a small reservation in Bayfield County, Wisconsin, on the shores of Lake Superior. There are 3,180 persons enrolled in the band. 1,651 members live on or near the reservation.

The Red Cliff Tribal Council is authorized by the Red Cliff Constitution Article VI, Section 1(e) to manage all economic affairs and enterprises of the Tribe. The Red Cliff Tribal Council included two resolutions as part of the Tribes application package. Resolution 9/23/93C requests the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust. Resolution 2/7/94A authorized the Tribal Chairperson to sign the Joint Operating Agreement on behalf of the Red Cliff Band of Lake Superior Chippewa and also authorized the Chairperson to take such other actions necessary to effectuate the agreement.

These Tribes continue to have high rates of unemployment and poverty in spite of having developed gaming facilities on their reservations. We agree with the Tribes determination that this is true largely because they are located at great distances away from urban markets.

Each of these Tribes also have relatively small populations and land holdings. The Hudson location will provide the tribes with access to an urban market for the gaming facility. However, since it is unlikely that many of the residents of these three communities will chose to relocate to be employed at this location, the benefits which will accrue to each of these communities will come not from direct employment in the gaming facility, but, rather, from employment and the goods and services which would be generated by the spending of each community's share of the net income.

The average amount estimated to be received by each of the three Tribes over the next five years from the operation of the Hudson Gaming Facility is approximately $10 million per year. This money would be used by the Tribes to improve health care facilities on their reservations, purchase land, improve housing facilities, improve community and elderly programs, improve educational facilities and as educational grants, and to invest in economic development in the communities.

1. Description of Land:

The Tribes have requested that land located in the City of Hudson, County of St. Croix and State of Wisconsin, be taken into trust pursuant to 25 C.F.R. Parts 151 and 25 U.S.C. § 465 and § 2719. The land is currently owned by Croixland Properties Limited Partnership.

This request is for a parcel of land located in the fractional NE¼ of the NE¼, and SE¼ of the NE¼, Section 6, T28N, R19W, City of Hudson, Saint Croix County, Wisconsin, described as follows:

The fractional NE¼ of the NE¼ of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional NE¼ of the NE¼ of said Section 6.

ALSO, that part of the SE¼ of the NE¼ of said Section 6 described as follows: Commencing at the NE corner of said Section 6; thence S02°49'01"W 1,891.74 feet along the East line of the fractional NE¼ of said Section 6 to the NE corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the SE¼ of the NE¼ of said Section 6; thence N02°48'30"E along the west line of said SE¼ of the NE¼ to the NW corner thereof; thence Easterly along the North line of said SE¼ of the NE¼ to the NE corner thereof; thence S02°49'01"W, along the East line of said SE¼ of the NE¼ to the point of beginning.

The properties listed above encompass an area of approximately 55.82 acres currently consisting of the St. Croix Meadows Greyhound Racing Facility. The site is served by all necessary utilities and a highway system which includes Interstate Highway 94.

2. Third Parties:

The Tribes have entered into a Joint Operating Agreement with Galaxy Gaming and Racing Limited Partnership, an affiliate of Croixland, in order to provide management of the proposed gaming facility. We have informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Association. The National Indian Gaming Commission concurred in our determination and the Tribes have requested their approval.

II. GOVERNMENTAL ACTIONS REQUIRED

The process of taking Off-Reservation land into trust requires a tribal applicant to meet the requirements of 25 C.F.R. Part 151 - Land Acquisition, and Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988). Section 2719(b)(1)(A)requires the following two part determination:

> "The Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's Determination;"

This report does not contain information written specifically to meet the requirements of 25 C.F.R. Part 151, Land Acquisition. This report only outlines the Minneapolis Area Office's review and analysis of the Tribe's proposal to meet the two part determination required by the Indian Gaming Regulatory Act. 25 C.F.R. Part 151 requires specific actions within real estate services that exceeds Section 2719 action under the Indian Gaming Regulatory Act. If and when it becomes necessary, the requirements of 25 C.F.R. Part 151 will be addressed by the Area Office in a separate document.

The Indian Gaming Regulatory Act has several requirements that have been met by the Tribes; first, all three Tribes have successfully negotiated Class III Gaming Compacts with the State of Wisconsin as required by Section 2710(d)(1)(C) of the Indian Gaming Regulatory Act and the Secretary of Interior published the Approval Notice of the Gaming Compacts in the Federal Register; second, in accordance with 2710(d)(1)(A), each Tribe has adopted tribal gaming ordinances that have been approved by the Chairman of the National Indian Gaming Commission.

III. CONSULTATION PROCESS

The Bureau of Indian Affairs consultations with the City of Hudson, Local Officials, and Tribal Officials are described in detail in the Recommended Findings of Fact and

Conclusions. As the Recommended Findings of Fact and Conclusions indicate, the Tribes' application has received mixed support from the Community and nearby Tribes.

IV DOCUMENTARY RECORD

The Minneapolis Area Office has prepared four volumes of documentary support required for the Secretary's determination. The documentary support consists of documents the Tribes have submitted in support of their application and documents the Area Office has compiled during the course of the review and analysis of this application. The documentary record contains a complete index of documents.

Volume I contains proprietary information that is privileged commercial and financial information, which is confidential and exempt from disclosure pursuant to 5 U.S.C. 552 (b)4.

V RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the documentary support that was prepared during the course of the review and analysis of the Tribes' Application, the Area Office has prepared the attached Recommended Findings of Fact and Conclusions.

Based upon the Tribes' application, the documentary support and the consultations between the Great Lakes Agency Superintendent, the City of Hudson, St. Croix County, and other federally acknowledged Indian Tribes located in Wisconsin and Minnesota, the Recommended Findings of Fact and Conclusions conclude that allowing gaming on the proposed trust property is in the best interests of the Tribe and its members and would not be detrimental to the surrounding community.

VI RECOMMENDATION

Because the establishment of a gaming facility on the proposed trust land is in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, I recommend that the Secretary determine that the proposed trust property be acquired by the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes for Gaming purposes.

Area Director

Attachments

MINNEAPOLIS AREA OFFICE'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

November 15, 1994

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RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

INTRODUCTION:

The Sokaogon Chippewa Community of Wisconsin, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (Collectively referred to as the "Tribes") have entered into an agreement with the current owners (Croixland Properties Limited Partnership or "Croixland") of the St. Croix Meadow Greyhound Park located in the City of Hudson, Wisconsin, to purchase the assets of the pari-mutual dog track. The Tribes have requested that the land currently comprising St. Croix Meadows, as well as land immediately surrounding the dog track (totaling approximately 55 acres), be placed into trust. The stated purpose of the acquisition is to begin Class III gaming at the facility with the introduction of 1,500 - 2,000 slot machines and 30 - 40 blackjack tables.

Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988) states, in part, that lands can be acquired for gaming only if "the Secretary, after consultation with the Indian Tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a Gaming Establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community..." 25 U.S.C. § 2719 (b)(1)(A). The following is the Minneapolis Area Office's analysis and recommendations of the Tribes application under this section.

I. BEST INTEREST OF THE TRIBES

A. GROSS AND NET INCOME TO THE TRIBES:

Two separate market studies were prepared regarding this proposal. One by Arthur Andersen & Co. (AA)(Tab 3)[1] which used the "comparative market analysis approach" to estimate the Hudson market potential, and one by James M. Murray, PhD. (Tab 4) which used the gravity model and Reilly's Law of Retail Gravitation to establish the sphere of influence of the Hudson facility both currently and as projected. Although the specific findings of the two reports do differ significantly in some respects, we will incorporate both reports into our analysis.

The AA Study estimates the total market gaming revenues in the primary market of Minneapolis/St. Paul to be between $550 - $630

[1] Unless otherwise stated, the tabs are located in Volume I.

million, with the proposed Hudson Casino share projected to be $80 million (excluding the dog track) (Tab 3, pages 21 & 22). AA projects Total Revenues for the first year to be $88,367,000. The Net Income is projected to be $30,910,000 in the first year of operation. Pursuant to the Joint Operating Agreement (Tab 7D, page 8) each tribe would receive 25% of the net revenue. Thus, under this study, each tribe is projected to receive $7,727,000 in the first year of operation and $11,506,000 by the fifth year (V-I, Tab 3, page 30).

Dr. Murphy estimates the total gaming revenues in the primary market to be currently at $406,906,108 a year (Tab 4, page 15). He estimates the proposed Hudson Casino take (including income from the dog track) would be $104.1 million in the first year of operation and $131.4 million by the fifth year (Tab 4, page 18). He projects Net Revenues to be $31.1 million in the first year and 48.8 million by the fifth year (Tab 5, page 1). Dr. Murphy did not provide an estimate of the total market gaming revenues. However, we note that his estimate of total revenues of $511,124,739 (Tab 4, page 15) is consistent with the estimate made by the Arthur Andersen study.

The two reports differ notably in amount of gross income projected and the total amount of expenses expected to be incurred by the Hudson Venture in the first year (See Table 1 of this report). As a result, we combined the two reports to calculate a best case scenario and a worst case scenario.

Dr. Murphy does not give a breakdown of the expected expenses since his report focuses more on the overall impact to the Tribes and surrounding community from the spending of the net proceeds. Nevertheless, we feel it is important to include this information since it substantiates the Tribes position.

If you combine Dr. Murphy's total expenses ($73 million) with AA's estimated Total Revenues ($88,367,000), the Tribes would net approximately $3.84 million each (15,367,00 multiplied by 25%). This number represents the worst case scenario under a combination of the two studies.

The best case scenario under a combination of the two studies is a Net Revenue of approximately $46.6 million ($104.10 million in Gross Revenue under Dr. Murphy's study minus $57.45 million in total expenses in AA's study) to be divided equally among the three Tribes and current owner. Under this scenario each Tribe would receive $11.65 million in the first year of operation.

We find that due to the sheer size of the market of the urban area, the Tribes would enjoy a financial benefit well beyond any financial benefits generated from reservation located casinos. Also, an urban location would be more likely to produce a relatively stable annual cash flow for the Tribes. It would also

Table 1

COMPARISON OF THE MARKET STUDIES FOR THE FIRST YEAR OF OPERATION

Revenues:	Arthur Andersen:	Dr. James Murray:
Casino	$70,000,000	
Dog Track	11,367,000	
Food & Beverage	7,000,000	
Total Gross Revenues:	88,367,000	104,100,000
Expenses:		
Casino	20,300,000	
Dog Track	7,131,000	
Food & Beverage	5,600,000	
G&A, Marketing, Sec, Property	17,673,000	
Operating Expenses		60,000,000
Depreciation	3,111,000	
Interest	3,641,000	
Debt Service per Year		13,000,000
Total Expenses:	57,456,000	73,000,000
PROJECTED NET INCOME:	*$30,911,000*	*$31,100,000*

provide each Tribe a source of income which it can use to further Self-Determination and economic independence.

B. PROJECTIONS OF MANAGEMENT AND TRIBAL EXPENSES:

For the first five to seven years the Hudson Venture will be operated by the three Tribal Economic Development Commissions and Galaxy Gaming pursuant to the terms of the Joint Operating Agreement (Tab 7D, page 11, § 3.1). We informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Commission. The National Indian Gaming Commission concurred verbally in our determination. The Tribes have submitted the Joint Operating Agreement and the collateral agreements to NIGC for approval.

Under the Joint Operating Agreement, the "Business Board" will have general oversight and authority over the operation. It will be composed of eight persons: two Galaxy Gaming representatives and two representatives from each of the three Tribes (Tab 7D, page 4, § 2.7). The primary management officials include any person with the authority to hire and fire employees and any person with the authority to set working policy (Tab 7D, page 10, § 2.31). The Business Board will unanimously select four of the primary management officials. They include the Chief Executive Officer, General Manager, Chief Financial Officer and the Human Resource Director Id.

The Chief Executive Officer will be a member of the Business Board. This position will be unanimously selected by the Business Board and will be granted the power and authority to oversee the daily business affairs and operations of the Enterprise (Tab 7D, page 5, § 2.9). The CEO is required to report to the Business Board and under the Joint Operating Agreement, will not be able to undermine the Boards authority. Thus, even though the CEO must be a Galaxy Gaming Representative as long as the Financing Debt remains outstanding, the three Tribes will have substantial control of the operation (Tab 7D, page 16, § 5.1).

Each Tribe will also select their own Tribal Inspector. The three Tribal Inspectors will have full access to all aspects of the Enterprise (Tab 7D, page 20, § 5.6.3).

Under the Joint Operating Agreement, each Tribe is guaranteed a minimum monthly payment of $66,667.67 from the net revenues. Galaxy Gaming will then receive the next $66,667.67 for that month. Anything over $266,667.67 for any particular month will be distributed equally between the three Tribes and Galaxy Gaming (Tab 7D, § 2.26 and § 7.1). Galaxy will be entitled to a 25% share in the net revenues for the first seven years of operation with the Tribes maintaining the authority to "buy-out" all of Galaxy's rights in the agreement after the completion of the

fifth full year of the operation (Tab 7D, page 41, § 24).

The Joint Operating Agreement requires Galaxy to loan[2] the Enterprise the amount necessary to fully pay the Tribe for any yearly shortfall of the guaranteed payments (Tab 7D, page 8, § 2.26). However, the market studies indicate that loans will not be necessary to fulfill this minimum monthly obligation.

1. **Assumed Liabilities and Nonrecourse Liability:**

The Economic Development Commissions (EDCs) of the Tribes have agreed to purchase the St. Croix Meadows real property for $10.00. The assets necessary to run the operation (the building and improvements constructed on the land) will also be transferred to the EDCs subject to certain obligations of the seller. Under the Asset Purchase Agreement, the obligations will be paid as operating expenses and are referred to as the "Nonrecourse Liability" (Tab 7, pages 6 & 7). They include the debt owed to First Union National Bank of Florida (principal of $37,900,000 plus certain accrued interest arrearage which has been or will be capitalized) and the debt owed to the First National Bank of Hudson (Principal in the amount of $1,230,000). Although the agreement provides no limitation on the amount of interest that the Tribes will eventually pay, it does state that "in no event shall the aggregate principal amount of the Nonrecourse Liability exceed $39,200,000" (Tab 7, page 7).

The EDCs have also agreed to take the assets subject to certain "Assumed Liabilities" (Tab 7, pages 7 & 8). They include the following:

(a) Real property lease obligations;
(b) Personal property lease obligations;
(c) Obligations under contracts and licenses;
(d) Deposits held by seller under the real property and personal property leases.

The Tribes have not provided the dollar amount of the obligations these assumed liabilities will total. However, we do note the Tribes have estimated a yearly total expenditure in both market studies which includes these expenses.

Croixland will continue to own and pay taxes only on 6.96 acres of land next to the Hudson proposal (Tab 7B). The remaining land will be transferred to the Land Venture and leased to the Tribe's EDCs (Tab 7E). The EDCs will pay all taxes, assessments, water and sewer rents, rates and charges, charges for public utilities,

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[2] The interest rate on this loan is equal to the prime commercial lending rate of First Union plus 1% (Tab 7D, page 9, § 2.27).

and maintenance of the Parking Lot Land (Tab 7E, page 7, Article 4).

2. **Joint Venture Agreement of Meadows Parking Lot Joint Venture:**

Croixland and the Tribes have also agreed to form a joint venture partnership (Tab 7F). It will be called the Meadows Parking Lot Joint Venture and is not scheduled to terminate until December 31, 2045 (Tab 7F, page 6, Article 3). The purpose of this agreement is to transfer ownership of the parking lot to the partnership. To accomplish this, Croixland has agreed to sell the parking lot land to the Joint Venture at closing (Tab 7, page 27, § 9.03(g)). The property shall be deemed to be owned by the Venture as an entity and no Venturer will own the parking lot individually (Tab 7F, page 6, Article 2).

Under the Asset Purchase Agreement, Croixland will transfer the parking lot land to the venture for $10.00 and the portion of the First Union Debt equal to the fair market value of the parking lot land (Tab 7, page 11, Article III). The venture will then lease the parking lot to the Tribe's EDCs. Thus, the Meadows Parking Lot Joint Venture will be the landlord and the Tribal EDCs will be the tenants under terms of the Parking Lot Lease (Tab 7E). Rent payable by the EDCs under the Net Lease will initially be "a sum equal to 110 percent of the aggregate of the monthly debt service payable over the initial Lease Year with respect to the portion of the... (First Union Debt) allocable to the Demised Premises" (Tab 7E, page 4, Article 3). The annual base rent after the initial lease year will be determined by multiplying the annual base rent for the preceding year by a fraction (adjustment level divided by the base level) Id. The lease is to terminate in the year 2018 (Tab 7E, page 2).

We have advised the Tribes of the troublesome aspects of this arrangement. Specifically, we informed the Tribes that the ownership arrangement does not appear to be beneficial to the Tribes and seems likely to cause friction in the future. However, it is our determination that this arrangement, by itself, is not a basis to reject the application.

3. **Agreement for Government Services:**

The three Tribes, City of Hudson and the County of St. Croix entered into an *Agreement for Government Services* on April 18, 1994 (Tab 9). Under this agreement, the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other services that are under the control of the City or County or are

customarily provided to other commercial properties within the City or County (Tab 9, page 2).

The Tribes have agreed to initially pay the City and County $1,150,000 for the services Id. The payments will be paid on a semi-annual basis beginning on January 31, 1995. The first payment will be pro-rated from the date the land is actually accepted into trust.

Beginning in 1999, the Tribes will begin paying the City and County an amount equal to the allocable amount for the preceding year ($1,150,000 in 1998 with no adjustments) multiplied by 1.05 (Tab 9, page 3). The following table provides a comparison of the amount the Tribes will initially pay the city and county and the future value of $1,150,000:

ALLOCABLE AMOUNT PROJECTIONS ASSUMING NO ADJUSTMENT

Year:	Actual Amount Owed:	Future Value of 1,150,000:[3] A	B
1999	1,207,500	1,240,850	1,195,425
2000	1,267,875	1,338,877	1,242,644
2001	1,331,269	1,444,649	1,291,729
2002	1,397,832	1,558,776	1,342,752
2003	1,467,724	1,681,919	1,395,791
2004	1,541,110	1,814,791	1,450,925
2005	1,618,166	1,958,159	1,508,236
2006	1,699,074	2,112,854	1,567,811
2007	1,784,028	2,279,769	1,629,740
2008	1,873,229	2,459,871	1,694,115
10 YEAR TOTALS	15,187,807	17,890,515	14,319,168
2025	4,293,477	8,959,357	3,273,099

As the above chart indicates, the yearly 1.05 increase in the payment by the Tribes to the City and County for services is reasonable. The Office of the Field Solicitor, Twin Cities, has also indicated the Government Services Agreement is an agreement in which the Tribes may participate (Volume II, Tab 2, page 3). Thus, we find this agreement acceptable.

The Agreement for Government Services states that "any real estate taxes and assessments and personal property taxes paid with respect to the Non-Trust Property with respect to any calendar year shall be treated as a credit against the payment by the Tribes of the Allocable Amount (as adjusted) for such

[3] Formula Used to determine the future value:
For Column A: Annual Interest Rate is 7.9% for 1 period a year.
For Column B: Annual Interest Rate is 7.9% for 2 periods a year.

calendar year" (Tab 9, page 4). However, this does not apply to taxes paid by Croixland for improvements or special assessments Id. The Tribes will also receive a total reimbursement from Galaxy Gaming and Racing Limited Partnership in the amount of $297,500 in years 1995, 1996 and 1997 (Tab 9, page 18). This amount represents the difference in the Tribes proposal and the City's proposal for payment of government services.

The Agreement for Government Services states that the Tribes will cause Croixland to pay the delinquent and overdue real estate taxes and assessments and personal property taxes due through 1993 (Tab 9, page 4). Thus, all encumbrances on the land will be removed prior to placing the land into trust. However, to verify this, we have requested the Tribes submit title evidence prior to beginning the 25 C.F.R. Part 151 process. The Tribes responded by providing a copy of the Title Insurance Commitment (Tab 10). Also see the Tribe's letter to the Minneapolis Area Office dated October 14, 1994 (Volume II, Tab 4).

4. Ground Lease:

This lease agreement is between Croixland Properties Limited Partnership and the Tribe's EDCs. The Asset Purchase Agreement provides that the land will be leased to the Tribe's EDCs at the same time the conveyance of the Assets[4] takes place and immediately prior to the conveyance of the land (Tab 7, page 3 § 1.01(a)). The Asset Purchase Agreement then calls for the land and the Croixland's interest in the Ground Lease to be conveyed to the Tribes Id. Thus, the Tribes will become the landlord and the EDC's the tenants under the terms of the Ground Lease.

Initially, we had concern over the language in Article I, Section 1.03(d) of the Ground Lease and Article II, Section 2.01 of Asset Purchase Agreement since it appeared as if these agreements required the United States to become the landlord and a party to the Ground Lease. We informed the Tribes that this type of arrangement is not acceptable. As a result, the Tribes and Croixland amended the requisite sections to make clear that the United States, as trustee for the Tribes, will not be assigned or conveyed the landlord's interest in the Ground Lease or have any obligations or responsibilities under its terms (Tab 7, Amendments). We are satisfied that the Ground Lease is now only between the Tribes (as the assignee of the Seller), as landlord, and the EDCs, as tenant.

The Ground Lease is for 25 years and may be extended by the EDCs for an additional 25 year term (Tab 7C, page 1). All rent is payable directly to the Tribes. The EDCs will be required to pay

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[4] We note that the land is not defined as an "Asset" in any of the agreements.

rent of $12 a year and all costs expenses and other payments which the EDCs assume or agree to pay. The EDCs will also be required to pay to the Tribes rent from the net revenue pursuant to the terms of the Joint Operating Agreement. The EDCs also agree to pay all real estate taxes, assessments, water and sewer rents, and other governmental charges imposed against the facility, or imposed against any personal property or any Rent or Additional Rent (Tab 7C, page 4, Article 3).

The tenant may construct any building on the land after obtaining approval of the Landlord (Tab 7C, Article 4). The tenant is obligated to provide indemnification for any work on the facility, any use, non-use, possession, occupation, condition, operation, maintenance or management of the facility, any negligence on the part of the Tenant or their agents, contractors, employees, invitee or tenants, and any injury or death to any person or damage to or loss of property occurring in, on or about the facility. Galaxy Gaming is not required to provide any indemnification. The tenant is also required to provide insurance, Galaxy is not required to pay for any of it (Tab 7C, Articles 7 & 8).

5. Activities Loan:

The Joint Operating Agreement is between the Tribe's EDCs and Galaxy Gaming and Racing Limited Partnership. This agreement also provides that Galaxy Gaming will assist the Business Board in securing financing to the EDCs for the funds necessary to renovate and remodel the existing dog track facility and to begin operation. Galaxy guarantees the obtainment of this financing (Tab 7D, page 2, § 1.6).

To fund renovation of the third floor of the existing building, an "Activities Loan" (Tab 7D, page 3, § 2.1) will be made by a third-party lender to the EDCs and Galaxy Gaming and Racing Limited Partnership in an amount of up to $10,000,000 (any amount over $5,000,000 must be approved unanimously by the Business Board). This money will be used for costs, expenses and expenditures set forth in the Renovation Budget, for initial working capital as needed and for payments of expenditures necessary to "protect and keep perfected the Activities Loan."

C. BASIS FOR PROJECTIONS AND COMPARISONS:

The Proposed facility will be located at 2200 Carmichael Road in Hudson, Wisconsin. The site is approximately one mile south of the Carmichael Road/Interstate 94 interchange in a rural area in the southeast corner of Hudson. The existing grandstand building of the greyhound track has three floors with over 160,000 square feet of space. The property includes parking for approximately 4,000 vehicles.

The Las Vegas office of Arthur Andersen & Co., an international "Big 6" accounting firm performed a market demand and feasibility study. Dr. James M. Murray, PhD. performed an analysis of the market for the addition of casino games to the existing greyhound track and an analysis of the economic impact of the proposed Venture on the Tribal Reservations and the communities where the proposed facility would be located. We relied heavily on both studies to reach our recommendations and findings.

Our review of the market studies indicates that there was a substantial amount of time involved in accumulating the data in the studies. We find the sources of data to be reliable. The Arthur Andersen & Co. study contains pro forma financials which were reviewed and found to be acceptable by the Minneapolis Area Branch of Credit (Volume II, Tab 5).

D. PROJECTED TRIBAL EMPLOYMENT:

The Tribes have stated they plan to "actively recruit Native American candidates for positions at all levels." For employees at the Hudson Venture, a hiring preference will be given in the following manner: first, to members of the three Tribes and their spouses and children, second, to other Tribal members and third, to local residents from communities surrounding Hudson (Tab 7D, page 22).

Each of the three Tribes have stated that due to the location of their reservations, they do not anticipate many Tribal members who are currently living on the reservations to move to Hudson for employment in the casino (Tab 1, page 4). Since the Lac Courte Oreilles Reservation is located approximately 117 road miles from Hudson, the Red Cliff Reservation is located approximately 221 road miles away and the Sokaogon Reservation is located approximately 290 road miles away from Hudson, we have no reason to dispute the Band's assessment. The Tribes do anticipate 10 - 20 percent of the 1,600 positions at the Hudson Venture to be filled by Tribal members already living near the Hudson, Wisconsin area (Tab 1, page 5).

The three Tribes expect to receive an average of $10 million annually over the next five years as their share of the profits (Tab 5, S-1). They have identified areas of "high priority"[1] for which this money will be spent at each reservation. We have advised each Tribe that if they are going to provide a per capita payment from their gaming proceed, a Revenue Allocation Plan must be submitted and approved under the December 21, 1992, Guidelines

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[1] Activities Identified as High Priorities by all three Bands: improved health care facilities, educational facilities and grants, housing, economic and community development, programs for the elderly, land purchases and community programs.

to Govern the Review and Approval of Per Capita Distribution Plans and Section 2710 of the Indian Gaming Regulatory Act. Currently, only the Sokaogon Community has indicated that per capita payments will be made. The Sokaogon Community did submit a Revenue Allocation Plan. We returned the plan to the Community and recommended minor changes. We expect to approve the plan when these changes are made.

Each Band anticipates increased employment on the reservations due directly to the spending of their share of the net income generated by the Hudson Venture. In his analysis of the economic impact of the proposed Hudson Gaming Facility on the three Tribes, Dr. Murray estimates the creation of 150 new jobs on each reservation over the next five years (Tab 5, S-1). Although the Tribes may have to recruit non-Indians to fill many of the new positions due to a lack of training, the Tribes anticipate that the majority of these jobs will eventually be held by Tribal members.

E. BASIS FOR PROJECTING THE INCREASE IN TRIBAL EMPLOYMENT:

When we assume the figures provided by Dr. Murphy are accurate, the impact of a total of 450 new jobs on the reservations will have a substantial beneficial impact on tribal unemployment. The following figures provided by the three Tribes bolster this contention (Tab 5):

TRIBE	TOTAL ENROLLMENT:	NUMBER LIVING ON THE RESERVATION:	LABOR FORCE:	UNEMPLOYMENT RATE:
Red Cliff:	3,180	1,651	821	39% (321)
Lac Courte Oreilles:	5,431	1,923	1,362	58% (800)
Sokaogon:	1,528	512	198	42% (83)

Since each Tribe has a high unemployment rate, the jobs created on the reservation will provide incentive to Tribal members to work on the reservation rather than moving to Hudson for employment. Tribal members living off the reservation would also have incentive to move back.

F. PROJECTED BENEFITS FROM TOURISM:

As with any project of this nature, the success of the Tribe's proposed facility will depend on the volume of people/visitors who come to gamble at the Tribe's proposed facility. Based on the Market Analysis prepared by Dr. Murray, the Tribes estimates that 3,184,330 people will visit the facility annually (Tab 4,

page 15). Of that number, 95% are expected to come from the Twin Cities area and are expected to drop $199,399,166; 5% of the visitors will come from outside the Twin Cities Area and are expected to add $5 million to the net profit of the facility Id

G. PROJECTED TRAINING BENEFITS:

In their cover letter, the three Tribes stated that the Hudson Venture will "provide both jobs and training at the supervisory and managerial levels for our people" (Tab 1, page 5). They plan to implement a cross training internship program to accomplish this goal. The Tribe's representative has stated that the internship program will last one year and will obligate the trainee to stay on an additional year to help train other employees.

Under the Joint Operating Agreement (Tab 7D, § 5.8.2) as positions in the facility become available, preference in recruiting, training, and employment in all job categories of the Enterprise, including management positions, shall be given first to qualified members of the Tribes and their spouses and children; second to qualified members of other Tribes and their spouses and children; third, to residents of the City of Hudson; fourth, to residents of the Township of Troy; fifth, to residents of the County of St. Croix.

H. PROJECTED BENEFITS TO THE TRIBAL COMMUNITIES FROM THE INCREASE IN TRIBAL INCOME:

The Tribes contend that substantial benefits would accrue to their Tribal members and surrounding communities. Specifically, they show the following benefits will result (Tab 1, page 7):

- The creation of approximately 150 new jobs on each reservation.
- The employment will generate an annual average of about $3 million per Tribe in added earnings for these employees.
- A total of over $11 million in additional earnings and 600 additional jobs will be created as a recirculation of the gaming revenue.
- The proceeds will be applied to health, education, scholarship funds, housing, elderly care, early child care, land purchases and other community support services and as per-capita payments. The Tribes expect that a substantial increase in the quality of life will be directly experienced by all members.

Our data indicates that the three Tribes have high rates of unemployment and poverty in spite of having developed local

tribal gaming facilities. This is true in part because they are located farther away from urban markets than other tribes in Wisconsin and Minnesota. The Hudson proposal will help remedy this problem by providing these Tribes with access to a urban market for gaming.

As we have already indicated, the Tribes have relatively small populations and land holdings. Thus, the proposal is expected to have a significant positive impact. However, the positive impact is not expected to be employment in the proposed facility, but from the spending of the income by the Tribes on their respective reservations.

I. PROJECTED BENEFITS TO THE RELATIONSHIP BETWEEN THE TRIBES AND SURROUNDING COMMUNITY:

The Tribes anticipate that between 80 and 90 percent of the 1600 employees will be from the non-Indian surrounding community (Tab 5, Page S-2). The Tribes are also committed to providing funding for the increased infrastructure costs to the City of Hudson (Tab 1, page 12). This indicates the Tribes willingness to cooperate with the surrounding community as well as the local governments. Once the Casino goes into operation and begins generating income for the community, we anticipate an improvement in the relationship between those persons now opposed to the Hudson Venture, casino management, and the three Tribes.

J. POSSIBLE ADVERSE IMPACTS ON THE TRIBES AND PLANS FOR DEALING WITH THOSE IMPACTS:

The Tribes have stated that they do not anticipate any adverse impacts as a result of this proposal.

The Minneapolis Area Office recognizes possible conflict between some members of the local community and the proposed management of the Hudson Venture. In fact, a member of the local Hudson community has formed her own activist group to oppose the Casino. The group has submitted a petition in opposition to the Venture and claims to have collected over 3,000 signatures. Please note, the petition was submitted after the City of Hudson, County of St. Croix and the School District of Hudson, held public hearings, made findings and submitted their own comments on the proposal. Thus, we have only provided cursory review of the petition. We have not determined whether all the people who signed the petition are registered voters in the State of Wisconsin or Minnesota. Since the group has not provided any additional specific substantive reasons as to why the Hudson Venture should not be approved, other than those already addressed, we have informed the local activist group that the petitions should be directed to the Governor of Wisconsin.

Nevertheless, we do not regard the possibility of friction

between some members of the local community and the three Tribes or the management of the proposed Venture, as grounds to reject the proposal.

II. NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

A. CONSULTATION:

To satisfy the consultation required by Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719 (1988), the Bureau of Indian Affairs, Minneapolis Area Office, consulted with State and local government officials and nearby tribes on the impacts of the gaming operation to the surrounding community (Volume III). The Bureau's consultation process consisted of letters to local government officials, including the applicant Tribe, seeking responses to several suggested areas of discussion for an analysis of the "best interest of the tribe and its members" and "not detrimental to the surrounding community" determination Id.

1. Consultation with the Governor of the State of Wisconsin:

There has been no consultation with the Governor of Wisconsin by the Minneapolis Area Office or the Great Lakes Agency since it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings.

2. Consultation with the City of Hudson:

(a) Mayor: The Mayor of the City of Hudson, Thomas H. Redner, responded to our request for input by providing detailed material addressing possible impacts on the environmental, social structure, infrastructure, land use patterns, income and employment, the possible need for additional services and compulsive gamblers programs. The Mayor stated in his cover letter, that "the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size" (Volume III, Tab 1).

(b) Common Council: The Common Council of the City of Hudson adopted a resolution with a stated purpose of protecting the "city's interest in the event the transfer takes place." The Council only sought to protect the City's financial interest and did not take a position on the proposal (Volume III, Tab 1, page 12).

(c) School District: The School District of Hudson provided considerable correspondence on the proposal (Volume III, Tab 4). Their primary concern was insuring that the tax revenue that would be lost after the land was placed into trust be replaced. To accomplish this, the School District passed a resolution to protect their financial interests (Volume III, Tab 4). However, the resolution did not approve or disapprove the purpose of the proposal. An agreement between the City, County and Tribes was

eventually finalized (Volume I, Tab 9). It provides for a distribution formula for services to be paid by the Tribes. The School District approved the distribution formula in an intergovernmental agreement with the County on April 12, 1994. The particular financial aspects of the agreement are discussed in Part I of this report. The School District then wrote to the Governor of the State of Wisconsin calling for in-depth investigations regarding the impact on education (Volume III, Tab 4, page 7). They expressed their desire for additional funding, earlier growth escalators and the possible need for a reversionary clause in the deed. This indicates weak support for the current proposal.

3. **Consultation with the County of St. Croix:**

The County Board Office of St. Croix County, Wisconsin also provided correspondence on the proposal (Volume III, Tab 2). On March 13, 1994, prior to the signing of the "Agreement for Government Services", they wrote to the Governor to advise him that significant back real estate taxes are owed on St. Croix Meadows (Volume III, Tab 2, page 8). The Board requested that the Governor not approve any agreement in relation to the proposal until the county has received payment of all real estate taxes, penalties, and interest due and unpaid on the St. Croix Meadows dog track property. They also noted strong public opposition to the proposal. However, after the signing of the agreement, the Board showed their support of the proposal by criticizing the Hudson School District in their call for in-depth investigations by the Governor (Volume III, Tab 2, page 10). No mention was made of the public opposition. This indicates that the Board fully supports the proposal.

The St. Croix County Board Office also prepared an "Impact Assessment" of the proposed gaming establishment (Volume III, Tab 2, page 1). It focused on the impact of the proposal to the County as a whole, including the City specifically. The assessment was prepared by the County Planning Department Staff and reviewed by the Chairman, Richard Peterson. Although each of the seven subject matters were addressed, Mr. Peterson stated in the cover letter that the County could not conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. We note that this assessment was completed prior to the signing of the *Agreement for Government Services*.

4. **Consultation with the Town of Troy:**

The Town of Troy provided their response to our consultation letter on March 14, 1994 (Volume III, Tab 3). The town had several areas of concern dealing with, increased traffic, lowered standard of living, limited housing, and the possible additional cost services.

The town's concern over increased traffic is addressed in the Finding of No Significant Impact. The concern over a lower standard of living as an argument against the proposal is without merit since the Tribes have indicated that the proposed gaming facility will require many supervisory and managerial positions as well as training programs. Additionally, Dr. James M. Murray estimates that 85 percent of the employment and payroll in the expanded operation will accrue to Wisconsin residents and that 90 percent of the spending at the proposed gaming facility will originate from outside the state of Wisconsin (Volume I, Tab 5, page 12). The concern of limited housing does have merit. However, we find that any growth to the community as a result of gaming facility would not have a detrimental affect on Hudson. The towns concern over additional cost of services has been addressed in the Agreement for Government Services.

5. General Public Response:

(a) Public Opposition: Approximately 76 letters[4], written by people in the Hudson community, were sent to the Department of the Interior expressing opposition to the proposal. Their arguments against approval of this proposal are based primarily on social concerns, i.e. concern over increased crime; concern over the impact of gaming on the children in the area; concern over the projected increased traffic; concern over a possible increased cost to the city; possible increased cost to the social programs that problem gamblers would cause; concern over organized crime; and general concern over the diminishment of the aesthetical values to the city. The people against this proposal also cited the referendum of April 1993, to show that a majority of people were against the expansion of gambling in Wisconsin. Many stated that the market is already saturated and that the dog track was a failure so the Casino will be too. As a result, it is only serving as a "bailout" for the current owners of the St. Croix Meadows. Many people stated that Hudson is fine economically without the casino and does not need the low paying jobs that would be created. A few people were morally opposed to the idea of gambling.

Approximately 3,100 people signed a petition expressing opposition to the proposal. We have not verified the legitimacy of the signatures. Nor have we determined how may people who signed the petition are registered voters in Hudson. It is our determination that these petitions should be directed to the Governor of the State of Wisconsin.

A thorough report was sent in by one member of the Hudson community to provide evidence to form a basis to reject the application. However, each of the issues raised in the report

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[4] These letters are attached.

have been addressed by the Tribe's application, in the Finding of No Significant Impact, by the local governments of Hudson, or in other areas of our findings. Many of the arguments advanced by people opposed to the proposal are also political in nature and raise policy issues for the Department of the Interior. It is our determination that none of these issues form a basis to reject the proposal.

(b) Public Support: One letter, written by Wisconsin State Legislature, Doni Burns, was sent expressing support for the proposal. He stated that the majority of people in Hudson were in support of this proposal. To support his position he referred to a referendum passed in 1992 in regard to the possibility of a casino at St. Croix Meadows.

The referendum voted on in 1992 asked the following question:[7]

> *Do you support the Transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?*

Results: 1,351 people voted "yes", (51.2%);
1,288 voted "no" (48.8%)

The survey results were provided by the City of Hudson and referred to in a number of the responses by people in favor as well as people opposed to the casino.

This referendum differs from the April 1993 statewide referendum in that it is site specific. The 1993 statewide referendum (Volume II, Tab 8) which has been cited by people opposed to the proposal, asked:

> *"Do you favor a constitutional amendment that would restrict gambling casinos in this state?"*

St. Croix County results: 6,328 voted "yes" (65.4%)
3,352 voted "no" (34.6%)

While the Hudson Proposal may be an expansion of a type of gaming in Hudson, it will not be an expansion of a gaming facility. Additionally, since the Tribes have agreed to a limited number of Class III facilities with the State of Wisconsin, it will also not be an expansion of gaming in Wisconsin. It may also be argued (indeed, the Tribes have done so) that this is not an expansion of gaming even in Hudson since the building is already

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[7] The question and results where obtained from the City of Hudson (Volume III, Tab 1, page 11).

in place and the dog track is currently in operation. At any rate, it is our determination that the 1993 referendum, standing alone, does not preclude the Secretary of the Interior from making a determination the Hudson proposal would not be detrimental to the surrounding community.

Approximately 800 people signed a petition supporting the Hudson proposal. They did not provide any supporting reasons. No evidence has been provided to show that these signatures are not legitimate. However, we have not verified the residency of these supporters or determined whether or not they are registered voters in the State of Wisconsin or elsewhere.

6. Consultation with Neighboring Tribes:

18 Tribes in the State of Minnesota and Wisconsin were informed of the proposal (Volume III, Tabs 5 - 16). We requested that these Tribes provide input on the impact the proposal would have on their respective reservations by letter, all dated December 30, 1993. Nine of the eleven responses that we received were emphatically against the proposed Hudson project. However, none of the Tribes that responded provided reliable or scientific data to support their views. The following are the Tribes and Tribal Organizations that responded as a result of our inquires and a summation of their comments and our response:

(a) St. Croix Band of Chippewa Indians of Wisconsin: St. Croix is strongly opposed to the project (Volume III, Tab 12). They stated, "the proposed Hudson fee to trust acquisition will have an extreme detrimental and crippling impact on the St. Croix Casino located in Turtle Lake, Wisconsin." They supported this position by providing a detailed response to the seven questions and an *Impact Statement*. This material focused heavily on the probable loss of revenue at the Tribe's Turtle Lake Casino. The St. Croix Tribe stated that the Hudson proposal would cut into the revenue generated at their Turtle Lake Casino because the Hudson proposal is larger, in a better location and has a better highway system. St. Croix also stated that the gaming market is already saturated and as a result, they would have to increase marketing expenditures just to survive and would lose current qualified employees to the Hudson project. The Tribe did not provide any data to support their position.

St. Croix provided a casino density illustration to show that "the market is becoming saturated". However, they did not provide any financial studies to back up this or any other claim dealing with a loss of income.

We question St. Croix's opposition to this project since initially, they were the first Tribe to consider purchasing the St. Croix Meadows Dog Track for gaming purposes. We also find that their economic position is overstated since they have two

casinos currently in operation and may also be working to purchase the Lake Geneva Dog Track to add a casino.

(b) Wisconsin Winnebago Nation: The Wisconsin Winnebago Business Committee responded by stating that they do not want this proposal to even be considered until the State of Wisconsin has fulfilled its commitment under the Tribal/State Compact to agree to a fourth Class III gaming site for the Wisconsin Winnebago Nation (Volume III, Tab 13).

We find that the conflict over the Gaming Compact between the Wisconsin Winnebago Nation and the State of Wisconsin provides no legal basis to reject the Hudson's proposal.

(c) Leech Lake Band of Chippewa Indians: The Leech Lake Tribal Council passed a resolution against the proposal (Volume III, Tab 6). They stated that numerous problems will arise for the State and the gaming Tribes in Minnesota if gaming is expanded to off-reservation locations. According to the Tribe, the problems would not only be a monetary loss to the surrounding Tribes but also political in nature due to the unfair use of the "special trust and tax status" of the Tribes. However, they did not elaborate as to what the political ramifications would be. Nor did the Leech Lake Band provide any justification for limiting the expansion of gaming to "off-reservation" locations.

(d) Shakopee Mdewakanton Sioux Community: The Shakopee Mdewakanton Sioux Community's Business Council passed a resolution stating their opposition to the proposed Hudson Venture (Volume III, Tab 11, page 3). Their objections were based on loss of income for the surrounding gaming Tribes and the political ramifications. Specifically, the Business Council stated the proposed casino would have a "detrimental political impact in Minnesota since Minnesota Tribes have agreed by formal tribal/state compacts to not expand Tribal gaming off-reservation..."

The Community also argued that the proposed area is actually Mdewakanton Sioux territory Id. As a result, they feel that approval of an off-reservation gaming facility in Hudson should be reserved for the Mdewakanton Sioux Tribe. We have found no legal basis for this argument. Our Fee to Trust review under 25 C.F.R. Part 151 will identify any interest this Tribe may hold in the land at Hudson.

The Chairman and CEO of the Little Six, Inc., also responded on behalf of the Mdewakanton Dakota Community (Volume III, Tab ii, pages 8 - 11) . He stated that the Community "vehemently opposes" the proposal for the following reasons:

1) This is only an off-reservation gaming experiment which could have devastating impacts on the negotiation process

among the National Indian Gaming Association, Congress, State Governors, and Attorneys General.

2) This proposal could damage the national efforts to protect gaming and could have severe political ramifications in Minnesota. They did not elaborate or provide any scientific information to support this claim.

3) The proposal could cause the State of Minnesota to open up gaming around the State thereby diminishing the beneficial economic impact of Indian Gaming. The Tribe has not provided any legal justification to show why gaming should not be expanded by Wisconsin Tribes in Wisconsin.

4) The market is at or very near the saturation point and cannot absorb another casino in the Twin Cities area without having a negative impact on jobs. A market study has not been provided by the Shakopee Mdewakanton.

5) The proposal could damage the current cooperative government to government relationship between the State of Minnesota and the Tribes. The Tribe has yet to explain how this will happen.

(e) Prairie Island Dakota Community: The Prairie Island Dakota Community passed a resolution voicing their opposition to the proposal (Volume III, Tab 10). They stated that the Hudson Casino would "saturate the already extremely competitive Minneapolis-St. Paul market area." In addition, the Tribe contends that they would not be able to compete due to the advantages the Hudson site offers. Specifically, the Tribe stated that they would suffer a severe loss of revenue (they estimate a 30%-50% reduction in customers) due to the following reasons: the proximity of Hudson to the metro area, the proximity of the proposed casino to an interstate highway and because the dog track is already an existing "first-class facility".

(f) Lower Sioux Community: The Lower Sioux Community did not pass a resolution opposing the proposal. However, the Chairman did write a letter indicating his opposition (Volume III, Tab 7). He stated that the Lower Sioux Community would be severely and unfairly damaged economically. He also indicated that the Community would be damaged politically since all of the Minnesota Tribes have not sought to locate a gaming establishment away from the reservations and to do so would cause a region-wide and probably a nation-wide race by other Tribes to do the same. No data was provided to validate his arguments.

(g) Minnesota Chippewa Tribe: The Minnesota Chippewa Tribe passed a resolution opposing the Hudson Project (Volume III, Tab 14). They stated this proposal could set a dangerous precedent by creating an open market for expansion by other Tribes.

(h) Mille Lacs Band of Chippewa Indians: Although the Mille Lacs Band did not pass a resolution to declare their opposition to the proposal, the Chief Executive did write a letter stating the Tribe's opposition and referred to letters written by the Minnesota Indian Gaming Association (Volume III, Tab 8). She also asserted that the Indian Gaming Regulatory Act was designed to act as a reservation based economic development tool and that the Hudson proposal is inconsistent with that intent. She said that reservation based gaming has allowed Mille Lacs to take a 45% unemployment rate to "effectively zero". She feels this number would increase should the proposal go through. No studies or data was provided to support these claims.

(i) Minnesota Indian Gaming Association: The Minnesota Indian Gaming Association passed a resolution and wrote a number of letters expressing their opposition to the Hudson Proposal (Volume III, Tab 15). They stated that since Minnesota Tribes oppose off-reservation gaming activity and have promised not to expand tribal gaming off-reservation, the Hudson proposal is an infringement upon their own inherent sovereign rights. In addition, the following reasons were given for their opposition:

1) Other gaming Tribes would suffer economically due to the Hudson proposal's close proximity to the metro area. In particular, the more remote casinos would be hurt.

2) The St. Croix area has historically been considered to be Dakota land. Findings: This issue will be addressed in the actual transferring of the land into trust pursuant to 25 C.F.R. Part 151. The objections identified in the Preliminary Title Opinion, if any, will have to be satisfied before the land may be transferred.

3) An off-reservation expansion of this magnitude would create huge political problems for Minnesota Tribes. The Minnesota Indian Gaming Association stated that State Legislators have been under political pressure from private businesses who want to expand gaming by placing video games in bars among other things. They also stated that they have fought hard to keep this from happening and the this proposal would jeopardize what they have fought to maintain.

MIGA also argues that the National Governors Association and other adversaries have been stating that tribes would expand gaming off-reservation into major cities in direct competition with non-Indian businesses. MIGA does not want them to be proven right.

(j) Lac du Flambeau Band of Lake Superior Chippewa Indians: The Lac du Flambeau Band stated that they do not oppose the Hudson project (Volume III, Tab 1). They also stated that their experience in gaming indicates that there would be a beneficial

impact.

(k) Oneida Tribe of Indians of Wisconsin: The Oneida Tribe stated that since they are located 250 miles away from Hudson, Wisconsin, they are not in a position to offer detailed comments or analysis on the impacts of the proposal (Volume III, Tab 9). They did state that they do not perceive that there would be any serious detrimental impacts on their reservation or gaming operations.

B. IMPACT ON NEARBY TRIBES:

1. Economic:

None of the Tribes who have written to our office to protest this proposal has provided us with any figures to back up their claim that the Hudson Venture would be "devastating economically" to the other casinos in the area. As a result, we must rely heavily on the study prepared by Arthur Andersen and Dr. Murphy to estimate the impact on the other Tribes economically.

Arthur Anderson's study estimates current market revenue for the six existing casinos in the Minneapolis/St. Paul area to be $510 million with a total estimated market revenue between $550 and $630 million[4] (Volume I, Tab 3, page 21).

Since the Hudson Venture's share of the market is estimated to be $80 Million, AA has found that even though the existing casinos would suffer some economic loss, the "proposed Hudson casino should not significantly impact aggregate revenues of the existing casinos" Id. We have particular concern over the economic impact of those casinos located within 55 road miles from Hudson. They include the Mystic Lake Casino, Turtle Lake Casino and Treasure Island Casino. Each of the Tribes operating these casinos have voiced strong opposition to the Hudson Proposal based on economic reasons. However, none of these Tribes have provided our office with any hard figures to back up their claims.

On August 12, 1994, we requested the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes provide an analysis which focuses on the particular economic impact of the proposed casino on the

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[4] The market was estimated by Arthur Andersen & Co. using the following figures:

Population within 100 miles.... 3,800,000
MULTIPLIED BY: Estimated per capita gaming revenue.... $145 - $165

We also note that the Hole in the Wall Casino in Danbury, Wisconsin, was not included in figuring the total estimated market revenue.

Mystic Lake, Turtle Lake and Treasure Island Casinos. The Tribes did not respond in writing. Their representative, Bill Cadotte, did state that there is no legal basis to reject the proposal based on what the potential political ramifications "might" be. We concur. Specifically, we find that additional market studies cannot be completed by the three Tribes without financial data supplied by the three casinos in question.

2. **Political:**

A number of Tribes and commentators have indicated that expansion of off-reservation gaming erodes their political power and will eventually undermine their ability to limit States from expanding gaming. However, it can be argued that each new gaming operation, whether or not on land placed into trust prior to October 17, 1988, erodes Tribal political power to protect the gaming industry. We find that the Tribal Sovereignty of the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes is far more important than limiting the expansion of Tribal Gaming. In fact, each Tribe currently operating gaming facilities went into the industry knowing that expansion into major metropolitan areas was a possibility and maybe even likely. We find that it is up to each individual Tribe to operate within the limits of the Indian Gaming Regulatory Act, their Class III Gaming Compacts and their existing governing documents. The Minneapolis Area Office will not restrict Lac Courte Oreilles's, Red Cliff's, Sokaogon's or any other Tribe from operating within these limits and find that any negative political ramifications from this proposal would be minimal.

C. EVIDENCE OF ENVIRONMENTAL IMPACTS AND PLANS FOR REDUCING ANY ADVERSE IMPACTS:

The Lac Courte Oreilles and Red Cliff Bands Lake Superior Chippewa Indians and the Sokaogon Chippewa Community propose to purchase, and place into federal trust 55.82 acres of land. The proposed trust site consists of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building, for the purpose of operating a Class III gaming facility in addition to the existing pari-mutuel dog track operation. The main parking lot west of the grandstand building is not intended for trust acquisition.

The existing grandstand would be remodeled to accommodate gaming activities, however, most support facilities (kitchen, washrooms, office space, etc.) would be maintained.

1. **Environmental Considerations:**

An "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" was prepared by

Mid-State Associates, Inc., in accordance with the requirements of the Wisconsin Racing Board Application for License (Volume IV, Tab 4). An addendum to the Environmental Assessment was prepared by Bischof & Vasseur for the proposed trust acquisition (Volume IV, Tab 3). Based on the findings of the EA and the Addendum, the Superintendent, Great Lakes Agency, found that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary. The *Finding of No Significant Impact* was issued on September 14, 1994 (Volume IV, Tab 1).

A Level I Hazardous Waste Survey has not yet been completed. However, we do note that a Phase I Environmental Property Assessment has been prepared by Braun Intertec for the Tribes. It indicates that there are no documented or observable environmental concerns associated with asbestos containing building materials or underground storage tanks. It also states that there is no documented evidence indicating any past or current land-use activities that have had an adverse environmental impact on the site. We also note that prior to the United States taking the land into trust, a Level I Hazardous Waste Survey must be completed and approved at the Area Office. We will satisfy this requirement under the 25 C.F.R. Part 151 process.

2. Natural and Cultural Resources:

The addendum to the Environmental Assessment states that the proposed facility will have no new significant short-term, long-term, or cumulative impacts on the regional geology, including bedrock and soils, ground water/water quality, or climate (Volume IV, Tab 3).

The Addendum also states that the facility is not expected to impact any natural areas such as native trees or wildlife habitat. Additionally, there are no anticipated impacts from the planned action on wetlands or other surface waters in the area. According to the National Wetlands Inventory Map for the site, there are no designated wetland areas located on the site. No rare plant or animal species or other significant natural feature will be adversely impacted.

(a) Land Resources: The topography of St. Croix County ranges from gently rolling to hilly and rough (Volume IV, Tab 4, pages 3 & 4). All of the county has been covered by continental glaciation. The St. Croix River has also had a major impact on the topography of the area. The St. Croix River is bounded by 100' - 200' bluffs along its eastern shore. The Hudson Casino Venture would be located on the plateau above these river bluffs.

The site where the proposed facility would be located and the

immediate area surrounding the site is "mostly gently rolling with an average elevation of 840 feet" Id.

The site surrounding the facility is a combination of many soils. Pillot silt loam is the most common Id. The slope of this soil is 0 to 3 percent so runoff is slow and there is slight hazard of erosion. Most of the remaining soil at the site is Burkhardt-Sattre complex of differing slopes. Since most areas of the Burkhardt-Sattre complex are cultivated, there is no identified erosion or soil blowing problem.

Since the planned action will utilize the existing racetrack facilities, there will be no significant impact on prime or unique farmlands in the Farmland Protection Policy Act (Volume IV, Tab 3, page 3).

(b) Water Resources: The Hudson area has an abundance of groundwater. All potable water used in St. Croix County is groundwater. The supply of water is presently determined by the ability to pump it out of the ground. The source of the groundwater is precipitation (Volume IV, Tab 4, page 3).

The Hudson area surface waters occupy two major drainage systems. The St. Croix River drains the western two-thirds of St. Croix County. The balance of the county is mostly drained by the Chippewa River which flows into the Mississippi River Id.

The St. Croix River is located approximately 4800 feet to the west of the proposed facility. There are no other existing surface water bodies in the EA study area Id.

(c) Air Quality: Both the City of Hudson and St. Croix County have stated that the projected traffic increase will not cause the air quality to exceed applicable standards (Volume III, Tab 1, page 1 and Volume III, Tab 2, page 2). Air monitoring stations are currently in place at the track exit and the southeast corner of the Carmichael Interchange to detect any change in the air quality which could be harmful to the area Id.

(d) Threatened and Endangered Species: St. Croix County is listed as a habitat for the following three endangered or threatened species (Volume IV, Tab 4, page 4):

(1) Peregrine Falcon - Potential breeding habitat; Endangered.
(2) Bald Eagle - Breeding and wintering habitat; Threatened.
(3) Higgins' Eye Pearly Mussel - River habitat; Endangered.

According to the EA, site visits in 1988 to the area around the proposed facility did not detect any of these species Id. The development site may serve as a habitat for the Peregrine Falcon and Bald Eagle. However, none have yet been located. Additionally, there is no habitat for the Higgins' Eye Pearly

Mussel at the site. At any rate, the natural area consisting of vegetation or wildlife habitat will not be impacted by the internal construction or additional traffic flow Id.

(e) Cultural Resources: No specific cultural resources or structures are known to exist on the site.

The State Historical Society of Wisconsin has stated that there are no buildings in the study area that are listed in the National Register of Historic places (Volume IV, Tab 2, page 2).

The Mississippi Valley Archaeology Center, Inc., stated that there are no known archeological sites in the proposed project area (Volume IV, Tab 2, page 3).

D. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY:

Concern over an increase in crime has been expressed by most of those people who wrote to oppose the Hudson Venture. However, none of the letters contained any scientific or statistical evidence to back up this claim. The City of Hudson has stated that similar predictions were made in regard to the St. Croix Meadows dog track before it went into operation in 1990. The City stated, to date, "none of the earlier negative predictions concerning increased crime, etc., have come true..." (Volume III, Tab 1, page 2). To prevent any crime escalation in the City of Hudson, and to help offset any fear among the community, the City has stated that they will hire an additional Investigator Crime Prevention Office in the year the Casino is opened (Volume III, Tab 1, page 4). The City also expects the Police Department to expand the police force by five officers and one clerical employee within the next five years Id. Additionally, the Tribes have stated that they are committed to paying for the reasonable costs of these services (Volume I, Tab 1, page 12).

The City stated that the residents of the community have come to accept the dog track's existence and that there is no overwhelming majority of citizens either in favor of or opposed to the casino (Volume III, Tab 1, page 2). Nevertheless, the city is prepared to handle any negative reaction by the community over the casino.

E. IMPACT ON THE INFRASTRUCTURE:

1. Utilities:

The current facility is supplied by existing public water, sanitary sewer, electric, and telephone utilities. No additional infrastructure is scheduled to be constructed as part of the proposed action.

2. Zoning:

According to the City of Hudson, most of the proposed trust site is zoned general commercial district (B-2) for the principal structure and ancillary track, kennel and parking facilities (Volume III, Tab 1, page 4). Six acres of the proposed trust site are currently zoned single family residence Id. The east, south and westerly perimeters are classified as on-family residential districts (R-1) and serve as a buffer area between the track operation and other surrounding land uses Id.

3. Water:

The City of Hudson stated that the water trunk mains and storage facilities are adequate for providing water service to the proposed casino and "ancillary development south of I-94" (Volume III, Tab 1, page 3).

4. Sewer and Storm Drainage:

According to the Impact Assessment of the Proposed Casino on St. Croix County which was prepared by the County, St. Croix County anticipates an increase in waste generation from the proposed casino (Volume III, Tab 2, page 1). Currently, the St. Croix Meadows generates .5 pounds per person Id. This equals approximately 104 tons of waste per year. Based on the anticipated average daily attendance of 7,000 people, the proposed casino would result in a production of 639 tons of waste per year, an increase of 535 tons. The County has stated that the waste-to-energy facility that services St. Croix County has adequate capacity to handle the increase Id. To verify the figures, the County compared their estimates to the St. Croix Bingo and Casino gaming facility in Turtle Lake, Wisconsin. That facility averages .53 pounds per person or 677 tons per years.

An existing storm water collection system collects storm water runoff and directs it towards a retention pond located near the southwest corner of the parking area. From there, collected storm water is allowed to evaporate, percolate into site sils, or slowly flow along a regional storm water control system towards the St. Croix River (Volume IV, Tab 4, pages 7 & 8). According to Hudson officials, the existing storm water control system is adequate to handle storm water runoff from the site (Volume III, Tab 1, page 3).

5. Lighting:

The County has stated that although the City of Hudson has jurisdiction to control and monitor the lighting, the County has a responsibility to surrounding neighbors in other jurisdictions (Volume III, Tab 2, page 2). As a result, the County expressed that any changes made to the current lighting system take into

consideration the larger community which may be affected. They did not express any dissatisfaction with the current system.

The City of Hudson stated that this concern was addressed at the time St. Croix Meadows was constructed. Specifically, a lighting system is already in place which reduces the light spillage at the property lines "to an amount equivalent to residential streets" (Volume III, Tab 1, pages 1 & 2). The City also acknowledged that the lights may be on for extended periods of time because the casino operation is likely to be open until 2:00 a.m. or 24 hours per day Id.

6. Roads:

(a) Access: The City of Hudson stated that the current street system is sufficient enough to accommodate projected traffic needs based on 40,000 average daily trips (Volume III, Tab 1, page 4). However, development on Carmichael Road north of the proposed casino may be necessary. Specifically, traffic regulatory signals will likely be needed at the interchange of Carmichael Road and Hanley Road.

St. Croix County expressed particular concern with increases in traffic on USH 12, CTH UU, CTH A, and Carmichael Road (Volume III, Tab 2, pages 2 & 3). The County stated that even minimal traffic increases will have a negative impact on these roadways since they are already at capacity. However, information gathered from the Wisconsin Department of Transportation indicates that any negative impact from additional traffic will be minimal (Volume IV, Tab 3, pages 38 & 39).

(b) Traffic Impact Analysis: A traffic study was completed and is contained in the 1988 Environmental Assessment for the St. Croix Meadows dog track (Volume IV, Tab 2, page 18). It is based on traffic projections in the year 2011. Peak traffic estimates were provided to the Wisconsin Department of Transportation regarding the proposed Hudson Casino Venture. No significant problems were identified regarding the proposed traffic increase on the Interstate 94/Carmichael Road Interchange.

The *Finding of No Significant Impact* (Volume IV, Tab 1) also indicates that although no transportation system is likely to be developed in Hudson that would assure there will be no slow-down or delays during peak traffic periods, various methods would be utilized to manage delays should they occur. These methods include varying dog track racing times so as not to coincide with peak casino attendance times, elimination of parking fees and gates for easy parking lot entry, use of shuttle buses and remote parking areas, possible adjustment of time delays on traffic lights during peak attendance times, and installation of traffic lights.

F. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY:

The City has stated that approximately 25 acres of the site is developed. The six acres that are zoned as single family residence have limited development potential; 18.5 acres are located in an area of the bluff east of the track and are generally not suited for development, although there may be some potential; 5.5 acres are suitable for development (Volume III, Tab 1, page 4).

The City of Hudson has stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses Id.

G. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY:

Total employment at the proposed facility is expected to be between 1,500 and 1,600 positions. Current employment figures at St. Croix meadows is approximately 175 full-time positions and 225 part-time positions (Volume III, Tab 2, page 4). All existing employees would be offered re-employment at their current wage rates. Thus, between 1,100 and 1,200 new positions are expected to be generated Id.

Even though the three Tribes will give hiring preference to their own tribal members, 80-90% of the new positions are expected to be filled by non-Tribal members already living in the Hudson area Id. Wage rates for these jobs are estimated at between $5 and $10 per hour, not including salaried positions Id.

According to statistics provided by the St. Croix County, the service industry accounts for 20 percent of the County's 1993 total labor force of 28,300 people. Since the casino is expected to pull some employment from existing service jobs within the county, County officials estimate that approximately 175 service positions will be filled by currently unemployed County residents either through direct employment at the casino or by other service jobs Id.

The remaining 900-1025 positions are expected to be filled by people from the nearby Wisconsin counties.

According the Economic Impact Report by Dr. James Murray, over 90 percent of the spending at the proposed Hudson Gaming Facility is expected to originate from outside the state (Volume I, Tab 5, page S-2). Dr. Murray estimates the total impact of the gaming facility would be to support 2,691 jobs and generate over $56 million in annual earnings for residents of Wisconsin (Volume I, Tab 5, page 12).

H. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO:

Additional services will be needed in the City of Hudson, County of St. Croix and at the site of the Hudson Project. To assure that all necessary services are provided, the three Tribes, County of St. Croix and the City of Hudson have entered into an *Agreement for Government Services* (Volume I, Tab 9). In the agreement, the Tribes, through their EDC's, will pay the City and County for general government services, including, but not limited to, the following services: police, fire, water, sewer, ambulance, rescue, emergency medical and education. These services will be provided in the same manner and at the same level of the services provided to residents of the City and County and other commercial entities located in the city and county. The agreement will continue for as long as the land is held in trust or until Class III gaming is no longer operated on the land.

I. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING:

Currently, there is not a compulsive gamblers program within St. Croix County. The County has indicated that if the Hudson Project goes into operation, their Human Services Department would initiate staff training and would develop treatment programs, including initial on-site screening of potential problem gamblers, treatment and aftercare services (Volume III, Tab 2, page 5).

There are six State-Funded Compulsive Gambling Treatment Centers in Minnesota (Volume II, Tab 7, page 38). Two are in Minneapolis. The other four are located in St. Cloud, Bemidji, Granite Falls and Duluth. According to the Minnesota Council on Compulsive Gambling, since 1984, limited funds have been appropriated by the Minnesota Legislature for training, research, gamblers' hot-line services, rehabilitation and public awareness programs (Volume II, Tab 6, page 2). Unfortunately, Minnesota Planning has also found that current levels of treatment in Minnesota are inadequate and that some treatment facilities already have waiting lists while others are near capacity (Volume II, Tab 7, page 37).

Since there are no Wisconsin state-funded treatment facilities near Hudson, the three Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. Additionally, the Tribes have stated they will contribute money to local self help programs for compulsive gamblers (Volume I, Tab 1, page 12).

III. RECOMMENDATIONS

Based upon the discussion and conclusions provided above, we recommend that the Secretary of the Interior find that the proposed action will be in the best interest of the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes and that it will not have a detrimental effect on the surrounding community. We also recommend that the decision be made to take this particular parcel into trust for the three Tribes for gaming purpose.

I attest that I have reviewed this transaction and the case file is documented in compliance with all of the above stated regulations and facts. I further state that I will not accept the property in trust until I have received satisfactory title evidence in accordance with 25 C.F.R. Part 151.12.

ATTEST:

Area Director

11-17-94
Date

EOP 064540

HM document #14

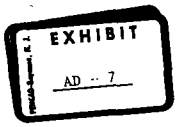
Author: George Skibine at -IOSIAE
Date: 3/17/97 4:31 PM
Priority: Normal
Receipt Requested
Hilda Manuel at -iiaktao_mail, Robert Anderson at -IOS, Heather Sibbison at -IOS, Michael Anderson at -IIAOIPM, scott keep at -ISOL, Dave Etheridge at -ISOL, Tom Hartman, Nancy Pierskalla
Subject: HUDSON DOG TRACK

On Monday, March 17, 1997, at 2:00 PM, we had a conference call with plaintiffs and their attorneys to discuss the terms of any resubmission of their application to take land in trust in Hudson, Wisconsin, for gaming. One of the terms for consideration of a resubmitted application would be that the BIA Minneapolis Area Office would redo the consultation with nearby tribes and the surrounding communities.

Document provided pursuant to Congressional subpoena

Plaintiffs informed us that a pivotal question in their decision to resubmit an application is whether the Department will again stand by its position that the "naked" political opposition of the surrounding communities without factual support is enough for the Secretary to refuse to a make a finding that the proposed acquisition is not detrimental to the surrounding community. If that is the case, they indicated that they are not willing to spend time and money on this exercise, since they are fairly certain that the two communities have not changed their mind. i.e., They need to know whether this political opposition is or is not rebuttable by the tribal applicants.

We told them that we would confer with policy makers within the Department and let them know the outcome. We would like to discuss this issue at the 2:00 PM Wednesday gaming meeting, if possible. I think that it is a fair question for plaintiffs to ask.... GTS



Author: George Skibine at ~IOSIAE
Date: 7/8/95 5:36 PM
Priority: Normal
Receipt Requested
TO: Miltona R. Wilkins
TO: Tom Hartman
TO: Paula L. Hart
TO: Tina LaRocque
Subject: Hudson Dog Track
---------- Message Contents ----------

I have left on Tona's desk the redrafted version of the Hudson letter, per Duffy and Heather's instructions, along with the disk I used. Please make sure it is put in final form, and brought up to Heather first thing on Monday. Please have copies made for Bob Anderson, Kevin, ~~Troy,~~ and Hilda. The Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes Area. Also, give Larry a copy of this message, and tell him to contact Tom Sweeney and keep him advised of any development on Hudson letter. I do not have a copy of the original Hudson letter draft, because it is no longer on my disk (George Skibine Docs). However, I cc: mailed that document to some of you and to SOL if it needs to be retrieved.

EXHIBIT
AD - 8

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Indian Gaming-Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles BAnd, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

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[1] References are to the application documents submitted by the Minneapolis Area Office.

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EXHIBIT
AD - 9

Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

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The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

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Hudson Dog Track Application

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

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County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, "Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

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Hudson Dog Track Application

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1¼% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

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The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin
In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes
On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

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Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million) Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

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Hudson Dog Track Application

Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers
The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime
Hudson Police Dept. Crime & Arrests. (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

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3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level
The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns
One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values
An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase
Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

Hudson Dog Track Application

2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities
St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning
According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water
The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage
The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads
The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

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The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis
The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

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Hudson Dog Track Application

Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

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St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

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Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 – a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any fax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

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are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

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BY MR. WILSON:

Q I have provided Ms. Manuel with a document that has been marked HM-1, and for the record, it is a letter to the editor from Bruce Babbitt, Secretary of the Interior dated January 2nd, taken from the New York Times, and I believe it appeared on January 4 edition of the New York Times.

If you could take just a moment to review the letter.

And I will go back because there are specific things in this letter that I wanted to discuss with you.

In this letter that the Secretary of the Interior has stated that: "This department does not force off-reservation casinos upon unwilling communities," and that's the second sentence of the second paragraph.

My question to you is, is it Department of the Interior policy that any opposition to an off-reservation casino is sufficient to cause an application to be rejected?

Mr. Elliott. Don't answer that.

Jim, that question is going to one of the central issues in litigation.

Mr. Wilson. I'm asking about Department of Interior policy, though, not about the litigation or anything about the litigation.

I am asking about your understanding of Department of the Interior policy. Actually, I should be more specific. I am asking about it as of 1995; 1994, 1995.

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Mr. Elliott. Repeat the question, please.

BY MR. WILSON:

Q Was it Department of the Interior policy in 1995 that any opposition to an off-reservation casino was sufficient to cause an application to be rejected?

[Counsel conferring with witness.]

Mr. Elliott. We need to consult.

Mr. Wilson. Certainly.

Mr. Elliott. Okay. I think she can respond to the question.

Mr. Wilson. Okay.

The Witness. The answer is, yes.

BY MR. WILSON:

Q Well, I was going to ask you what the standard was, but you have adequately told me what the standard was. Any opposition was the way that I phrased the question, so any opposition in 1995 was sufficient to cause an application to be rejected?

A Yes.

Q Was this communicated to -- just let me preface this with it seems like a lot of time and effort and money went into perfecting an application. It was all relevant to the process. Was this communicated to the Ashland office or the Minneapolis office?

A Every area office is aware what the requirements are

*** Notes ***

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under 151 and under Section 20. Any particular Section 20.

Mr. Elliott. Let me -- one minute.

[Counsel conferring with witness.]

The Witness. When you -- when they work with the tribes at the local level agency or the area, they know that community support is a key factor. We give them every opportunity, and I think the records in the gaming office in terms of all of the mail, the letters that have gone out with my signature, with George's signature, will verify the fact that we inform the tribes, we inform the communities, that they all have an equal opportunity to present their case and to develop a record. So when I say, yes, we don't put a casino in a community that doesn't want it, I qualify that by saying, however, that the community has to have a reason for not wanting it there. It can't be just because they don't like Indians, for example.

And in most cases, my experience is that the communities are concerned about environmental issues and impacts to their municipal services. My directive to the area directors since 1994 and the directive before I was deputy commissioner by the then deputy commissioner is that to work with the local communities to try to either mitigate their concerns, or to resolve them. But if a community comes in without any basis for their opposition, we move forward with a -- and our record supports a positive finding that there is going to be no

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detriment to the community, we move forward with a recommendation to the Assistant Secretary for approval, and in fact, there is at least two cases that I was personally involved in where we did that, where the community did not have a basis for their opposition, other than they just didn't want Indians right next door to them.

Q And I know you have answered this question, or at least around it, but I didn't understand what the basis for the community opposition was in this case?

A Environmental concerns. They were concerned about the impact to their municipal services.

Q Could those concerns have been cured?

A Probably, at probably great expense to the tribes. I mean we're talking about, you know, such things as providing police services; you know, all the kinds of services that you would need to supplement when you're going to start bringing in a lot of people.

Q And who made the determination that the expenses were -- who made the determination on behalf of the tribes that the expenses were prohibitive?

A I didn't say that that decision was made. You asked me if they could have been corrected, and I'm giving you my opinion that probably, yes, but probably at great expense.

Q Were the tribes given an opportunity to cure the specific defects?

*** Notes ***

EXHIBIT

AD -- 10

[The deposition of Franklin Ducheneaux follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: FRANKLIN DUCHENEAUX

THURSDAY, DECEMBER 4, 1997

The deposition in the above matter was held in Room 2203, Rayburn House Office Building, commencing at 10:00 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: James C. Wilson, Senior Investigative Counsel; Robert Dold, Jr., Investigative Counsel; Michael Yang, Minority Counsel; and Michael Yeager, Minority Counsel.

Mr. WILSON. Good morning, Mr. Ducheneaux.

Mr. DUCHENEAUX. Good morning.

Mr. WILSON. On behalf of the members of the Committee on Government Reform and Oversight, thank you for appearing here today. This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter and notary public. I would now request that the reporter place you under oath.

THEREUPON, FRANKLIN DUCHENEAUX, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. WILSON. I would like to note for the record those who are present at the beginning of this deposition. My name is James Wilson. I am the designated Majority counsel for this deposition. I am accompanied today by Bob Dold, who is an investigative counsel with the Majority. The Minority is represented by Mr. Michael Yeager.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a courtroom. If I ask you about conversations you have had in the past and you are unable to recall the exact words used in such conversations, you may state that you are unable to recall those exact words and then you are requested to give me the gist or substance of any such conversation to the best of your recollection. If you recall only part of a conversation or only part of an event, please give me your best recollection of that conversation or that event. If I ask you whether you have any information about a particular subject, and you have overheard other persons conversing with each other about that subject or have seen correspondence or documentation about that subject, please tell me that you do have such information and provide that information.

The Majority and Minority committee counsels will ask you questions regarding the subject matter of this investigation. Minority counsel will ask questions after Majority counsel has finished. After the Minority counsel has completed questioning, a new round of questioning may begin.

Members of Congress, if any should attend today, will be afforded an immediate opportunity to ask their questions. When they are finished, committee counsel will resume questioning.

Pursuant to the committee's rules, you are allowed to have an attorney present to advise you of your rights. It is my understanding that you have elected to appear today without an attorney; is that correct?

The WITNESS. Conditioned upon the statement I will make in a few minutes.

Mr. WILSON. Certainly.

Any objection raised during the course of this deposition or any questions that you have regarding the procedure or the substance of the questioning will be discussed on the record and we will make the best effort we can to resolve the questions you have. As I stated a moment ago off the record, we will make every attempt to accommodate any question or observation you have, and if it is deemed necessary for you to consult with counsel, for any purpose whatsoever, then obviously we will not pursue a particular line of questioning and allow you to do that, and that might require us to reschedule to resolve that particular issue.

This deposition is considered as taken in executive session of the committee, which means that it may not be made public without the consent of the committee pursuant to clause 2(k)(7) of House Rule XI. During the course of the questioning, I will make every attempt not to ask you questions about proprietary information, but in order to effect as little disruption to your life and business as possible, you will have an opportunity to discuss removing any information that you consider to be confidential, and we will discuss in a moment your review of the transcript. But if you have a question or any observation about material that you would prefer not to be publicly disseminated, please make the observation at the time and we will do the best we can to get around that question or issue.

No later than 5 days after your testimony is transcribed and you have been notified that your transcript is available, you may submit suggested changes to the Chairman. Transcripts have generally been available within a day or two of the deposition being taken.

Practically speaking, I or somebody else from the committee will notify you as soon as possible and will give you an opportunity to come down to the committee rooms at a time convenient to you and review the transcript for any changes that you consider to be necessary. Committee staff may make any typographical or technical changes requested by you. Substantive changes, modifications, clarifications or amendments to the deposition transcript, submitted by you, must be accompanied by a letter requesting the changes, and a statement of your reasons for each proposed change. A letter requesting substantive changes must be signed by you. Any substantive changes will be included as an appendix to the transcript, conditioned upon your signing of the transcript.

Do you understand everything we have gone over so far?

The WITNESS. Yes.

Mr. WILSON. Do you have any questions about anything we have gone over so far?

The WITNESS. No. Well, at a proper time.

Mr. WILSON. Sure. And I am going to ask you a couple of questions and then you will have an opportunity to make a statement. If you don't understand a question, please say so and I will repeat it or rephrase it so you do understand the question.

Do you understand that you should tell me if you don't understand my question?

The WITNESS. Yes.

Mr. WILSON. The reporter will be taking down everything we say and will make a written record of the deposition, therefore, I ask that you give verbal, audible answers in order to assist the House reporter. If you can't hear me, please say so and I will repeat the question or have the court reporter read the question to you; do you understand that?

The WITNESS. Yes.

Mr. WILSON. Your testimony is being taken under oath, as if we were in court, and if you answer a question, it will be assumed that you understood the question, and the answer was intended to be responsive to the question. Do you understand that?

The WITNESS. Yes.

Mr. WILSON. It is my understanding that you are here voluntarily, and we do thank you for coming in. Do you have any questions about the deposition before we begin the substantive portion of this proceeding?

The WITNESS. Is this the appropriate time for a statement?

Mr. WILSON. Absolutely.

The WITNESS. Well, I just want to, on the record, first of all, talk a little bit about the transcript. I can't get a copy, but I am entitled to see it within 5 days after it is available?

Mr. WILSON. Absolutely. And we can work with you on that score, if there are any conflicts in your schedule. We are not going to be rigid on that, but it is generally available within one or two days of the deposition, so perhaps as early as tomorrow, I will inform you that it is ready at the committee offices and you can come down at your convenience, too.

The WITNESS. If at some point I am called as a witness before the committee, will the transcript be available to me?

Mr. WILSON. It probably will be. Almost all transcripts, and I shouldn't say that, dogmatically, but at the time a witness appears, transcripts are generally released and they can be released at other times as well.

The WITNESS. I am going to keep my own notes here, as we go through this, of significant parts.

The only other thing I want to say before we get started is, as you point out, I am here voluntarily and without counsel. It is my understanding that I am being deposed relating to, first of all, documents that I submitted pursuant to the subpoena of the committee and also, generally, my knowledge and involvement in a

matter, which for shorthand terms is the Hudson Dog Track issue. And I am pleased to cooperate without counsel.

As I indicated to you on the phone yesterday, and I think I talked to Mr. Yeager, that is what I am here for, voluntarily, and I don't expect that you will do it, but if the questioning begins to go off the point, you know, I reserve the right to terminate the interview and seek counsel.

In addition, as you point out, if there are certain questions, and I don't think there will be, where I have some concerns, I reserve the right to do that, also.

Mr. WILSON. Absolutely, and that is understood.

The WITNESS. With that, I am prepared to answer your questions.

Mr. WILSON. Thank you very much.

Mr. Yeager.

Mr. YEAGER. Thank you.

This deposition relates to the Interior Department's denial of an application by three Indian tribes to place off-reservation land into trust for development of a casino in Hudson, Wisconsin.

After the Interior Department rejected the request, the applicant tribes alleged that opponents of the casino project, other Indian tribes, improperly influenced the decision through contacts with Democratic Party and administration officials. These allegations are the subject of a well-publicized lawsuit pending in the U.S. District Court for the western district of Wisconsin.

The Majority is aware that the Senate Governmental Affairs Committee has already investigated this matter. It has already interviewed and deposed dozens of witnesses and taken public testimony from those people central to any allegations of impropriety. For example, the Senate took public testimony from Secretary of the Interior Bruce Babbitt, former DNC Chairman Donald Fowler, lobbyist Paul Eckstein, and former Deputy Chief of Staff Harold Ickes. The Attorney General is looking into this issue, and I also understand the House Resources Committee has commenced its own investigation.

I want to take this opportunity to lodge a continuing objection to this deposition and every deposition relating to the Hudson casino matter. It is not that the committee lacks the power to pursue this inquiry. It is, however, imprudent and oppressive use of that power to investigate and reinvestigate matters that have already seen the light of day. It has an effect on real people.

On behalf of the Minority, I would like to thank Mr. Ducheneaux for appearing today voluntarily. He was not called by the Senate to give deposition or hearing testimony. I suspect there was a good reason for that and he has little to add to the public record.

Mr. WILSON. Just before I begin, I do recognize that you are going to be taking notes, and I will make every attempt to ensure that you are able to take notes that you deem necessary, but if you would, I request, please tell me to go slower or change my style if I am going a little too quickly for you to get that down, and hopefully we can move expeditiously through this.

EXAMINATION BY MR. WILSON:

Question. Mr. Ducheneaux, would you please state and spell your name for the record?

Answer. My name is Franklin Ducheneaux, Franklin, F-R-A-N-K-L-I-N, D-U-C-H-E-N-E-A-U-X.

Question. Did you attend college?

Answer. Yes.

Question. Where did you attend college?

Answer. University of South Dakota.

Question. If you could, please provide a brief employment history after college, and when I say brief, if you could just provide your major employment situations?

Answer. Okay.

Question. If you would, please.

Answer. You mean on the record?

Question. Yes.

Answer. Okay. I graduated from law school in 1965, from the University of South Dakota, in the spring of '65. I went to work for the United States Government as a regional civil rights coordinator with the old Office of Economic Opportunity. I worked there until the September of '67.

I then went to work for the Bureau of Indian Affairs here in Washington, D.C., as a congressional relations official. I worked there until the end of 1970. For a short period of time, I was executive director of the National Congress of American Indians, which at that time was an elective position.

I then became a free-lance consultant. In March of 1973, I was hired by the Subcommittee on Indian Affairs of the old House Interior and Insular Affairs Committee and served as counsel on that committee for, let's see, for about 6 years, I think. And then after that, I was hired by Chairman Udall as Indian Affairs counsel to the full Interior committee, served in that capacity until toward the end of 1990, and since then have been in a lobby government consulting business under two different names, currently Ducheneaux, Taylor & Associates, Inc.

Question. Have you discussed this deposition with anyone else, apart from people in this room?

Answer. With my wife. With my partner. You mean did I mention I was going to have a deposition?

Question. Any substantive discussions?

Answer. I think I have indicated to certain people who are involved in the issue. Larry Kitto, I told him I would be testifying. I talked to Mr. Corcoran and told him that I would be testifying when I had my records subpoenaed, but that is about it.

Question. Have you provided documents regarding the Hudson Dog Track matter, and just parenthetically, I think we hit the same shorthand for this, just to refer to the subject of this deposition, I will refer to as the Hudson Dog Track matter. Have you provided documents regarding the Hudson Dog Track matter to the Department of Justice?

Answer. No.

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. No.

Mr. WILSON. I would like to, and this is a little bit cumbersome, but it is just a housekeeping matter relating to your production of documents. I will submit the production to you, or at least give you a copy of the production, which I don't anticipate you will need to go through right now. I also will give you a second exhibit. The first exhibit will be FD–1, and the second exhibit is marked FD–2.

[Ducheneaux Deposition Exhibit No. FD–1 was marked for identification.]

[Ducheneaux Deposition Exhibit No. FD–2 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

EXAMINATION BY MR. WILSON:

Question. Exhibit 2 represents the documents that have been taken from your production that appear on the Ducheneaux-Taylor letterhead, which represents five separate documents, and I wanted to ask you a couple questions about the document production. As I said, this is a housekeeping matter, and I am just trying to determine we have everything that is relevant.

There are five documents here on the firm letterhead. Are you aware of, or do you know of any other documents that relate to the Hudson Dog Track matter that you still have, other than the five documents that have been marked as Exhibit FD–2?

Answer. No, I'm not aware of any.

Question. Okay. You provided——

Answer. Oh, I'm sorry. I provided copies of letters to you. I think I sent two letters to the DNC on our letterhead, I believe.

Question. Okay. That are?

Answer. In here, they should be in here.

Question. Well, I am saying this is a housekeeping matter and I did it this way just to check on that because it seemed there were very few documents on the letterhead.

Answer. Okay. But I have——

Mr. YEAGER. The record should reflect Mr. Ducheneaux hasn't had an opportunity to go through the entire package.

Mr. WILSON. Absolutely. And he is relying on my representation that these are the only documents.

The WITNESS. The five you submitted to me, FD–2, and, again, as Mr. Yeager says, I could flip through here and see, but you left off the two letters I wrote to the DNC and I think at least one of them appears on our letterhead, maybe not.

EXAMINATION BY MR. WILSON:

Question. Okay.

Answer. Because, just for the record, I don't keep hard copies of my computer letters, I put them on the computer, and when I print off the original letter, I print

it off on our letterhead, but the record in the computer does not necessarily have the letterhead. I have prepared a macro for fax purposes, and I prepared my own letterhead, and if you will look at the first—if you look at the second thing, this is a macro, computer macro, so in that case, when I print off the computer, it is on there, but when I print a letter off from the computer, I print it directly onto the letterhead, and the computer thing will not necessarily have our letterhead on it and that may be true of the DNC stuff; I'm not sure.

Question. Okay. Well, I will go back and check on that, and I know you are not going to go through this whole thing and it is just to try to get a very complicated thing resolved up front, so it is my understanding there are, in addition to these two documents——

Answer. There may be.

Question. There may be, okay, fine.

Answer. I believe this is most of them, but if I went through it, there may be.

Question. Fine. Do you prepare any billing records that you sent out on firm letterhead?

Answer. Yes, we send out to our clients quarterly, for almost all of them, there may be a couple exceptions, an invoice on our letterhead.

Question. Okay. This is not something we need to discuss terribly much now, but if there are any billing records that have any relationship to the Hudson Dog Track matter, it's my belief they would be responsive to our document request.

Answer. No, they are not.

Question. They are not?

Answer. I mean, just for the record, in all of this, as you will note if you went through here, we represent the Minnesota Indian Gaming Association; we represent them on a wide variety of things. My involvement, and my firm's involvement, in these issues are roles of our representation of MIGA, M-I-G-A, MIGA.

Our invoice is a very simple thing. Retainer, we send an invoice for the next succeeding quarter, any expenses, and whatever. There is nothing on those invoices that relate to the Hudson Dog Track. I would be glad to provide them to you, but I will tell you now there is nothing on there. They are very simple, but I would be glad to provide them to you.

Question. Well, I don't want to——

Answer. I did not submit them pursuant to subpoena because in my opinion they don't have anything to do with it.

Question. Are they itemized at all?

Answer. I will tell you what they are. They are an invoice for—we get paid in advance from MIGA. It varies from client to client. From MIGA we get paid a quarterly payment in advance, that is at the top, quarterly advance, quarterly retainer, X dollars. Any expenses we had for MIGA, for that year, is set out, taxies or transportation, you know. There is nothing in there on a particular project, or any particular work I might have done, there is nothing on there. I would be glad to submit it to you.

Mr. WILSON. If we can go off the record for just a moment.

[Discussion off the record.]

Mr. WILSON. Back on the record.

Just for the record, I will make a very quick statement about what was discussed off the record. Mr. Ducheneaux is very, very forthcoming and offered committee counsel an opportunity to review his records, and I expressed no need to have——

The WITNESS. Certain records.

Mr. WILSON. Certain records, absolutely, and I expressed no need for us to have those records, and we left this matter to be discussed between us at a later date, but I have not asked him for any of the records we just discussed a moment ago on the record.

EXAMINATION BY MR. WILSON:

Question. Mr. Ducheneaux, do you know whether the Minnesota Indian Gaming Association keeps records?

Answer. Not of my own knowledge, but obviously they do. I am almost certain they do, but not of my own knowledge; I don't see them filed.

Question. Do you know who the record keeper would be or do you know to whom you send correspondence when you correspond with MIGA?

Answer. At all times during this period I believe John McCarthy was the executive director, maybe toward the end. He then became a consultant to MIGA, but kind of de facto executive director. Most of my communications on MIGA business are with him. The organization has a chairman, an elected chairman. On occasions I would send things directly there, but in most cases, to Mr. McCarthy.

Question. When were you first aware that there was the possibility that the Hudson Dog Track might be used for gambling purposes, other than as a Greyhound track?

Answer. That is hard to say. I think that the earliest, and my records that I submitted tend to support this, the earliest that I was formally aware I believe was in around the end of 1992.

Question. And do you know how you became aware?

Answer. I know for certain that, formally, I was asked by Mr. McCarthy to review a draft tribal resolution that they were preparing, opposing the proposal, and I did do so and made some recommended changes in it. It is probable, although I cannot say so, it certainly is probable I had some awareness before that in discussions, but I don't remember that far back.

Question. When was your first professional involvement with the Hudson Dog Track?

Answer. That was, from my records, and my recollection, an October 20 memorandum to me from Mr. McCarthy, relating to that particular tribal resolution.

Question. October 20 of what year?

Answer. I'm sorry, 1992.

Question. And did you have any discussions with anybody at that time about being formally retained to work on matters involving the Hudson Dog Track?

Answer. That is not how our relationship with MIGA works. We are on a retainer, as I said, a quarterly retainer. We work on issues back here and provide advice and assistance on a variety of subjects when they ask for it. So there is no specific direction from the client saying you will work on, you know, Hudson Dog Track. There is nothing of that nature. I work on issues that come up and they need assistance on.

Question. And I would just like to ask you a very general question, and hopefully when I ask general questions like this, the theory is it might enable me to save time a little bit later on. I do have a number of documents and I would like to walk through each document with you. But if you could, to the extent you recall, please provide a sense of who was involved in opposition to the Hudson Dog Track proposal on a compensated basis?

Answer. On a compensated basis, I assume you are not asking about tribal officials.

Question. Well, I will ask you about tribal officials next?

Answer. I mean, they are compensated but not in the sense I think you are asking. Are you talking about lobbyists, lawyers?

Question. Lobbyists, lawyers, consultants, to one category, and then I will ask you about tribal officials following?

Answer. I would say that the chairman of the Minnesota Indian Gaming Association, who also was a tribal official, by the way, was involved in opposing the matter, since the organization, on behalf of its three member tribes, opposed it. John McCarthy, who at that time was I believe executive director, was involved in efforts to oppose it. Larry Kitto, a Minneapolis-based consultant, lobbyist, was involved in the opposition. The O'Connor-Hannan firm at some point became involved, and I don't know at what point. I think the lead person on that effort was Mr. Corcoran, Tom Corcoran. I believe Mr. Jerry Sikorski at some point was involved. Mr. Kurt Bluedog, who was a counsel for the Shakopee tribe, was involved. Virginia Boylan, who was with the Dorsey Whitney firm and a local D.C. representative of the Shakopee Sioux was involved at some point. I think there was someone named Scott Dacey was involved, and I think he was working, at that time, with the Onieda tribe of Wisconsin. That is pretty much my recollection. Again, this is not saying anything about tribal chairman and counsel members.

Question. Okay. And, again, when I ask you a question that is broad like that, and you do your best to recall, if you do recall somebody later, please go back and point that out. I understand it is difficult to come up with long lists of names on demand.

Could you please give me a list, to the best of your recollection, of the tribal entities that were opposed to the Hudson Dog Track?

Answer. Okay. I have to do that in two parts. First of all, all of the member tribes of MIGA were opposed because that was the position they adopted. At one time or another I think all but one of the 11 Minnesota tribes were member tribes of MIGA, I'm not sure. Any how, they were opposed because they were members of the organization and representing three very effected Minnesota tribes. The three Minnesota tribes that were felt directly affected and directly opposed the effort was the Mille Lacs Band of Chippewa, M-I-L-L-E L-A-C-S, Mille Lacs Band of Chippewa, the Shakopee Sioux community, and the Prairie Island Band of Sioux. They were very directly opposed and very strongly opposed to the effort.

In Wisconsin, the St. Croix Chippewa tribe was strongly opposed. At some point I think the Onieda tribe of Wisconsin indicated its nonsupport of the issue, and there was one other Wisconsin tribe that I don't recall, it is in my records, who at some point evidenced opposition to the proposal.

Question. If you could, MIGA is going to come up on a number of occasions during this deposition. If you could provide just a little background on the purpose of the Minnesota Indian Gaming Association.

Answer. The purpose is broadly set out in the name. It is an interest organization, a partially trade association, but mainly an interest organization, of the Minnesota Indian tribes that are involved in gambling activities, tribal gambling activities. Again, at some point I think every one of the 11 tribes was a member of the organization; they fall in and fall out. The board of the association is composed of the chairs of each of the 11 tribes that choose to pay dues and belong.

The purpose of the organization, very broadly and generally, is to protect and preserve the right of Indian tribes to engage in gambling activities as a means of developing revenue. That is the very broad purpose.

Question. Is MIGA funded by contributions from the member tribes?

Answer. Yes. They also hold trade shows and derive revenue from that.

Question. Does MIGA make political contributions?

Answer. Of my own knowledge, I do not know. I don't think so. I don't believe so, but of my own knowledge, I do not know.

Question. Now I am going to go through a little bit of laundry list here pertaining to meetings, and before we get to certain documents, I think there will be certain meetings that we will discuss at some length, but just so I can get an overview up front, hopefully again for the purpose of saving time later, what I would like to do is ask you about meetings that you had regarding the Hudson Dog Track with various branches of the government. First of all, did you attend any meetings about the Hudson Dog Track issue with any White House employees?

Answer. No.

Question. And just to try and make sure that we cover all the bases, I will read you five or six names and if one of them comes to mind that you had a meeting with, we can take it from there: Harold Ickes, Loretta Avent, Tom Schmidt, Leon Panetta, President Clinton, Vice President Gore, David Strauss, Peter Knight, Jennifer O'Connor, did you have meetings with any of those people?

Answer. I had no meetings with anyone in the White House, including all of those you have listed.

Question. Did you have any meetings with any DNC personnel, Democratic National Committee personnel, regarding the Hudson Dog Track?

Answer. Yes.

Question. How many meetings did you have with DNC personnel?

Answer. Let me say, I didn't have a meeting, I attended a meeting. I attended one meeting with DNC people, at which the Hudson Dog Track issue was discussed.

Question. Okay. And did you have telephone conversations with DNC personnel about the Hudson Dog Track issue?

Answer. I did not. Subsequent to the meeting I attended, I talked to Dave Mercer, but it was not about the Hudson Dog Track.

Question. Did you have any meetings with any employees of the Department of the Interior regarding the Hudson Dog Track issue?

Answer. Yes, I attended a meeting at which there were Interior personnel present, and the subject of the meeting was the Hudson Dog Track issue.

Question. Is it fair to say, then, that you attended one meeting with Interior personnel directly about the Hudson Dog Track issue? I mean, to just try and eliminate any number——

Answer. To the best of my recollection, I only attended one meeting where there were Interior Department officials, and the subject was the Hudson Dog Track, to the best of my knowledge.

Question. And where was that meeting?

Answer. I believe, although I can't say for certain, I believe it was Congressman Oberstar's office.

Question. And do you recall who from the Department of the Interior attended the meeting?

Answer. Mr. John Duffy, who was a counsel to the Secretary of the Interior, and Mr. George Skibine, who was the director of the office, the BIA Office of Indian Gaming.

Question. Have you had any telephone conversations with any employee of the Department of the Interior about the Hudson Dog Track issue?

Answer. I believe that Mr. Skibine called me once, and I don't recollect the tenor of the conversation. I believe it was in relationship, though, to the Hudson Dog

Track. He called me on the matter, as I recall. Do you want me to go through these or do you want to keep all of them?

Question. I don't want to put you on the spot and try and have you track down the conversation. Do you recall approximately when that conversation might have been?

Answer. That was at 2:00 p.m. on May 1st, 1995.

Question. Two things that will be astounding about this deposition, your memory is great and the record might reflect that you found a memo pointing that out, and I also really appreciate you spelling names of people for the benefit of the court reporter.

Answer. For the benefit of the record, I remembered that I included in the subpoenaed document a notice of a call to—or I think it was from, a call from Mr. Skibine on the issue and I just refreshed my memory.

Question. And do you recall why he telephoned you?

Answer. He at that time was reviewing the FETA trust application, that is a shorthand too, FETA trust application for the purpose, I suppose, of making a recommendation one way or another through the assistant secretary.

One of the key issues involved was the meaning and the intent of Congress and the particular part of section 20 of the Indian Gaming Regulatory Act. I was responsible for that language being included in the act, and we discussed what the intent of Congress was.

Mr. YEAGER. As a staff member?

The WITNESS. As a staff member.

Mr. YEAGER. For the Committee on Interior and Insular Affairs?

The WITNESS. Yes.

EXAMINATION BY MR. WILSON:

Question. Did you have any meetings—let me back up one second and I will just, again, for purposes of covering all individuals, I will read you a list of names and if anyone comes to mind of either being at a meeting you attended or you had any telephone conversations with, we can discuss that: Secretary Babbitt, John Duffy, Tom Collier, George Skibine, Ada Deer, Tom Anderson, Michael Chapman?

Answer. You mean Mike Anderson?

Question. Mike Anderson, I do mean. Kevin Meisner, Heather Sibbison or Tom Hartman, and bearing in mind, you did just discuss attending a meeting with Mr. Duffy and Mr. Skibine?

Answer. To the best of my recollection, the only contact I had with any official of the Department of Interior on the Hudson Dog Track issue was Mr. Duffy and Skibine in the meeting in Mr. Oberstar's office, if that is where it occurred, and my telephone conversation with Mr. Skibine that I mentioned. I do not recall meeting with anybody else at any time, other than that, on the Hudson Dog Track issue.

Question. Did you have any meetings with any individuals who were involved in the committee to re-elect the President?

Answer. I don't even know. I don't know anybody there that I am aware of. I don't know of anybody—I am not aware of it.

Question. And, again, for purposes of speeding through this, Terry McCullough is one name that comes to mind. Did you have any meetings or conversations with Mr. McCullough?

Answer. I have never met the man.

Question. Did you have any contacts, and by contacts I mean meetings or telephone conversations, with anybody at the Department of Justice about the Hudson Dog Track issue?

Answer. To the best of my recollection, I never talked to anyone in Justice about that.

Question. Okay. And just for completeness sake, does that answer include the ongoing civil litigation in Wisconsin?

Answer. I have not talked to anyone in the Justice Department about that litigation, nor have I been contacted by them.

Question. And did you have any contacts, either meetings or telephone conversations, with any Members of Congress or staff of Members of Congress, other than the one that you mentioned earlier, involving Congressman Oberstar?

Answer. As my papers indicate, I attended a meeting with Senator McCain, who was then chairman of the Indian Affairs Committee. I don't recall ever talking to any other, other than the meeting at Oberstar's office and the meeting in McCain's office, I don't recall meeting with or discussing with any other Member of Congress or staff member the Hudson Dog Track matter.

Question. Bearing in mind this is a little bit broad, but have you ever worked with, and by worked with I am trying to get at a close business relationship or work in the same office, with either Mr. Collier, Mr. Duffy, Miss Deer, Mr. Skibine, Mr. Anderson, Mr. Chapman or Ms. Sibbison?

Answer. Did I ever work with them?

Question. I am just trying to get a professional relationship where you were working on the same staff or whether you have had a close business relationship, and I am trying to eliminate——

Answer. I have never worked, to the best of my knowledge, in the same office with any of those individuals. Ada Deer is a personal friend of mine, a friend longstanding. George Skibine is the brother of my former deputy counsel on Interior and Insular Affairs Committee. I know Mike Anderson socially but we are not close friends. You have to understand the Indian community in D.C. is pretty small and we know each other.

Mr. YEAGER. I have some concerns, if you will excuse me, about the breadth of that question, particularly since Mr. Ducheneaux isn't represented by counsel. I just don't want him to be in a position where if he neglects to mention somebody—the question is the closeness of the relationship, so that he has not created a problem for himself.

Mr. WILSON. I understand that and I am not going to follow up on that and there is no intent to trap anybody here. I am just trying to work out relationships, and I think you had pretty much gotten to the end of the answer.

The WITNESS. I can't remember all the people's names you raised, but I have never had an employment relationship with any of them. I have met with Secretary Babbitt on a couple of occasions, unrelated to this issue, but, you know, we don't go to the same dinners and that kind of stuff.

Mr. WILSON. I will provide for Mr. Ducheneaux a document which is marked FD–3, and it is a memorandum to a Mr. McCarthy from Mr. Ducheneaux.

[Ducheneaux Deposition Exhibit No. FD–3 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. If you could take just a moment to look at that document, please.

Answer. Yes.

Question. The date on this document is August 11, 1997. Why did you draft this memo?

Mr. YEAGER. Excuse me, I am going to object. Were you representing MIGA at the time you wrote this letter?

The WITNESS. Yes, I was.

Mr. YEAGER. I have concerns about you inquiring into privileged material. I just want to advise you of that.

The WITNESS. I have no problem. I appreciate your assistance on that, but I don't have any problem with that.

EXAMINATION BY MR. WILSON:

Question. Okay.

Answer. Your question was?

Question. Why did you draft the memo?

Answer. At the request of Mr. McCarthy. He was being deposed in Minnesota and there are two cases going on up there. I am not very familiar with them. One is in the Federal District Court, and I think there is a State case in Wisconsin, but I am not sure on that. He was being—some of his records were being subpoenaed, as the consultant to MIGA, and he wanted, from me, the kinds of things that he and I had interacted to, and I searched my files, as I did for you, and my records, and sent him what I had, to the best of my knowledge.

Question. Referring to the first sentence of the second paragraph, which refers to a meeting with the Minnesota congressional delegation, do you recall where this meeting was?

Answer. I thought we covered that.

Question. I think you have.

Answer. The meeting, I believe, and I could be wrong, was in Mr. Oberstar's office. I would have to go back through my records, I can find out, but I believe it was Mr. Oberstar's office.

Question. Do you recall whether any other Congressmen were at that meeting?

Answer. Yes. I can't recall all of them. I believe that Mr. Sabo was there. I know Mr. Vento was there. I don't even remember all their names anymore. Mr. Minge might have been there. That is—no, I can't recall all of them.

Question. Do you recall whether Mr. Duffy or Mr. Skibine made any statements about the Hudson Dog Track matter at the meeting?

Answer. I don't think they made any particular statement. I think that they were there more to hear the concerns of the Minnesota tribes. Obviously, there was conversation but they didn't open up with a statement or anything, no.

Question. Do you recall that they made any comments about the Department of Interior's position at that time, about the Hudson Dog Track?

Answer. I don't recall any specific statements. Again, the purpose of the meeting was to bring to their attention the concerns of the Minnesota tribes about what was going on, to find out what the status of the thing was, and they were responsive to those kinds of inquiries, but I don't remember any specific conversation.

Mr. WILSON. I have now provided for Mr. Ducheneaux a document which has been marked Exhibit FD–4, and the first page is what appears to be a fax cover page from the O'Connor & Hannan firm.

This document refers to a meeting that we have already discussed, and I don't want to go back over things we have discussed, but it refers to a meeting at Chairman Fowler's office at the DNC.

[Ducheneaux Deposition Exhibit No. FD–4 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I have gotten ahead of myself there, because my question is do you remember where the meeting referred to in this fax took place?

Answer. Generally, it took place at the DNC offices here in D.C. I believe, though I am not certain, that it took place in Mr. Fowler's office, but I am not certain of that.

Question. Do you know how this meeting was arranged?

Answer. I believe it was arranged through the O'Connor & Hannon firm.

Question. Did you have any involvement in setting up this meeting?

Answer. I had no involvement in setting it up.

Question. Do you recall what was discussed during the course of the meeting?

Answer. I don't have any specific recollections of conversations. The purpose of the meeting, and I believe the purpose was carried out, was to have the tribal representatives express their concern about what they felt was the failure of the Bureau of Indian Affairs to adequately consider the objections they were raising to the proposal, their outrage that they were being treated like that, and a request that Mr. Fowler see if the White House could convey that to the appropriate people in the Interior Department.

Question. Do you recall whether the name of a corporation was, I will refer to as Delaware North, came up during that meeting?

Answer. I don't recall whether it did.

Question. Do you recall whether the political affiliation of any of the applicant tribes or applicant tribe members was discussed at that meeting?

Answer. I think generally the tribal representatives who were there, and I thought there were more, on the document you submitted there, there were not as many people as I thought were there, they indicated to Mr. Fowler that, at least the Minnesota tribes did, that they had been strong supporters of President Clinton in his race for President. They had engaged in getting out the vote efforts on their reservations. They had contributed to the Democratic candidates routinely, and they were outraged that the Bureau of Indian Affairs was not giving adequate consideration to their objections, and felt that, particularly since one of the leaders of one of the tribes was a Republican, and also the Republican Governor of Wisconsin seemed to be getting some special treatment.

Question. You answered the question I asked about Delaware North, but do you recall whether Senator D'Amato's name came up during that meeting?

Answer. I don't recall it did.

Question. Do you know why this list was sent to——

Mr. YEAGER. Have you seen this document before?

The WITNESS. I have not. This is the first time I have seen it.

EXAMINATION BY MR. WILSON:

Question. I was going to ask you if you knew why, and I am not sure it was forwarded to Chairman Fowler's office, but the text of the message here is the list of the people at the meeting with Chairman Don Fowler. "Please forward this information to Chairman Fowler's office."

Do you have any knowledge as to why the list was requested to be sent on to Chairman Fowler's office?

Answer. I do not.

Mr. YEAGER. While we are on the subject and while you are shifting papers, I may as well ask now, did Chairman Fowler solicit a contribution from you at that meeting?

The WITNESS. No.

Mr. YEAGER. Did anyone else at the DNC solicit a contribution from you at that meeting?

The WITNESS. No.

Mr. YEAGER. Was it hinted or suggested that anyone should make a contribution at that meeting?

The WITNESS. Not to my knowledge, no.

EXAMINATION BY MR. WILSON:

Question. If we could return for a second to Exhibit FD–3, and in paragraph 4 it refers to a meeting that we have already discussed with Senator McCain.

Answer. Yes.

Question. Do you recall whether Delaware North was discussed at that meeting?

Answer. I don't recall specifically. I think it did come up, it was raised, but I don't recall specifically.

Question. Do you know who brought Delaware North up?

Answer. It would have been either who was at the meeting—I am not sure O'Connor was at the meeting. It might have been someone else. I put O'Connor here, but I am not sure. It may have been raised by Mr. Corcoran. It was not raised by me.

Question. Do you remember what was discussed about Delaware North at the meeting?

Answer. No, I don't remember exactly. I can give you my impression.

Question. No, we will stay away from that for now.

Mr. YEAGER. If I might, I haven't objected to this because I understand you are trying to get to the nub of things, but counsel has made reference to Delaware North. I don't think the record really reflects what Delaware North is, so I will just ask you now, do you know what Delaware North is?

The WITNESS. I have only third or fourth hand information, which I would be glad to give.

Mr. WILSON. I have a long series of questions about that that I will bring up later. If you want to give a general impression, that is fine.

The WITNESS. I have no personal knowledge of Delaware North or anybody in the organization. I understand that it is a corporation based in Buffalo or Rochester, I am not sure which. The reason it came up I think in this issue was because of a Wall Street Journal article of a certain date which I had a copy of at one time, but I don't have a copy now, where it was suggested that this corporation had some affiliation with organized crime.

In a document I do have that was provided to me, there was some indication that this corporation was involved in the Hudson Dog Track matter. There is, was then and is now, were then and have been now serious allegations that organized crime was infiltrating Indian gambling. This has been refuted on numerous occasions before congressional committees, but the Indian tribes in general, and I represent many or several Indian tribes that are involved with gambling, are very incensed about it and very sensitive to it.

That is my knowledge of Delaware North. I have very little knowledge of it.

EXAMINATION BY MR. WILSON:

Question. I would like to return to this later, but given what you have just said in your statement, am I correct in thinking that Indian tribes that you are involved with are very sensitive to ensuring that no inaccurate statements about affiliations with organized crime are made that involve Indian gaming?

Answer. Obviously I would not want inaccurate statements. I represent Indian tribes, and I would not want inaccurate statements made.

Mr. YEAGER. I have to say that question appears to relate to a libel suit pending in the District of Columbia. It strikes me as unusual that this committee would be interested in that suit. Your question suggests that it is, and it strikes me as unusual that the committee has taken such an unusual interest in the Wisconsin lawsuit.

Mr. WILSON. Well, I am pointing this out right now, it surprises me, your clairvoyance is extraordinary, because I wasn't thinking about any lawsuit. I am thinking about a document I am going to show the witness in a few moments. So if you want to make comments about what I am thinking about, you can continue to do so, but I am not thinking about that.

Mr. YEAGER. It relates less to what you are thinking about. I think there is a letter, and I will not get into the contents of the letter, but there is a letter from the ranking member to the Chairman of this committee which refers to a potential leak by members of your staff to litigants in the Wisconsin lawsuit. To my knowledge, the Minority has never received a response to that letter.

This question, which appears to relate to a lawsuit in the District of Columbia, makes me wonder why the committee has taken an interest in this issue and has taken an interest in those two lawsuits.

Mr. WILSON. Well, I will just make the representation now that this question, this line of questioning, relates to a document that we will get to in due course. I am perfectly happy to have that speculation on the record.

EXAMINATION BY MR. WILSON:

Question. Returning to the document that we were looking at, which is marked FD–3, and returning to the meeting with Senator McCain, do you recall who attended the meeting with Senator McCain?

Answer. In the document I indicate I, O'Connor and Corcoran attended. I am not sure that that is an accurate recollection. I am not sure whether O'Connor was there or not, and the best evidence of that would be them. I do recall very clearly that I was there, Senator McCain was there, and Mr. Corcoran was there. There was another party. I am not sure who it is, or who it was.

Mr. WILSON. I have provided for Mr. Ducheneaux a document which has been marked FD–5.

[Ducheneaux Deposition Exhibit No. FD–5 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. It is on O'Connor & Hannan letterhead, a memorandum from Mr. Thomas Corcoran to Lewis Taylor. It mentions in the second paragraph a request to Mr. Ducheneaux to talk to George Skibine to clarify a matter described in the memorandum.

Do you recall whether you spoke with Mr. Skibine?

Answer. That may be my call. I thought it was a call from Skibine. It may have been my call. My call to Skibine was March—or May 1st. I don't recall talking to Skibine in response to Mr. Corcoran's call, but I may have. But I don't recall that. I never called Oberstar or Vento.

Question. In the first paragraph here, and bearing in mind this is not a document that you provided to us, so it is entirely possible you have never seen it before——

Answer. I have not.

Question [continuing]. The first paragraph speaks about a report from a Kevin Meisner in the Office of the Solicitor.

Do you know what type of report Mr. Meisner gave to Mr. Corcoran?

Answer. No, I do not.

Question. Do you know of any other or any meetings at all between opponents of the Hudson Dog Track and Kevin Meisner?

Answer. I am not aware of any.

Mr. WILSON. I have given Mr. Ducheneaux a document that has been marked Exhibit FD–6.

[Ducheneaux Deposition Exhibit No. FD–6 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. This appears to be a handwritten note on the letterhead of David Mercer to Mr. Ducheneaux.

Does this letter refer to the meeting that we have already discussed with Chairman Fowler?

Answer. Yes. As you can see, it is on a card. It is not a letter, it is a card.

Mr. WILSON. I will provide Mr. Ducheneaux with a document marked as Exhibit FD–7.

[Ducheneaux Deposition Exhibit No. FD–7 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. If you could take just a moment to review that, please.

Answer. All right.

Question. Do you know whether this is a letter that was sent to Mr. Mercer?

Answer. I sent this letter to Mr. Mercer.

Question. The format of this letter, if you could provide some background to help me out, is a letter that is not on letterhead and it is not signed, so it is—it appears not to be a copy of a letter that was actually sent.

What does this document represent?

Answer. As I indicated at the beginning of this interview, deposition, I don't keep hard copies of—very few documents do I keep hard copies of, but I do them on the computer. I type the letter or document into the computer and then print it out on letterhead. I don't have the original, obviously. I think you do. It was on letterhead. To the best of my recollection, I did send it. In response to your subpoena, I printed this out from the computer. That is why it is not on letterhead.

Question. Do you know how long the meeting with Chairman Fowler took?

Answer. I don't have a recollection. I would say somewhere around an hour. I don't have a recollection of it.

Mr. WILSON. If we could go off the record for just a minute.

[Discussion off the record.]

Mr. WILSON. Back on the record.

I have provided Mr. Ducheneaux with a document that has been marked FD–8.

[Ducheneaux Deposition Exhibit No. FD–8 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. There are two sentences here that I wanted to ask you a few questions about. The second sentence of the first paragraph talks about, or states, "The Minnesota tribes are very grateful to you and the Chairman for your assistance in advising the President and the Secretary on this matter."

Do you have any knowledge of whether Mr. Mercer or anybody at the DNC did in fact advise either the President or Secretary of the Interior——

Mr. YEAGER. Do you mean at the time he wrote this letter, July 27, 1995?

EXAMINATION BY MR. WILSON:

Question. Either then or now, I am asking whether you have any knowledge.

Answer. Let me talk about now. I don't have any independent knowledge of that. I read the paper, I watch the TV and I have heard the testimony. But I then, neither then nor now, have any independent knowledge of any contacts with the White House or with the Secretary by anybody at the DNC.

Question. At the conclusion of the second paragraph in this letter there is a clause here that talks about something that would cement the support of the tribes to the administration.

Answer. Yes.

Question. What were you referring to when you made this statement in the sentence at the end of the second paragraph?

Answer. What I was referring to was what I say in the third paragraph, the third and fourth paragraphs. If you want me to say it for the record, I will.

Question. No, that is fine.

Mr. WILSON. I have provided Mr. Ducheneaux with a document that had been marked as Exhibit FD–9.

[Ducheneaux Deposition Exhibit No. FD–9 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. This appears to be a copy of a faxed newspaper article. There is a notation on the side, "to Frank from Scott." I just wanted to know who Scott is?

Answer. I think I indicated earlier that one of the people involved for compensation was a man by the name of Scott Dacey. I believe at that time, I don't know whether he still does, he was working with the Oneida Tribe of Wisconsin. That is who that is.

Question. Did you have any other contacts with Mr. Dacey about this particular article?

Answer. I think in my log or the thing I provided to Mr. McCarthy, I believe I did talk to Dacey on two or three occasions. I would have to check my log. I think I did have conversations with him or his partner. I think he had a partner, Cindi Broydrick, in Wisconsin. He was down here.

Question. Do you know where Mr. Dacey was working at the time?

Answer. Where physically?

Question. The name of his employer.

Answer. He was working with a firm known as Broydrick, Broydrick and Dacey, and he was the Washington, D.C. person for the firm, which I believe—this is my recollection, a firm that was based in Wisconsin somewhere. He has subsequently parted with that firm and is in some other relationship. I don't know.

Mr. WILSON. I have given Mr. Ducheneaux a document that has been marked Exhibit FD–10.

[Ducheneaux Deposition Exhibit No. FD–10 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I think you have already answered my question about the way that you have produced these documents. Do you recall whether this letter was sent?

Answer. This letter was sent, yes. Not on letterhead. This is a personal letter.

Question. At the beginning of the deposition we discussed meetings that you did attend, or as the case may actually and correctly be, that you did not attend, at various branches of the government.

Do you know, and I will try and break this down from subsequent news articles that might provide more information than you would have had access to at the time, but as of, for want of a better day, July 14 of 1995, did you know of any meetings that were held at the Department of Interior between Department of Interior officials and any of the compensated individuals that we discussed at the beginning of the deposition, relating to the Hudson Dog Track matter?

Answer. Could you restate the question? At what times?

Question. Before July 14 of '95, before the application for the dog track was denied, did you have any knowledge of meetings with Department of Interior officials and any of the opponents of the Hudson Dog Track that we discussed at the outset of this deposition?

Answer. Prior to the denial action?

Question. Yes.

Answer. I don't have any knowledge of any meetings that were held.

Question. And just to finish that off, do you recall whether you prepared anybody, you know, bearing in mind you may not have specific recollection of a particular meeting, do you recall preparing or discussing with anybody the Hudson Dog Track issue in advance of their going to meet with Department of Interior officials?

Answer. No, I do not.

Question. I will ask the same question of the DNC or any DNC employees: Do you recall either preparing anybody or discussing the Hudson Dog Track issue in anticipation of going to meet with any DNC employees, apart from the one meeting that we have already discussed?

Answer. No.

Question. Do you have any recollection of either discussing or preparing anybody for a meeting about the Hudson Dog Track issue, again, before July 14, 1995, in terms of your knowledge, with any White House officials?

Answer. I provided information to the Minnesota Indian Gaming Association, John McCarthy, and to others. I have never specifically briefed anyone to go meet with White House people on this issue.

Mr. WILSON. I have given Mr. Ducheneaux a document that has been marked FD–11.

[Ducheneaux Deposition Exhibit No. FD–11 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. It is a memorandum on the MIGA letterhead to all interested parties from John McCarthy. Could you take just a moment to review this memo, please.

Answer. I have a general knowledge of this.

Question. Did you prepare this memorandum?

Answer. No.

Question. Did you assist in the preparation of the memorandum?

Answer. No.

Question. Do you know who received, if anybody, received this memorandum?

Answer. I received it. Who else received it, I don't know.

Question. Do you know who—did you have any discussion with Mr. McCarthy about the intended destination of this memorandum?

Answer. No, I did not.

Question. On the second page of the memorandum, there is a section that is marked "political perspective," and there are three points in this section. If you could take just a moment to look through those three points marked A, B and C.

Answer. All right.

Question. Do any of these points or any part of these points have any importance for the permitting process for the trust application made by the Indians in the Hudson Dog Track matter?

Answer. Are you asking me if any of these three issues should be considered in approving or disapproving such a thing?

Question. Correct.

Answer. I don't know.

Mr. WILSON. I have given Mr. Ducheneaux a document that is marked Exhibit FD–12.

[Ducheneaux Deposition Exhibit No. FD–12 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. It is a letter on MIGA letterhead to a Ms. Denise Homer from Stanley Crooks, who is vice chairman of MIGA. If you could take just a moment to look at that.

Also, there are three separate pieces of correspondence in what I have given to Mr. Ducheneaux. The second is a letter on the Department of Interior letterhead, two pages long, and the third is another letter on the Department of Interior letterhead that is also two pages long.

Answer. Yes.

Question. Take just a moment.

Answer. I know this.

Question. One of the points made on the first page of the letter on the MIGA letterhead is that in paragraph 2 it says, "We do not feel that we have had adequate consultation as detailed in the Indian Gaming Regulatory Act."

Answer. Yes.

Question. Actually, I will back up for a moment. First of all, did you have any part in preparing this letter?

Answer. I don't think so. I don't believe so.

Question. Returning to what I was asking you about pertaining to the second paragraph of this letter, where it says, "We do not feel we have had adequate consultation as detailed in the Indian Gaming Regulatory Act," do you have any knowledge as to why MIGA made this point to Ms. Homer?

Answer. Yes.

Question. If you could just provide us with a general——

Answer. It would take me awhile.

Question. The background. Just if you can provide a very general——

Answer. As I indicated to you, I, as a former counsel to the House Interior Committee, played a major role in the development of the Indian Gaming Regulatory Act, and in particular section 20 which governs the process of taking lands into trust off reservations for gambling purposes. This is a major role I played in all of this.

The proposal was first introduced by Congressman Bereuter as a separate bill 3 years before we passed the act. His legislation would have basically prohibited it. Over the course of the consideration of the legislation, that changed quite a bit. The act was finally passed and the decision was made by Chairman Udall not to pass the bill, for political reasons, but rather to work something out in the Senate that was acceptable to everybody over here in the House. If it was, then just to pass it on suspension without referral.

So I spent time negotiating quite a bit over in the Senate, and if you look at section 20 of the act, it requires that the Secretary of the Interior, upon a request, make a two part determination: one, whether the transfer would be in the best interests of the petitioning tribe or tribes; two, whether it would not be adverse to the local surrounding community.

In doing that, he was to consult with local governments. I insisted with the Senate that there be included in there the phrase "and nearby Indian tribes."

The belief of the parties, and the tribes of Minnesota in particular, was that the Bureau of Indian Affairs at the agency and at the area level and eventually at the central level were not carrying out the intent of Congress in looking at the impact that the transfer would have had on nearby Indian tribes, that is to say, those three Minnesota tribes. That is what is being discussed here.

Question. And bearing in mind what you have said has many more complicated ramifications than your summary just then, is it fair to characterize that this was a disagreement over the decisions made regarding substance, or as opposed to the amount of time that people had had to comment on——

Answer. Both. There were both procedural objections that the Minnesota tribes were raising—I say Minnesota, there was the Wisconsin tribe but they were not a member of MIGA. The Minnesota tribes were objecting to what they felt was denial of due process in the procedures, particularly at the area office level, and they were objecting to the substance, lack of substance consideration of their objections.

As you will note, the response they got from the area office was that NEPA did not require consideration of economic impacts or political impacts. And the response

from the Minnesota tribes was this was not just governed by NEPA, but by NEPA and section 20, where the Secretary was required to consult with Indian tribes about the impact on nearby Indian tribes. So it was both procedural and substantive.

Question. Referring to the second letter in the materials marked Exhibit FD–12, in the fourth paragraph it is stated that "It is noted that MIGA took advantage of the opportunity to comment about their concerns on the socioeconomic impacts this proposal may have on surrounding tribes on January 22, 1994, in a letter to the Minneapolis Area Director." That paragraph continues.

Again, bearing in mind this is a complicated issue, is it your belief that there should have been an opportunity to provide an additional commentary period than that which MIGA took advantage of in this situation?

Answer. I am not familiar with what was happening up there at that time in the area office. What I am going to respond to you is what I got from talking to people that were, and from the documents that I have read.

The act requires the Secretary to consult with nearby Indian tribes. The area director felt that a letter, the comment period and receiving a letter was sufficient consultation. The tribes did not think so. They wanted the ability to come in and sit down and meet with her and lay out their concerns, economic, political and otherwise, and they were denied that opportunity.

Question. When you say denied that opportunity, you are referring to——

Answer. A meeting——

Question. Meetings with the Secretary of the Interior?

Answer. No, with the area director, Denise Homer. The tribes were not given the opportunity to come in and meet with her and lay out their concerns. She said, I think somewhere in the documents she says, well, you know, you sent us a letter, and that was consultation. The tribes did not feel that that was responsive to section 20.

Mr. WILSON. I have given Mr. Ducheneaux a document that has been marked Exhibit FD–13.

[Ducheneaux Deposition Exhibit No. FD–13 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. It is a letter on MIGA letterhead to Mr. Stanley Crooks and it is signed by John McCarthy. Could you just take a moment to review that.

Answer. Okay.

Question. The one thing I am most interested in is the second sentence of the first paragraph. It is stated that "It appears that Mr. George Skibine, Director of the Office of Indian Programs, is fast approaching completion of his report on the fee to trust request concerning the Hudson Dog Track."

Do you know of a report prepared by Mr. Skibine?

Answer. I do not. In the normal course of procedures, I understand he would have had the documents from the area office with the recommendations of the area director and whoever else. He would have gone through it. I think he would have consulted with the Solicitor's office. At some point, I don't know this, I have never seen the report, but at some point in the normal course of things, he would have provided a report up through the channels eventually to the Assistant Secretary. But I have never seen the report.

Question. Do you know whether Mr. Skibine did ultimately produce any type of report?

Answer. Again, I have never seen the report. It is my understanding that he did submit a report, but I have not seen it.

Question. Okay. And where have you gained that understanding from?

Answer. Well, from two things: First, I think, from communications such as this, where he was apparently preparing a report. But just from the normal—that would be the normal bureaucratic process, as I understand it, on Indian trusts, is that his office would have reviewed it and made certain recommendations. It is just the normal procedure, and I assume it was followed.

Mr. YEAGER. Would it be necessarily called a report? Could it have been a recommendation?

The WITNESS. Yes. I don't know what form it would have taken, but in the normal course of events, he would have sent it forward to someone higher up in the chain with some recommendation. But I have never seen it.

EXAMINATION BY MR. WILSON:

Question. In the third paragraph of this letter, the first sentence reads, "Mr. Skibine and Mr. Duffy indicated that they would accept any documentation that we had on this issue and that they would hold off any decision pending our submittals."

Did you have any discussions with Mr. Crooks or Mr. McCarthy about Mr. Skibine and Mr. Duffy holding off on any decision pending any submissions?

Answer. No, I don't. But I think what that is referring to, if I could give you my opinion, and I don't know, but I think what that is referring to is the comments that Duffy and Skibine made in the Oberstar meeting, that they would be willing to accept further documentation. I don't know that. I never discussed that with McCarthy or Crooks.

Mr. WILSON. I am coming down to the last couple of questions here.

The WITNESS. Good.

Mr. WILSON. Just so you know whether we are in the process.

I have given Mr. Ducheneaux a document which has been marked Exhibit FD–14.

[Ducheneaux Deposition Exhibit No. FD–14 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. If you could take just a moment to review this.

Answer. Okay.

Question. This is a document that you produced to us, and it appears to be—it is numbered at the bottom, page 12, and in the production we don't have earlier pages than this. It has got an entry at the top which is starred, and it is "2nd Mortgage Holder, Delaware North Companies." Actually, I will take a moment if you would like to try and locate this in the overall production.

Answer. The reason I want to is it is part of four or five pages. You can go ahead and ask your question.

Mr. WILSON. If we could go off the record for just a second here, please.

[Discussion off the record.]

Mr. WILSON. If we could go back on the record, please.

We have just re-marked this exhibit. It is now an exhibit that is four pages in length, it is marked Exhibit FD–14. The cover page is headed at the top Broydrick and Associates, dated April 10, 1995. It is to Frank Ducheneaux from Cindi Broydrick. The fax is sequentially numbered, and it contains a number of pages that are not sequentially numbered that were received by Mr. Ducheneaux in this order.

EXAMINATION BY MR. WILSON:

Question. The second page, before I get into the second page, I will ask you a very general question: Do you know why this fax was sent to you?

Answer. I don't have a specific recollection of why it was sent. As I indicated earlier in my statements, this firm, Broydrick and Associates, I believe were working with the Oneida Tribe of Wisconsin, and they were providing information relating to what was going on in the State of Wisconsin on the proposal.

I think it was provided to me by Cindi Broydrick. I talked to her about twice on the phone, mainly because of the items relating to Tom Diehl, I don't even remember who he is anymore, and the Delaware North notation.

Question. Turning to the Delaware North notation, on the second page of this fax, which is page 3 of the fax transmission and marked page 12, there is an entry which is starred. It says "2nd Mortgage Holder," and underneath that it says "Delaware North Companies, One Delaware North Place, 438 Main Street, Buffalo, New York 14202."

Did you have any discussions with Ms. Broydrick or anybody else at her firm about this fax transmission?

Answer. I was provided, I think by Mr. Scott Dacey, at some point, I think I mentioned this to you, a copy of a Wall Street Journal article which discussed the relationships of Delaware North Corporation—I don't have that any more, I don't know where it is—with the intimation that Delaware North was involved in the Hudson Dog Track issue. And I think Dacey told me to call this Cindi Broydrick, who was a Wisconsin associate, and talk to her about it. I did.

They were involved in the State lobbying effort against this proposal, the Broydrick firm. I don't remember the conversation, but it revolved around what was going on up there, where Tommy Thompson was on the issue. He vacillated back and forth.

And the involvement of the Delaware North Corporation, she subsequently faxed to me, I think it is five pages and not four, but she subsequently faxed to me the

material you provided as Exhibit FD–14, which appeared to be excerpts from some other document, and I don't know what that document is.

Question. Do you recall whether you had discussions about what this document was?

Answer. No, I don't recall discussing it, and I don't know what the document is. It appears to be, just from the four pages that she provided to me, to be in connection with information that had to be provided by parties associated with the Hudson Dog Track proposal. But I don't know.

Question. On the page, the second page of this exhibit that we have been talking about, there is a handwritten notation at the bottom, and it says Wisconsin D-E-L-L-S. Do you recognize the handwriting?

Answer. No, I do not.

Question. Is it your recollection that when you received this document, you received it with this handwritten notation upon it?

Answer. Yes. My recollection is what was—this is as I got it, and I have no—I think I know independently what Wisconsin Dells is, but I have no knowledge of why it is on here and who put it on here.

Question. Based on your independent knowledge, what is Wisconsin Dells?

Answer. I think Wisconsin Dells is another dog track or race track in Wisconsin. It is a town, I think, in Wisconsin, and I think there is a race track there, but I am not familiar with it.

Question. And is it your recollection that this document was provided to communicate to you a relationship between Delaware North and the Hudson Dog Track?

Answer. Among others. As you will see, there are four pages that she faxed, and they are, in order, this page 12 which notes—I don't know what this means, but it notes that Delaware North was a second mortgage holder. On what, I don't know.

The second page is a list, I think, of people who had a financial interest, and I am just guessing, and I don't recall why she submitted that.

The third one again contains a Delaware North notation, and also a Bank of Wisconsin Dells, and other information. I don't know why she sent it to me.

The last one is information that does not mean anything to me.

Question. Did you ever communicate with anybody that there might be an affiliation between Delaware North Companies and the Hudson Dog Track?

Answer. I did not communicate that.

Question. So just trying to summarize this, you received this, and I think from what you said before, you have heard others communicate that there might be an affiliation, but you did not tell anybody else that there might be an affiliation?

Answer. As I indicated to you, I received from Dacey, as I recall, the Wall Street Journal article which intimated that there at least in the past had been some evidence of an affiliation of Delaware North with organized crime. I gave that to someone. I don't know. I don't have it. It is conceivable I talked to someone. I don't recall discussing this in any manner.

Mr. YEAGER. Do you know what this document is? Not the fax cover sheet, but the attached items. It appears to be part of an application.

The WITNESS. Yes. I had a discussion with Mr. Wilson about that. I don't know what it is. I don't know what the document is. It appears to be information submitted in response to a form and in connection with the Hudson Dog Track, but I don't know that. That is just my guess.

If it is going to be a while longer, can I go down the hall?

Mr. WILSON. I have two more exhibits. It will probably take 10 minutes.

[Discussion off the record.]

Mr. WILSON. Back on the record, please.

I have given Mr. Ducheneaux a document that has been marked Exhibit FD–15.

[Ducheneaux Deposition Exhibit No. FD–15 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. This is a letter written on the O'Connor & Hannan letterhead to Mr. Harold Ickes from Patrick O'Connor. Again, this is not from your production.

Have you ever seen this letter before?

Answer. I have not.

Question. And if you could take just a moment to review, there are five points made on page 2 of this document, and I just want to stay very briefly with this theme of Delaware North. The second point states, "Senator Al D'Amato supports this project because it bails out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Delaware North is located in Buffalo, New York."

I think we have covered this fully, but I will ask again just to make sure. Did you have any conversations with anybody, any of the O'Connor & Hannan employees working on the Hudson Dog Track matter, about the Delaware North issue?

Answer. Did I have conversations with anyone at O'Connor & Hannan?

Question. About the Delaware North issue.

Answer. No. As I indicated, I was in a meeting where it was raised, if I recall. It was raised by someone, but I did not discuss this issue with anyone.

Question. Just recapitulating, do you recall what was said?

Answer. No. I think it was in the context, as I said in my previous answer, the Indian tribes are very sensitive about what we believe are basically false charges, but they keep coming up. Senator Reid raises them, everybody and his brother raises the specter of organized crime taking over these little Indian casinos in remote areas. We are very sensitive. Indian gaming and Indian tribes are under attack in this Congress routinely, and we don't need this kind of reality. And I think it was raised about the Chairman of the Indian affairs committee in the Senate by, I believe Mr. Corcoran, I can't say for sure. You should ask him, in that context.

Mr. YEAGER. Is it your view that those concerns about organized crime playing a role in Indian gaming are entirely unfounded?

The WITNESS. I believe, and this has nothing to do with it, but I am willing to put it on the record, I believe there have been attempts and actually have been—has been some temporary successes of criminals of more or less organized capabilities, who have done so. They have been ferreted out by the rapid league. FBI keeps close check on it, as they said in their testimony before these congressional committees. This is all opinion, but I am glad to say it.

You know, it is not very cost-effective for an organized crime outfit to go into a little small casino in Cass Lake, Minnesota. But obviously where there is cash sitting on the table, there are going to be shady characters inside and outside, so we don't need this kind of reality.

Mr. WILSON. I have no further questions.

Mr. YEAGER. I think I will be brief.

The WITNESS. Okay. Good.

EXAMINATION BY MR. YEAGER:

Question. Taking you back to Exhibit 14, the first page of that exhibit. It appears to be a memo from Cindi Broydrick to you, dated April 10, 1995. At the bottom of the memo it states: TMD management is Tom M. Diehl. John Trie's told me he would be given the management contract for St. Croix at 85 percent, exclamation point?

Answer. I should have caught that.

Question. Do you know what that means?

Answer. Yes. If a management contract to operate a tribing gaming casino is let, the management company could ask for a certain percentage. That would be in violation of the law and wouldn't have been approved because the law limits a management contractor to, what is it, I can't remember, 35 percent, no more than that. There is a limitation that is way below that.

Question. You said earlier there were two prongs to the section 20 analysis; one related to detriment to the surrounding communities. What was the other prong?

Answer. The first part of the termination by the Secretary has to be whether the transfer would be in the best interest of the tribe requesting it.

Question. Do you think this sort of deal would have been in the best interest of the tribe, an 85 percent cut to the management company?

Answer. No. I mean, first of all, it never would have been approved, because the law prohibits it, but it wouldn't have been in the best interest. That is why we passed the law. At the time there were companies that were gouging tribes to that extent, and so the law would limit it to 35 percent.

Question. Counsel had asked you general questions at the very beginning of the deposition about which lobbyists and attorneys and tribal members were involved in the effort to defeat the casino project. I am going to, as I suspect that we are not going to call any of the lobbyists and attorneys who were proponents of the project, I will ask you if you know about those people who were involved in the lobbying effort, not which you know, but if you could identify those lobbyists and lawyers who were involved as proponents of the dog track project?

Answer. I'm sorry, I don't know them. I don't know them; I really don't.

Question. Okay.

Answer. There would be—some of the other people would have better information than that.

Question. Okay. You had mentioned, just referring to a meeting with a chairman of the DNC, Don Fowler, that the tribes—and I think you were of the view that the proponents of the project were getting special treatment by the Governor of Wisconsin. Was it your view that this was a politicized process?

Answer. Again, this is second or third hand from what was happening up there in Wisconsin. I don't work on those issues up there, but from what I was getting from McCarthy and Kitto and others, who were working both down here and up there, is that the proposal was very much politicized in Wisconsin at the State level, that Governor Thompson had come out initially very strongly opposed to any extension of Indian gambling in Wisconsin, but as time went on he began to vacillate to the point where, eventually, and this is just my perception, he was now ready to support it. There was the Broydrick firm, as I indicated, I was aware was involved in a State lobbying effort, at the State legislature, to oppose—there were both sides, there were proponents and opponents of the matter at the State Governor's level and the legislative level, so, yes, it was very political.

Question. Were you of the view, I think you suggested this if you haven't said it directly, that this application was moving quickly through the BIA process?

Answer. I don't know that I said that. I wasn't that familiar with the process. I wasn't really aware of it as it started out. As I indicated in one of my earlier answers, I don't think I became formally aware of it until late in '94. Maybe I heard about it a little before then, so I am really not aware exactly what was going on.

The Minnesota tribes were very upset that the agency in the area office limited themselves to a NEPA review and did not consider the substantial impacts that this proposal, if approved, would have on those tribes. And there were basically three impacts that they were concerned about. One was economic. You would have these three northern Wisconsin tribes coming down into this market area, and the Coopers & Lybrand study that was done quick and dirty indicated there was to be some really substantial economic impacts on those tribes down there.

Question. And you thought that should be considered as part of the application process?

Answer. I don't want to make it personal, but when I ensured that the language was included in section 20, that is the kind of thing I was thinking about. In addition, the Minnesota tribes had an informal agreement among themselves that they would not seek off-reservation sites for gambling; they would stay on their reservations and they did because they didn't want to destabilize their cooperative efforts. And, finally, the tribes were fighting, at that time, actively fighting efforts to expand non-Indian gambling, to have a casino in Minneapolis, two of them, and they thought they had an agreement with the State that in return for not seeking a broad range of gaming activities, that they would have basically a monopoly. So they were fighting that in the State legislature of Minnesota, and here you have across the river, 20 miles away from St. Paul, an off-reservation facility, and they——

Question. Is this an unusual arrangement, to have those who are involved in land being taken into trust, as a group, such a great distance from the applicant tribe?

Answer. It's fairly unusual, yes. After Indian gambling became a big thing, you would always find financiers who would go find themselves a tribe and make a little money, so the proposals became more frequent after that, but rarely has it ever happened.

Question. Was that going on here? Were financiers shopping for tribes?

Answer. It was my understanding that the Hudson Dog Track was going down the tubes, as a lot of dog tracks are. Even over here in Maryland and Virginia, they are putting slots in dog tracks because the whole industry is going down. Hudson was going down. The city was concerned about unemployment, economic activities. They were seeking some way to save it, so they found some developers and they found some tribes.

Mr. YEAGER. I have no further questions.

Mr. WILSON. I just have two quick follow-up questions.

EXAMINATION BY MR. WILSON:

Question. Do you know of any examples of land being taken into trust further from the location of the tribal reservation than the Hudson Dog Track situation?

Answer. For gambling?

Question. For gambling purposes, yes.

Answer. There has only been one case where it has ever happened, only one, despite fears and statements that it is rampant. Very early after the enactment of IGRA, the Indian Gaming Regulatory Act, the city of Duluth, I think it was Duluth, was in very dire economic straits, and they approached a tribe there, I think the

Fond Du Lac Tribe, F-O-N-D D-U L-A-C, Fond Du Lac tribe, three words, to take in trust a block of land in downtown Duluth for a gambling operation. That was approved. Everybody supported it. The tribe was very close to Duluth.

There has never been another instance. There was a proposal to take land and trust in Detroit, which was quashed by the Governor of the State. That would have been quite a distance removed—in Detroit, quite a distance removed from the tribes involved, but there never has been a case.

Question. In that situation, was that approved by the Department of the Interior?

Answer. I think it was approved by the Secretary, but the Governor vetoed it, as I recall.

Question. Is that the property known as Greek Town?

Answer. I don't know. There were different kinds of proposals made. I'm not sure.

Mr. WILSON. Just one last document. I have given Mr. Ducheneaux a document marked FD–16. That is an O'Connor & Hannan memorandum to David Mercer from Larry Kitto.

Mr. YEAGER. What is the number?

Mr. WILSON. FD–16.

[Ducheneaux Deposition Exhibit No. FD–16 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. The questions are twofold. One, have you ever seen this memorandum before?

Answer. I have never seen this.

Question. And have you ever discussed with David Mercer any of the political affiliations of any of the members of applicant tribes or has Mr. Mercer—well, that is my first question.

Answer. I am running through this quickly, if you let me finish.

Question. Sure.

Answer. Okay. I have never seen the document. What is the question?

Question. Have you ever discussed with Mr. Mercer any of the political affiliations of members of the applicant tribes for the Hudson Dog Track?

Answer. No. I had three communications with Mr. Mercer. I met him at the meeting and I got two notes from him and I responded. I don't believe I ever talked to him again.

Mr. WILSON. That concludes my questioning. Thank you very much for coming here.

Mr. YEAGER. If I could ask, I don't want to drag this out too long.

EXAMINATION BY MR. YEAGER:

Question. With respect to the Duluth FETA trust application you referred to, the only other instance you are aware of, where an off-reservation FETA trust application had been granted, you mentioned that in that case, there was no local opposition to the project?

Answer. None whatsoever.

Question. And Hudson project——

Answer. Well, I can't say none whatsoever, I am assuming.

Question. Right. Do you think it is distinguishable?

Answer. The politics were there and these things are political. The Secretary has the power to take land into trust. It is not under ICRA; the authority comes from section 5 of the Indian Reorganization Act of 1934. Section 20 of ICRA is simply a limitation on that. But within some broad statutory guidelines his power is very discretionary and it becomes political. If a Governor opposes it, it doesn't matter whether the Governor is Democrat or Republican, if there is political opposition from the State, chances are it is not going to happen. And in the Duluth case, I think all the local politics were right. I think there may have been one Republican Congressman far removed who opposed it, but I think the Member from that district support—I am just—you know, it is only going to happen if the politics are right, if the support is there, if there is not any significant opposition. If that comes in and the opposition is there, then the Secretary is very wary of granting these kinds of things, unfortunately. We would like to see more of them.

Question. Do you know if lawyers and lobbyists and consultants were involved in that project, also?

Answer. I don't have any personal knowledge but I can't imagine that they weren't.

Question. Do you know if Haley Barbour was involved?
Answer. I don't know.
Mr. WILSON. Thank you. Thank you very much for coming here today.
[Whereupon, at 12:15 p.m., the deposition was concluded.]

[The exhibits referred to follow:]

LOG OF DOCUMENTS FOR HUDSON SUBPOENA

1992

1. October 15th - Copy of one-page Minnesota Indian Gaming Association (MIGA) Resolution No. 3-92, opposing the Hudson Dog Track proposal

2. October 20th - One-page Memorandum from Frank Ducheneaux to John McCarthy, recommending amendments to St. Croix tribal resolution opposing Hudson Dog Track proposal - Computer fax.

3. October 27th - Fax copy of two-page Prairie Island Tribal Council Resolution No. 92-138 opposing Hudson Dog Track proposal - Fax from Bluedog Law Office, P.A.

4. October 28th - Fax copy of two-page Shakopee Mdewakanton Sioux Community Business Council Resolution No. 10-28-92-001 opposing Hudson Dog Track proposal.

1993

1. December 1st - Copy of two-page letter from Myron Ellis, Chairman, MIGA, & Stanley Crooks, Vice-Chairman, MIGA, to Secretary of the Interior Bruce Babbitt transmitting one-page MIGA Resolution 3-92.

2. December 24th - Copy of three-page letter from Gaiashkibos, Lac Courte Oreilles Tribal Chairman; Rose Gurnoe, Red Cliff Tribal Chairwoman; and Arlyn Ackley Sr., Sokaogon Tribal Chairman, to Secretary of the Interior Bruce Babbitt re Hudson Dog Track proposal.

1994

1. January 10th - Copy of three-page letter from Myron Ellis, MIGA Chairman, and Stanley Crooks, MIGA Vice-Chairman, to Secretary Babbitt re Hudson Dog Track proposal.

2. January 22nd - Copy of one-page letter from Myron Ellis, MIGA Chairman, and Stanley Crooks, MIGA Vice-Chairman, to Denise Homer, Acting Area Director of Bureau of Indian Affairs (BIA) Minneapolis Area Office, transmitting copy of three-page January 10th letter to Secretary Babbitt listed in item 1 re the Hudson Dog Track proposal.

3. January 24th - Computer copy of one-page Memorandum from Frank Ducheneaux to John McCarthy, MIGA, transmitting addresses of Wisconsin congressional delegation.

4. January 27th - Fax copy of memo from John McCarthy to MIGA tribes and representatives re Hudson Dog Track proposal.

EXHIBIT

FD - 1

5. January 28th - Fax copy of one-page letter from Darrell Wadena, President of the Minnesota Chippewa Tribe, to Secretary Babbitt, opposing Hudson Dog Track proposal and transmitting one-page tribal Resolution 143-94 to that effect - Fax from Bluedog Law firm.

6. February 1st - Fax copy of a two-page letter from Stanley Crooks, Chairman of the Shakopee Mdewakanton Sioux Community, to Denise Homer, Acting Area Director, Minneapolis BIA Area Office, opposing Hudson Dog Track proposal, and transmitting a three-page tribal Resolution No. 02-01-94-001 to that effect - Fax from Bluedog Law firm.

7. February 24th - Undated one-page memo from Frank Ducheneaux to Kurt Bluedog transmitting draft of proposed two-page letter from Minnesota congressional delegation to Secretary Babbitt opposing Hudson Dog Track proposal - Computer fax.

8. March 24th - Copy of two-page letter from Assistant Secretary of the Interior - Indian Affairs Ada Deer to Myron Ellis, MIGA Chairman, re Hudson Dog Track proposal.

9. March 25th - Copy of two-page letter from Kurt Bluedog to Congressman David Minge transmitting draft two-page Minnesota congressional delegation letter to Secretary Babbitt opposing Hudson Dog Track proposal.

10. March 25th - Fax copy of two-page letter listed in item 9 from Bluedog firm.

11. May 1st - Copy of three-page letter from Minnesota congressional delegation to Secretary Babbitt opposing Hudson Dog Track proposal - Fax copy from Bluedog firm.

12. June 6th - Fax copy of one-page letter from Kurt V. Bluedog to Senator Paul David Wellstone re MIGA opposition to Hudson Dog Track proposal.

13. June 20th - Copy of one-page letter from Acting Superintendent of the Great Lakes Agency of the Bureau of Indian Affairs to Marjorie Anderson, Chairman (sic) of the Milles Lacs Business Committee enclosing certain NEPA documents relating to the Hudson Dog Track proposal, including an Addendum to the Environmental Assessment, a Notice of Availability, and a draft finding of no significant impact (FONSI).

14. July 20th - Copy of one-page letter from Stanley Crooks, MIGA Vice-Chairman, to Ms. Denise Homer, Acting Area Director of the BIA Minneapolis Area Office, acknowledging receipt of NEPA documents noted item 13, and opposing findings.

15. July 26th - Fax copy of two-page letter from Senator Wellstone to Secretary Babbitt opposing Hudson Dog Track proposal - Fax from Bluedog firm.

16. August 8th - Fax copy of two-page letter from Robert Jaeger, Superintendent of BIA Great Lakes Agency, to Stanley Crooks, MIGA Vice-Chairman, responding to Crooks letter under item 14 - Fax from John McCarthy, MIGA

17. August 12th - Fax copy of two-page letter from Kurt V. Bluedog to Congressman Bill Richardson, Chairman of House Subcommittee on Native American Affairs, requesting support in opposition to the Hudson Dog Track proposal - Fax from Bluedog firm.

18. September 14th - Copy of one-page letter from BIA Superintendent Robert Jaeger to Stanley Crooks, MIGA Vice-Chairman, transmitting certain NEPA documents on Hudson Dog Track proposal, including final FONSI.

19. September 21st - Copy of one-page letter from Myron Ellis, MIGA Chairman, to Ms. Denise Homer, Acting BIA Minneapolis Area Director, acknowledging receipt of NEPA documents from Jaeger and continuing to oppose Hudson Dog Track proposal.

20. September 28th - Copy of two-page letter from Denise Homer to Myron Ellis, acknowledging receipt of September 21st letter and rejecting request for meeting.

21. October 3rd - Fax copy of letter listed in item 19 and copy of September 28th letter from Denise Homer to Myron Ellis listed in item 20, acknowledging receipt of September 21st letter and rejecting request for meeting - Fax from John McCarthy.

22. November 11th - Fax copy of Milwaukee Sentinel stories on Governor Tommy G.Thompson's opposition to Hudson Dog Track proposal - Fax from Scott Dacey of Broydrick, Broydrick & Dacey.

23. December 27th - Fax copy of one-page letter from Kurt Bluedog to Myron Ellis, MIGA Chairman, expressing appreciation for MIGA's Resolution No. 3-92 opposing Hudson Dog Track proposal, and transmitting copies of Shakopee Sioux and Prairie Island Sioux resolutions to same effect - Fax from Bluedog firm.

24. December 29th - One-page fax from John McCarthy, MIGA consultant, to Frank Ducheneaux, transmitting three-page McCarthy Memo of December 28th to All Interested Parties on Wisconsin Dog Track issue, and three-page Wisconsin Dog Track Chronology of Events.

1995

1. January 6th - Copy of one-page letter from Congressmen Oberstar and Minge to Minnesota colleagues requesting signature of an attached one-age draft of a letter to Secretary Babbitt urging meeting with MIGA representatives.

2. January 13th - Fax copy of one-page letter from Assistant Secretary Ada Deer to Curtis Campbell, Chairman of Prairie Island Sioux, (date obscured) re status of Hudson Dog Track proposal - Fax from John McCarthy.

3. January 10th - One-page fax from Virginia W. Boylan, Dorsey & Whitney, to Frank Ducheneaux attaching three-page January 10th Memo from Boylan to Stanley Crooks, Chairman of the Shakopee Mdewakanton Sioux Community, re conversations with BIA personnel on Hudson Dog Track proposal.

4. January 12th - Fax copy of two-page January 11 letter from Minnesota congressional delegation to Secretary Babbitt requesting meeting between him or John Duffy with representatives of Minnesota tribes on Hudson Dog Track proposal - Unclear who fax is from.

5. February 20th - Fax copy of 4-page memo from Larry Kitto to Lewis Taylor, Howard Bickler, and Tom Corcoran re notes on Hudson Dog Track proposal - Fax from Management & Public Affairs (MPA) Consultants.

6. February 22nd - Computer fax of 2-page undated memo from Frank Ducheneaux to John McCarthy, MIGA, transmitting draft of Thank-You letter to Minnesota congressional delegation for arranging meeting.

7. February 22nd - Computer fax of one-page undated memo from Frank Ducheneaux to John McCarthy, MIGA, transmitting a draft one-page letter from Myron Ellis, Chairman of MIGA, to Senator Inouye on intent of section 20 of the Indian Gaming Regulatory Act with respect to Hudson Dog Track proposal.

8. February 24th - Fax copy of one-page memo from John McCarthy, MIGA Consultant to All MIGA Tribes and MIGA Representatives re Hudson Dog Track proposal - Fax from John McCarthy.

9. February 28th - One-page fax from John McCarthy to MIGA tribes and representatives transmitting draft two-page letter from Myron Ellis to Senator Inouye mentioned in item 7.

10. March 2nd - Fax copy of one-page letter from John McCarthy, MIGA Consultant, to Stanley Crooks, Chairman of Shakopee Mdewakanton Sioux Community, re BIA action on Hudson Dog Track proposal.

11. March 27th - Fax copy of 3-page memo from Larry Kitto and Tom Corcoran to Lewis Taylor providing status report on Hudson Dog Track proposal - Fax from Management & Public Affairs (MPA) Consultants.

12. March 27th - Copy of one-page letter from John J. Duffy, Counselor to the Secretary, to Senator Paul Wellstone, following up on February 8th meeting on the Hudson Dog Track proposal.

13. April 6th - Copy of one-page press release of Ho-Chunk Nation of Wisconsin opposing Hudson Dog Track proposal.

15. April 10th - One-page fax from Cindi Broydrick of Broydrick & Associates to Frank Ducheneaux transmitting four-page excerpts of what appears to be an Indian gaming management contract application relating to the Hudson Dog Track proposal.

16. April 11th - One-page fax from John McCarthy to All Tribal Leaders and MIGA representatives transmitting certain news clippings of the Saint Paul Pioneer Press, one of which relates to the Hudson Dog Track proposal.

17. April 28th - Copy of one-page letter from Steven W. Laible with KPMG Peat Marwick to Mr. George Skibine, Director of BIA's Office of Indian Gaming transmitting their "COMMENTS REGARDING HUDSON CASINO PROPOSAL", including copy of a copy of an April 28, 1995, letter from Myron Ellis, MIGA Chairman, requesting such comments.

18. April 29th - Card from David L. Mercer of the DNC to Frank Ducheneaux re meeting at DNC on the Hudson Dog Track proposal.

19. May 4th - Computer copy of one-page letter from Franklin Ducheneaux to David L. Mercer, DNC, responding to his April 29th note mention in item 18.

20. May 8th - One-page letter from Donald L. Fowler, National Chairman of the DNC, to Frank Ducheneaux, re meeting at DNC on the Hudson Dog Track proposal.

21. May 8th - Computer copy of a three-page personal letter from Frank Ducheneaux to Myron Ellis, one paragraph of which comments on the status of the Hudson Dog Track proposal. Letter is a redacted to include only the date, salutation, paragraph discussing the Hudson Dog Track proposal, and the closing.

22. July 27th - Copy of one-page letter from Franklin Ducheneaux to David L. Mercer with the DNC thanking him for card advising of the decision of Secretary Babbitt to deny the fee-to-trust transfer requested in the Hudson Dog Track proposal.

1996

1. July 19th - Fax copy of three-page letter from Senator John McCain, Chairman of the Senate Indian Affairs Committee, to President Clinton regarding the Hudson Dog Track proposal.

1997

1. August 11th - Computer copy of one-page memo from Frank Ducheneaux to John McCarthy, MIGA Consultant, transmitting certain memos and draft letters generated by Ducheneaux (included in items above), and a log of 1995 telephone calls, on the Hudson Dog Track proposal.

2. November 10th - Six-page log of documents to be submitted to the Committee on Reform and Oversight of the U. S. House of Representatives in response to its Subpoena Duces Tecum of October 27, 1997.

RESOLUTION NO. 3-92

WHEREAS, the Minnesota Indian Gaming Association represents the interests of all 11 gaming tribes, within the State of Minnesota, and

WHEREAS, the Minnesota Indian Gaming Association has gone on record opposed to any expansion of gaming activity, if that expansion is off reservation, and

WHEREAS, the Minnesota Indian Gaming Association is aware of activity in the State of Wisconsin specifically relating to the sale of the St. Croix Meadows Dog Track, which is less than 30 miles from the metropolitan areas of Minneapolis and St. Paul, and clearly within the existing market area of several member tribes of the Minnesota Indian Gaming Association, and

WHEREAS, it is proposed that the land upon which the track is located be taken in trust by the Secretary of Interior as Indian land for the purpose of gaming, and

WHEREAS, Section 20(b)(1)(A) of the Indian Gaming Regulatory Act clearly requires that any such action by the Secretary be taken only after consultation with 'officials of other nearby Indian tribes' so that the economic interests of those tribes, which might be impacted by such action, can be protected, and

WHEREAS, no consultation has been held in this situation and several of the Minnesota Indian Gaming Association tribes will be impacted by this action.

NOW THEREFORE, the Minnesota Indian Gaming Association officially goes on record as opposing any attempt by the State of Wisconsin, or others, to operate a tribal gaming facility off reservation at the Hudson Wisconsin Dog Track site, and

BE IT FURTHER RESOLVED, that the Minnesota Indian Gaming Association requests the intervention of the Secretary of Interior, the Governor of the State of Minnesota, and the Governor of the State of Wisconsin to stop all such action from occurring.

WE DO HEREBY CERTIFY, that the foregoing Resolution No. 3-92 was approved at an official meeting of the Minnesota Indian Gaming Association on Thursday October 15th., in St. Paul, Minnesota, and was acted upon by a vote of 10 for 0 against, 1 abstention, a quorum being present.

Myron F Ellis

Myron Ellis, Chairman
Minnesota Indian Gaming Association

Stanley K Crooks

Stanley Crooks, Vice-Chairman
Minnesota Indian Gaming Association

Rt. 2, Box 95 Cass Lake, MN 56633
Phone[redacted], FAX 2[redacted]

October 20, 1992

MEMORANDUM

TO : JOHN MCCARTHY

FROM : FRANK DUCHENEAUX

SUBJECT: SUGGESTED AMENDMENTS TO ST. CROIX RESOLUTION

I would recommend the following additions or changes to the resolution you faxed to me:

1. Add a new "Whereas" clause after the third "Whereas" clause as follows:

"Whereas, it is proposed that the land upon which the track is located be taken in trust by the Secretary of the Interior as Indian land for the purpose of gaming, and".

2. Amend the existing fourth "Whereas" clause to read as follows:

"Whereas, section 20(b)(1)(A) of the Indian Gaming Regulatory Act clearly requires that any such action by the Secretary be taken only after consultation with 'officials of other nearby Indian tribes' so that the economic interests of those tribes, which might be impacted by such action, can be protected, and".

If you have any questions, please give me a call.

Prairie Island Tribal Council

PRAIRIE ISLAND TRIBAL COUNCIL
5750 STURGEON LAKE ROAD
WELCH, MINNESOTA 55089

RESOLUTION NO. 92-138

WHEREAS, the Prairie Island Indian Community in the State of Minnesota is organized under the provisions of the Indian Reorganization Act of 1934 (48 Stat. 984), and is governed under the terms of a Constitution and Bylaws adopted by the members of the Prairie Island Indian Community on May 23, 1936, and approved by the Secretary of the Interior on June 20, 1936; and

WHEREAS, the said Constitution and Bylaws provide that the Community Council (sometimes referred to as the Tribal Council), shall be the governing body for the Prairie Island Indian Community (Article IV, Section 1); and

WHEREAS, the Tribal Council maintains the Constitutional authority to negotiate with the Federal, State and local governments on behalf of the Community, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Prairie Island Indian Community; and

WHEREAS, the Tribal Council, as a member of the Minnesota Indian Gaming Association, has gone on record opposed to any expansion of gaming activity, if that expansion is off reservation; and

WHEREAS, the Tribal Council is aware of activity in the State of Wisconsin specifically relating to the sale of the St. Croix Meadows Dog Track, which is less than 30 miles from the metropolitan areas of Minneapolis and St. Paul, and clearly within the existing market area of several member tribes of the Minnesota Indian Gaming Association in particular, the Prairie Island Indian Community; and

WHEREAS, it is proposed that the land upon which the track is located be taken in trust by the Secretary of Interior as Indian land for the purpose of gaming; and

RESOLUTION NO. 92-138
PAGE 2

WHEREAS, Section 20(b)(1)(A) of the Indian Gaming Regulatory Act clearly requires that any such action by the Secretary be taken only after consultation with 'officials of other nearby Indian tribes' so that the economic interests of those tribes, which might be impacted by such action, can be protected; and

WHEREAS, no consultation has been held in this situation with the Prairie Island Indian Community nor the member Tribes of the Minnesota Indian Gaming Association and several of the Minnesota Indian Gaming Association tribes will be impacted by this action, in particular the Prairie Island Indian Community.

NOW THEREFORE, the Tribal Council officially goes on record as opposing any attempt by the State of Wisconsin, or others, to operate a tribal gaming facility off existing reservation land at Hudson Wisconsin Dog Track site; and

BE IT FURTHER RESOLVED, that the Tribal Council requests the intervention of the Secretary of Interior, the Governor of the State of Minnesota and the Governor of the State of Wisconsin, to stop all such action from occurring.

CERTIFICATION

This resolution was passed at an executive meeting of the Prairie Island Tribal Council with a quorum present with a vote of 4 for, 0 against, 1 abstentions, on Oct 27, 1992.

Freeman Johnson, Chairman

Johnny Johnson, Vice-Chairman

Edith Pacini, Secretary

Vine H. Wells, Treasurer

Lu Taylor-Jacobson, Asst. Sec./Treas.

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

2330 Sioux Trail N.W., Prior Lake, Minnesota 55372
Tribal Office [redacted]
FAX [redacted]

OFFICERS
STANLEY R. CROOKS
Chairperson
KENNETH ANDERSON
Vice Chairperson
DARLENE MATTA
Secretary-Treasurer

BUSINESS COUNCIL
RESOLUTION NO. 10-28-92-001

WHEREAS, the Shakopee Mdewakanton Sioux Community is a federally recognized Indian Tribe organized under the provisions of the Indian Reorganization Act of 1934 (48 Stat. 984), and is governed under the terms of a Constitution and Bylaws adopted by the members of the members of the Shakopee Mdewakanton Sioux Community and approved by the Secretary of the Interior on November 28, 1969; and

WHEREAS, the Business Council is responsible for the immediate oversight of the affairs of the Community; and

WHEREAS, the Business Council maintains the Constitutional authority, as granted by the General Council, to negotiate with the Federal, State and local governments on behalf of the Community, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Shakopee Mdewakanton Sioux Community; and

WHEREAS, the Business Council, as a member of the Minnesota Indian Gaming Association, has gone on record opposed to any expansion of gaming activity, if that expansion is off reservation; and

WHEREAS, the Business Council is aware of activity in the State of Wisconsin specifically relating to the sale of the St. Croix Meadows Dog Track, which is less than 30 miles from the metropolitan areas of Minneapolis and St. Paul, and clearly within the existing market area of several member tribes of the Minnesota Indian Gaming Association in particular, the Shakopee Mdewakanton Sioux Community; and

WHEREAS, it is proposed that the land upon which the track is located be taken in trust by the Secretary of Interior as Indian land for the purpose of gaming; and

WHEREAS, the geographical area involved, St. Croix Meadows located in Hudson, Wisconsin, has historically been Sioux (Dakota), aboriginal territory, for centuries; and

WHEREAS, Section 20(b)(1)(A) of the Indian Gaming Regulatory Act clearly requires that any such action by the Secretary be taken only after consultation with 'officials of other nearby Indian tribes' so that the economic interests of those tribes, which might be impacted by such action, can be protected; and

WHEREAS, no consultation has been held in this situation with the Shakopee Mdewakanton Sioux Community nor the member Tribes of the Minnesota Indian Gaming Association and several of the Minnesota Indian Gaming Association tribes will be impacted by this action, in particular the Shakopee Mdewakanton Sioux Community.

NOW THEREFORE, the Business Council officially goes on record as opposing any attempt by the State of Wisconsin, or others, to operate a tribal gaming facility off existing reservation land at Hudson Wisconsin Dog Track site; and

BE IT FURTHER RESOLVED, that the Business Council requests the intervention of the Secretary of Interior, the Governor of the State of Minnesota and the Governor of the State of Wisconsin, to stop all such action from occurring.

CERTIFICATION

This resolution was passed at an executive meeting of the Shakopee Mdewakanton Sioux Community Business Council with a quorum present with a vote of 3 for, Ø against, Ø abstentions, on 11-28, 1992.

Stanley Crooks, Chairman

Kenneth Anderson, Vice Chairman

Darlene Matta, Secretary/Treasurer

Honorable Bruce Babbit
Secretary of Interior
U.S. Dept. of Interior
18th and C St. N.W.
Washington D.C. 20240

Dear Secretary Babbit,

December 1, 1993

Enclosed please find a copy of the resolution passed by the Minnesota Indian Gaming Association on October 15th, 1992, regarding the potential sale of an existing gaming operation (Dog Track) in the State of Wisconsin. It is our understanding that several Wisconsin Chippewa Bands are pursuing this purchase with the intent of petitioning your office to place the land in trust for the purpose of conducting additional gaming activity in conjunction with the dog racing, which is already being conducted at the site by the State of Wisconsin.

In reading the Indian Gaming Regulatory Act, Section 20 (b) (1), it is clear that in the process of petitioning the Secretary's office for lands to be put into trust for gaming purposes, the tribes located the area must be consulted as a part of the process. To date, none of the Tribes currently operating gaming facilities in the area have been consulted.

As the resolution outlines, the Minnesota Indian Gaming Association has gone on record opposing off reservation gaming activity in Minnesota. This is primarily due to our compacts and agreements with our state government and as an effort to protect our industry in Minnesota. We do not appreciate other groups placing our industry in jeopardy and encroaching into our market areas.

Mr. Secretary, it is very difficult for our association, which is made up of many different tribal groups, to take action against other tribal governments which we deem to be sovereign nations. In fact, we would

Rt. 2, Box 95 Cass Lake, MN 56633
Phone [redacted]

not take such a serious step if we did not feel that our own inherent sovereign rights were being infringed upon by the actions of the three Wisconsin Tribes.

In conclusion, let me add that we are going directly to your office to serve notice that we remain firm on our 1992 position on this issue. We are aware that the actual petition to place this land in trust may not have been filed through your department as of this writing and we hope that it will not reach your department, but we are making public our stand at this time.

Sincerely,

Myron F Ellis

Myron Ellis, Chairman
Minnesota Indian Gaming Association

Stanley R Crooks

Stanley Crooks, Vice Chairmen
Minnesota Indian Gaming Association

cc.

Ada Deer Dept. of Interior
Governor Arne Carlson
Governor Tommy Thomson
House Speaker Walter Kunicki
Tim Wapato N.I.G.A.
Rick Hill N.I.G.A
Chairman Gaiashkibos
Chairman Arlyn Ackley
Chairperson Rose Gurnoe

RESOLUTION NO. 3-92

WHEREAS, the Minnesota Indian Gaming Association represents the interests of all 11 gaming tribes, within the State of Minnesota, and

WHEREAS, the Minnesota Indian Gaming Association has gone on record opposed to any expansion of gaming activity, if that expansion is off reservation, and

WHEREAS, the Minnesota Indian Gaming Association is aware of activity in the State of Wisconsin specifically relating to the sale of the St. Croix Meadows Dog Track, which is less than 30 miles from the metropolitan areas of Minneapolis and St. Paul, and clearly within the existing market area of several member tribes of the Minnesota Indian Gaming Association, and

WHEREAS, it is proposed that the land upon which the track is located be taken in trust by the Secretary of Interior as Indian land for the purpose of gaming, and

WHEREAS, Section 20(b)(1)(A) of the Indian Gaming Regulatory Act clearly requires that any such action by the Secretary be taken only after consultation with 'officials of other nearby Indian tribes' so that the economic interests of those tribes, which might be impacted by such action, can be protected, and

WHEREAS, no consultation has been held in this situation and several of the Minnesota Indian Gaming Association tribes will be impacted by this action.

NOW THEREFORE, the Minnesota Indian Gaming Association officially goes on record as opposing any attempt by the State of Wisconsin, or others, to operate a tribal gaming facility off reservation at the Hudson Wisconsin Dog Track site, and

BE IT FURTHER RESOLVED, that the Minnesota Indian Gaming Association requests the intervention of the Secretary of Interior, the Governor of the State of Minnesota, and the Governor of the State of Wisconsin to stop all such action from occurring.

WE DO HEREBY CERTIFY, that the foregoing Resolution No. 3-92 was approved at an official meeting of the Minnesota Indian Gaming Association on Thursday October 15th., in St. Paul, Minnesota, and was acted upon by a vote of 10 for 0 against, 1 abstention, a quorum being present.

Myron F Ellis

Myron Ellis, Chairman
Minnesota Indian Gaming Association

Stanley R Crooks

Stanley Crooks, Vice-Chairman
Minnesota Indian Gaming Association

Rt. 2, Box 95 Cass Lake, MN 56633
Phone [redacted] *F*[redacted]

December 24, 1993

Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street
North West, Washington, DC 20240

Dear Honorable Secretary, Babbitt:

We the Tribal Chairs of the Lac Courte Oreilles Band, Red Cliff Band and Sokaogon Chippewa Community (Mole Lake Band) of Lake Superior Chippewa Indians and Croixland Properties Limited Partnership, have entered into a partnership venture to purchase the St. Croix Meadows Parimutuel Dog Track (currently a Class III Facility) and operating it as a combined Class III Casino and Greyhound Track. This is the first time in the gaming world that a business arrangement of this type has been initiated.

Three native american tribes located in the most economically depressed rural areas in the State of Wisconsin have joined to bring economic diversification and economic opportunity to their tribes and the respective surrounding communities. Each of these tribes, by State Compact, could have two casinos with blackjack sites. In entering into this agreement, each tribe involved has agreed to give up the second casino that they are authorized to have. This would, in effect, reduce the number of casinos in the State of Wisconsin.

We have learned that there is opposition to our involvement in operating a Class III Gaming Facility at Hudson, Wisconsin from two different tribal sources. First, the St. Croix Tribe is opposing this venture since they believe we would be affecting their gaming facility. Let it be noted that when the St. Croix Tribe's Management Company built a casino at Turtle Lake, Wisconsin the Lac Courte Oreilles Band did not oppose them, in fact they supported the St. Croix Tribe and still do. St. Croix's Turtle Lake facility is closer than fifty miles to Lac Courte Oreilles Land and definitely has affected the Lac Courte Oreilles Gaming Operation.

The Hudson facility is not located near any tribal lands historically recognized as reservation property or belonging to any Indian Tribe. It is clearly more than fifty (50) highway miles from any gaming facility in Wisconsin or Minnesota.

The second source of opposition is coming from the Minnesota Tribes. We feel that this is definitely improper since we, the different Wisconsin Tribes, have never opposed any economic development projects by the Minnesota Tribes. Even when the Mille Lacs Chippewa and their Management Company, Grand Casino, Inc., built their casino at Hinkley, Minnesota, which effected the St. Croix and Lac Courte Oreilles Chippewa, there wasn't any outcry of opposition to their venture. We believe that everyone's efforts to expand their economies should be supported. The market area is not saturated now and with our plan to give up three (3) additional casino sites, we feel that we have a prudent proposal that will allow geographically constrained tribes to share in the benefits of a much larger market for all our people.

Our marketing staff inform us that the St. Croix Tribes' Turtle Lake facility is drawing from the northern portion of Minneapolis and traffic off U. S. Highway 8 in Wisconsin. We will not be interfering with their gaming operations and will continue to support them even though their operations continue to draw market share from the new Lac Courte Oreilles Casino.

In a limited way, the gaming operations in downtown Duluth and the Black Bear Casino twenty (20) miles south of Duluth, Minnesota draw from the Red Cliff's rural market area. Again, there has not been any opposition from Wisconsin tribes or the Red Cliff Chippewa, or for that matter, the Bad River Chippewa.

We cannot emphasize enough what an opportunity this is for our three (3) small rural tribes to become self sufficient and economically diversified. We are not going to be managed by an outside management group, rather we are going to operate this gaming facility jointly with the previous owner from whom we are purchasing the St. Croix Meadows property. This is an opportunity for our tribal members to move into the management positions that are so often denied them. It is our opinion that this innovative and unique operation will be so advantageous to tribes that this business partnership will be used as a model on how tribes and private business can work effectively together for the benefit of our economies.

More recently, studies have determined that tribal gaming has a direct benefit in eliminating the need for welfare dependency. With Wisconsin's Governor Tommy Thompson formally announcing that Wisconsin will no longer participate in the federal AFDC system by the year 1999, Native American gaming will continue to play a major roll in providing employment and business opportunity for our communities as State programs subside.

The local unit of Government, the City of Hudson, is supportive of this innovative venture. Democrats and Republicans support this venture. In addition, please find attached recommendations of the Governors Blue Ribbon Task Force on gaming. We feel that we are well within the recommendations of this study.

Mr. Secretary, we would be more than happy to come in and talk with you personally and answer any questions or concerns that you may have. Best wishes to you and your family for the Holidays.

Sincerely,

Gaiashkibos, Tribal Chairman
Lac Courte Oreilles Tribal Government

Rose Gurnoe, Tribal Chairwoman
Red Cliff Tribal Government

Arlyn Ackley Sr., Tribal Chairman
Sokaogon, Tribal Government

cc: Governor Tommy Thompson
Governor's Blue Ribbon Task Force
MIGA
WIGA
St. Croix Tribe
Mille Lacs Tribe
Congressman Obey
Congressman Gunderson
Senator Kohl
Senator Feingold
Wisconsin Gaming Commission
Bad River Tribe
Hudson Mayor
St. Croix County Board Chair
Editorial Boards
Milwaukee Journal
Milwaukee Sentinel
Green Bay Press Gazette
St. Paul Pioneer Press
Minneapolis Star Tribune

January 10, 1994

Honorable Bruce Babbitt
Secretary of The Interior
1849 C . Street North West
Washington, DC 20240

Dear Secretary Babbitt:

We have received two documents relating to the purchase of the St. Croix Meadows Dog Track by three Wisconsin tribes. The first is a December 24, 1993 letter to your office from the chairpersons of the three tribes involved. The second letter is from Acting Area Director Denise Homer to all Minnesota tribes requesting input on the request to approve the off-reservation fee-to-trust acquisition.

On December 1, 1993 the Minnesota Indian Gaming Association submitted to your office a copy of Resolution 92-3 in which our association makes clear our official opposition to the proposed tribal purchase of the dog track. The resolution cites two primary reasons for our opposition.

The first and most significant, as part of our tribal-state compacts, Minnesota tribes have promised not to expand tribal gaming off-reservation. Although several tribes have been contacted by public and private entities with an interest in developing off-reservation casinos, Minnesota tribes have declined to consider such opportunities.

Although the St. Croix project is outside Minnesota's borders, it is just barely outside, and well within the metropolitan Twin Cities media market, only twenty minutes from downtown Minneapolis and St. Paul. A major off-reservation expansion of tribal gaming in that location will create huge political problems for Minnesota tribes.

The second reason for our opposition to this proposal is in its potential economic impact on Minnesota tribes. The St. Croix development is well within the primary market area of several of Minnesota's largest tribal casinos, and will undoubtedly have a serious negative impact on them.

Our more remote casinos are also likely to be harmed. Visitors to rural casinos come from a wide radius of locations, but a heavy share come from the metropolitan Twin Cities area. Another major tribal casino development within thirty minutes of the Twin Cities is certain to have a negative impact on the rural casinos which rely heavily on Twin Cities customers for much of their visitor volume.

The December 24 letter from the three chairpersons raises several points which we would like to address:

1. They state that "...The Hudson facility is not located near any tribal lands historically recognized as reservation property or belonging to any Indian Tribe. It is clearly more than fifty (50) highway miles from any gaming facility in Wisconsin of Minnesota."

The fact is that the St. Croix area is historically considered Dakota land and is still considered by the Minnesota Sioux Community as traditional Dakota lands.In reality the actual mileage from Hudson to St. Paul is 27 miles,from Hudson to Prairie Island is 35 miles and from Hudson to Prior Lake is 48 miles.

2. They state that "...They have not objected to any of the St. Croix or Minnesota tribal developments."

This is a moot point, since the developments cited occurred on reservation lands owned by the tribal governments in question. We would not attempt to challenge the right of any tribe to develop a casino on its own land. This proposal is problematic because it involves the development of off-reservation gaming near a major Minnesota urban center at a time when political pressures and anti-Indian gaming sentiment make such ventures extremely risky.

While this proposed project is clearly an infringement on our economic resource, we are even more concerned about its possible political

implications in Minnesota. For the past two years, state legislators have been under intense political pressure from private business interests to "open up" gaming in Minnesota to non-Indians through video gaming in bars or other means. The Minnesota Indian Gaming Association has fought hard to defeat these proposals, assuring lawmakers that we view tribal gaming as a tool for reservation and community development, and it is not our intent to propose casinos on every street corner or in off-reservation locations. We have not closed the door on off-reservation gaming in Minnesota only to have other tribes in Wisconsin jeopardize all we have fought to maintain.

It is also important to recognize that many tribes in Minnesota have the same "remote location" problem as some of the Wisconsin tribes face, yet we have resisted the temptation to move into major urban centers with off-reservation gaming operations because we believe such initiatives are not the in long-term best interests of our own tribes. The National Governors Association and our other adversaries have been stirring up opposition to Indian gaming by predicting that tribes would begin expanding gaming off-reservation into major cities in direct competition with non-Indian businesses. The approval of this St. Croix proposal would prove them right.

Mr. Secretary, we want to make very clear that we believe this proposal, if approved, would do serious harm economically and politically to the tribal gaming industry in Minnesota, and could potentially harm tribal gaming nationwide. This is not the time for a major off-reservation expansion of tribal gaming in Wisconsin.

Sincerely,

Myron F Ellis

Myron Ellis, Chairman
Minnesota Indian Gaming Association

Stanley R Crooks

Stanley Crooks, Vice Chairman
Minnesota Indian Gaming Association

Bruce Babbitt
January 4, 1994

cc: Governor Tommy Thompson
Governor's Blue Ribbon Task Force
M.I.G.A. Tribes
W.I.G.A. Tribes
St. Croix Tribe
Congressman Obey
Congressman Gunderson
Senator Kohl
Senator Feingold
Mayor of Hudson Wisconsin
Editorial Boards
Milwaukee Journal
Milwaukee Sentinel
Green Bay Press Gazette
St. Paul Pioneer Press
Minneapolis Star Tribune
Minnesota Congretional Delegation
Ada Deer, Dept. of Interior
Governor Arne Carlson
House Speaker Walter Kunicki
Tim Wapato, N.I.G.A.
Rick Hill, N.I.G.A.
Chairman Gaiashkibos
Chairman Arlyn Ackley
Chairperson Rose Gurnoe

Ms. Denise Homer
Acting Area Director
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, MN 55401-2241

January 22, 1994

Dear Ms. Homer,

Please accept the enclosed documents as the official response from the Minnesota Indian Gaming Association to your request for determination survey.

As you can tell from our correspondence we are totally opposed to this action by the Wisconsin tribes and would be happy to meet with you to discuss in more detail the particulars of our position.

Sincerely,

Myron F Ellis

Myron Ellis, Chairman
Minnesota Indian Gaming Association

Stanley R Crooks

Stanley Crooks, Vice Chairman
Minnesota Indian Gaming Association

Rt. 2, Box 95 Cass Lake, MN 56633
Phone[redacted] FAX[redacted]

January 10, 1994

Honorable Bruce Babbitt
Secretary of The Interior
1849c Street North West
Washington, DC 20240

Dear Secretary Babbitt:

We have received two documents relating to the purchase of the St. Croix Meadows Dog Track by three Wisconsin tribes. The first is a December 24, 1993 letter to your office from the chairpersons of the three tribes involved. The second letter is from Acting Area Director Denise Homer to all Minnesota tribes requesting input on the request to approve the off-reservation fee-to-trust acquisition.

On December 1, 1993 the Minnesota Indian Gaming Association submitted to your office a copy of Resolution 92-3 in which our association makes clear our official opposition to the proposed tribal purchase of the dog track. The resolution cites two primary reasons for our opposition.

The first and most significant, as part of our tribal-state compacts, Minnesota tribes have promised not to expand tribal gaming off-reservation. Although several tribes have been contacted by public and private entities with an interest in developing off-reservation casinos, Minnesota tribes have declined to consider such opportunities.

Although the St. Croix project is outside Minnesota's borders, it is just barely outside, and well within the metropolitan Twin Cities media market, only twenty minutes from downtown Minneapolis and St. Paul. A major off-reservation expansion of tribal gaming in that location will create huge political problems for Minnesota tribes.

Rt. 2, Box 95 Cass Lake, MN 56633
Pho[redacted]

The second reason for our opposition to this proposal is in its potential economic impact on Minnesota tribes. The St. Croix development is well within the primary market area of several of Minnesota's largest tribal casinos, and will undoubtedly have a serious negative impact on them.

Our more remote casinos are also likely to be harmed. Visitors to rural casinos come from a wide radius of locations, but a heavy share come from the metropolitan Twin Cities area. Another major tribal casino development within thirty minutes of the Twin Cities is certain to have a negative impact on the rural casinos which rely heavily on Twin Cities customers for much of their visitor volume.

The December 24 letter from the three chairpersons raises several points which we would like to address:

1. They state that "...The Hudson facility is not located near any tribal lands historically recognized as reservation property or belonging to any Indian Tribe. It is clearly more than fifty (50) highway miles from any gaming facility in Wisconsin of Minnesota."

The fact is that the St. Croix area is historically considered Dakota land and is still considered by the Minnesota Sioux Community as traditional Dakota lands.In reality the actual mileage from Hudson to St. Paul is 27 miles,from Hudson to Prairie Island is 35 miles and from Hudson to Prior Lake is 48 miles.

2. They state that "...They have not objected to any of the St. Croix or Minnesota tribal developments."

This is a moot point, since the developments cited occurred on reservation lands owned by the tribal governments in question. We would not attempt to challenge the right of any tribe to develop a casino on its own land. This proposal is problematic because it involves the development of off-reservation gaming near a major Minnesota urban center at a time when political pressures and anti-Indian gaming sentiment make such ventures extremely risky.

While this proposed project is clearly an infringement on our economic resource, we are even more concerned about its possible political

implications in Minnesota. For the past two years, state legislators have been under intense political pressure from private business interests to "open up" gaming in Minnesota to non-Indians through video gaming in bars or other means. The Minnesota Indian Gaming Association has fought hard to defeat these proposals, assuring lawmakers that we view tribal gaming as a tool for reservation and community development, and it is not our intent to propose casinos on every street corner or in off-reservation locations. We have not closed the door on off-reservation gaming in Minnesota only to have other tribes in Wisconsin jeopardize all we have fought to maintain.

It is also important to recognize that many tribes in Minnesota have the same "remote location" problem as some of the Wisconsin tribes face, yet we have resisted the temptation to move into major urban centers with off-reservation gaming operations because we believe such initiatives are not the in long-term best interests of our own tribes. The National Governors Association and our other adversaries have been stirring up opposition to Indian gaming by predicting that tribes would begin expanding gaming off-reservation into major cities in direct competition with non-Indian businesses. The approval of this St. Croix proposal would prove them right.

Mr. Secretary, we want to make very clear that we believe this proposal, if approved, would do serious harm economically and politically to the tribal gaming industry in Minnesota, and could potentially harm tribal gaming nationwide. This is not the time for a major off-reservation expansion of tribal gaming in Wisconsin.

Sincerely,

Myron F Ellis

Myron Ellis, Chairman
Minnesota Indian Gaming Association

Stanley R Crooks

Stanley Crooks, Vice Chairman
Minnesota Indian Gaming Association

Bruce Babbitt
January 4, 1994

cc: Governor Tommy Thompson
Governor's Blue Ribbon Task Force
M.I.G.A. Tribes
W.I.G.A. Tribes
St. Croix Tribe
Congressman Obey
Congressman Gunderson
Senator Kohl
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Ada Deer, Dept. of Interior
Governor Arne Carlson
House Speaker Walter Kunicki
Tim Wapato, N.I.G.A.
Rick Hill, N.I.G.A.
Chairman Gaiashkibos
Chairman Arlyn Ackley
Chairperson Rose Gurnoe

January 24, 1994

MEMORANDUM

TO : JOHN McCARTHY, MIGA

FROM : FRANK DUCHENEAUX

SUBJECT: WISCONSIN CONGRESSIONAL DELEGATION

Per your request, here is the information on the Wisconsin congressional delegation. The two Senators, both Democrats, are Herb Kohl and Russell D. Feingold. Their addresses are:

Honorable Herb Kohl
SH-330 Hart Senate Office Bldg.
U. S. Senate
Washington, D. C. 20510-4903

Honorable Russell D. Feingold
SH-502 Hart Senate Office Bldg.
U. S. Senate
Washington, D. C. 20510-4904

There are nine House members in the delegation as follows: Democrats: Peter W. Barca (4901); Gerald D. Kleczka (4904); Thomas M. Barrett (4905); and David Obey (4907), and Republicans: Scott Klug (4902), Steve Gunderson (4903), Thomas E. Petri (4906), Toby Roth (4909), and Jim Sensenbrenner, Jr (4909). Gunderson represents the district which contains Eau Claire and the Winnebago tribe. Obey represents the northwestern district which includes Bad River, Lac Courte Oreilles, Red Cliff and St. Croix. Toby Roth represents the northeastern district which includes all the rest of the Indian tribes. You can address their letters as follows:

Honorable _____
U. S. House of Representatives
Washington, D. C. 20515-____

I have included the last four numbers of their zip with their names above. I hope this is what you wanted. If not give me a call.

In case you haven't found our 1st quarter 94 invoice, I am faxing a copy herewith. We appreciate your help on this.

To: All M.I.G.A. Tribes/M.I.G.A. Reps.

From: John McCarthy, M.I.G.A. Consultant

Subject: B.I.A. Dog Track Response

January 27, 1994

Just a reminder that the information requested by the Bureau on the impact of the St. Croix Dog Track purchase is due on February 1, 1994.

Hopefully every tribe has responded but if you have not please do so before the 1st. I have enclosed another copy of the B.I.A. request for information in case you don't already have one.

I have also enclosed a copy of the agenda for our upcoming meeting which is scheduled for 10:00 a.m. Wednesday February 2 at the Kelly Inn.

Rt. 2, Box 95 Cass Lake, MN 56633
Phone[redacted] FAX[redacted]

DARRELL WADENA PRESIDENT
NORMAN DESCHAMPE, VICE PRESIDENT

GARY S. FRAZER, EXECUTIVE DIRECTOR
JIM SCHOESSLER, GENERAL COUNSEL

PETER DEFOE, JR., SECRETARY
DAVID C. MORRISON, SR., TREASURER

The Minnesota Chippewa Tribe

P.O. BOX 217 — CASS LAKE, MINNESOTA 56633-0217

TELEFAX
218 335 6562

Administration [redacted]
Home Loan [redacted]
Economic Development [redacted]
Education [redacted]
Human Services [redacted]
Water Quality [redacted]

January 28, 1994

The Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Secretary:

Enclosed is a resolution that was passed by the Tribal Executive Committee on January 27, 1994, opposing the application of the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa to put 55 acres of off-reservation fee land into trust for gaming purposes. The resolution cites two primary reasons for our opposition.

The most significant reason is that the Minnesota tribes have promised not to expand gaming off-reservation. In fact a number of tribes have been contacted by public and private entities with an interest in developing off-reservation casinos, but have declined. Allowing off-reservation expansion of tribal gaming will create huge problems for the state and Minnesota gaming tribes.

The second reason for our opposition is its potential economic impact on Minnesota tribes. Not only is this development within the primary market area of several of Minnesota's largest tribal casinos, but the casinos of the Minnesota Chippewa Tribe member reservations in northern Minnesota will also be harmed. Visitors to our casinos primarily come from the metropolitan Twin Cities area and having another major tribal casino development within thirty miles of the Twin Cities is certain to have a negative impact.

We believe this proposal if approved will have a serious economic and political impact to tribal gaming in Minnesota.

Sincerely,

THE MINNESOTA CHIPPEWA TRIBE

Darrell Wadena

Darrell Wadena
President

Enclosure
cc: Governor Arne Carlson
Denise Homer, Acting Area Director-BIA
MCT Tribal Chairpersons

RESOLUTION 143-94

WHEREAS, The Minnesota Chippewa Tribal Executive Committee is the duly elected governing body of the Minnesota Chippewa Tribe, comprised of six member reservations (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth), and

WHEREAS, The member reservations of the Minnesota Chippewa Tribe have all been notified by the Department of the Interior that the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa have submitted an application to the Department of the Interior to place 55 acres of off-reservation fee land in Hudson, Wisconsin, into trust for gaming purposes, and

WHEREAS, Section 20 (B)(1)(A) of the Indian Gaming Regulatory Act clearly requires that any such action by the Secretary can only be taken after consultation with "officials of other nearby Indian tribes" so that the economic interests of those tribes, which might be impacted by such action, can be protected, and

WHEREAS, The member reservations of the Minnesota Chippewa Tribe feel that a number of their tribal gaming operations will be economically impacted by this proposed action, and

WHEREAS, The member reservations of the Minnesota Chippewa Tribe also feel that the approval of this application would set a dangerous precedent creating an open market for expansion by other reservations onto off-reservation fee lands for gaming purposes.

NOW THEREFORE BE IT RESOLVED, that the Minnesota Chippewa Tribal Executive Committee does hereby oppose the Red Cliff and Lac Courte Oreilles Bands proposal and application to put this off-reservation fee land into trust for gaming purposes.

BE IT FURTHER AND FINALLY RESOLVED, that the Minnesota Chippewa Tribal Executive Committee requests the intervention of the Secretary of Interior and the Governor of the State of Minnesota to stop this action from occurring.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 10 For, 0 Against, 0 Silent, at a Regular Meeting of The Minnesota Chippewa Tribal Executive Committee, a quorum present, held on January 27, 1994, at Mahnomen, Minnesota.

Darrell Wadena

Darrell Wadena, President
THE MINNESOTA CHIPPEWA TRIBE

Peter J. DeFoe Jr.

Peter J. DeFoe, Jr. Secretary

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

2330 Sioux Trail NW, Prior Lake, Minnesota 55372
Tribal Office [redacted]
FAX: [redacted]

OFFICERS
STANLEY R. CROOKS
Chairman
KENNETH ANDERSON
Vice Chairman
DARLENE MATTA
Secretary/Treasurer

February 1, 1994

Denise Homer
Acting Area Director
United States Department of the Interior
Bureau of Indian Affairs
331 South 2nd Avenue
Minneapolis, MN 55401

Dear Ms. Homer:

I write as Chairman of the Shakopee Mdewakanton Sioux (Dakota) Community to respond to your correspondence requesting commentary on the application of the Red Cliff, Lac Courte Oreilles and Sokaogon Chippewa Communities to place off reservation lands located in Hudson, Wisconsin into trust status for gaming purposes pursuant to the IGRA.

We are in total opposition to the stated request, for reasons as stated in the attached Resolution No. 02-01-94-001, and for the reasons as stated in the January 10, 1994 Minnesota Indian Gaming Association (MIGA) correspondence on this matter.

Most particularly, it is our strong belief that the subject area at issue, located in Hudson, Wisconsin, has been recognized by the United States government in the 1825 Prairie du Chien Treaty (7 Stat. 222), as well as in the Treaty of September 29, 1837 (7 Stat. 538), as Mdewakanton Sioux territory. The Indian Claims Commission, in their comprehensive review of Indian land claims, ruled in Docket Nos. 359-363 at page 159 on January 12, 1962, that "the Commission finds that as of the 1837 Treaty of cession the Mississippi Sioux and in particular the Medawakanton band had a recognized title to the subject lands east of the Mississippi by virtue of the 1825 Prairie du Chien Treaty." This land area, referred to by the Commission as Royce Area 243, includes the present day municipality of Hudson, Wisconsin. A copy of the Royce Area 243 is attached to Resolution No. 02-01-94-001 referenced above.

Therefore, we believe strongly that if Class III gaming were to be allowed in Hudson, Wisconsin, it should most appropriately be approved for a requesting Mdewakanton Sioux Tribe. We have declined to do so for the reasons as articulated in the January 10, 1994 NIGA correspondence.

If we can provide further information, please contact me at the number listed above, or else contact the Community's General Counsel Kurt Bluedog at (612) 893-1813.

Sincerely,

Stanley R. Crooks
Tribal Chairman

SRC/jbm
enclosure

cc: Senator Inouye
Senator Wellstone
Congressman Minge
Governor Carlson
Governor Thompson

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

2330 Sioux Trail N.W., Prior Lake, Minnesota 55372
Tribal Office [redacted]
FAX: [redacted]

OFFICERS
STANLEY R. CROOKS
Chairperson
KENNETH ANDERSON
Vice Chairperson
DARLENE MATTA
Secretary Treasurer

RESOLUTION NO. 02-01-94-001

Opposition to Hudson Dog Track Casino

WHEREAS, The Shakopee Mdewakanton Sioux (Dakota) Community is a federally recognized Indian Tribe organized under the provisions of the Indian Reorgnization Act of 1934 (48 Stat. 984), and is governed under the terms of a Constitution and Bylaws adopted by the members of the Shakopee Mdewakanton Sioux (Dakota) Community and approved by the Secretary of the Interior on November 28, 1969; and

WHEREAS, the Business Council is composed of the duly elected tribal officials and is responsible for the immediate oversight of the affairs of the Community; and

WHEREAS, the Business Council maintains the Constitutional authority to negotiate with the Federal, State and local governments on behalf of the Community, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Shakopee Mdewakanton Sioux (Dakota) Community; and

WHEREAS, the Community, as a member of the Minnesota Indian Gaming Association, has gone on record as opposed to any expansion of gaming activity, if that expansion is off reservation; and

WHEREAS, the Community was made aware of activity in the State of Wisconsin specifically relating to the proposed tribal purchase of the St. Croix Meadows Dog Track, which is less than 30 miles from the metropolitan areas of Minneapolis and St. Paul, and clearly within the existing market area of several member tribes of the Minnesota Indian Gaming Association, and in particular, the Shakopee Mdewakanton Sioux (Dakota) Community; and

WHEREAS, the geographical area involved, St. Croix Meadows located in Hudson, Wisconsin, has historically been regarded as Sioux (Dakota) aboriginal territory, for centuries as confirmed by the Treaty with the Sioux of August 19, 1825 (7 Stat. 222), and the Treaty with the Sioux of September 29, 1837 (7 Stat. 538), as is vividly illustrated in the attached Royce Map depicting Treaty Area 243; and

WHEREAS, if the United States Government were to approve a tribal casino site at this geographical location, it would be most appropriate that it be approved for a petitioning Sioux (Dakota) tribe; and

WHEREAS, the Indian Gaming Regulatory Act, 25 U.S.C. §2701, et. seq., was enacted to provide that tribal gaming is designed to promote the reservation economy by occurring within pre-existing Indian lands; and

WHEREAS, if the petitioning tribes are allowed to expand tribal gaming to off-reservation sites, a precedent will be created for other tribes to locate tribal gaming in more desirable off-reservation urban sites; and

WHEREAS, the Community believes that a major off-reservation expansion of tribal gaming in the Hudson, Wisconsin area will have a detrimental economic impact on the Community and other area casinos since the proposed site is within the metropolitan Twin Cities media market; and

WHEREAS, the Community is convinced that the proposed casino will have a detrimental political impact in Minnesota since Minnesota tribes have agreed by formal tribal/state compacts to not expand tribal gaming off-reservation; and

NOW THEREFORE, the Shakopee Mdewakanton Sioux (Dakota) Community officially goes on record as opposing any attempt by the Tribes, or others, to operate a tribal casino gaming facility at the Hudson, Wisconsin Dog Track site; and

BE IT FURTHER RESOLVED, that the Shakopee Mdewakanton Sioux (Dakota) Community hereby requests that the U.S. Department of the Interior decline to take the subject off-reservation lands into trust status for purposes of establishing a tribal casino location in Hudson, Wisconsin.

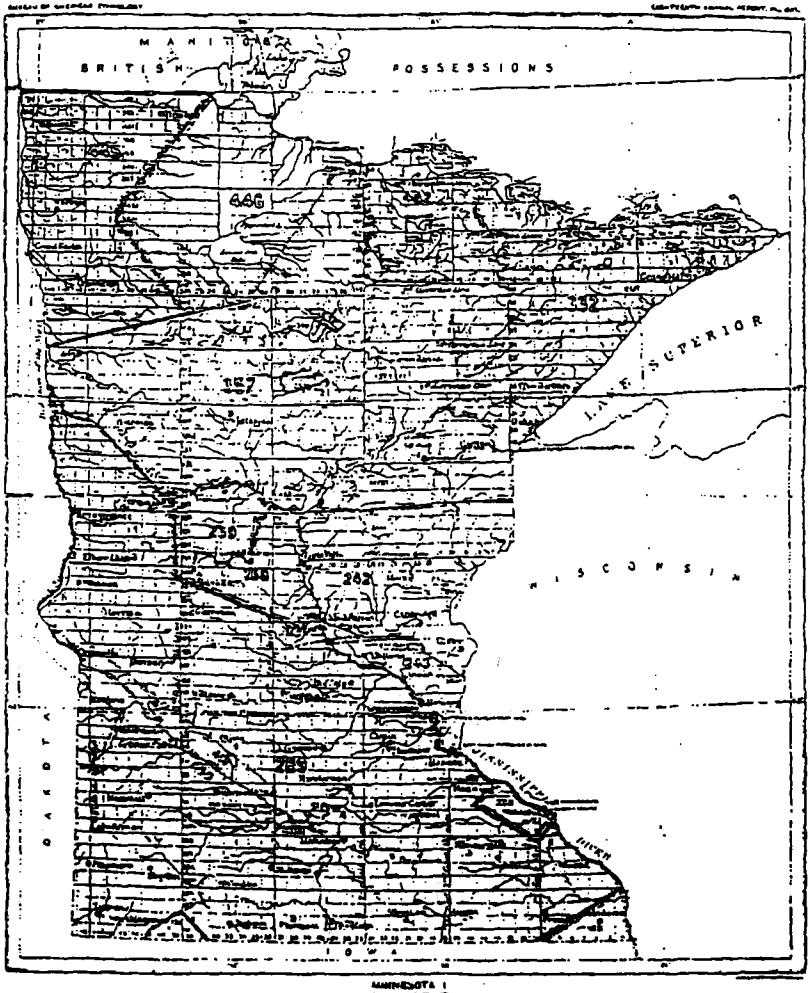
CERTIFICATION

This resolution was passed at an executive meeting of the Shakopee Mdewakanton Sioux (Dakota) Community Business Council with a quorum present with a vote of 3 for, 0 against, 0 abstentions, on February 1, 1994.

Stanley Crooks, Chairman

Kenneth Anderson, Vice Chairman

Darlene Matta, Secretary/Treasurer



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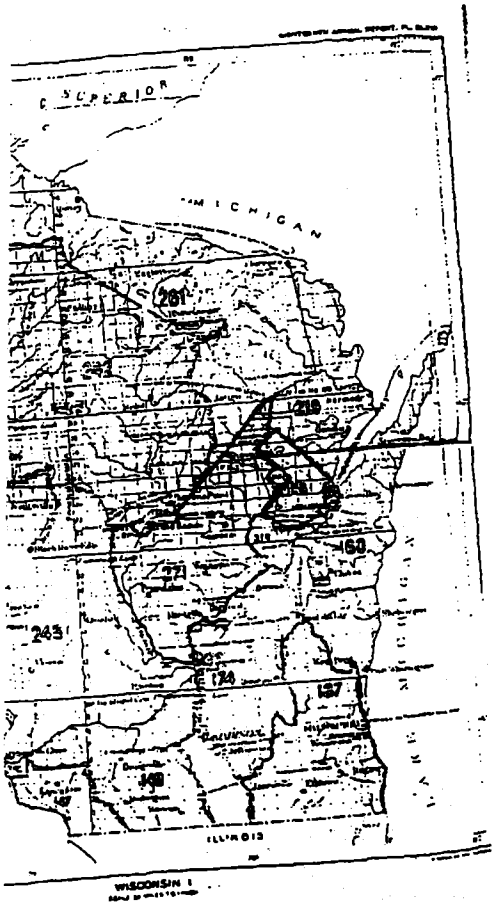

HOUSE COMMITTEE ON
NATURAL RESOURCES

CHAIRMAN
SUBCOMMITTEE ON NATIONAL PARKS
FORESTS AND PUBLIC LANDS

HOUSE COMMITTEE ON
BANKING, FINANCE AND
URBAN AFFAIRS

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copy of that letter

gress

DUCHENEAUX, TAYLOR & ASSOCIATES
1155 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON, D. C. 20036

FRANKLIN DUCHENEAUX
PETER S. TAYLOR
CORNESTINE DUCHENEAUX, EX. ASST.

TELEPHONE [redacted]
FAX [redacted]

MEMORANDUM
TO : KURT BLUEDOG ESQ.
FROM : FRANK DUCHENEAUX
SUBJECT: DRAFT MINNESOTA DELEGATION LETTER TO SECRETARY BABBITT RE HUDSON DOG TRACK

Myron reminded me that I was supposed to draft a proposed letter for the Minnesota congressional delegation to send to Secretary Babbitt opposing the fee-to-trust transfer for the St. Croix Meadow Dog Track. Attached hereto is such a draft. Please feel free to modify as much as you feel necessary.

It is very difficult to coordinate a delegation letter. It is even more so when it involves both Senators and Representatives. MIGA may wish to have two letter, perhaps identical; one from the two Senators and the other from the House delegation.

It is necessary to get one member of the delegation to agree to be the coordinating sponsor. I would suggest Oberstar. He (or, in reality, his staff) would then contact the other offices to see if they would be willing to co-sign the letter. This often result in rewrite compromises to satisfy one member or the other. If Oberstar or whoever we get to take the lead agrees, we could help in this process by contacting the other offices to urge them to sign the letter.

I am faxing a copy of this letter and the draft to Myron. I am going on vacation tomorrow (Friday, March 25th) and will not be back in the office until April 4th.

cc: Myron Ellis, Chairman, MIGA

DRAFT LETTER FROM THE MINNESOTA CONGRESSIONAL DELEGATION TO SECRETARY BABBITT RE PURCHASE OF HUDSON DOG TRACT BY WISCONSIN TRIBES FOR GAMING PURPOSES.

The Honorable Bruce Babbitt
Secretary of the Interior
Department of the Interior
1849 C Street, N. W.
Washington, D. C. 20240

Dear Mr. Secretary:

We are writing to express our deep concern about a proposal of three Indian tribes of Wisconsin to acquire the St. Croix Meadows Dog Track site in Hudson, Wisconsin. We understand it will be their intention to petition your office for transfer of such lands in trust for establishment of an off-reservation casino. While we are reluctant to intervene in a proposal outside Minnesota, we see serious adverse implications for the gaming enterprises of the Indian tribes of Minnesota, and for the delicate relationship which has been achieved by the State of Minnesota and the Minnesota tribes of such a proposal is approved.

We concede that we would have little reason to oppose this proposal if the site was located on the existing reservations of these three tribes. However, this land is not on those reservations. In fact, the site is far removed from the reservations of those tribes.

The taking of these lands in trust for those Wisconsin tribes and the establishment of a Class III Indian gaming enterprise will have a severe, adverse impact on the economic viability of gaming enterprises of the Shakopee Mdewakanton Dakota Tribe and the Prairie Island Sioux Community of Minnesota. The immediate market area of these two enterprises is the Minneapolis-St. Paul metropolitan area. Hudson is just across the river from this area, and, therefore, it is very clear why the dog track proposal is being pushed. Its success is dependent upon drawing from the Minnesota market. Not only would this off-reservation Indian casino unfairly undercut the economic viability of our Minnesota tribal gaming enterprises, it will also weaken the economy of the State of Minnesota.

The opening of an off-reservation casino in close proximity to the major markets of Minnesota could also upset the working arrangement the State of Minnesota has developed with the Indian tribes on gaming activity. Because of the amicable agreement to gaming compacts covering Class III gaming on the reservations of the Minnesota tribes, those tribes have adopted a policy of not pursuing, or accepting offers of, off-reservation fee-to-trust land transfers for gaming purposes. Based upon their policy, concrete proposals in that respect have been rejected by the Minnesota tribes. The Secretarial approval of an off-reservation fee-to-trust transfer for gaming purposes in the Twin Cities market area, even though in the State of Wisconsin, might cause the Minnesota

tribes to reassess their policy when faced with that kind of precedent.

Section 20 of the Indian Gaming Regulatory Act requires the Secretary of the Interior, prior to approving any fee-to-trust transfer for gaming purposes, to consult with officials of other nearby tribes. It was the intent of Congress that the Secretary, in deciding whether or not to take lands in trust for an Indian tribes for gaming purpose, outside of their own reservations, to give the most serious consideration to the impact that such a decision would have on other nearby tribes, for whom the Secretary has a trust obligation. We believe that the case can easily be made that such a decision in the St. Croix Meadows Dog Track would be devastating to the existing economic activities of the Minnesota tribes.

We strongly urge you to examine very closely the impact of your decision in that case on the Minnesota Indians tribes and upon the State of Minnesota itself.

Sincerely,

Dave Durenberger U. S. Senator	Paul David Wellstone U. S. Senator
James L. Oberstar M.C.	Timothy Penny M.C.
David Minge M.C.	Jim Ramstad M.C.
Bruce F. Vento M. C.	Martin Olav Sabo M. C.
Rod Grams M.C.	Collin C. Peterson M.C.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

MAR 24 1994

Mr. Myron Ellis
Chairman
Minnesota Indian Gaming Association
Rt. 2, Box 95
Cass Lake, Minnesota 56633

Dear Chairman Ellis:

Thank you for your letter of January 10, 1994, to Secretary of the Interior Bruce Babbitt. Your letter has been referred to this office for response.

You are writing on behalf of the Minnesota Indian Gaming Association to express the Association's concerns over the proposed fee-to-trust acquisition of the St. Croix Meadows Dog Track by three Wisconsin tribes, the Lac Courte Oreilles Band, the Red Cliff Band and the Sokaogon Chippewa Community.

The three tribes have filed an application with the Bureau of Indian Affairs (BIA) to have the track property converted to trust status. The property is intended for a combined race track and Class III casino.

The application is currently being reviewed by the BIA Minneapolis Area Office. Because the property to be acquired in trust is for gaming, the Minneapolis Area Director (Area Director) has initiated the Section 20 consultation required by the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719. Subsection (b)(1)(A) of Section 20 of the IGRA requires consultation with state, local officials and nearby Indian tribes, a two-part determination by the Secretary and concurrence by the Governor of the state.

We are informed that all of the Minnesota tribes have been "consulted" and asked to comment on the proposed acquisition. Because this is the only opportunity for the tribes to express their views and objections to the proposed trust acquisition, it is important that the tribes respond to the Area Director's consultation letter. Any and all factual information in support of their respective positions should be provided to the Area Director for consideration. This is the appropriate means to ensure that the Minnesota tribes' views are considered. In this regard, we are providing a copy of your letter to the BIA Minneapolis Area Office for information.

At this time all actions concerning the review and analysis of the application are being handled by the Area Office. The Area Office has not yet submitted its findings and recommendation to this office. Thus, we are not in a position to discuss the merits of the proposed acquisition.

Thank you for your interest in Indian gaming.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

cc: Minneapolis Area Office
Vice Chairman Stanley Crooks, Minnesota Indian Gaming Association

BLUEDOG LAW OFFICE, P.A.
SOUTHGATE OFFICE PLAZA, SUITE 670
5001 WEST 80TH STREET
BLOOMINGTON, MN 55437

FAX [redacted]

Kurt V. BlueDog *
William J. Hardacker
Andrew M. Small ***
Steven F. Olson **
Vanya S. Hogen-Kind

Also admitted in:
* Wisconsin
** South Dakota
*** Only admitted in: Montana

March 25, 1994

The Honorable David Minge
1508 Longworth House Office Building
Washington, D.C. 20515

RE: Hudson Dog Track/Casino Proposal

Dear Congressman Minge:

Thank you so much for the opportunity to meet with you on March 9, 1994 to discuss the matter relating to the effort on the part of certain Wisconsin Indian Tribes to place a tribal casino in Hudson Wisconsin at the St. Croix Meadow Dog Track. As Chairman Stanley Crooks and I explained at that time the Minnesota Indian Tribes, collectively through the Minnesota Indian Gaming Association, have actively opposed this initiative for the reasons stated in the materials which we left at your office. Most particularly we believe that placement of such lands into trust for gaming purposes would be detrimental to the Minnesota Tribes and to the State of Minnesota because it would draw the Minnesota population to Wisconsin and thus interfere with the Minnesota Tribal Gaming Markets; it would create what could amount to a precedent for other rural Tribes to move into more heavily populated urban areas; and it could well serve to disrupt the delicate Tribal/State balance which the Minnesota Tribes have been able to achieve with regard to working amicably with state officials on gaming issues. Additionally, and as we state in the Shakopee Tribal Resolution, we believe that the subject Hudson Wisconsin acreage here at issue has been historically recognized in the Treaty of 1825, and in the Treaty of 1837, as well as within the proceedings before the Indian Claims Commission, as historically Dakota Mdewakanton territory. Thus if such lands were to be utilized by any Indian Tribe it seems most appropriate that this been done by a Dakota Tribe; and as explained in the resolution our Dakota Tribes have declined to request such a fee-to-trust status based on our existing relationship with the State of Minnesota.

We therefore are requesting, pursuant to our discussions with you, that your office coordinate an effort among the Minnesota Congressional delegation to collectively correspond with Interior Secretary Babbitt in opposition to the proposal on the part of the Wisconsin Chippewa Tribes. A draft of a letter for this purpose is enclosed herein.

BLUEDOG LAW OFFICE, P.A.

RE: Hudson Dog Track/Casino Proposal
March 25, 1994
Page 2

Please contact me at the number listed above or our Washington D.C. representative Franklin Ducheneaux at [redacted] if we can provide further information. Many thanks for your assistance on this important matter.

Sincerely,

Kurt V. BlueDog

Enclosure

cc: Myron Ellis, Minnesota Indian Gaming Association
Stanley Crooks, Minnesota Indian Gaming Association

smsc\misc\sicroxdt tkf

March 25, 1994

The Honorable Bruce Babbitt
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 2040

Dear Mr. Secretary:

We are writing to express our deep concern about a proposal of three Indian tribes of Wisconsin to acquire the St. Croix Meadows Dog Track site in Hudson, Wisconsin. We understand it will be their intention to petition your office for transfer of such lands into trust status for establishment of an off-reservation casino. While we are reluctant to intervene in a proposal outside Minnesota, as well as in a proposal involving other Indian tribes, we see serious adverse implications for the gaming enterprises of the Indian tribes of Minnesota, and for the delicate relationship which has been achieved by the State of Minnesota and the Minnesota tribes if such a proposal is approved.

We concede that we would have little reason to oppose this proposal if the site was located on the existing reservations of these three tribes. However, this land is not on those reservations; in fact, the site is far removed, by hundreds of miles, from the reservations of those tribes.

The taking of these lands into trust for those Wisconsin tribes and the establishment of a Class III Indian gaming enterprise will have a severe, adverse impact on the economic viability of the gaming enterprises of the Minnesota Indian Tribes, most particularly the Shakopee Mdewakanton Dakota Tribe, the Prairie Island Sioux Community of Minnesota and the Mille Lacs Band of Chippewa. The immediate market area of these enterprises is the Minneapolis-St. Paul metropolitan area. Hudson is just across the river from this area, and, therefore, it is very clear why the dog track proposal is being pushed. Its success is dependent upon drawing from the Minnesota market. Not only would this off-reservation Indian casino unfairly undercut the economic viability of our Minnesota tribal gaming enterprises, it will also weaken the economy of the State of Minnesota.

The opening of an off-reservation casino in close proximity to the major markets of Minnesota could also upset the working arrangement the State of Minnesota has developed with the Minnesota Indian tribes on gaming activity. Because of the amicable agreement in gaming compacts covering Class III gaming on the reservations of the Minnesota tribes, the Minnesota tribes have adopted a policy of not pursuing, or accepting offers of off-reservation fee-to trust land transfers for gaming purposes. Based upon this policy, concrete proposals in that respect have been rejected by the Minnesota tribes. The Secretarial approval of an off-reservation fee-to-trust transfer for gaming purposes in the Twin Cities market area, even those in the State of Wisconsin, might cause the Minnesota tribes to reassess their policy when faced with that kind of precedent.

Section 20 of the Indian Gaming Regulatory Act requires the Secretary of the Interior, prior to approving any fee-to-trust transfer for gaming purposes, to consult with officials of other nearby tribes. It was the intent of Congress that the Secretary, in deciding whether or not to take lands in trust for an Indian tribes for gaming purpose, outside of their own reservations, to give the most serious consideration to the impact that such a decision would have on other nearby tribes, for whom that Secretary has a trust obligation. We believe that the case can easily be made that such a decision in the St. Croix Meadows Dog Track would be devastating to the existing economic activities of the Minnesota tribes.

We strongly urge you to examine very closely the impact of your decision in this case on Minnesota Indians tribes and upon the State of Minnesota itself. We urge you to decline to take the subject lands located in Hudson, Wisconsin into trust status.

James L. Oberstar M.C.	Timothy Penny M.C.
David Minge M.C.	Jim Ramstad M.C.
Bruce F. Vento M.C.	Martin Olav Sabo M.C.
Rod Grams M.C.	Collin C. Peterson M.C.

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BLUEDOG LAW OFFICE, P.A.
SOUTHGATE OFFICE PLAZA, SUITE 670
5001 WEST 80TH STREET
BLOOMINGTON, MN 55437

[redacted]
FAX[redacted]

Kurt V. BlueDog *
William J. Hardacker
Andrew M. Small ***
Steven F. Olson **
Vanya S. Hogen-Kind

Also admitted in:
* Wisconsin
** South Dakota
*** Only admitted in: Montana

March 25, 1994

The Honorable David Minge
1508 Longworth House Office Building
Washington, D.C. 20515

RE: Hudson Dog Track/Casino Proposal

Dear Congressman Minge:

Thank you so much for the opportunity to meet with you on March 9, 1994 to discuss the matter relating to the effort on the part of certain Wisconsin Indian Tribes to place a tribal casino in Hudson Wisconsin at the St. Croix Meadow Dog Track. As Chairman Stanley Crooks and I explained at that time the Minnesota Indian Tribes, collectively through the Minnesota Indian Gaming Association, have actively opposed this initiative for the reasons stated in the materials which we left at your office. Most particularly we believe that placement of such lands into trust for gaming purposes would be detrimental to the Minnesota Tribes and to the State of Minnesota because it would draw the Minnesota population to Wisconsin and thus interfere with the Minnesota Tribal Gaming Markets; it would create what could amount to a precedent for other rural Tribes to move into more heavily populated urban areas; and it could well serve to disrupt the delicate Tribal/State balance which the Minnesota Tribes have been able to achieve with regard to working amicably with state officials on gaming issues. Additionally, and as we state in the Shakopee Tribal Resolution, we believe that the subject Hudson Wisconsin acreage here at issue has been historically recognized in the Treaty of 1825, and in the Treaty of 1837, as well as within the proceedings before the Indian Claims Commission, as historically Dakota Mdewakanton territory. Thus if such lands were to be utilized by any Indian Tribe it seems most appropriate that this been done by a Dakota Tribe; and as explained in the resolution our Dakota Tribes have declined to request such a fee-to-trust status based on our existing relationship with the State of Minnesota.

We therefore are requesting, pursuant to our discussions with you, that your office coordinate an effort among the Minnesota Congressional delegation to collectively correspond with Interior Secretary Babbitt in opposition to the proposal on the part of the Wisconsin Chippewa Tribes. A draft of a letter for this purpose is enclosed herein.

BLUEDOG LAW OFFICE, P.A.

RE: Hudson Dog Track/Casino Proposal
March 25, 1994
Page 2

Please contact me at the number listed above or our Washington D.C. representative Franklin Ducheneaux at [redacted] if we can provide further information. Many thanks for your assistance on this important matter.

Sincerely,

Kurt V. BlueDog

Enclosure

cc: Myron Ellis, Minnesota Indian Gaming Association
Stanley Crooks, Minnesota Indian Gaming Association

smac\misc\stcroxat.tk:

Congress of the United States
House of Representatives
Washington, DC 20515

May 1, 1994

The Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street, NW
Washington, D.C. 22040

Dear Secretary Babbitt:

We are writing to express our concern about a proposal of three Indian tribes of Wisconsin to acquire the St. Croix Dog Track site in Hudson, Wisconsin. We understand it will be their intention to petition your office for transfer of such lands into trust status for establishment of an off-reservation casino. While we are reluctant to intervene in a proposal outside Minnesota, we see serious adverse implications for gaming enterprises of the Indian tribes of Minnesota, and for the delicate relationship which has been achieved by the State of Minnesota and the Minnesota tribes if such a proposal is approved.

We recognize that we would have little reason to oppose this proposal if the site was located on the existing reservations of these tribes. However, this land is not on those reservations; in fact, the site is hundreds of miles from the reservations of the tribes.

The taking of these lands into trust for those Wisconsin tribes and the establishment of a Class III Indian gaming enterprise will have a severe and adverse impact on the economic viability of the gaming enterprises of the Minnesota Indian Tribes -- most particularly the Shakopee Mdewakanton Dakota Tribe, the Prairie Island Sioux Community of Minnesota and the Mille Lacs Band of Chippewa. The immediate market area of these enterprises is the Minneapolis-St. Paul metropolitan area. Hudson is just across the river from this area, and, therefore, it is very clear why the Dog Track proposal is being pushed. Its success is dependent upon drawing from the Minnesota market. Not only would this off-reservation Indian casino unfairly undercut the economic viability of our Minnesota tribal gaming enterprises, it will also weaken the economy of the State of Minnesota.

The opening of an off-reservation casino in close proximity to the major markets of Minnesota could also upset the working arrangement the State of Minnesota has developed with the Minnesota Indian tribes of gaming activity. Because of the

Secretary Babbitt,
May 1, 1994

amicable agreement in gaming compacts covering Class III gaming on the reservations of the Minnesota tribes, the Minnesota tribes have adopted a policy of not pursuing, or accepting offers of off-reservation fee-to-trust land transfers for gaming purposes. Based on this policy, concrete proposals in that respect have been rejected by the Minnesota tribes. The Secretarial approval of an off-reservation fee-to-trust transfer for gaming purposes in the Twin Cities market area, even those in the State of Wisconsin, might cause the Minnesota tribes to reassess their policy when faced with that kind of precedent.

Additionally, it appears that the subject Hudson, Wisconsin area at issue has been historically recognized as Dakota Mdewakanton territory. We understand that the basis for this territory are in the Treaty of 1825, the Treaty of 1837, and the proceedings before the Indian Claims Commission. Thus if such lands were to be utilized by any Indian Tribe, it seems most appropriate that this be done by a Dakota Tribe. The Dakota Tribes have declined to request such a fee-to-trust status based on their existing relationship.

Section 20 of the Indian Gaming Regulatory Act requires the Secretary of the Interior, prior to approving any fee-to-trust transfer for gaming purposes, to consult with officials of other nearby tribes. It was the intent of Congress that the Secretary, in deciding whether or not to take lands in trust for an Indian tribe for gaming purposes, outside their reservations, to give the most serious consideration to the impact that such a decision would have on other nearby tribes, for whom the Secretary has a trust obligation. We believe that the case can easily be made that such a decision in the St. Croix Meadows Dog Track would be devastating to the existing economic activities of the Minnesota tribes.

We strongly urge you to examine very closely the impact of your decision in this case on Minnesota Indian tribes and upon the state of Minnesota itself. We urge you to decline to take the subject land located in Hudson, Wisconsin into trust status.

Sincerely,

DAVE DURENBERGER, U.S.S.

DAVID MINGE, M.C.

Secretary Babbitt
May 1, 1994

JAMES OBERSTAR, M.C.

MARTIN OLAV SABO, M.C.

BRUCE VENTO, M.C.

TIMOTHY PENNY, M.C.

COLLIN PETERSON, M.C.

JIM RAMSTAD, M.C.

BLUEDOG LAW OFFICE, P.A.
SOUTHGATE OFFICE PLAZA, SUITE 670
5001 WEST 80TH STREET
BLOOMINGTON, MN 55437

[redacted]
FAX [redacted]

Kurt V. BlueDog *
William J. Hardacker
Andrew M. Small ***
Steven F. Olson **
Vanya S. Hogen-Kind

Also admitted in:
* Wisconsin
** South Dakota
*** Only admitted in: Montana

June 6, 1994

Paul David Wellstone
U.S. Senate
Washington, D.C. 50510-2303

RE: Hudson Wisconsin Dog Track

Dear Senator Wellstone:

I am writing at the direction of the Minnesota Indian Gaming Association to follow up on a matter which is of the utmost importance to the Minnesota Tribes. Sometime ago we were informed that three Indian Tribes from the State of Wisconsin were in the process of petitioning the Department of the Interior to place the St. Croix Meadows Dog Track, located in Hudson Wisconsin, into trust status with the United States Government. The purpose of this move was to allow those tribes to conduct a high stakes Class III gambling casino at that location and to draw customers from the more heavily populated Twin Cities area. The Tribes in Minnesota were at that time understandably reluctant to interfere and so we therefore took no action at that time in the hope that the project would stumble on it's own accord. Somewhat to our dismay however, we discovered that the project is alive and well and is presently being seriously considered at the top level within the Department of the Interior. I am writing therefore on behalf of the Tribes to request your participation and intervention in this matter in opposition to the initiative.

The enclosed materials are self-explanatory, we previously had forwarded and delivered a copy to your office, and they serve to explain the back drop to this situation. We fully recognize that as our United States Senator, and particularly as a member of the Senate Committee on Indian Affairs, that your view on this matter is critical. We are therefore requesting your direct intervention with the Secretary of Interior in opposition to the creation of a high stakes gambling casino in Hudson Wisconsin. Please contact me if I can provide further information.

Sincerely,

Kurt V. BlueDog

Enc.

Kurt V. BlueDog

cc: MIGA Chairman, Myron Ellis
MIGA Vice-Chairman, Stanley R. Crooks

other\miga\welldgtr.dkf

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
Ashland, Wisconsin 54806-0270

IN REPLY REFER TO
Natural Resources

June 20, 1994

Marjorie Anderson, Chairman
Mille Lacs Business Committee
HCR 67, Box 194
Onamia, MN 56359

Dear Ms. Anderson:

The Bureau of Indian Affairs, Great Lakes Agency is providing a copy of the Addendum (referred to as the Addendum) to the "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988," (referred to as the EA) for your review and comments, pursuant to the requirements of the National Environmental Policy Act (NEPA) in 40 CFR Parts 1500-1508. Also included in the package is a copy of the Notice of Availability (NOA) and DRAFT finding of no significant impact (FONSI) for the proposed project.

The enclosed Addendum describes the proposed federal trust acquisition of, and addition of class III gaming to, the St. Croix Meadows Greyhound Racing Park in Hudson, WI, by the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians and the Sokaogon Chippewa Community. The DRAFT FONSI was prepared, based upon the findings of the Addendum and original EA, and may be signed if no significant environmental impacts are identified during the 30-day comment period (June 23, 1994 - July 23, 19941).

Copies of the EA can be viewed at the Hudson Public Library, 304 Locust Avenue, Hudson, WI; at the Bureau of Indian Affairs, Great Lakes Agency, 615 Main Street West, Ashland, WI; or at the Bureau of Indian Affairs, Minneapolis Area Office, 331 South Second Avenue, Minneapolis, MN.

Comments regarding this proposed action, the DRAFT FONSI, and/or the Addendum may be submitted during the 30-day comment period to the above address in care of the Superintendent.

Contact Mark Kuester, Natural Resources Specialist, at [redacted] for additional information.

Sincerely,

ACTING Superintendent

Enclosures

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
Ashland, Wisconsin 54806-0279

IN REPLY REFER TO
Natural Resources

JUN 23 1994

NOTICE OF AVAILABILITY

An addendum (referred to as the Addendum) to the "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" (referred to as the EA) and "DRAFT" Finding of No Significant Impact (FONSI) have been prepared for the proposed trust acquisition of, and addition of class III gaming to, the St. Croix Meadows Greyhound Racing Park by the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians, and the Sokaogon Chippewa Community. These documents have been prepared pursuant to requirements of the National Environmental Policy Act (NEPA) in 40 CFR Parts 1500-1508.

Brief Description of Proposed Action

The three Indian Tribes mentioned above propose to place 55.82 acres, consisting of the St. Croix Meadows Greyhound Racing Facility including the principle structure (grandstands), track facilities, paddock and kennel facilities, and northern parking lot, into federal trust for the purpose of operating a class III gaming facility, in addition to the existing pari-mutuel dog track operation. The main parking lot to the west of the grandstand building is not intended for trust acquisition.

Availability and Comments

The Addendum contains information regarding the proposed project, site description/background, alternatives to the proposed action, possible environmental impacts, mitigation plans, and conclusions. Interested parties can view copies of the draft FONSI, the Addendum, and the EA at the Hudson Public Library, 304 Locust Avenue, Hudson, WI; at the Bureau of Indian Affairs, Great Lakes Agency, 615 Main St. W., Ashland, WI; or at the Bureau of Indian Affairs, Minneapolis Area Office, 331 South Second Avenue, Minneapolis, MN.

Comments regarding the proposed action, the draft FONSI, and/or the Addendum may be submitted within 30 days of the date of this publication notice to the letterhead address above in care of the Superintendent. If no significant environmental impacts are identified within the 30 day period, the draft FONSI will be signed and the NEPA process complete for the proposed project.

Contact Mark Kuester, Natural Resources Specialist, at (715) 682-4527 if any additional information is needed.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
Ashland, Wisconsin 54806-0070

IN REPLY REFER TO
Natural Resources

DRAFT

FINDING OF NO SIGNIFICANT IMPACT

An addendum (referred to as the Addendum) to the "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" (referred to as the EA), has been prepared for the proposed trust acquisition of, and addition of class III gaming to, the St. Croix Meadows Greyhound Racing Park by the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians, and the Sokaogon Chippewa Community. These documents have been prepared pursuant to requirements of the National Environmental Policy Act (NEPA) in 40 CFR Parts 1500-1508. The addendum was prepared by Eischof & Vasseur from Oak Park, Illinois, and the EA was prepared by Mid-States Associates, Inc.

Project Description

The Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians and the Sokaogon Chippewa Community propose to purchase, and place into federal trust, 55.82 acres consisting of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building, for the purpose of operating a class III gaming facility in addition to the existing pari-mutuel dog track operation. The main parking lot west of the grandstand building is not intended for trust acquisition.

The existing grandstand would be remodeled to accommodate gaming activities, however, most support facilities (kitchen, washrooms, office space, etc.) would be maintained.

Need for Project

The Three Tribes anticipate the generation of revenues from the proposed project that are needed for community development for each Tribe.

ADDENDUM TO THE ENVIRONMENTAL ASSESSMENT FOR ST.CROIX MEADOWS GREYHOUND RACING PARK HUDSON, WISCONSIN, JANUARY 1988

Table of Contents:

- The Addendum by Bischof and Vasseur, Oak Park, IL
- Attachment I: Proposed Tribal Gaming Facility Impacts on Socioeconomic Conditions
- Attachment II: Proposed Casino Development Impact on the City of Hudson
- Attachment III Impact Assessment of Proposed Casino on St. Croix County
- Attachment IV: Agreement for Government Services

DRAFT

Project Alternatives and Possible Impacts

Three alternatives have been proposed. "Alternative One" is the proposed project. Several possible impacts have been addressed in the Addendum regarding this alternative. Possible negative socioeconomic impacts on the City of Hudson and St., Croix County, have been addressed and minimized through the "Agreement for Government Services" developed between the City, the County and the three Tribes. Possible negative impacts to Tribes with gaming facilities in the general area of the proposed facility are also addressed in the EA addendum and are expected to be minimal. It is not the intent of the NEPA process to limit competition for business profits. Possible social impacts are addressed in both the addendum and the original EA. The proposed project is projected to have similar attendance as the original dog track facility was designed to manage, and the impacts to the social environment would, similarly, not be considered significant. The addition of one form of gaming to a facility, already established for the purpose of gaming, would also not be considered significant.

"Alternative Two", proposes that the three Tribes would construct a new Tribal gaming facility at an alternate location. This alternative would have similar impacts as the proposed action and would include the environmental impacts associated with constructing an entire new facility.

"Alternative Three" is the "No Action" alternative. The environmental impacts associated with this alternative would be minimal, however, the proposed need to gain revenues to enhance Tribal community development would not be met.

Findings and Conclusion

Based upon the findings of the EA and the Addendum regarding this proposed action and the alternatives considered, it has been determined that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary.

_____ _____

Superintendent, Great Lakes Agency **Date**

Bischof & Vasseur

[redacted]
Oak Park, Illinois 60304
[redacted]

May 23, 1994

Mr. Elliot Moffett
Tribal Operations Officer
United States Department of the Interior
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, MN 55401-2241

RE: St. Croix Meadows Greyhound Racing Park
2200 Carmichael Road
Hudson, Wisconsin
Environmental Assessment Addendum

Dear Mr. Moffett:

Bischof & Vasseur (B&V) has been requested by Mr. William Cadotte on behalf of the Lac Courte Oreilles Tribal Government, to submit a response to your review response letter, dated May 19, 1994. As we discussed during our telephone conversation, we are submitting the Environmental Assessment (EA) prepared by Mid-States Associates, Inc. as part of the Wisconsin Racing Board License Application for the St. Croix Meadows Greyhound Racing Park. In addition, we are submitting an addendum to the racetrack EA which discusses the potential impacts transferring the site to be held in trust by the United States on behalf of the three tribes and remodeling the existing grandstand area to accommodate the new tribal gaming facility may have on the natural resources, cultural resources, socioeconomic resources, and urban resources of the site.

Section 102 (2) of the National Environmental Policy Act (NEPA) establishes procedures which are binding on all Federal agencies. The primary requirement of NEPA is that an environmental impact statement (EIS) be prepared for every major Federal action which may significantly affect the quality of the human environment. Due to the tribes' application for transferring the site to be held in trust by the United States on behalf of the three tribes, the lead Federal agency responsible for enforcing the NEPA requirements is the Bureau of Indian Affairs (BIA). An environmental assessment (EA) is a less-detailed document which may used to determine whether an EIS is required. If, based on an EA, it is determined that an EIS is not required, the responsible line official, in this case the BIA Area Director, signs a finding of no significant impact (FONSI).

RECEIVED
MAY 26 1994
TRIBAL OPERATIONS

Site Description/Background

The site is located at 2200 Carmichael Road in Hudson, Wisconsin, approximately one mile south of the Carmichael Road/Interstate "94" interchange. The site consists of approximately 55.82 acres located in the fractional Northeast Quarter and Southeast Quarter of the Northeast Quarter, Section 6, Township 2, North, Range 16 West, City of Hudson, Saint Croix County, Wisconsin.

In June 1991, the St. Croix Meadows Greyhound Racing Park opened on the site. The facility consists of a racing area, enclosed grandstand and clubhouse, kennels, and parking areas. The racetrack is open year round and has twenty kennels, each kennel having the capacity of housing up to 72 greyhounds each. The racetrack currently employs approximately 282 employees, including the food service employees. Prior to the construction of the racetrack, the site was used for agricultural purposes.

The site is located in a rural area in the southeast corner of the City of Hudson. Small residential pockets are located to the south and east of the site. There are approximately 13 single family homes and 26 units of multi-family housing located along County Trunk Highway "F". There are an additional 16 rural residences located to the northeast of the site near the Carmichael Road/Interstate "94" interchange and approximately 20 homes south of the site near Tower Road. A quarry is located near the top of the bluff east of the site adjoining Tower Road. The quarry is currently operating. The balance of the bluff is woodlands. Existing agricultural/pasture land is located to the north and west of the site. The Hudson Industrial Park, consisting of approximately 108 acres of privately-owned land, is located west of the site.

Environmental Consequences

Alternative One - Transfer the Site Into Trust Status and Implement Tribal Gaming Facility Remodel As Planned - The Preferred Alternative

Alternative One would involve transferring the site to be held in trust by the United States on behalf of the three tribes and implement the conversion of the existing grandstand area into a tribal gaming facility. The grandstand area would undergo remodelling activities so that the space can accommodate the tribal gaming activities. Existing support facilities (i.e., kitchen, washrooms, office space, etc.) would be utilized as much as feasible as part of the conversion. This is the preferred alternative. Alternative One will have a positive impact on the economic growth and well being on the surrounding communities. Project planning and construction activities will provide valuable, hands-on training to members of the project planning/implementation team. Once completed, the new tribal gaming facility will provide several hundred permanent full-time employment opportunities.

A. Impacts on Natural Resources

The transfer of the site to be held in trust by the United States on behalf of the three tribes and remodeling of the grandstand area to accommodate a new tribal gaming facility would have no new significant short-term, long-term, or cumulative impacts on the regional geology, including

bedrock and soils, ground water/water quality, or climate.

The planned remodeling activities may temporarily result in increased levels of noise, dust, and exhaust fumes within the area where remodeling activities occur. These impacts will be of relatively short duration throughout the early stages of the remodeling activities and will be isolated within the grandstand area. Mitigation measures will include maintenance of construction equipment in good working order, proper muffling of construction equipment, maintaining secured access to the construction area, and conforming with tribal and local ordinances and codes regarding construction curfews.

Current plans call for utilizing existing racetrack facilities to house the new tribal gaming and support operations. Therefore, no new significant short-term, long-term, or cumulative effect on site soils erosion, storm water runoff flows, heating and cooling systems noise levels, or facility lighting are expected as a result of transferring the site to be held in trust by the United States on behalf of the three tribes and remodeling the existing grandstand area to accommodate a new tribal gaming facility. An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. From here, collected storm water is allowed to evaporate, percolate into site soils, or slowly flow along a regional storm water control system towards the St. Croix River. According to City of Hudson officials, the existing storm water control system appears to be adequate to handle storm water runoff from the site.

Extensive traffic and air pollution modeling were performed as part of the Mid-States EA. Access roads and parking areas were designed to accommodate the traffic counts expected from the planned actions. According to City of Hudson officials, regular ambient air monitoring and traffic evaluations of the racetrack operations have indicated no significant impact to traffic flow or ambient air quality. The proposed actions will utilize the existing traffic network. No new significant short-term, long-term, or cumulative impact is expected on area traffic and ambient air quality as a result of the proposed actions.

It is not expected that any natural areas (native trees and wildlife habitat) will be impacted by transferring the site to be held in trust by the United States on behalf of the three tribes or remodeling the existing grandstand area into a new tribal gaming facility. There are no anticipated impacts from the planned action on wetlands or other surface waters in the area. According to the National Wetlands Inventory map for the site, there are no designated wetland areas located on the site.

Since the WDNR did not identify any rare plant or animal species or other significant natural features known to occur within the immediate vicinity of the site, the transfer of the site to be held in trust by the United States on behalf of the three tribes and remodeling the existing grandstand area to accommodate a new tribal gaming facility will have no significant impact on these rare resources.

Since the planned action will utilize the existing racetrack facilities, they will not have a significant impact on prime or unique farmlands as described in the Farmland Protection Policy Act.

B. Impacts on Cultural Resources

No significant impacts are expected on either the cultural resources of the City of Hudson, St. Croix County, or the surrounding communities other than the possible increase in visitors to various cultural activities.

No impact on historic or archaeological resources would be expected as a result of the transfer of the site to be held in trust by the United States on behalf of the three tribes and remodeling the existing grandstand area to accommodate a new tribal gaming facility. Prior to the construction of the racetrack, the site was used for agricultural purposes and none of the buildings located on the site are eligible for the National Register of Historic Places.

If archaeological resources should be discovered during project remodeling, the Wisconsin State Archaeologist and the Bureau of Indian Affairs Minneapolis Area Office would be contacted immediately and consulted to develop the appropriate discovery and treatment plan.

C. Impacts on Socioeconomic Conditions

The remodeling of the existing grandstand area to accommodate a new tribal gaming facility is expected to have a significant positive impact on the current socioeconomic conditions of the City of Hudson, St. Croix County, and the surrounding communities. Acquisition of the 55.82 acre site and transferring the land to be held in trust by the United States on behalf of the three tribes is consistent with the tribes' efforts to regain their lost land base. An efficient new tribal gaming facility, particularly a facility with most of the support operations already present, will allow the tribes to further compete within the rapidly expanding Indian gaming industry.

The remodeling activities are expected to create several dozen temporary construction jobs. These temporary construction jobs and purchases will contribute positively to the local economy. In addition, as members of the project planning team continue through the planning process, they will gain valuable hands-on project planning and management experience which can be applied to other tribal projects.

Operation of the new tribal gaming facility will create several hundred permanent full-time jobs which will have a positive effect on the three tribal populations as well as the surrounding communities. Revenues generated by the proposed tribal gaming operations can be used to reinvest in economic development opportunities on the three Reservations. Tribal gaming revenues are often the only source of economic development funding available to residents of Indian Country. The planned tribal gaming facility will also benefit other tourism-related businesses in the Hudson area by providing additional recreational variety for visitors to the area.

D. Impacts on Urban Services

No significant short-term, long-term, or cumulative impacts are expected on urban services as a result of the proposed actions. The existing racetrack facilities are supplied by exiting public water, sanitary sewer, electric, and telephone utilities. Access roads and adequate parking

facilities also already exist. Fire protection, police protection, and emergency medical services provided by the City of Hudson and St. Croix County are supplemented by the racetrack facility's security personnel. A formal intergovernmental agreement between the three tribes, City of Hudson, St. Croix County, and racetrack management regarding contracted government services has been submitted to the BIA as part of the fee to trust application package. This agreement states that the tribes and racetrack management will compensate local government bodies approximately $1.15 million for the increased costs incurred by those government bodies to provide additional government services to the planned tribal gaming facility and racetrack operations. No additional infrastructure will be constructed as part of the proposed actions.

Alternative Two: Construct New Tribal Gaming Facility at an Alternative Location

This alternative would involve purchasing another parcel of land, transferring that property to be held in trust by the United States on behalf of the three tribes and constructing a new tribal gaming facility at the alternative location. Transferring another parcel of land to be held in trust by the United States on behalf of the three tribes and constructing a new tribal gaming facility at this alternative location would not eliminate any of the impacts discussed with Alternative One. Many of the same negative impacts associated with Alternative One would also be true for Alternative Two. Constructing a new tribal gaming facility without utilizing the existing support facilities the existing racetrack offers will likely have a greater impact on the human environment that Alternative One. In addition, other potential negative impacts, which are unforeseeable at this time, may be possible.

Alternative Three: No Action

The third alternative would involve taking no action at this time. This alternative would have an overall negative impact on the three tribal communities and the communities surrounding the site by limiting their ability to further compete in the rapidly expanding Indian gaming marketplace. None of the revenues expected to be generated by the new tribal gaming facility would be available for reinvesting in economic development opportunities on the three Reservations. Tribal gaming revenues are often the only source of economic development funding available to the residents of Indian Country. Few, if any, of the expected benefits resulting from the additional employment and training opportunities associated with Alternative One, the preferred alternative, would be realized.

Conclusion

The Environmental Assessment and Addendum have analyzed the existing environment for the proposed transfer of the site to be held in trust by the Unites States on behalf of the three tribes and remodeling the existing grandstand area to accommodate a new tribal gaming facility, examined the proposed activities relating to the existing facilities, site, and operations, and identified potential environmental consequences of the proposed activities. No new significant short-term, long-term, or cumulative impact on the site's natural resources, cultural resources, socioeconomic resources, or urban resources were identified as a result of the proposed activities.

Bischof & Vasseur

838 South Taylor
Oak Park, Illinois 60304
[redacted]

May 25, 1994

Mr. Elliot Moffett
Tribal Operations Officer
United States Department of the Interior
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, MN 55401-2241

RE: St. Croix Meadows Greyhound Racing Park
2200 Carmichael Road
Hudson, Wisconsin
Site Cultural Resources Review

Dear Mr. Moffett:

Enclosed please find copies of letters from the State Historical Society of Wisconsin, Historic Preservation Division, and Mississippi Valley Archaeology Center, Inc. responsing to requests for information regarding resources of architectural, historical, or archaeological significance at the site referenced above. These requests were made as part of the environmental assessment performed of the site supporting the Wisconsin Racing Board License Application for the St. Croix Meadows Greyhound Racing Park. Also enclosed is a copy of a more recent Freedom of Information Act request made by Bischof & Vasseur regarding the proposed actions.

The planned remodeling activities will take place within the existing grandstand area, a facility that was constructed only a few years ago. This structure is not eligible to be listed in the National List of Historic Places. It is also unlikely to contain resources of archaeological significance. We therefore believe that the planned actions will not have a significant impact on any resources of architectural, historical, or archaeological significance. We recommend that issue a Finding of No Significant Impact (FONSI) for the transfer of the site to be held in trust on behalf of the three tribes and remodeling the existing grandstand area to accommodate a new tribal gaming facility.

If you have any questions or if we can provide you with any additional information, please feel free to contact me at [redacted] or [redacted].

Sincerely,

Louis M. Vasseur
Principal

enc.

RECEIVED
MAY 26 1994
TRIBAL OPERATIONS

Bischof & Vasseur

838 South Taylor
Oak Park, Illinois 60304
[redacted]

June 9, 1994

Mr. Elliot Moffett
Tribal Operations Officer
United States Department of the Interior
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, MN 55401-2241

RE: St. Croix Meadows Greyhound Racing Park
2200 Carmichael Road
Hudson, Wisconsin
Environmental Assessment Addendum - Socioeconomic Impacts

Dear Mr. Moffett:

Bischof & Vasseur (B&V) has been requested by Mr. William Cadotte on behalf of the four parties joined together to pursue the project referenced above to provide additional discussion regarding the potential impact on socioeconomic conditions as a result of transferring the site to be held in trust by the United States on behalf of the three tribes and remodelling the existing grandstand area to accommodate a new tribal gaming facility. The four parties include three federally recognized American Indian tribes, the Red Cliff, Sokaogon, and Lac Courte Oreilles Bands of the Lake Superior Chippewa, and an affiliate of the current owner of the St. Croix Meadows Greyhound Racing Park. The information used to develop this assessment was collected from a wide range of public and private documents, as well as personal communication with persons knowledgeable about the site and vicinity. Two key documents, *An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin* and *An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Racetrack Near the City of Hudson, Wisconsin (February 1994)*, are included as attachments to this addendum.

Thank you for your prompt attention to the submitted Environmental Assessment and Addenda. If you have any questions, please do not hesitate to contact me at [redacted] or [redacted]

Sincerely,

Louis M. Vasseur
Principal

St. Croix Meadows Greyhound Racing Park
Hudson, Wisconsin
Proposed Tribal Gaming Facility
Impacts on Socioeconomic Conditions

The Environmental Assessment and Addenda have analyzed the existing environment for the proposed transfer of the site to be held in trust by the United States on behalf of the three federally recognized American Indian tribes who chose to participate in the proposed actions, the Red Cliff, Sokaogon, and Lac Courte Oreilles Bands of the Lake Superior Chippewa, and the remodelling of the existing grandstand area to accommodate a new tribal gaming facility. In addition, the proposed activities were examined relating to the existing facilities, site, and operations, and potential consequences affecting the quality of the human environment were identified. The following discusses the potential impacts on socioeconomic conditions of the proposed actions.

The proposed actions are expected to have a significant positive impact on the current socioeconomic conditions of the City of Hudson, St. Croix County, and the surrounding communities. The proposed tribal gaming facility is anticipated to support at least 1,600 permanent, full-time jobs at the Hudson location with an average payroll over the next five years of approximately $38 million, including fringe benefits. In addition to the payroll, the proposed tribal gaming facility is expected to purchase approximately $10 million in goods and services (annual average) from a variety of area suppliers. As the payroll and supplier income are recirculated by residents, it is expected to support an additional 1,091 jobs and $18 million per year in earnings for the study area.

The proposed remodelling activities are expected to create several dozen temporary construction jobs. These temporary construction jobs and purchases will contribute positively to the local economy. In addition, as members of the project planning team continue through the planing and construction process, they gain valuable, hands-on project planning and management experience which can be applied to other tribal projects.

The current dogtrack operation has sustained losses in each of the years since its initial opening. It is unlikely that the dogtrack would be able to continue operating without a significant reorganization such as the proposed actions. If the current dogtrack were to close down, it would generate a significant negative impact on the socioeconomic conditions of the study area through the loss of over 500 direct jobs, and 300 indirect jobs, as well as the loss of approximately $9 million in output and approximately $3 million in earnings by dogtrack and supplier employees.

The transfer of the site to be held in trust by the United States on behalf of the three tribes and remodeling the existing grandstand area to accommodate a new tribal gaming facility will have a significant positive effect on the socioeconomic conditions of the Red Cliff, Sokaogon, and Lac Courte Oreilles tribal communities as well. Acquisition of the site and transferring the land to be held in trust by the United States on behalf of the three tribes is consistent with the tribes' efforts to regain their lost land base. An efficient new tribal gaming facility, particularly a facility with most of the support facilities already present, will allow the tribes to further compete within a rapidly expanding Indian gaming industry.

Each of the three tribes which have chosen to participate in the proposed actions continue to have high rates of unemployment and poverty in spite of having developed local tribal gaming facilities. This is

MIGA
Minnesota Indian Gaming Association

Ms. Denise Homer
Acting Area Director
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, MN 55401-2241

Date: July 20, 1994

Dear Mr. Homer:

Please accept this letter as the official response from the Minnesota Indian Gaming Association to both the Addendum and the FONSI in relation to the St. Croix Meadows Greyhound Racing Park project.

The M.I.G.A. members strongly oppose your findings and challenge there validity. We respectfully request an extension of the deadline date from July 23 to September 23 and ask that you meet with us to discuss this issue before any further action is taken. We do not feel that we have had adequate consultation as detailed in the Indian Gaming Regulatory Act. The comment in your draft Addendum under Project Alternatives and Possible Impacts states, "It Is Not The Intent Of The N.E.P.A. Process To Limit Competition For Business Profits". While this may be true for N.E.P.A. it does not hold true for I.G.R.A. as it is our contention that this action will have severe sociion/economic impacts on surrounding tribes. We would appreciate an immediate response to our request and if possible a meeting date when we can get together with you on this most serious issue. Please contact John McCarthy our Executive Director at our office in Cass Lake.

Sincerely,

Stanley Crooks

Stanley Crooks
Vice Chairman, M.I.G.A.

Rt. 2, Box 95 Cass Lake, MN 56633
Phone 218 335-7921 FAX 218 335-7920

PAUL D. WELLSTONE
MINNESOTA

Minnesota Toll Free Number:
1-800-642-8041

United States Senate

WASHINGTON, DC 20510-2303

COMMITTEES:
ENERGY AND NATURAL RESOURCES
LABOR AND HUMAN RESOURCES
SMALL BUSINESS
INDIAN AFFAIRS

July 26, 1994

The Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street, NW
Washington, DC 22040

Dear Secretary Babbitt:

I am writing to add my voice of concern to the voices of my Minnesota Congressional colleagues regarding the proposal of three Wisconsin tribes to acquire the St. Croix Dog Track Site in Hudson, Wisconsin.

It is my understanding that these Wisconsin tribes are petitioning your office to transfer the land into trust status in order to establish a gaming operation. Though I am very reluctant to intervene in an issue outside of Minnesota, I am concerned about the possible adverse impact to Minnesota tribes and Minnesota tribal gaming enterprises if such a plan is approved.

If the proposed site of the casino were to be located on the reservation of any of these tribes, I would have little reason to express any opposition. However, the site is not located on or even near any of the reservations, but rather hundreds of miles away.

The immediate market for this proposed Wisconsin casino is the Minneapolis-St.Paul metropolitan area. The establishment of such a gaming enterprise would have a negative impact on the economic viability of Minnesota Indian gaming enterprises -- in particular the Shakopee Mdewakanton Dakota, the Prairie Island Sioux Community and the Mille Lacs Band of Chippewa. This off-reservation gaming operation would not only undermine the economic viability of Minnesota tribes, but also weaken the economy of the State of Minnesota.

The opening of an off-reservation casino in close proximity to the major markets of Minnesota could also upset the working arrangement the State of Minnesota has developed with the Minnesota tribes on gaming activities. Because of the amicable agreement in gaming compacts covering Class III gaming on

☐ 717 Hart Senate Office Building
Washington, DC 20510-2303
(202) 224-8041

☐ 2560 Midwestern Avenue, West
Court International Building
St. Paul, MN 55114-1000
(612) 646-8223

☐ Post Office Box 291
106 3d Avenue, South
Virginia, MN 55792
(218) 741-1074

☐ 417 Lincoln Avenue, SW
Willmar, MN 56201
(612) 231-8001

Aug. 09 1994 12:34PM P2

FROM : AIPRI

reservations, the Minnesota tribes have adopted a policy of not pursuing or accepting offers of off-reservation fee-to-trust land transfers for gaming purposes. Secretarial approval of an off-reservation fee-to-trust transfer for gaming purposes in the Twin Cities area, even those in the State of Wisconsin, might cause the Minnesota tribes to reassess their policy.

Additionally, it appears that the subject Hudson, Wisconsin area has been historically recognized as Dakota Mdewakanton territory. The basis for this is the Treaty of 1825, the Treaty of 1837 and the proceeding before the Indian Claims Commission. Therefore, if such land were to be utilized by any tribe, it would seem most appropriate that this be done by a Dakota Tribe. The Dakota Tribes have declined to request such a fee-to-trust status based on their existing relationship.

Section 20 of the Indian Gaming Regulatory Act requires that the Secretary of the Interior consult with the officials of other nearby tribes prior to approving any fee-to-trust transfer for gaming purposes. It was the intent of Congress that the Secretary give serious consideration to the impact that such a decision would have on nearby tribes, for whom the Secretary has a trust obligation. I believe that a case can be made that a decision to approve the St. Croix Meadows Dog Track fee-to-trust transfer would have a devastating effect on the economies of Minnesota tribes.

I strongly urge you to examine the impact of your decision on Minnesota tribes very closely and also urge that you decline to permit the Hudson, Wisconsin land to be taken in trust status.

Sincerely,

Paul Wellstone

Paul David Wellstone
United States Senator

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
Ashland, Wisconsin 54806-0271

IN REPLY REFER TO

Natural Resources

August 8, 1994

Stanley Crooks, Vice Chairman
Minnesota Indian Gaming Association
Rt. 2, Box 95
Cass Lake, MN 56633

Dear Mr. Crooks:

The Minneapolis Area Office sent a copy of your enclosed 7/20/94 letter to our Agency and asked us to respond to your request for an extension of the deadline for submitting comments to the environmental documents regarding the proposed Hudson Dog Track/Casino in Hudson, WI.

According to the regulations implemented regarding the National Environmental Policy Act (NEPA) in 40 CFR 1506.10(d) it states, "The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency."

These regulations allow the Agency to extend prescribed periods if a Federal agency shows that there is a compelling reason of national policy. Neither the "showing by any other Federal agency" or the "compelling reasons of national policy" qualifiers are applicable to your extension request.

It is noted that MIGA took advantage of the opportunity to comment about their concerns on the socio-economic impacts this proposal may have on surrounding Tribes on January 22, 1994, in a letter to the Minneapolis Area Director. This was the result of the Minneapolis Area Office's notice of a comment period in which comments regarding the Indian Gaming Regulatory Act and related matters concerning this proposal were solicited. I am aware that your organization has also sent their concerns to the Secretary of Interior during this same time period.

While the Agency would like to be open to any request at any time, we are bound by these regulations and must decline your request for extension.

Please contact me or Mark Kuester, Natural Resources Specialist, at (715) 682-4527 for any information we have available regarding this matter.

Sincerely,

Robert R. Jaeger

Superintendent

Enclosure

RECEIVED
JUL 27 1994
NATURAL RESOURCES

Ms. Denise Homer
Acting Area Director
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, MN 55401-2241

OPTIONAL FORM 99 (7-90)
FAX TRANSMITTAL
# of pages ▶
To Mark Kuester
From Herb Nelson
Dept./Agency Great Lakes
Phone [redacted]
Fax #
Fax #
NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Date: July 20, 1994

Tim L -

Dear Mr. Homer:

Please accept this letter as the official response from the Minnesota Indian Gaming Association to both the Addendum and the FONSI in relation to the St. Croix Meadows Greyhound Racing Park project.

The M.I.G.A. members strongly oppose your findings and challenge there validity. We respectfully request an extension of the deadline date from July 23 to September 23 and ask that you meet with us to discuss this issue before any further action is taken. We do not feel that we have had adequate consultation as detailed in the Indian Gaming Regulatory Act. The comment in your draft Addendum under Project Alternatives and Possible Impacts states, "It Is Not The Intent Of The N.E.P.A. Process To Limit Competition For Business Profits". While this may be true for N.E.P.A. it does not hold true for I.G.R.A. as it is our contention that this action will have severe socilon/economic impacts on surrounding tribes. We would appreciate an immediate response to our request and if possible a meeting date when we can get together with you on this most serious issue. Please contact John McCarthy our Executive Director at our office in Cass Lake.

Sincerely,

Stanley Crooks

Stanley Crooks
Vice Chairman, M.I.G.A.

Rt. 2, Box 85 Cass Lake, MN 56633
Phone [redacted] FAX [redacted]

BLUEDOG LAW OFFICE, P.A.
SOUTHGATE OFFICE PLAZA, SUITE 670
5001 WEST 80TH STREET
BLOOMINGTON, MN 55437

[redacted]
FAX[redacted]

I V BlueDog *
iam J. Hardacker
frew M. Small ***
ven F. Olson **
iya S. Hogen-Kind**

Also admitted in:
* Wisconsin
** South Dakota
*** Only admitted in: Montana

August 12, 1994

Congressman Bill Richardson, Chairman
Subcommittee on Native American Affairs
United States House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

Attn: Tad Johnson

RE: Hudson Wisconsin Dog Track

Dear Congressman Richardson:

I am writing at the direction of the Minnesota Indian Gaming Association to follow up on a matter which is of the utmost importance to the Minnesota Tribes. Sometime ago we were informed that three Indian Tribes from the State of Wisconsin were in the process of petitioning the Department of the Interior to place the St. Croix Meadows Dog Track, located in Hudson, Wisconsin, into trust status with the United States Government. The purpose of this move was to allow those tribes to conduct a high stakes Class III gambling casino at that location and to draw customers from the more heavily populated Twin Cities area. The Tribes in Minnesota were at that time understandably reluctant to interfere and so we, therefore, took no action at that time in the hope that the project would stumble on it's own accord. Somewhat to our dismay, however, we discovered that the project is alive and well and is presently being seriously considered at the top level within the Department of the Interior. I am writing, therefore, on behalf of the Tribes to request your participation and intervention in this matter in opposition to the initiative.

The enclosed materials are self-explanatory and they serve to explain the back drop to this situation. We fully recognize that as a United States Congressman, and particularly as the Chair of the House Subcommittee on

Congressman Bill Richardson
RE: Hudson Wisconsin Dog Track
August 12, 1994
Page 2

Native American Affairs, that your view on this matter is critical. We are, therefore, requesting your direct intervention with the Secretary of the Interior in opposition to the creation of a high stakes gambling casino in Hudson, Wisconsin. Please contact me if I can provide further information.

Sincerely,

Kurt V. BlueDog

Enclosure
cc: MIGA Chairman, Myron Ellis, Leech Lake ✓
MIGA Vice-Chairman, Stanley R. Crooks, Shakopee

other\miga\misc.ltr\richdgtr.kbf

Ms. Denise Homer
Acting Area Director
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd. Avenue
Minneapolis, MN 55407-2241

September 21, 1994

Dear, Ms. Homer,

We are in receipt of Superintendent Jaeger's letter to Vice Chairman Stanley Crooks dated September 14, 1994. It is obvious that our last correspondence to you had little impact as the Bureau has apparently ignored our challenge to the validity of these findings and has moved forward with the process. It is interesting that in numerous responses the Bureau indicates that the comment "is beyond the scope of this action." We are concerned with the question of what the scope of your action is. We know what the result of your action will produce for Minnesota tribes but that doesn't seem to have been an issue that you folks found it necessary to discuss with any of the affected tribes.

We again urge you to meet with us to discuss this matter. We were very disappointed that our last letter requesting a meeting was not even granted the courtesy of an acknowledgement from your office. We hope to hear from you soon.

Sincerely,

Myron Ellis
Chairman, M.I.G.A.

Rt. 2, Box 95 Cass Lake, MN 56633
Phone [redacted] *FAX* [redacted]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, Minnesota 55401-2241

TRIBAL OPERATIONS

SEP 28 1994

Myron Ellis, Chairman
Minnesota Indian Gaming Association
Route 2, Box 95
Cass Lake, MN 56633

Dear Mr. Ellis:

This is in response to your letter dated September 21, 1994, with regard to the Superintendent of the Great Lakes Agency's letter of September 14, 1994. The Superintendent's letter issued the Finding Of No Significant Impact (FONSI) in relation to the proposed Dog Track Casino facility at Hudson, Wisconsin.

As you are aware, this proposed project is being reviewed under the Indian Gaming Regulatory Act (IGRA) of 1988, which governs the acquisition of land into trust when the intended use is for gaming purposes, 25 U.S.C. Section 2719. Pursuant to the "Two Part Determination" of Section 20 of the IGRA, the Minneapolis Area Office (MAO) conducted consultation with the affected tribes in the area. The Tribes were provided this opportunity and the input is considered in the MAO's Findings and Recommendations. The MAO also received comments from the Minnesota Indian Gaming Association (MIGA) on the proposal by letter dated January 22, 1994.

In compliance with the National Environmental Protection Act (NEPA) of 1969, the Great Lakes Agency performed the necessary action to consider the environmental consequences of the proposed project and which resulted in the issuance of the FONSI.

Because of the importance of keeping the two review processes separate, the NEPA and the IGRA, the letter from MIGA was referred to the Great Lakes Agency for response, since the letter dealt with the Environmental Assessment process. The MAO is aware that the Agency did, in fact, respond to the request for an extension of the deadline and the consultation process, by letter dated August 8, 1994. The Great Lakes Agency was the lead agency in the NEPA process and as such, the MAO referred MIGA's inquiry to them.

The MAO would like to thank the members of the MIGA for the invitation to meet on this matter. However, since the processes have closed, the MAO is of the opinion that a meeting would not accomplish the desired objective.

The MAO is aware of the opposition expressed by the MIGA to the Hudson Dog Track proposal.

If you have any questions or concerns, they may be directed to Elliott L. Moffett, Tribal Operations Officer, at [redacted]

Sincerely,

Area Director

Ms. Denise Homer
Acting Area Director
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd. Avenue
Minneapolis, MN 55407-2241

September 21, 1994

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Sincerely,

Myron Ellis
Chairman, M.I.G.A.

Rt. 2, Box 95 Cass Lake, MN 56633
Phone [redacted] *FAX* [redacted]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, Minnesota 55401-2241

IN REPLY REFER TO:
TRIBAL OPERATIONS

SEP 28 1994

Myron Ellis, Chairman
Minnesota Indian Gaming Association
Route 2, Box 95
Cass Lake, MN 56633

Dear Mr. Ellis:

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The MAO is aware of the opposition expressed by the MIGA to the Hudson Dog Track proposal.

If you have any questions or concerns, they may be directed to Elliott L. Moffett, Tribal Operations Officer, at (612)373-1120.

Sincerely,

Area Director

To: Frank From: Scott

PROOF of Story '#14938' Requested by LAGERMAN ($LSRV) on 11/22/94 10:41:34

(c) 1994, Journal/Sentinel Inc.
PUBLICATION: Milwaukee Sentinel
EDITION: 4 star final SECTION: A News
HEADLINE: Thompson still opposes casino plan
BYLINE: STEVEN WALTERS
LENGTH: MEDIUM (577)
DAY/DATE: THU Nov 17, 1994
PAGE: 1

KEYWORD

<A2>ND: Thompson still opposes casino plan
<A4>BY: STEVEN WALTERS
<A2>SO: Sentinel Madison Bureau
<A4>DL: Madison

<A1>" Gov. Tommy G. Thompson said Wednesday he will continue to block Indian tribes from turning the Hudson dog racing track into a casino, despite approval from regional federal officials.<ep>

"Not interested," Thompson said when asked about initial approval by the U.S. Bureau of Indian Affairs of plans by a coalition of Indian bands to buy the Hudson track and run it as a casino.<ep>

During his re-election campaign, Thompson repeatedly promised to oppose expanding gambling. Indian leaders and their lobbyists remain privately hopeful that will change.<ep>

Leaders of the Red Cliff, Mole Lake Chippewa and Lac Courtes Oreilles bands have offered to develop a casino at the St. Croix Meadows dog track in Hudson, which will lose $6 million this year and maybe more next year.<ep>

A spokesman for the bands, Mark Goff, said Thompson has never seen a formal plan for the casino. "He's speaking like a guy who hasn't seen it," Goff said.<ep>

Thompson's approval would be required before any Indian casino could open in Hudson.<ep>

State Gaming Commission Chairman John M. Tries said he also opposes expansion of legal gambling.<ep>

"I still don't think it's a good idea," Tries said, echoing the governor's comments.<ep>

Also, Tries said, the recommendation to approve an Indian-run Hudson casino was preliminary, because it was only given by the Minneapolis head of BIA.<ep>

That recommendation must still be approved by BIA officials in Washington, D.C., including former University of Wisconsin -- Madison faculty member Ada Deer.<ep>

Goff said the bands will now ask Deer, assistant interior secretary for Indian affairs, and Interior Secretary Bruce Babbitt to approve the plan.<ep>

In applications they filed with the Gaming Commission for the 1995 racing season, owners of three of four dog tracks reported losing money this year and said that could continue next year.<ep>

Only the Kenosha track, Dairyland Greyhound Park, is profitable, the reports showed.<ep>

On other subjects, Thompson:<ep>

<s^sq> Said the state's economy remains strong, but the one-year increase in state tax collections will *probably be short of $500 million,* the figure he repeatedly cited during the campaign. <ep>

During the campaign, Thompson often said he would use $500 million more a year in higher tax collections to help pay for $1 billion in additional aid required to control property taxes for public schools.<ep>

If tax collections do not increase by $500 million a year, it means the governor and Legislature must find other sources of money to control property taxes for public schools.<ep>

<s^sq> Refused to rule out the possibility that cuts he will propose in state programs could force the layoffs of some state workers. <ep>

I'm hopeful we would have no layoffs, he said. *It's possible, but highly unlikely.*<ep>

Thompson ordered most agencies to submit budgets that included 5% and 10% cuts in state tax subsidies, which prompted fears of widespread layoffs.<ep>

But the 5% and 10% budget cut plans *are just parameters,* Thompson said.<ep>

<A2>ME: Photos ran in 2 star
<A4>GR: Photo 1
<A2>CL: Thompson

<A4>GR: Photo 2
<A2>CL: Goff

<A4>GR: Photo 3
<A2>CL: Tries

<A6>KE: gambling

11/17/94

[redacted]

ACROSS THE STATE

■ HATFIELD

Timber wolf hit by vehicle, dies

A female timber wolf died after being hit by a vehicle several miles north of Hatfield in Clark County, a game warden says.

Ken Jonas, warden for the state Department of Natural Resources, said Tuesday the wolf that died during the weekend weighed [illegible] pounds and was [illegible] years old.

Several wolf packs have established themselves in northern Wisconsin in recent years, apparently including animals that migrated from Minnesota and Upper Michigan.

Jonas said officials are concerned about the safety of other wolves with the gun season for deer due to start Saturday. He noted that wolves have longer legs and are larger than coyotes and typically run with their tails straight out or pointed up.

■ HUDSON

Regional BIA chief backs casino plan

The director of the Minneapolis office of the federal Bureau of Indian Affairs recommended approval of a plan by three Wisconsin tribes to develop a casino at the St. Croix Meadows dog track in Hudson.

The recommendation by Denise Homer now goes to Washington, D.C., where Assistant BIA Secretary Ada Deer is to consider the plan.

But Gov. Tommy Thompson has the power to veto the proposal, and his news secretary indicated he would use that power if necessary.

"He does not favor expansion of gambling, and he views casinos at dog tracks as an expansion," Kevin Keane said Tuesday. "This won't change his position."

■ MILWAUKEE

Officer can't say if he fired fatal shot

A Milwaukee police officer testified during an inquest into the shooting death of a 17-year-old boy that he did not know how the fatal shot was fired.

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To: Frank
From: Scott
Oct 5-11

Thompson says no to casinos

Won't permit them at tracks

By CARY SPIVAK
Sentinel staff writer

Gov. Tommy G. Thompson will not allow any of the state's financially failing dog tracks to become Indian casinos, the governor said Tuesday.

There has been quite a bit of confusion in recent months concerning the governor's position on allowing Indian tribes to buy the tracks so slot machines and blackjack tables could be installed.

Thompson has continually voiced opposition to the expansion of gambling. But, at the same time, he has said he would allow off reservation Indian gaming if the local communities involved embraced the idea.

Asked Tuesday whether he had decided to totally shut the door on any type of casino gambling at the tracks, Thompson replied "yes."

"I don't know of any reason whatsoever (to approve it). I don't know of anybody who wants it," Thompson said in a brief interview following a Serb Hall speech to the City of Milwaukee Retired Employees Association.

As governor, Thompson has veto power over any proposal to place Wisconsin land in federal trust for gaming. Three tracks have proposed doing that so their facilities could offer both greyhound racing and casino gaming.

The governor has "always been opposed to the expansion of gambling," said Kevin J. Keane, his press secretary. "But he didn't want to shut the door totally because of economic development considerations."

But, Keane said, Thompson decided to end any possibility of turning tracks into casinos because he found little local support for the gambling halls.

Owners of St. Croix Meadows Greyhound Racing Park have said they would close the $40 million facility if they are unable to sell the track to three Chippewa bands. St. Croix Meadows lost $5.32 million last year and expects to lose $6.12 million this year, according to records filed with the State Gaming Commission.

Mark Goff, spokesman for the group attempting to turn the track into Four Feathers Casino and Racing, said Thompson's comments were cause for concern. But, he said, the group still hoped to open a casino at the track.

The St. Croix Meadows proposal is being reviewed by the U.S. Bureau of Indian Affairs. If the BIA and the U.S. Department of Interior agree to place the land in federal trust, Thompson would then be asked for his approval.

An amendment to the Indian Gaming Regulatory Act pending in Congress could eliminate Thompson's veto authority on the issue and instead allow him only to advise the Department of Interior.

Geneva Lakes Kennel Club in Delavan, which lost $3.16 million last year and expects to lose $3.17 million this year, has announced plans to sell its property to two tribes.

Fox Valley Greyhound Park in Kaukauna went out of business last year and its owners want to sell the facility to a tribe so it could reopen with casino games.

Owners of Dairyland Greyhound Park, the only profitable track in the state, have said they would consider casino games at the Kenosha facility if the state permitted it. Dairyland had a $781,000 profit last year and expects a $232,000 profit this year.

Wisconsin Dells Greyhound Park in Lake Delton lost $198,000 last year and expects to lose $498,000 this year. The track would have the toughest time converting to an Indian casino because it's only about 2 miles from the Ho-Chunk Casino that is owned by the Winnebago tribe.

BLUEDOG LAW OFFICE, P.A.

KURT V. BLUEDOG
WILLIAM J. HARDACKER
ANDREW M. SMALL

SOUTHGATE OFFICE PLAZA, SUITE 870
5001 WEST 80TH STREET
BLOOMINGTON, MN 55437
PHONE [redacted]
FAX [redacted]

ADDITIONAL DOCUMENTATION

RESOLUTION'S
LETTERS

Myron Ellis, Chairman
Minnesota Indian Gaming
Route 3, Box 3
Cass Lake, MN 56653

Dear Chairman Ellis:

I wanted first to express appreciation on behalf of the Shakopee Mdewakanton Sioux Community and the Prairie Island Mdewakanton Sioux Community for the Minnesota Indian Gaming Association's strong position statement as expressed in Resolution No. 3-92 relating to the proposed off-reservation gaming site in Hudson, Wisconsin.

Additionally, I wanted to transmit to you a copy of the Shakopee Business Council No. 10-28-92-001 which takes a similar position in opposition to the establishment of a gaming casino at the St. Croix Meadows Dog Track. Also enclosed herein is Prairie Island Tribal Council Resolution No. 92-138 which, likewise, opposes any attempt to operate a tribal gaming facility at the off-reservation dog track site in Hudson, Wisconsin.

On behalf of these two tribal governments, we thank you for the assistance of the Minnesota Indian Gaming tribes on this important matter.

Sincerely,

Kurt V. BlueDog

KVBD17/mlv
Enclosure

cc: Chairman, Prairie Island Sioux Community
Chairman, Shakopee Mdewakanton Sioux Community

MIGA
Minnesota Indian Gaming Association

M.I.G.A.
RT 2 BOX 95
CASS LAKE MN 56633
Phone (218)335-7921
Fax (218)335-7920

TOTAL NUMBER OF PAGES: 7 (including fax cover)

TO: Frank Duchneaf

FROM: John McCarthy

If any difficulty is experienced with this transmission, please notify sender at (218)335-7921 and ask for John McCarthy. Thank you.

DATE: 12-28-94 TIME: 10:05 AM.

MESSAGES: Frank

Here is the outline that we discussed on the phone last night. I have talked with both Rich Jaucet and Waylon Peterson from Minga and Oberstar staff. I'm trying to reach Willstone's guy today. They are working on the date and location and will contact us when they have it tied down. I sent them full backup documentation that I will forward to you by mail. If you have any questions or suggestions please call John

Myron Ellis - Chairman

To: All Interested Parties
From: John McCarthy, M.I.G.A. Consultant
Date: Wed, Dec 28, 1994
RE: Wisconsin Dog Track Issue

CONFIDENTIAL

Enclosed please find documentation of our response to the request by the three Wisconsin Indian Bands to place off-reservation lands in trust for the purpose of gaming. I have developed a chronology of events that will provide a brief synopsis for your convenience.

I have talked with staff members from the offices of Congressman Oberstar, Congressman Minge, and Senator Wellstone, about assisting us in our effort to meet with the Secretary of the Interior on the dog track issue. It is our intention to try to schedule this meeting in Washington D.C. on either Tuesday afternoon, Jan. 17, or anytime on Jan. 18, as we will be in Washington on those dates.

Our goal is to secure a meeting with Secretary Babbit or his designee (probably John Duffy) to discuss this issue. We need to determine how best to request this meeting, through Senator Wellstone, Congressman Minge, Congressman Oberstar, or by delegation request. We also need to determine where the meeting will be held.

SPECIFIC STRATEGY

At this point it appears that the Assistant Secretary's office and the Minneapolis Area Office have succeeded in securing an affirmative recommendation from the B.I.A. for the three tribes requesting the fee to trust transfer. In order for the Secretary to overrule the recommendations of the Bureau, we need to point out the following:

1) We feel that the consultation was flawed and that we were not given a fair opportunity to present our case.

2) We challenge the validity of the Finding Of No Significant Impact (FONSI) as it relates to the socio-economic impact that this action will have on the neighboring tribes. (St. Croix Chippewa, Prairie Island, Shakopee, Mille Lacs, Fond Du Lac, Lower Sioux)

3) We feel that the whole issue of market share has been glossed over and has been unfairly slanted by the B.I.A. (It appears that they took most of the facts that they used to make the finding from the Bischof & Vasseur Firm hired by the Lac Courte Oreilles tribe.

4) We suggest that the National Environmental Protection Act (NEPA) format is not an adequate evaluation tool to properly deal with the far-reaching implications of the socio-economic impacts of gaming on neighboring tribes, or in this case, border state issues. We need to show that while the B.I.A. tried to do its job by considering the positive social enhancements that would be experienced by the three Wisconsin tribes, via jobs, reduction in dependency on social services, etc., it failed to take into account the political impact this action would have on the Minnesota tribes.

Rt. 2, Box 95 Cass Lake, MN 56633
Phone 218 335-7921 FAX 218 335-7920

CONFIDENTIAL

This failure to consider the political impact gives us cause to challenge the use of NEPA. guidelines to determine true impact. The tribes in Minnesota have a solid working-relationship with the State Government, partly because we have not tried to build casinos in off-reservation sites. The pressure has always been on the State to allow one or two gambling operations in either downtown Minneapolis or St. Paul.

The Tribes have resisted the move even when it meant a potential loss of revenue to them. Now we have a situation that would allow a major gambling facility located less than twenty minutes from the Twin Cities, just off an interstate highway. If this facility is approved we will most assuredly have the local businessmen crying for the legislature to give them a "level playing field." They will cite the huge loss in revenue to Wisconsin and will now have the ammunition they need to expand gaming in Minnesota.

Finally, we have to emphasize that a meeting is needed to fairly address this issue. This meeting will help us to overcome the lack of understanding shown by the B.I.A.and better examine the inadequacy of NEPA in evaluating fee to trust decisions.

This lack of understanding on the part of the Bureau is most clearly evidenced by statements made by Superintendent Jaeger in his Sept. 14, 1994, letter to Stanley Crooks, "It is not the intent of the NEPA process to limit competition for business profits." A similar lack of understanding is found in the 'Response to Comments' section of the same correspondence, in which a commenter is listed as stating, "This action gives movement and impetus to the drive for more non-Indian gaming." and the Superintendent's response was "The movement for more non-Indian gaming is beyond the scope of this action and is more appropriately addressed in the IGRA process." The Superintendent seems to think that the sole concern of the Minnesota tribes is a profit-driven motive, when in fact our concern has much deeper roots in current political impacts and future impact on the Minnesota Indian Gaming Venue.

5) We might want to identify the potential for a conflict of interest on the part of the B.I.A. This should be discussed further as it is a drastic step that should not be considered lightly.

POLITICAL PERSPECTIVE

We have a few key political issues to keep in mind and to point out to the Secretary:

A) One of the key players in this issue is Chairman Gaiashkibos from Lac Courte Oreilles. Without in any way degrading him we do need to point out to the Secretary that he in fact is a Republican, that he worked for Republicans in the last election, and that he will no doubt work hard against Bill Clinton in the next two years. We also need to point out to the Secretary that it would not be in his best interest to in any way help the Republicans erode any additional Indian votes or Indian political contributions.

B) The Governor of Wisconsin, Tommy Thompson, is also a Republican. While he has publicly stated his opposition to this proposal we are still hearing rumors that he may consider it. He has ties to the dog racing industry from past years. It might be an opportunity for the Secretary to use the public denial of the Governor to concur and also turn it down, using the Governor's decision as part of his basis for denial.

C) Minnesota Tribes have been very active politically and are strong Democrats. We contributed heavily in the november elections and played a key role with our support for President Clinton in 1992. Every tribe in Minnesota had excellent voter drives this past November

CONFIDENTIAL

OTHER ISSUES

1) Remoteness as a Criteria

We also need to very clearly point out to the Secretary that the primary basis for the petition for fee to trust is that all three of the tribes petitioning are located in rural settings which are not conducive to drawing large crowds for gaming purposes. The rational of the B.I.A. and of these tribes is very directly tied to this fact. If the Secretary makes a determination based on this fact, most of Indian Country would then qualify under the same rationale. Unfortunately, when reservations were created the people laying them out intentionally put Indians where most folks did not want to go. That is a fact of life, and while it's not fair it is still a fact. We only have to look at Leech Lake, Red Lake, Grand Portage, Boise Forte, and Lower Sioux, to see that issue very clearly. If we want to start using remoteness as a criteria for approval of fee to trust requests, our guess is that the Secretary's office will be swamped with requests.

2) Precedent - Future Race Track Bailouts

The last concern we have also relates to a possible precedent that this action could establish. What we see here is another case of an ill-conceived race track that has gone under, not as a result of Indian Gaming, but because of poor planning, poor management, unfavorable economic conditions, and a variety of other reasons. The IGRA is what is being used to bail them out. We should point out to the Secretary that there are a lot of tracks throughout the country that are in trouble. Will this action become the solution for every troubled race track?

Wisconsin Dog Track Chronology of Events

CONFIDENTIAL

BACKGROUND

- In 1992 the St. Croix Band of Chippewa attempted to purchase the St. Croix Meadows Dog Track in Hudson, Wisconsin. The Minnesota Indian Gaming Association went on record opposing such action. (See Resolution 92-3)

- The St. Croix Band request was turned down by the Wisconsin Governor, and rejected in a referendum by the residents of Hudson. The St. Croix Band did not pursue the purchase after this rejection.

- In 1993 the Red Cliff Band of Lake Superior Chippewa, the Lac Courte Oreilles Band of Lake Superior Chippewa, and the Sokaogon Chippewa Community, all of Wisconsin, proposed placing 55 acres of land in trust for gaming purposes. This acreage included the existing St. Croix Meadows Greyhound Racing Park and other amenities.
(See addendum to E. A., Letter to Marjorie Anderson June 20, 1994 for detail)

- In 1992, 1993, and 1994 the M.I.G.A. went on record opposing this proposed action by these tribes.
(See letters to Secretary Babbit Dec. 1, 1993, Jan. 10, 1994)
(See letters to Denise Homer Jan. 22, 1994, July 20, 1994, and Sept. 21, 1994)

- In 1992, 1993, and 1994, resolutions were submitted by all the M.I.G.A. tribes and the Minnesota Chippewa Tribe opposing this action.
(See additional documentation)

- In December 1993 the bands involved submitted a letter to Secretary Babbit. This letter contains many incorrect statements and is flawed in its premise that other tribes should not oppose this request because the three bands involved did not oppose these tribes when they initiated their gaming operations. i.e. "let it be noted that when the St. Croix Tribe's management company built a casino at Turtle Lake Wisconsin, the Lac Courte Oreilles Band did not oppose them, in fact they supported the St. Croix Tribe and still do."

The fact that is not brought out in their 12/93 letter to Sec. Babbit is that <u>all of the tribes whom they did not oppose were building gaming facilities on their own land</u>. They were not petitioning to purchase land <u>outside</u> of their own reservations. If this was the case with the request made by these three tribes, we would not oppose it.
(See Dec. 24, 1993 letter to Secretary Babbit)

- In a Jan. 22, 1994 letter to Ms. Denise Homer, we requested a meeting to more clearly define our position. We were not granted a meeting, nor did we hear anymore from the B.I.A. until June of 1994.
(See Jan. 22, 1994 letter to Denise Homer)

Wisconsin Dog Track
Chronology of Events

CONFIDENTIAL

- In March of 1994 we requested a Minnesota delegation letter through congressman Minge's office. This letter requested support from our congressional delegation in opposing this request.
(See March 25, 1994 letter to Congressman Minge from attorney BlueDog)

- In March of 1994 we received a response to our Jan. 10, 1994 letter to Secretary Babbit from Assistant Secretary Ada Deer. Ms. Deer informed us that all action on this matter was being handled by the Minneapolis Area Office. Ms. Deer encouraged us to respond to the consultation process, which we already had done.
(See March 24, 1994 letter to Myron Ellis)

- In May of 1994 we received the Minnesota Delegation letter initiated by Congressman Minge.
(See May 1, 1994 Congressional Delegation letter to Secretary Babbit)

- In June of 1994 we requested a support letter from Senator Wellstone's office on this issue.
(See June 6, 1994 letter to Senator Wellstone from Attorney BlueDog)

- In June of 1994, Ms. Marjorie Anderson, Chairperson of the Mille Lacs Band of Ojibwe received a copy of the addendum to the Environmental Assessment and a draft Finding of No Significant Impact (F.O.N.S.I.) for this project. She was instructed that July 23, 1994, was the deadline for comments on the E.A. and the F.O.N.S.I.
(See B.I.A. Great Lakes Agency June 20, 1994 letter to Marge Anderson)

- In July of 1994 the M.I.G.A. submitted a letter to the area office opposing the project and requesting an extension of the 30 day comment period. We also questioned the validity of the Findings and again asked for a meeting to discuss the issue with the area office and their staff. We clearly cited our concern that the consultation process was not adequate and we maintained our contention that this action would have a severe impact on Minnesota Tribes. We received no response from the area office until September of 1994.
(See M.I.G.A. letter to Denise Homer July 20, 1994)

- In July 1994 we received a copy of a letter from Senator Wellstone to Secretary Babbit. The Senator clearly raised questions as to the negative impact that this action could have on the Minnesota Tribes, the economy of Minnesota, and the relationship which the Tribes and the State currently enjoy.
(See July 26, 1994 letter from Senator Wellstone to Secretary Babbit)

- In August 1994 we submitted a letter to congressman Bill Richardson regarding this issue.
(See Aug. 12, 1994 letter to Congressman Richardson from Attorney BlueDog)

Wisconsin Dog Track
Chronology of Events

CONFIDENTIAL

- In September 1994 we finally received a letter from Mr. Robert Jaeger from the B.I.A. telling us that the Bureau had found that the proposed action would have no significant impact. In other words, that the B.I.A. would recommend that the request for fee to trust be approved.
(See Sept. 14, 1994 letter from Great lakes Agency Superintendent Jaeger to Chairman Crooks)

- In September 1994 we sent another letter to the area director urging her to meet with us on this issue.
(See Sept. 21, 1994 letter from M.I.G.A. to Denise Homer)

- In September 1994 we finally received a letter from Ms. Homer that was very confusing and basically stated that the issue was now closed, so there was no further need to meet with the M.I.G.A.

We noted that she made mention of only one letter dated Jan. 22, 1994. We had certainly sent more letters than this and had requested meetings on several occasions. It was also interesting to note that now, after almost one year, we were being told that the "processes have closed, the Minneapolis Area Office is of the opinion that a meeting would not accomplish the desired objective." We had been put off and put off until the desired effect had been accomplished and now we were being told that a meeting would be fruitless. Maybe if we had actually been consulted and given an opportunity to properly comment on this issue our concerns could have been fairly discussed and the outcome might have been different.
(See Sept. 28, 1994 letter from Minneapolis Area Director Denise Homer to Myron Ellis)

L. Nonexempt Modifications

"Modification" means any change in the physical size or method of operation of a stationary source which:

(1) increases the potential amount of emissions of an air contaminant;

(2) results in the emission of an air contaminant not previously emitted; or

(3) results in the violation of an ambient air increment.

Any modification of the source(s) subject to this permit is prohibited unless the modification is an exempt modification or the modification is authorized by a permit. The following changes in method of operation are exempt modifications if the specified change does not cause or exacerbate the violation of an ambient air quality standard or increment and if the change in method of operation does not result in the violation of any other term or condition of this permit:

1. An increase in production rate if that increase does not exceed the operating design capacity of the source.

2. An increase in the hours of operation of the source.

3. Use of an alternate fuel or raw material if the source is designed to burn or use the alternate fuel or raw material and if that information is included in the plans, specifications and other information submitted under sec. 144.392(2), Wis. Stats. or under sec. 144.39(1), Wis. Stats. (1977).

4. Resumption of operation of a source after a period of closure if the existing equipment was continuously included in the source inventory as an existing source covered by plans under sec. 144.31(1)(f), Wis. Stats.

5. A change in ownership of the source.

M. Replacement

Unless authorized by a permit, replacement of the source(s) covered by this permit is prohibited.

N. Circumvention

Pursuant to section NR 439.08, Wis. Adm. Code, the installation or use of and article, machine, equipment, process, or method, which conceals an emission which would otherwise constitute a violation of an applicable rule is prohibited unless written approval has been obtained from the Department. Such concealment includes, but is not limited to, the use of

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
Ashland, Wisconsin 54806-0273

IN REPLY REFER TO

Natural Resources

September 14, 1994

Stanley Crooks, Vice Chairman
Minnesota Indian Gaming Association
Rt. 2, Box 95
Cass Lake, MN 56633

Dear Mr. Crooks:

Enclosed with this transmittal are our responses to comments we received regarding the environmental assessment, addendum and DRAFT Finding of No Significant Impact (FONSI) action for the proposed trust acquisition of, and addition of Class III gaming to, the St. Croix Meadows Greyhound Racing Park in Hudson, WI. This action is proposed by the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa and the Sokaogon Chippewa Community. Also included is additional information requested by our Agency, regarding possible impacts to air quality and traffic flow.

Based upon these documents, it has been determined that the proposed action will not have significant environmental impacts and the preparation of an environmental impact statement will not be necessary. Enclosed is a copy of the Final FONSI for your review.

Thank you for your comments and participation regarding this matter. Contact Mark Kuester, Natural Resources Specialist at (715) 682-4527 for further information.

Sincerely,

Robert R. Jaeger

Superintendent

Enclosure

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
Ashland, Wisconsin 54806-0273

IN REPLY REFER TO:
Natural Resources

FINDING OF NO SIGNIFICANT IMPACT

An addendum (referred to as the Addendum) to the "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" (referred to as the EA), has been prepared for the proposed trust acquisition of, and addition of class III gaming to, the St. Croix Meadows Greyhound Racing Park by the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians, and the Sokaogon Chippewa Community. These documents have been prepared pursuant to requirements of the National Environmental Policy Act (NEPA) in 40 CFR Parts 1500-1508. The addendum was prepared by Bischof & Vasseur from Oak Park, Illinois, and the EA was prepared by Mid-States Associates, Inc.

Project Description

The Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians and the Sokaogon Chippewa Community propose to purchase, and place into federal trust, 55.82 acres consisting of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building, for the purpose of operating a class III gaming facility in addition to the existing pari-mutuel dog track operation. The main parking lot west of the grandstand building is not intended for trust acquisition.

The existing grandstand would be remodeled to accommodate gaming activities, however, most support facilities (kitchen, washrooms, office space, etc.) would be maintained.

Need for Project

The Three Tribes anticipate the generation of revenues from the proposed project that are needed for community development for each Tribe.

Project Alternatives and Possible Impacts

Three alternatives have been proposed. "Alternative One" is the proposed project. Several possible impacts have been addressed in the Addendum regarding this alternative. Possible negative socioeconomic impacts on the City of Hudson and St. Croix County, have been addressed and minimized through the "Agreement for Government Services" developed between the City, the County and the three Tribes. Possible negative impacts to Tribes with gaming facilities in the general area of the proposed facility are also addressed in the EA addendum and are expected to be minimal. It is not the intent of the NEPA process to limit competition for business profits. Possible social impacts are addressed in both the addendum and the original EA. The proposed project is projected to have similar attendance as the original dog track facility was designed to manage, and the impacts to the social environment would, similarly, not be considered significant. The addition of one form of gaming to a facility, already established for the purpose of gaming, would also not be considered significant.

"Alternative Two", proposes that the three Tribes would construct a new Tribal gaming facility at an alternate location. This alternative would have similar impacts as the proposed action and would include the environmental impacts associated with constructing an entire new facility.

"Alternative Three" is the "No Action" alternative. The environmental impacts associated with this alternative would be minimal, however, the proposed need to gain revenues to enhance Tribal community development would not be met.

Findings and Conclusion

Based upon the findings of the EA and the Addendum regarding this proposed action and the alternatives considered, it has been determined that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary.

Robert R. Jaeger
Superintendent, Great Lakes Agency

9/14/94
Date

RESPONSES TO COMMENTS REGARDING THE PROPOSED DOG TRACK/CASINO FACILITY IN HUDSON, WI

St. Croix Tribe

COMMENT: "Clearly this assessment is inadequate in view of the complete lack of analysis of the respective tribal markets..."

RESPONSE: A market analysis was performed regarding this proposed action and was submitted during the process required by the Indian Gaming Regulatory Act (IGRA). An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Racetrack Near the City of Hudson, Wisconsin, by Dr. James M. Murray, PhD., indicates that the proposed Hudson casino/dog track facility could have a 20% share of the blackjack market and a possible 24% of the slot and video market in the primary market zone (predominately St. Croix County in WI, and Washington and Ramsey Counties in MN). Based upon this analysis, the socioeconomic impacts to surrounding tribal casinos do not appear to be "devastating". Although the socioeconomic impacts regarding this proposed action are real, and are considered in the environmental assessment process, they do not normally require the preparation of an environmental impact statement. These comments are more appropriately addressed in the IGRA process.

COMMENT: "The artificial placement of competitor Tribes in geographic areas superior to that of the St. Croix Tribe gives official sanction to an unfair competitive advantage, something not envisioned by the NEPA process."

RESPONSE: The three Tribes, as well as the St. Croix Tribe, have the right to request land be placed in trust for the benefit of the tribe(s), by the US Government. It is not the intent of the NEPA process to limit this right. The tribes involved in this venture have clearly expressed their intent to diversify their respective economies and generate needed government revenues. Tribal casinos in the general vicinity of this proposed action are able to take various steps to make their facilities more attractive to gaming patrons. These comments are more appropriately addressed in the IGRA process.

COMMENT: "The current owners of the dog track, however, own considerable land surrounding the dog track and have extensive plans for the development of a destination resort."

RESPONSE: A "destination resort" is not part of the proposed plans, nor do the Tribes have economic control over non-tribal lands. This comment is beyond the scope of the decision related to this project, therefore, cannot be addressed in the scope of environmental impacts associated with the fee to trust conversion of the subject property.

COMMENT: "Allowing the three tribes and the present owners the opportunity to conduct those games at a location outside of their usual territory would cause a great injustice to the St. Croix people."

RESPONSE: This venture is geographically located within the treaty territory of the Lake Superior Chippewa Tribe, of which all three tribes are Bands. There is no limitation placed upon the St. Croix tribe, or any other tribe, to engage economic development ventures in other parts of the State or Country.

COMMENT: "Based upon previous discussion and information contained in Attachment A. the proposed findings and conclusion are not supportable. Additional studies in the form of an Environmental Impact Statement need to be undertaken in order to comply with the requirements of the National Environmental Policy Act."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc., (project specific, independent studies), indicate that the market is of sufficient size to support an additional casino operation and will not saturate the market. Again, these documents were submitted during the IGRA process and are more appropriately addressed in this venue. The requirements of the National Environmental Policy Act (NEPA) state in 40 CFR Part 1508.14, "that economic or social effects are not intended by themselves to require preparation of an environmental impact statement."

COMMENT: "The impact on jobs will be felt on the St. Croix Reservation where reductions in force will be necessary due to a declining business volume."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc. indicate that the market size is of sufficient size to support an additional casino operation and will not saturate the market. Profits and revenues generated by the venture will provide diversification opportunities for the member tribes at their respective reservations. Again, these types of comments are more appropriately addressed in the IGRA process.

COMMENT: "No mitigation efforts have been undertaken with regard to the potentially devastating impacts on the St. Croix Tribe and its ability to furnish essential governmental services."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc. indicate that the market size is of sufficient size to support an additional casino operation and will not saturate the market. Mitigation efforts, market analyses, business competition and revenues are more appropriately addressed in the IGRA process.

COMMENT: "That the dog track is a failing business is not a legitimate reason to take action to the detriment of a neighboring Tribe and its business. Adding the artificial stimulus of Class III gaming to prop up a failing non-Indian owned industry with the resulting devastating impacts on a neighboring industry does not qualify as a justifiable result under NEPA."

RESPONSE: The loss of jobs related to this financially troubled business is mentioned as a possible negative economic impact to the surrounding community. It is not given as a legitimate reason for the proposed action. The reasons for this action are, as stated in the environmental documents, to generate revenues, by the three Tribes, that are needed for community development on their respective Reservations.

COMMENT: "... This fee to trust conversion will stop in its tracks' any effort to expand the land base of the St. Croix Tribe due to greatly diminished revenues from its current gaming industry."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc. indicate that the market size is of sufficient size to support an additional casino operation and will not saturate the market. Little evidence of "devastating effects" as a result of this proposed action are provided in these comments. The findings of the professional and independent studies, referenced herein, indicate, with supporting documentation and analysis, that the St. Croix Tribe will not be significantly harmed by the proposed partnership venture. Again, these comments are more appropriately addressed in the IGRA process.

COMMENT: "The statements made in this paragraph (paragraph 3, page 2) are made without any supporting documentation. No effort was made to determine the true customer market of the St. Croix Tribe ... it is almost a certainty that the Hudson Dog Track area will encompass destination resort facilities, a far larger casino facility, . . there is no assurance made that the Hudson facility will maintain it's modest scope of 1500 machines and operational hours ..."

RESPONSE: The principle author of the Socioeconomic Addendum utilizes Dr. Murray's study and other proprietary market studies to support statements contained therein. (Proprietary sources include market studies for tribal and non-tribal, gaming and non-gaming business ventures, as well as Wisconsin Department of Tourism data and analysis.) The independent studies and analysis prepared by Dr. Murray and Arthur Anderson, Inc. utilized the best information available to the public, including information on the market of the St. Croix Tribe.

The three Tribes in this partnership do not have economic development control on non-tribal lands, nor have they indicated involvement in planning for on-site or off-site expansion.

Minnesota Indian Gaming Association

COMMENT: "... it is our contention that this action will have severe sociion/economic impacts on surrounding tribes."

RESPONSE: Attachment I of the Addendum cites, An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Racetrack Near the City of Hudson, Wisconsin, and An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, both by Dr. James M. Murray, PhD. These documents were submitted during the process required by the Indian Gaming Regulatory Act (IGRA) and were utilized, in part, to assess the gaming market, market shares and other related economic impacts. It was found in these and other studies performed in the primary market areas (predominately St. Croix County in WI and Washington and Ramsey Counties in MN) that the market is of sufficient size to support an additional casino operation and will not saturate the market.

Comments regarding economic or social effects are considered in the environmental assessment process, however, they are not intended by themselves to require preparation of an environmental impact statement. These comments are more appropriately addressed in the IGRA process.

Kenneth Tilsen

COMMENT 1: "The report fails to detail the relationship between the land to be placed in trust and the parking lot property, entrance gate, etc. which is part of the facility and will not be put in trust. It fails to identify the adjacent land that will remain exclusively in the control of the Florida gaming operator. It fails to identify the long history of community opposition to the track and it fails to identify the property as across the road from land protected by the "Wild River Act". It inaccurately indicates the track is open all year and fails to indicated that it operates about six days a week for between 32 to 40 hours a week - NOT 24 hours a day, seven days a week."

RESPONSE: The relationship between land taken into federal trust status for the Tribes is stated in several places in the Addendum and Attachments, the Notice of Availability, and the DRAFT Finding of No Significant Impact, where they indicate that the principal structure, track facilities, paddock and kennel facilities, and parking lot to the north of the principal structure are intended for trust acquisition while the main parking lot west of the grandstand building is not intended for trust acquisition. A legal description of the area of intended trust acquisition is provided in Attachment A of the Agreement for Government Services. The use of the "1988 Report" is to provide background information and data regarding work that had already been done regarding the dog track facility at this location.

Whether the adjacent lands to the track facility are controlled by a Florida gaming operator, or not, does not apply to this proposed action. There are no known plans for future development of these areas.

The Dec. 3, 1992, Indian Gaming Referendum, included in Attachment II of the Addendum, indicates that the Hudson Community is neither for, nor against, a Tribal Casino at the dog track facility. Some opposition to actions of this nature can be expected, however, based upon this referendum, it does not appear that there is overwhelming opposition to this concept.

Discussions with National Park Service personnel in St. Croix Falls, WI, indicate that the dog track facility is outside the management area of the St. Croix Wild and Scenic River System. Concerns regarding possible impacts to the St. Croix River from increased traffic and associated air pollution would be monitored and addressed through the existing air pollution control permit. According to the Wisconsin Department of Natural Resources, Bureau of Air Management, neither a new indirect source permit, nor modifications to the existing permit are required, however, the air monitoring stations constructed for the dog track facility would continue to be monitored and the terms of the permit would continue in compliance.

The statement that the track is open all year is accurate. The number of hours and/or days of facility operation per week does not render the statement inaccurate.

COMMENT 2: "There is no basis supplied for the conclusion that the project will have a positive impact on the economic growth and well being of the surrounding communities. Recent studies by the Ford Foundation, the Illinois Department of Safety and others suggest that the jobs lost will equal or exceed the jobs gained. No report by a biased observer was any value..."

RESPONSE: The new jobs created by this proposed facility would be available to unemployed residents of the Hudson area as well as to residents of St. Croix County and other counties nearby. These new jobs would provide workers at lower-paying jobs opportunities to increase individual earnings. Many of these jobs would be available to workers without special training, skills, undergraduate and/or post graduate degrees. It is reasonable to expect that increased earnings for area residents are likely to result in increases in the purchase of goods and services in these areas. Assertions to the effect that the proposed gaming facility would result in a loss of jobs in the Hudson area are not realistic.

Minnesota Gambling 1993 by Minnesota Planning describes many of the influences of tribal gaming in Minnesota and may be more applicable to gaming influences in the subject area of Hudson, WI, than documents from other localities. This document compares casino counties to noncasino counties in Minnesota and states, "There is no evidence that tribal gaming caused an increase in reported serious crimes such as murder, rape, robbery or theft. The crime rate for casino counties between 1989 and 1991 increased only slightly more than for noncasino counties... (14.8 percent compared to 12.1 percent)." Other positive influences documented include increases in gross business sales, increases in economic activity, increases in revenues of bars and restaurants, increases in visitors from other states and a decrease in county expenditures for Aid to Families with Dependent Children for counties with casinos compared to those without. Various negative social consequences are also discussed in this document including increases in calls for help to Gamblers Anonymous and as well as increases in visits to gambling treatment centers. It is expected, however, that the allocable amount determined by the "Agreement for Government Services" will compensate the local governments for the possible need for these services.

Attachment I of the Addendum cites two of the various documents, An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, and An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Racetrack Near the City of Hudson, Wisconsin, both by Dr. James M. Murray, PhD., that were

used to assess the economic impacts of the proposed dog track/casino facility to the Hudson Community and existing tribal casino markets. Information from these documents, along with others included in the application package pursuant to the Indian Gaming Regulatory Act (IGRA), was used to generate many of the estimates regarding socioeconomic impacts.

Competition between tribal casino facilities and possible impacts to each tribal community are discussed in these studies (by Dr. Murray), which show that the proposed Hudson casino/dog track facility could have a 20% share of the blackjack market and up to 24% share of the slot and video market in the primary market zone (predominately St. Croix County in WI, and Washington and Ramsey Counties in MN). This study indicates that the gaming market is of sufficient size to support an additional casino operation and will not saturate the market. Socioeconomic and business related matters are considered in the environmental assessment process, however, they are more appropriately addressed in the Indian Gaming Regulatory Act (IGRA) process.

The Indian Gaming Referendum of 12/3/92 specifically asked, "Do you support the transfer of St. Croix Meadows to an Indian tribe and the conduct of casino gaming at St. Croix Meadows if the tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" This referendum appears to ask the question that more appropriately addresses this proposed action than referendums regarding continuation of the dog track facility or State-wide surveys to limit casino gambling. This Indian Gaming Referendum of 12/3/92 indicates that there is not an overwhelming majority of citizens in the Hudson area for, or against, the operation of an Indian casino at the dog track facility. No comments from the Town of Troy, officially or unofficially, were received regarding the environmental impacts of this proposed action.

COMMENT: "The political social and practical effect of the Hudson dog track-to-casino proposal is as follows:"

1. <u>It denigrates and erodes the concept of Indian Sovereignty</u>

RESPONSE: The concept of Indian Sovereignty is one that has been argued for centuries and is beyond the scope of this action.

2. <u>It leads to the erosion of public support for Indian Gaming rights</u>.

RESPONSE: The erosion of public support for Indian gaming rights is beyond the scope of this action.

3. <u>It breaks the solidarity of Indian Tribes in supporting each other</u>.

RESPONSE: The solidarity of Indian Tribes in supporting each other is more appropriately addressed in the IGRA process and is beyond the scope of this action.

4. It gives movement and impetus to the drive for more non-Indian gaming.

RESPONSE: The movement for more non-Indian gaming is beyond the scope of this action and is more appropriately addressed in the IGRA process.

5. It does not promote or strengthen tribal government.

RESPONSE: The promotion and/or strengthening of tribal government is beyond the scope of this action.

6. It leads to the corruption of local and state officials and governments.

RESPONSE: Corruption regarding Indian gaming is an issue more appropriately addressed in the IGRA process.

William H.H. Cranmer

COMMENT (1): The FONSI and Addendum refer to this as a proposal by three Chippewa tribes to gain trust status for the land, in order to establish a casino. This is not an accurate statement of the facts.

RESPONSE: The statement is accurate. The association with Croixland Properties and other business arrangements regarding this matter does not render the statement inaccurate.

COMMENT (2): The FONSI and Addendum suggest that a casino would produce significant revenues for the tribes. The June 9, 1994 Bischof & Vasseur memo concerning "Impacts on Socioeconomic Conditions: in the Addendum points out, however, that each tribe will receive only 25% of the profits after debt service.

RESPONSE: The revenues for the Tribes, the profit shares, and after debt profits are issues more appropriately addressed by the Indian Gaming Regulatory Act (IGRA) process. No significant environmental impacts are expected as a result of these matters.

COMMENT (3): "The FONSI and Addendum suggest that an "Agreement for Government Services" (Agreement) between Croixland Properties, the three tribes, St. Croix County and the City of Hudson would "address and minimize""possible negative socioeconomic impacts on the City of Hudson and St. Croix County" (language in the draft FONSI)...this Agreement seems to violate 25 U.S.C. Section 2710 (d)(4) of the Indian Gaming Regulatory Act (IGRA), and Department of Interior policy... This agreement also incorporates a substantial annual payment to the Hudson School District not mentioned by the FONSI and Addendum. This payment is probably illegal under the IGRA, and probably violates Department of Interior policy..."

RESPONSE: The "Agreement for Government Services" is based upon the mutual consent of all signatory authorities, and the parties they represent, to provide government services to the proposed facility in exchange for an "allocable amount." It is not the imposition of a "tax" by a regulatory authority. There is currently no agreement between the gaming partners (the Partners) and the Hudson School District. Monies from the Agreement, to be provided to the Hudson School District by the City of Hudson (the City) or St. Croix County (the County) are not controlled by the Partners.

COMMENT (4): At no point did the County and City present a formal estimate of the cost of services to remedy the "possible negative socioeconomic impacts on the City of Hudson and St. Croix County," and provide services direct to the proposed casino. Bischof & Vasseur's Addendum also does not prepare such an estimate. Consequently, no one knows if the Agreement would adequately

"address and minimize" negative socioeconomic impacts, as the draft FONSI suggests.

RESPONSE: Monies that would be provided to the City and the County through the Agreement for Government Services are an "allocable amount" based upon information provided to the Tribes from the City and County governments. The signatory authorities for these governments, and the Council and Board they represent, are in ideal positions to assess the services necessary to address possible negative socioeconomic impacts, and estimate the costs to provide the services necessary to minimize these possible impacts.

COMMENT (5): "... the FONSI seems to confuse maximum capacity of the dog track with casino projections of average attendance ... Second, there is a good reason to think that a Hudson casino would attract more than an average of 7,000 patrons..."

RESPONSE: The Dog Track building and grandstand, after renovation, would, by State law, be able to hold 9,600 patrons based upon the number of square feet. This maximum peak capacity would restrict the number of people and vehicles able to patronize this facility.

COMMENT (6): The FONSI engages in sophistry when it says, "The addition of one form of gaming to a facility, already established for the purpose of gaming, would also not be considered significant." If that is true, why is Croixland Properties, the current owner of the Hudson dog track trying to move heaven and earth to get a casino license, even if it must be shared with Indian tribes?"

RESPONSE: Environmental impacts related to the addition of Class III gaming to the dog track facility would be almost entirely indirect as no expansion of, or exterior modifications to, the existing dog track facility are proposed.

COMMENT (7): One of the great weaknesses of the Bischof & Vasseur Addendum is that it ignores the empirical data and literature that has developed about costs of casinos. Robert Goodman in his 1994 nationwide LEGALIZED GAMBLING AS A STRATEGY FOR ECONOMIC DEVELOPMENT (funded by the Ford Foundation and Aspen Institute) comments that most gambling industry studies exaggerate benefits and understate costs..."

RESPONSE: A recent study by Minnesota Planning called Minnesota Gambling 1993 discusses many of the influences of Tribal casinos, and may be more applicable to the Hudson, WI, and Twin Cities area than documents from other localities. This document discusses the positive and negative influences of tribal casinos and provides comparisons of some of these influences between counties with and without casinos.

COMMENT (8): "It is interesting to see that the Bischof & Vasseur Addendum even gives slanted facts about the current track. It displays either ignorance or bias in its description of the track's placement in Hudson area geography, ... But the Addendum ignores all the homes to the west and northwest of the track,... further, most of the other residents of the Town of Troy are ignored in this description of local geography, even though these residents would have to use the same roads as casino patrons to drive to and from Hudson commercial areas and the freeway. The Addendum does not even mention that the Town of Troy surrounds the potential casino site on three sides..."

RESPONSE: Mention is made in the addendum and the original EA of residential areas surrounding the dog track facility. There seems to be no intent to slant or hide that fact in these documents. Traffic studies performed on the original dog track facility were based upon the total parking lot capacity for 4,400 vehicles. There are currently no plans to expand these parking facilities at this time. Recent projections regarding increased attendance of the proposed dog track/casino facility were submitted to the Wisconsin Department of Transportation (WDOT), who indicated that the Interstate 94/Carmichael Road Interchange is sufficient to adequately manage the additional traffic. Although no transportation system is likely to be developed that would assure that there will be no slow-down or delays during peak traffic periods, various methods would be utilized to manage delays should they occur. Some of these methods include varying dog track racing times so as to not coincide with peak casino attendance times, elimination of parking fees and gates for easy parking lot entry, use of shuttle buses and remote parking areas, possible adjustment of time delays on traffic lights during peak attendance times, and installation of traffic lights (see page 4, Attachment II of the Addendum).

No official, nor unofficial, comments were received from representatives of the Town of Troy regarding these documents. It is expected that alleged objections from the Town of Troy may be overstated, or that the Town's concerns have been resolved.

COMMENT (9): "Bischof & Vasseur also slants its facts about current track employment. There is a considerable gap between the May 23, 1994, Addendum, and Addendum Attachment I, a Bischof & Vasseur June 9, 1994 memo, "Proposed Tribal Gaming Facility Impacts on Socioeconomic Conditions." In the "Site Description" discussion in the Addendum, where track employment is not of material interest, Bischof & Vasseur states 282 employees currently work at the dog track. In the June 9 Attachment I, however, Bischof & Vasseur claims, "If the current dogtrack were to close down, it would generate a significant negative impact on the socioeconomic conditions of the study area through the loss of over 500 direct jobs, and 300 indirect jobs... Clearly, one or the other of these Bischof & Vasseur claims made less than three weeks apart is

incorrect. If the June 9 claim is incorrect, then a track closure would have far less impact on the Hudson economy than Bischof & Vasseur predicts... Moreover, in November, 1992, I checked Wisconsin Gaming Commission records for St. Croix Meadows contracts in the Hudson area. I found only five Hudson contracts for all of 1991 and 1992... These five contracts would have generated less than 10 jobs in the Hudson area, not the hundreds of jobs Bischof & Vasseur claims..."

RESPONSE: The 282 employees mentioned in the Addendum is referring to full-time employees while the 500 direct jobs discussed in Attachment I included approximately 200 seasonal and part-time positions. In any event, the loss of the 282 jobs is significant to many small communities. Direct contracts with service vendors is one of many forms of commerce that generate jobs. Many goods and services are purchased by the dog track facility without direct contracts. Race track employees living in and around Hudson, WI, St. Croix County and neighboring counties need food, shelter, clothing, community services, transportation and other goods and services. It is reasonable to expect that trucking companies, hardware stores, realty companies, barbers, department stores, clothing stores, auto sales companies, grocery stores, banks, schools, local/State/Federal governments and many others have gained customers and/or benefactors and have increased business sales as a result of these employees. Increased business sales can, in many cases, generate ancillary jobs.

COMMENT (10): "The Addendum claims that placing the track site in trust and creating a casino, "...will have a positive impact on the economic growth and well being of surrounding communities." No evidence is cited for this assertion..."

RESPONSE: The new jobs created by this proposed facility would be available to unemployed residents of the Hudson area as well as to residents of St. Croix County and other counties nearby. These new jobs would provide workers at lower-paying jobs opportunities to increase individual earnings. Many of these jobs would be available to workers without special training, skills, undergraduate and/or post graduate degrees. It is reasonable to expect that increased earnings for residents of the Hudson Community, St. Croix County and nearby counties are likely to result in increases in the purchase of goods and services in these areas.

Minnesota Gambling 1993, by Minnesota Planning, states, "Casino counties in Minnesota experienced $182 million more in economic activity in 1990 and 1991 than they would have if they had grown at the same rate as the rest of the state. Revenues of bars and restaurants in casino counties grew by 10.7 percent between 1989 and 1991, compared to 5.4 percent for non-casino counties. These figures do not include bars and restaurants in casinos." Other positive economic benefits described in this document include

increases in overall business sales and economic activity, increases in visitors from other states and decreases in county expenditures for Aid to Families with Dependent Children. Negative social consequences described in this document include increases in calls to gamblers anonymous and increased visits to problem gambling treatment centers. It is expected, however, that the allocable amount determined by the "Agreement for Government Services" will compensate the local governments for the possible need for these services.

COMMENT (11): The Addendum comments that "no new significant effects" of noise levels or facility lighting "are expected" because of the operation of a Hudson casino... Clearly a dog track that sends 500 to 1,000 customers home at 11 p. m. four nights per week will differ in impact on residents' lives and property values from a 24-hour per day, 7,000-15,000 customers per day casino...

RESPONSE: Increased activity at the Hudson dog track facility would involve the movement of additional vehicles in and out of the proposed facility. This increased traffic is not expected to significantly increase noise levels in the area as toll gates to the parking facility would be removed reducing delays in entering and exiting the facility. The original lighting system for the dog track facility was required to reduce the light spillage at the property lines to an amount equivalent to residential streets. There are no plans to modify the existing lighting system.

COMMENT (12): "The Addendum comments that "no significant short-term, long-term, or cumulative impacts are expected on urban services" because of a new Hudson casino. The Addendum specifically mentions public safety expenditures as one of these services... however, all the surrounding casino towns have found the need for more police expenditures because of increased crime and traffic problems..."

RESPONSE: Minnesota Gambling 1993, states, "From 1989 through 1991, there was no evidence that tribal gaming caused an increase in reported serious crimes such as murder, rape, robbery or theft. The crime rate for casino counties between 1989 and 1991 increased only slightly more than for noncasino counties other than Hennepin, Ramsey, Washington, Anoka and Dakota counties (14.8 percent compared to 12.1 percent)." This document discusses casino impacts in and around Minnesota communities and may be more applicable to the subject area. Increased crime does not seem to be a major problem for these counties. Attachment II of the Addendum states, "St. Croix Meadows first opened in 1990 after a long and involved approval process. Since it opened, none of the earlier negative predictions concerning increased crime, etc., have come true...".

Due to the increased demand for housing to accommodate new employees and their families. Many of these employees would be in higher-salaried, managerial positions who would be able to purchase

homes in the Hudson area. Many other families would have both heads of household working at the new facility with two incomes to increase buying power for area homes. It is reasonable to expect that property values around the proposed Hudson track/casino facility would increase. Comments referring to people "fleeing from crime and congestion" regarding the advent of this proposed casino/dog track appear to be overstated.

COMMENT (13): "The Addendum comments, "No new significant short-term, long-term, or cumulative impact is expected on area traffic and ambient air quality of the proposed action." ... A dramatic increase in traffic, and some air degradation is bound to result along Carmichael Road south of the freeway interchange... At the moment, since there has been no new traffic study at that interchange, nobody knows whether or not 1989 traffic estimates are correct..."

RESPONSE: The "indirect source permit" regarding air pollution for the Hudson dog track facility was based upon the size of the parking lot. The Wisconsin Department of Natural Resources, Bureau of Air Management Planning Section has reviewed the proposed modifications and stated in a recent letter, "As there will be no physical modifications to the parking lot, there are no requirements for any modifications to the existing permit or for the issuance of a new permit." The regulatory aspects of this State of WI permit would still apply as the parking lot would continue to remain in taxable status. Attachment II states, "... air monitoring stations were constructed at the track ... there are no known instances of air quality being monitored at levels not acceptable to EPA standards. The traffic flow to and from the casino and track facility should be dispersed sufficiently to maintain air quality standards well within acceptable limits."

The traffic study in the original EA was based upon traffic projections in the year 2011. Peak traffic estimates were provided to the WDOT regarding the new casino/dog track facility. WDOT Planning Section Personnel have reviewed these estimates and have not identified any significant problems regarding the proposed traffic increase on the Interstate 94/Carmichael Road interchange.

ADDITIONAL INFORMATION REGARDING THE PROPOSED DOG TRACK/CASINO FACILITY IN HUDSON, WI

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

WISCONSIN DEPT. OF NATURAL RESOURCES

George E. Meyer
Secretary

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897
AIR MGMT FAX 608-267-0560

August 16, 1994

File Code: 4509

Mr. Louis Vasseur
838 South Taylor
Oak Park, IL 60302

SUBJECT: Requested Information on St. Croix Meadows - Hudson, Wisconsin (Permit Number 91-CPB-062)

Dear Mr. Vasseur:

This letter is written as a follow up to our conversion regarding the necessity of an indirect source permit for the St. Croix Meadows facility in Hudson, Wisconsin.

From my understanding, the use of the facility may change somewhat as a result of some ownership changes, but there will be no physical modifications to the parking lot. As there will be no physical modifications to the parking lot, there are no requirements for any modification to the existing permit or for the issuance of a new permit. However, I do request that you send me a letter giving the name and business address of the new owners (partners). This information will be placed in the facility files.

Additionally, I have attached a copy of the latest indirect source permit issued to Croixland Properties. Should you have any questions or concerns, feel free to call me at (608)267-0869.

Sincerely,

John F. Meier

John Meier, Air Management Specialist
Planning Section
Bureau of Air Management

Attachment

cc: Ralph Patterson - AM/7

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

WISCONSIN DEPT. OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

101 South Webster Street
P.O. Box 7921
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897

July 8, 1991
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN REPLY REFER TO: 4509

Mr. Burton L. Nordstrand
Croixland Properties Limited Partnership
512 Second Street
Hudson, WI 54016

Dear Mr. Nordstrand:

Your application for an air pollution control permit for modification of the St. Croix Meadows greyhound racing facility in Hudson, Wisconsin, has been processed in accordance with sec. 144.392, Wis. Stats.

The enclosed permit is issued to provide authorization for your source to be modified and operated in accordance with the requirements and conditions set forth within Parts I and II of the permit. Please read it carefully. A release for permanent operation (construction release) will be issued after verification that the source was modified and initially operated according to the plans and specifications as approved by the Department.

This permit supersedes the air pollution control permit for your source issued on July 6, 1989 (permit number 89-CPB-003).

Enclosed with the permit there is a bill for the cost of reviewing and acting upon your air pollution control permit. This bill is due and payable in 30 days of the date of the issuance of the permit. This fee should be made payable to Wisconsin Department of Natural Resources and returned to the address on the bill.

The fee has been calculated under the provisions of sec. NR 410.03, Wis. Adm. Code, as follows:

Basic fee for permit to modify an indirect major source	$3,000
Basic fee reduction for applicant publishing public notice	-100
Additional fee for holding public hearing at request of applicant	500
TOTAL FEE	$3,400
Portion of fee submitted with application	-500
REMAINING FEE	$2,900

This permit may be revised as a result of rulemaking by the Department or the adoption of standardized permit forms and procedures which may differ from this document. At the time of such revision, permits reflecting these changes will automatically be issued.

A copy of this permit should be available at the source for inspection by any authorized representative of the Department. Questions about this permit should be directed to the Bureau of Air Management, P.O. Box 7921, Madison, Wisconsin 53707, (608) 266-7718.

NOTICE OF APPEAL RIGHTS

This decision is effective immediately unless the permit holder appeals the permit as set forth herein.

Any person aggrieved by this decision may appeal this decision by serving a petition for a contested case hearing for administrative review of this decision on the Secretary of the Department of Natural Resources under section 144.403, Stats., within 30 days after the date of mailing of this decision. Any petition for a contested case hearing under section 144.403, Stats., shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted and the relief desired. This notice is provided pursuant to section 227.48(2), Stats.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

Christopher P. Bovee

Christopher P. Bovee, Environmental Specialist
Planning Section
Bureau of Air Management

Enclosure

cc: Air Enforcement Branch - EPA, Region V
Western District Air Program

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
BUREAU OF AIR MANAGEMENT
FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION

Findings of Fact

The Department of Natural Resources (DNR) finds that:

1) Croixland Properties Limited Partnership, 512 Second Street, Hudson, Wisconsin 54016, has applied for an air pollution control permit. The authorized representative of the facility is Burton L. Nordstrand, Chairman, Management Committee.

2) Croixland Properties Limited Partnership submitted an air pollution control permit application and plans and specifications and any additional information describing the air pollution source on June 5, 1990, September 7, 1990, October 26, 1990, November 29, 1990, January 25, 1991, February 7, 1991, February 12, 1991, February 26, 1991, and March 1, 1991.

3) DNR has reviewed Croixland Properties Limited Partnership's air permit application and the plans and specifications submitted to DNR.

4) This permit is for a major, modified, attainment area air pollution source.

5) DNR has complied with the procedures set forth in s. 144.392, Stats.

6) The proposed air pollution source meets all of the applicable criteria in s. 144.393, Stats.

7) DNR has complied with the requirements of s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code.

8) DNR has considered the Environmental Assessment for this project and the comments received on it.

9) Consistent with social, economic and other essential considerations, DNR has adopted all practical means to avoid or minimize environmental harm.

Conclusions of Law

DNR concludes that:

1) DNR has authority under s. 144.31(1)(a), Stats., to promulgate rules contained in chs. NR 400-499, Wis. Adm. Code.

2) DNR has the authority under ss. 144.31(1)(a), (e), and (f), 144.375 (4) and (5) and 144.394, Stats., and chs. NR 400-499, Wis. Adm. Code, to establish emission limits for sources of air pollution.

3) DNR has the authority to issue air pollution control permits and to include conditions in such permits under ss. 144.391, 144.392, 144.393 and 144.394, Stats.

4) The emission limits included in this permit are authorized by ss. 144.394, Stats., and NR 415.04, Wis. Adm. Code.

5) DNR is required to comply with s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code, in conjunction with issuing an air pollution control permit.

Decision

Croixland Properties Limited Partnership is authorized to modify and operate a greyhound racing facility located at County Trunk Highway "F" and Tower Road, 1.5 miles south of Interstate Highway 94, in the City of Hudson, St. Croix County, Wisconsin, as described in plans and specifications dated June 5, 1990, September 7, 1990, October 26, 1990, November 29, 1990, January 25, 1991, February 7, 1991, February 12, 1991, February 26, 1991, and March 1, 1991, in conformity with the emission limits, monitoring, recordkeeping and reporting requirements and specific and general conditions set forth elsewhere in this permit.

AIR POLLUTION CONTROL PERMIT

ATTAINMENT AREA MAJOR SOURCE

EI FACILITY NO. N/A

PERMIT NO. 91-CPB-062

STACK NO.(S). N/A

TYPE: Permit to Modify and Operate

SOURCE NO.(S). N/A

PERMISSION TO COMMENCE MODIFICATION ENDS EIGHTEEN (18) MONTHS FROM THE DAY THIS PERMIT IS ISSUED. ONCE A RELEASE FOR PERMANENT OPERATION HAS BEEN ISSUED, THIS OPERATING PERMIT IS PERMANENT UNLESS ALTERED, REVOKED OR SUSPENDED.

In compliance with the provisions of Chapter 144, Wis. Stats., and Chapters NR 400 to NR 499, Wis. Adm. Code,

Name of Source: Croixland Properties Limited Partnership

Street Address: 512 Second Street
Hudson, Wisconsin 54016

Principal Officer or Authorized Representative, & Title:
Burton L. Nordstrand, Chairman, Management Committee

is authorized to modify and operate a greyhound racing facility located at County Trunk Highway "F" and Tower Road, 1.5 miles south of Interstate Highway 94, in the City of Hudson, St. Croix County, Wisconsin, as described in the plans and specifications dated June 5, 1990, September 7, 1990, October 26, 1990, November 29, 1990, January 25, 1991, February 7, 1991, February 12, 1991, February 26, 1991, and March 1, 1991, in conformity with the conditions herein.

This authorization requires compliance by the permit holder with the emission limitations, monitoring requirements and other terms and conditions set forth in Parts I and II hereof.

Dated at Madison, Wisconsin this 8th day of July, 1991.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By
Donald F. Theiler, Director
Bureau of Air Management

PART I
SPECIFIC PERMIT CONDITIONS
FOR INDIRECT SOURCES

A. Particulate Matter Emission Limitations

1. Fugitive dust emissions from the construction and operation of the source shall be prevented by taking precautionary measures which shall include, but not be limited to:

a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, or construction operations.

b) Application of asphalt, oil, water, suitable chemicals, or plastic covering on dirt roads, material stockpiles, and other surfaces which can create airborne dust, provided such application does not create a hydrocarbon, odor, or water pollution problem.

c) Covering or securing of materials likely to become airborne while being moved on public roads, railroads, or navigable waters.

d) The paving or maintenance of roadways or parking lots so as not to create air pollution.

B. Carbon Monoxide Mitigation Measures

1. Before the source places more than 999 parking spaces into use, the following roadway conditions shall exist:

a) A divided highway having at least two lanes in each direction travels from the source's exit ramp to the interchange of Interstate Highway 94 with Carmichael Road.

b) The interchange of Interstate Highway 94 (I-94) with Carmichael Road has: (1) an exit ramp from eastbound I-94 having at least two lanes, (2) an exit ramp from westbound I-94, (3) an entrance ramp to eastbound I-94, and (4) an entrance ramp to westbound I-94 having at least two lanes.

c) If accessing westbound Interstate Highway 94 from northbound Carmichael Road requires a left-turn, then northbound Carmichael Road has at least two exclusive left-turn lanes at its intersection with the entrance ramp to westbound Interstate Highway 94.

2. The permittee shall install and operate a carbon monoxide ambient air monitoring site in conformance with the Wisconsin Department of

Natural Resources (DNR) Air Monitoring Comparability Program guidelines, which are attached to this permit. Department approval is required for the specific location and design of the monitoring site prior to installation and start-up of the monitor. The monitor shall be located at a site approved by the DNR at a location near the exit of the St. Croix Meadows Greyhound Racetrack. Operation of the monitoring site shall commence no later than the opening date of the initial racing season at the St. Croix Meadows Greyhound Racetrack.

If any exceedance of the one-hour carbon monoxide standard of 40 milligrams per cubic meter (35 parts per million) or the eight-hour carbon monoxide standard of 10 milligrams per cubic meter (9 parts per million) is detected by the monitor, the permittee shall immediately notify the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, WI 54702 (telephone number: 715-839-3756) and the City of Hudson-Department of Public Works (telephone number: 715-386-9021); and submit a written report to the Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison, Wisconsin, 53707, within fifteen (15) calendar days after the exceedance. The report shall include: the time of the exceedance; the hourly average carbon monoxide concentrations during the time of the exceedance; the time of and attendance at any racing event held during the time of the exceedance, within 24 hours prior to the start of the exceedance, or within 12 hours after the end of the exceedance; and information on any unusual event or malfunction that may have caused the exceedance.

Regular data submittals consisting of hourly average carbon monoxide concentrations shall be submitted to the Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison, Wisconsin 53707, within thirty (30) days of the end of each calendar month.

For purposes of this condition the phrases "applicable intersections" and "applicable traffic movements" are defined.

"Applicable intersections" means all signalized intersections on Carmichael Road between the St. Croix Meadows Greyhound Racetrack and Coulee Road (I-94 North Frontage Road).

"Applicable traffic movements" means:

-All straight-ahead movements north and south on Carmichael Road between the St. Croix Meadows Greyhound Racetrack and Coulee Road (I-94 North Frontage Road).

-The eastbound Crestview Drive left-turn onto Carmichael Road.

-The eastbound I-94 exit ramp right-turn onto Carmichael Road.

-The northbound Carmichael Road left-turn onto the westbound I-94 entrance ramp.

If the carbon monoxide monitor required in condition number 2. measures an exceedance of a carbon monoxide ambient air quality standard, then the permittee shall make arrangements with the Wisconsin Department of Transportation (DOT) or the City of Hudson to procure and provide DNR with traffic volume data and traffic response signal plan information along with an analysis of this information for all applicable intersections and traffic movements between the St. Croix Meadows Greyhound Racetrack and Coulee Road for the time period beginning three hours before the start of the exceedance and ending three hours after the end of the exceedance. This information shall be submitted to the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, WI 54702. This information shall be provided in a summary form to DNR in a format approved by DNR and shall be supplied to DNR no later than 30 calendar days after the exceedance.

The definitions of "applicable intersections" and "applicable traffic movements" in condition number 3. also apply to this condition.

If an exceedance of a carbon monoxide ambient air quality standard has been measured within two miles of the St. Croix Meadows Greyhound Racetrack, or if DNR has reason to believe that such an exceedance has occurred, DNR may request and the permittee shall make arrangements with DOT or the City of Hudson to procure and provide DNR with traffic volume and traffic response data along with an analysis of this information for all applicable intersections and traffic movements between the St. Croix Meadows Greyhound Racetrack and Coulee Road. DNR shall specify in its request the time period for which such information is requested.

If no exceedance has been measured, DNR may make this request only if DNR has reason to believe that the following information indicates an exceedance has occurred:

a) carbon monoxide monitoring data, if available, including historical data,

b) meteorological data,

c) the times and attendance of events at the St. Croix Meadows Greyhound Racetrack,

d) carbon monoxide modeling results,

e) public comments or complaints to DNR regarding instances of poor air quality, if any, and

f) information pertaining to traffic congestion at any of the applicable intersections, if available.

Also, if no exceedance has been measured, DNR shall include in its request written justification as to why DNR has reason to believe that an exceedance has occurred.

When requested, the information shall be submitted to the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, WI 54702. This information shall be provided in a summary form to DNR in a format approved by DNR and supplied to DNR no later than 30 calendar days after the date of the request. The permittee shall make arrangements with DOT or the City of Hudson to retain the data necessary to compile this information for at least one year, irregardless of whether DNR requests the data.

5. The elapsed time between the start of any two consecutive events at the St. Croix Meadows Greyhound Racetrack shall be at least six hours.

Other Specific Conditions

1. Construction Progress Notification

The permittee shall send the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, Wisconsin 54702, construction progress reports every 30 days until a release for permanent operation is granted.

2. Initial Operation Notification

The permittee shall notify the DNR's Western District Air Program thirty (30) days prior to initial operation of the source covered by this permit.

3. Release for Permanent Operation

This permit does authorize an initial operation period of sixty (60) days for testing (if necessary) and Department evaluation of operation to assure conformity with the permit conditions. Permanent operation of the source(s) covered by this permit after the initial operation period is prohibited until a release has been issued by the Department.

4. This permit supersedes permit number 89-CPB-003, issued to Croixland Properties Limited Partnership on July 6, 1989.

Wisconsin Department of Natural Resources
Bureau of Air Management
Air Monitoring Section

Air Monitoring Comparability Program

The Department of Natural Resources' (DNR) Air Monitoring Section has established a program to audit air monitoring sites within the state covered under Section NR 404.06, Wisconsin Administrative Code. Data that is found to be accurate, precise, and comparable to DNR data will be determined to be comparable under terms of Section NR 404.06, Wisconsin Administrative Code. Comparability is a measure of the quality of the data and informs data users of the degree of confidence that can be placed in such data.

The Audit Program consists of the following:

1. Prior to beginning monitoring, the industry or other entity (or it's consultant):

   A. Prepares and submits to DNR a monitoring and quality assurance plan describing what procedures will be used to insure that data of good quality will be generated. The plan should include the operating procedures, preventive maintenance schedules, quality control checks on all phases of the operation (with acceptance limits), data reduction and validation procedures, and calibration schedules and procedures.

   OR

   B. Completes a copy of DNR's monitoring survey questionnaire which covers the items in "A" above.

   The information received is reviewed to determine the adequacy of the entity's monitoring program. Adequacy is based on a comparison with EPA's Quality Assurance Guidelines[1,2] for monitoring; where guidelines do not exist, good scientific practice is used. DNR then reports the results of this review to the entity. DNR's Air Monitoring Handbook is available for inspection at the Bureau of Air management as a guide for specific monitoring and quality assurance procedures.

2. Periodic, formal on-site inspections of all monitoring site(s) and equipment by DNR auditors. This inspection is conducted in the presence of the site operator. The initial site visit is best scheduled before monitoring begins so that the location of the site and the placement of the instrument probe may be reviewed to determine if they meet EPA siting criteria[3]. A review is also made of site operating procedures and record keeping to see if they adequately insure the production of good quality data. The results of this review are reported to the entity, with recommendations for improvements, if needed. Follow-up site inspections are scheduled only if deficiencies are observed.

3. Performance audits of the instruments are conducted and consist of either introducing a known quantity of the pollutant of interest into the monitor

and measuring its response or measuring flow with an audit device. Usually five different concentrations are used. Flow rate checks on the instruments may also be performed. For high volume air samplers, five different resistance plates (or other flow audit device) are placed on the sampler and the flow rate measured.

The DNR attempts to conduct performance audits at all monitoring site(s) once each year. Evaluations of the audit results are sent to the entity; follow-up audits will be scheduled if problems are observed.

Criteria for Comparability

1. Operating and quality control procedures must be adequate to insure good control of the accuracy and precision of the data. The following procedures are generally considered part of an adequate quality control program:

   a. Use of EPA reference or equivalent methods as described in the Code of Federal Regulations.[4]

   b. Use of EPA Quality Assurance Guidelines[1,2] where they exist.

   c. For continuous analyzers:

      1. Frequent zero/span checks of the analyzers - daily is preferred. Results of zero/span checks should be used to determine instrument drift and possible need for instrument recalibration as well as to validate hourly concentrations.

      2. Multipoint calibrations of the analyzers whenever: a) zero/span checks exceed limits, or quarterly (90 day), whichever occurs first, b) instrument maintenance or adjustment affects response.

      3. Periodic checks and recertification of standards and flow dilution equipment used to calibrate continuous analyzers. The frequency of the checks or recertification will depend on the calibration system used and the quality of the pollutant standards.

      4. Audits of manual strip chart reduction or periodic checks of analyzer output versus automated data acquisition equipment readings.

      5. Data validation procedures to detect abnormal data patterns and determine if such hourly concentrations are accurate measurements.

   d. For Prevention of Significant Deterioration (PSD) monitoring, the requirements in the Code of Federal Regulations 40 CFR 58, Appendix B must be followed along with the guideline provided in U.S. EPA's "Guideline" document[5].

2. Performance audits of the analyzers must be satisfactory.

   a. High volume samplers - flow measurements must be within ±9% of the DNR flow values.

b. Continuous analyzers - reported concentrations must be within ±10% of the known DNR concentrations.

Comparable industrial/entity data is reported in DNR's Annual Air Quality Data Reports, and is annotated as such.

To Maintain Certification

1. The industry/entity must continue to meet the criteria for certification listed above.

2. The industry/entity must submit copies of their multipoint calibration data for their monitoring instruments to DNR on a quarterly basis. These data are reviewed for consistency between calibrations. If a calibration is significantly different than previous calibrations for the instrument, the industry will be asked to review this calibration and determine if it is indeed accurate and explain the difference.

3. All hourly pollutant concentrations, meteorological parameters, and 24-hour concentrations for total suspended particulate are to be submitted in "AIRS"[6] format to DNR on floppy diskette. The data submittal should be on a monthly basis and should be received by DNR no later than 30 days after the end of the month.

Any industry or other entity interested in participating in the Air Monitoring Comparability program should contact:

Julian Chazin, Chief
Air Monitoring Section
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, WI 53707
Telephone #: 608/266-1902

References

1. Quality Assurance Handbook for Air Pollution Measurement Systems Vol. I - Principles EPA-600/9-76-005 March 1976

2. Vol. II - Ambient Air Specific Methods EPA-600/4-77-027a May 1977

3. Code of Federal Regulations - 40 CFR Part 58, Appendix D and Appendix E.

4. Code of Federal Regulations - 40 CFR Part 50 Appendices A through G.

5. Ambient Monitoring Guidelines for PSD (sources), EPA 450/4-87-007, May 1987

6. "AIRS" - U.S. EPA's Aerometric Information Retrieval System. Details available from the Air Monitoring Section.

GENERAL PERMIT CONDITIONS
FOR INDIRECT SOURCES
PART II

. Scope

This permit is valid only for the structure, building, facility, equipment or operations specifically identified herein. All emissions authorized hereby shall be consistent with the terms and conditions of Parts I and II of this permit.

. Prevention of Air Pollution

No person may cause, allow or permit the emissions of any air contaminant into the ambient air from a source subject to this permit which substantially contribute to the exceeding of an air standard or which cause air pollution.

. Notification Requirements

Pursuant to sec. 144.394(3), Wis. Stats., and section NR 445.05 and 439.025(6), Wis. Adm. Code, the Department shall be notified of the following events:

Event	Timing
Hazardous substance air spill	Immediate-call: (608)266-3232
Malfunction or event not reported in advance which causes or may cause any violation of an emission limitation.	Within 8 hours of onset
Noncompliance with any other condition specified in this permit	Written notification within 5 days identifying noncompliance, cause, duration, and steps taken to prevent reoccurrence.

. Right of Entry

Pursuant to sec. 144.34, Wis. Stats., the permittee shall allow authorized representatives of the Department of Natural Resources to enter upon the permittee's premises; to have access to and copy any records required to be kept under the terms and conditions of this permit; and to make any inspection necessary to ascertain compliance.

. Permit Alteration, Revocation, Suspension

After notice and opportunity for a hearing, as provided in sec. 144.395, Wis. Stats., this permit may be altered, suspended, or revoked in whole or in part for cause, including but not limited to, the following:

1. A significant or recurring violation of any term or condition of this permit;

2. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

3. A change in any applicable rule; or

4. Failure to pay any required permit fees.

F. Civil Liability

Nothing in this permit shall be construed to relieve the permit holder from civil penalties under secs. 144.426, 144.96 or 144.99, Wis. Stats., for violation of the terms or conditions of this permit, or for violation of secs. 144.30 to 144.426, 144.76 and 144.96, Wis. Stats., or of any rule or any special order issued under those sections.

G. Other Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permit holder from any responsibilities, liabilities, or penalties established pursuant to any other applicable Federal, State, or local law or regulation. The issuance of this permit does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or any invasion of personal rights.

H. Records Retention

All records and information resulting from any monitoring activities required by this permit shall be retained by the permittee for a minimum of three years (or longer if requested by the Department) pursuant to section NR 439.03, Wis. Adm. Code.

I. Reporting

Reports required by Part I of this permit, if any, shall be signed by an authorized representative of the permittee.

J. Confidential Information

Except for information determined to be confidential under sec. 144.33, Wis. Stats., any information or reports received by the Department in the permit application process, or subsequently obtained, will be available for public inspection at the offices of the Department of Natural Resources.

K. Notification of Transfer

In the event of a transfer of control of operation or ownership of the source, the permittee, prior to such transfer, shall notify its successor by letter of the need for a permit. A copy of this letter shall be forwarded to the Department.

Wisconsin Department of Transportation

TRANSPORTATION DISTRICT 6
718 West Clairemont Avenue
Eau Claire, WI 54701-5108

94 SEP -6 AM 7:54
BUREAU OF INDIAN AFFAIRS
GREAT LAKES AGENCY

September 2, 1994

Mr. Mark Kuester
Bureau of Indian Affairs
Great Lakes Agency
615 Main St W
PO Box 273
Ashland WI 54806-0273

Dear Mr. Kuester:

SUBJECT: IH94/Carmichael Road Interchange
St. Croix County

Thank you for the opportunity to review the anticipated traffic impacts from the planned Hudson Dog Track/Casino facility.

We have made a quick comparison of these traffic impacts with the traffic forecast used for the design of the IH94/Carmichael Road Interchange in 1989. From this quick look, it appears your anticipated traffic numbers can be handled by the existing interchange.

Due to the short time given to review, we have not studied the issue thoroughly; however, we are fairly confident the interchange will function fine with the planned dog track/casino.

We are assuming the proposal is also being reviewed by the City of Hudson. They operate and maintain the signals at the ramp terminals, and should be given an opportunity to comment.

If you have any questions or need clarification, please call 715-836-2807.

Sincerely,

Jeffrey P Kern

for M. L. Beckman, P.E.
Chief, Transp. Assistance &
Planning Section

MLB:cjh

01090294.JPK\Design

RECEIVED
SEP 06 1994
NATURAL RESOURCES

Peak Traffic Impacts

Assumptions:

Maximum Patron Occupancy: 9,600

REFERENCE:

Peak occurs at exit from the dogtrack from 4:30 - 5:30 PM, weekdays (Benshoof Assoc., Inc. - Traffic Study For City of Hudson South of I-94, November 15, 1988).

Dogtrack Peak: 2,655 outbound trips; 6,800 attendance (calculated).

Assumptions For Peak, Dogtrack/Casino Operations

Patron retention time:	Casino Player	1.5 hours
	Dog Track Player	3.0 hours
	Casino/Dog Player	2.5 hours
	Average Player	2.3 hours

Dogtrack/Casino Peak Duration = 2.3 hours

Occupancy at Peak = 9,600 Patrons

Caculations:

9600 patrons / 2.3 hours = **4,174 patrons/hour entering and exiting the facility during the peak period.**

((0.85)(4,174 patrons/hr) / (vehicle / 2.2 patrons)) = **1,613 passenger vehicles/hour entering and exiting the facility during the peak period.**

((0.15)(4,174 patrons/hr) / (bus / 40 patrons)) = **16 buses/hour entering and exiting the facility during the peak period.**

[Note: 2.2 Patrons/Vehicle and 40 Patrons/Bus, per CH2M Hill, Air Pollution Control Permit for St. Croix Meadows Hudson Greyhound Racing Facility, Jan. 1989.]

Peak Traffic Volume Estimate:

1,613 vehicles/hr + 16 buses/hr = **1629 vehicles/hour entering and exiting the facility during the peak period (27 vehicles/minute).**

Roadway Vehicle Storage Volume (I94 interchange south to casino/dogtrack facility):

((5280 feet) / (15 feet/vehicle))(2 lanes) = 704 vehicles

[Note: Distance from Charmichael Road to Dogtrack/Casino Complex = 1mile. Minimum, average vehicle length = 13 ft + 2 ft buffer space = 15 ft.]

Assumption: Traffic nearly stopped. Average speed = 5 mph.

(1,629 vehicles/hour) / (5 mph) = 326 vehicles in the roadway

Volume of Dogtrack/Casino traffic ingressing and egressing the facility :

Volume of the roadway: 326:704 (46%)

Congress of the United States
House of Representatives
Washington, D.C. 20515

January 6, 1995

Dear Minnesota Colleague:

Please join with Congressman Oberstar and me in sending the attached letter to Secretary Babbitt urging him to meet with representatives of the Minnesota Indian Gaming Association (MIGA).

Last May, many of you joined with us in sending a letter to the Secretary urging him to not approve the transfer of the Hudson Dog Track in Wisconsin into trust to three Wisconsin Indian Tribes because of its adverse impact on Minnesota Indian Tribes. There is some concern that the BIA has recommended the transfer be approved. MIGA is requesting a meeting with Secretary Babbitt or John Duffy so that their concerns can be heard.

I urge you to join with us in urging Secretary Babbitt to meet with representatives of MIGA. If you are willing to sign a delegation letter, please contact John Schaeffler, with Congressman Minge at x5-2331, or Waylon Peterson, with Congressman Oberstar at x5-6211. The deadline for signatures is noon, Tuesday, January 10th.

Sincerely,

JAMES OBERSTAR, M.C.

DAVID MINGE, M.C.

Congress of the United States
House of Representatives
Washington, D.C. 20515

January 6, 1995

The Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street, NW
Washington, D.C. 22040

Dear Secretary Babbitt:

We are writing to request that you or John Duffy meet with representatives of Minnesota Tribes on January 17th or 18th.

You may recall we wrote to you last ~~May~~ Nov to express our concern about a proposal by three Indian tribes of Wisconsin to acquire the St. Croix Dog Track in Hudson, Wisconsin. Attached find ~~a~~ copies of the earlier letter. We believe it is their intention to petition your office to approve the transfer of the Track into trust status for the establishment of an off-reservation casino.

Because this decision impacts seriously Minnesota Indian Tribes' economic viability and our entire state economy, we urge you meet with and hear the concerns of Minnesota's Tribal leaders.

Thank you for your consideration of this request. Representatives of the Tribes can meet with you at your convenience and in your office. Please contact John Schaeffler, with Congressman Minge at 225-2331, or Waylon Peterson, with Congressman Oberstar at 225-6211 to assist in making arrangements.

Sincerely,

draft only

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

Honorable Curtis Campbell
President
Prairie Island Community Council
1158 Island Boulevard
Welch, Minnesota 55089

JAN 0 9 1995

Dear President Campbell:

Thank you for your letter of November 30, 1994, to Secretary Babbitt expressing your objection to the Assistant Secretary - Indian Affairs purported position to approve the application of the proposed off-reservation acquisition of St. Croix Meadows Dog Track. This office has been asked to provide you a response.

The Lac Courte Oreilles, Red Cliff and Sokaogon Bands of Lake Superior Chippewa Indians have submitted an application which is currently under review in the Bureau of Indian Affairs' Indian Gaming Management Staff (IGMS) Office. In addition to compliance with 25 CFR 151, the Land Acquisition regulations, the application must comply with the requirements of the Indian Gaming Regulatory Act, in particular Section 20. Section 20 prohibits gaming on lands acquired in trust status after October 17, 1988, unless an exception listed in Section 20(a) applies. If none of the exceptions apply, gaming may be conducted on newly acquired lands only if the Secretary determines, after consultation with appropriate State and local officials, including officials of nearby Indian tribes, that the gaming establishment on newly acquired land will be in the best interest of the tribe and its members and will not be detrimental to the surrounding community, but only if the Governor of the State concurs in the Secretary's determination (25 U.S.C. § 2719 (b)(1)(A)).

The decision to take land into trust for gaming purposes is made only after an exhaustive and deliberative review of all relevant facts and criteria. Each request by a tribe whether for gaming purposes or other economic ventures is evaluated on its own merits.

If you have further questions, please contact the IGMS Office at (202) 219-4068 for more information.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

DORSEY & WHITNEY PROFESSIONAL
LIMITED LIABILITY PARTNERSHIP
(A MINNESOTA PROFESSIONAL LIMITED LIABILITY PARTNERSHIP)
SUITE 200
1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, D C 20036

FACSIMILE COVER SHEET
(202) 857-0569

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED SOLELY FOR THE USE OF THE PERSONS OR ENTITIES NAMED BELOW. IF YOU ARE NOT SUCH PERSONS OR ENTITIES, YOU ARE HEREBY NOTIFIED THAT ANY DISTRIBUTION, DISSEMINATION OR REPRODUCTION OF THIS FACSIMILE MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE IMMEDIATELY CALL US COLLECT AT (202) 452- .

Date: January 10, 1995 Time:

Total Number of Pages (including this cover sheet): 4

TO: Frank Ducheneaux FAX [redacted]

FIRM NAME: LOCATION:

TELEPHONE [redacted]

FROM: Virginia W. Boylan

TELEPHONE NUMBER [redacted]

COMMENTS:

Original will be sent via (circle one): Mail Messenger Air Courier Will not be sent

PLEASE CONTACT FACSIMILE OPERATOR Sarah Ridley AT
(202) 452 -6928 IF TRANSMISSION IS INCOMPLETE OR CANNOT BE READ.

Reference # [redacted]

MEMORANDUM

TO: Stanley Crooks, Chairman, SMSC
cc: Kurt BlueDog; Frank Ducheneaux

FROM: Virginia Boylan
Dorsey & Whitney
Professional Limited Liability Partnership

RE: Notes on conversations with BIA gaming personnel--Hudson issue

DATE: January 10, 1995

On the advice of Keven Meisner (gaming attorney, Office of Associate Solicitor for Indian Affairs, Department of the Interior) on Friday, January 6, I spoke with Larry Scrivener at the BIA office in D.C. (219-4066); he and Nancy Perscala (formerly of Mpls BIA office) are both in the Lakewood, Colorado BIA gaming office that provides "technical advice" to tribes on gaming issues. For some time, Larry and Nancy have been rotating coverage of the D.C. gaming office on a two-week exchange basis while the search is being conducted for a permanent Director of the D.C. gaming office for the BIA. (That search may be over since it appears that George Skibene has been chosen; George is now in the Office of Associate Solicitor for Indian Affairs.)

The Lakewood office is also staffed by Linda Ramirez who is no longer on the rotation team. Larry told me that Linda is the person to contact about any concerns the Minnesota tribes may have with regard to the Hudson Dog Track matter. (He also told me that the Chairmen of the Red Cliff, Lac Courte d'Oreilles, and Mole Lake Tribes are meeting with Ada Deer on January 12 at 10:30 a.m. on this issue.)

On January 9, I called Linda (303-969-5141--fax 5144) to discuss the issue of the Hudson matter and the "pre-decisional" memo from Denise Homer supporting a determination that taking the Track into trust for the Wisconsin tribes would be in the best interest of those tribes. I was told by all the persons with whom I spoke that the memo is not available for us to see. So, even though we know that Ms. Homer is recommending that the land be taken into trust for gaming purposes under section 20 of IGRA, we are not allowed to know the rationale for this decision.

I asked Linda about the matter of non-consultation with the Minnesota tribes and requested that she follow up by calling you, Marge Anderson and Kurt Campbell. I did this on the advice of Larry Scrivener who indicated that Lakewood could send the decisional memo back to Minneapolis if the consultation

requirements have not been met. Linda advised me that the only consultation required was the December 1993 letter to you from Ms. Homer. Your letter to her in February 1994 is considered the Tribe's "input" to the consultation process. I told her of your many requests for follow-up meetings with Ms. Homer which were refused. She indicated the Area Office is probably understaffed; I said that was no excuse for refusing to meet and on that basis alone, the memo should be returned to Minneapolis and further consultation should be required.

She then stated that, in any case, the IGRA does not define what "nearby" means when requiring consultation with tribes. I attempted to persuade her that "nearby" means just what it says, i.e., those tribes that will be financially impacted when lands are taken into trust for gaming by other tribes need to be fully consulted and their views and concerns accommodated. She did not concede this point either. However, she did say the Shakopee and other tribes are encouraged to provide data showing a negative impact on their gaming activities should this proposed gaming activity proceed. That is as far as she would go. When I asked where to send this material, she said to Ada Deer. I pointed out that you have met twice with Ada Deer and the information you shared with her at those meetings did not seem to have filtered down to either Ms. Homer or to the Lakewood office. So after some further discussion, it was agreed that you should send market statistics and other supportive backup information in opposition to the proposed determination to:

Director
Indian Gaming Management Staff
Bureau of Indian Affairs Mail Stop 2070 MIB
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 202440

Copies should also be sent to Ada Deer and fax copies of everything to Emily Ramirez at 303-969-5144.

On another note, we discussed your February 1994 letter where you mention the Indian Claims Commission decisions on the aboriginal lands of the Mdewakanton Sioux (where the Hudson Track is located). She was not impressed with that point; I was suitably outraged both by her attitude and her lack of understanding about Indian law, particularly given her position and responsibilities. She is disregarding the information in your letter as if it had no importance. She said that "tribes are always claiming lands" and it is irrelevant in the context of gaming; she exhibited a "so what" attitude about the Secretary taking lands into trust for tribes when the lands are aboriginal to other tribes.

We also discussed the need for consultation in the context of developing per capita regulations. She said tribes can participate when the regs are published; I pointed out that everyone would be happier if the BIA sought tribal input before the regs are published; she said that they had asked for funds to make six visits to different areas of the country to consult but had been turned down for lack of funds. I said that there are of course other ways to get tribal input; written materials could be submitted either through the mail or by fax and, as you pointed out, tribes can even visit Denver to talk with BIA staff there. I think you should pursue this by calling her to discuss the per capita regulations.

Congress of the United States
House of Representatives
Washington, D.C. 20515

January 11, 1995

The Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street, NW
Washington, D.C. 22040

Dear Secretary Babbitt:

We are writing to request that you or John Duffy meet with representatives of Minnesota Tribes on January 17th or 18th.

You may recall we wrote to you last year to express our concern about a proposal by three Indian tribes of Wisconsin to acquire the St. Croix Dog Track in Hudson, Wisconsin. Attached find copies of earlier letters. We believe it is their intention to petition your office to approve the transfer of the Track into trust status for the establishment of an off-reservation casino.

Because this decision impacts seriously Minnesota Indian Tribes' economic viability and our entire state economy, we urge you meet with and hear the concerns of Minnesota's Tribal leaders.

Thank you for your consideration of this request. Representatives of the Tribes and Members of the Minnesota Congressional delegation can meet with you at your convenience. Please contact John Schaeffler, with Congressman Minge at 225-2331, or Waylon Peterson, with Congressman Oberstar at 225-6211, or Mike Epstein, with Senator Wellstone at 224-5641, to assist in making arrangements.

Sincerely,

Paul Wellstone
PAUL WELLSTONE, U.S.S.

James L. Oberstar
JAMES OBERSTAR, M.C.

Martin Olav Sabo
MARTIN OLAV SABO, M.C.

Bruce F. Vento
BRUCE VENTO, M.C.

Secretary Babbitt
January 11, 1995

JIM RAMSTAD, M.C.

COLLIN PETERSON, M.C.

DAVID MINGE, M.C.

BILL LUTHER, M.C.

M P A

MANAGEMENT & PUBLIC AFFAIRS CONSULTANTS

1227 MARION STREET
ST. PAUL, MN 55117

LARRY KITTO
Phone [redacted]
Page [redacted]
Fax [redacted]

DATE : February 20, 1995
MEMO TO : Lewis Taylor, Howard Bickler, Tom Corcoran
MEMO FROM : Larry Kitto

REASON : NOTES ON THE HUDSON DOG TRACK

1. WASHINGTON D.C. MEETING

1.1 A delegation of tribal officials from Minnesota and the St. Croix Tribe met with members of the Minnesota congressional delegation in Washington D.C. on Wednesday, February 8, 1995 to voice their opposition to the proposed fee-to trust land transfer of the Hudson Dog Track. The meeting was coordinated by Congressman Minge and held in Congressman Oberstar's office. Also in attendance were Congressmen Luther and Vento, and Senator Wellstone, all from Minnesota. Representing Secretary of The Interior Bruce Babbitt were attorneys John Duffy and George Skibine.

1.2 It was generally concluded by those in attendance that the Department of The Interior (the Department) has changed its position on the status of the application process from "this is a done deal" to "a decision has not been made, we are still reviewing the application, and a final decision will be made by the Department, in Washington D.C.".

1.3 Up to this point, it has appeared that the Assistant Secretary's Office and the Minneapolis Area Office have succeeded in securing an affirmative recommendation from the BIA for the three Tribes requesting the fee-to-trust transfer. The following points of contention were put on the table:

* The consultation process was flawed.
* The "Finding Of No Significant Impact" was not valid.
* The issue of "market share" has been glossed over.
* The BIA failed to consider political consequences of the decision.
* The National Environmental Protection Act format is not an adequate evaluation tool for determining social and economic impact.

1.4 Department officials moved from the position that they would rely on Governor Thompson's veto authority to the position that they would act on this application regardless of the Governor's position. Duffy assured those in attendance that the BIA Division of Gaming and the Secretary's Office would review the application and the affected Tribes would have the opportunity to respond appropriately. Tribes asked that the Department inform them of:

* Administrative procedures the application process will follow.

* Criteria that will be used to determine environmental, economic, and social impact.

* How the Department will interpret the IGRA statute about what constitutes the "surrounding community".

2 GOAL

2.1 Ultimately, and regardless of the current position of Governor Thompson or the Hudson community, this issue will not be over until the FEE TO TRUST TRANSFER IS OFFICIALLY DENIED BY THE SECRETARY OF THE INTERIOR.

3 ACTION ITEMS

3.1 Because he is on the Natural Resource Committee, Congressman Vento should be asked to correspond to John Duffy and to the Department about the substance of the meeting that was held in Congressman Oberstar's office and outline what the Tribes had requested and what Duffy committed the Department to.

3.2 We need to find out what the administrative procedure and evaluation criteria was supposed to be in determining "significant impact" and if the BIA actually followed the procedure to reach their decision of "no significant impact"

3.3 We might also consider asking the National Indian Gaming Commission and the Congressional Committees involved in drafting the IGRA their interpretation of the "surrounding community" language in the statute. NOTE: THESE INQUIRES SHOULD BE INFORMAL AND NOT REQUESTED FORMALLY UNTIL WE ARE ASSURED THAT THE RESPONSES ARE FAVORABLE TO OUR POSITION.

3.4 The St. Croix Tribe has commissioned an economic impact study to document negative impact of the Hudson project on their business and reservation. We should interview the consultant in charge in order to:

* Assure that the survey instrument addresses the issues that the Department will consider relevant when they do their review.

* See if this data is compatible to the data that has been gathered by the Mille Lacs Lake Band in a study they have already completed.

If the economic data from the two separate studies is not compatible enough to do any meaningful projections, then we may have to approach some of the Minnesota Tribes to do an updated analysis.

We should also consider having the Minnesota Tribes approach the Minnesota Planning Agency or the Metropolitan Council to do a study on the impact a Hudson Casino will have on the state or the metro-east area of the twin cities. NOTE; WE SHOULD ONLY DO THIS IF WE ARE REASONABLY ASSURED OF A FAVORABLE OUTCOME.

3.5 The reality of the situation is that this issue will probably be decided "politically" rather than on its merits. To that end, we need to consider:

* Communicating with Secretary Babbitt both directly and through Chief of Staff Collier. NOTE; Collier is reported to be more political than Duffy.

* Communicating directly with the White House about how the politics of this issue, if approved, will help the Republicans and hurt the Democrats.

* Using Senator Bob Kerry's office, (Kerry was just elected to be head of the Democratic Senatorial Campaign Committee) and the Democratic National Committee (DNC) to influence the White House. NOTE; This should be easier to do after Rita Lewis moves from the Department of Education over to the DNC.

* Doing an assessment of the Wisconsin congressional delegation and get them to sign a joint letter of opposition that should be sent to The White House and to Secretary Babbitt.

* Getting the two democratic U.S. Senators from Wisconsin to work with Senator Wellstone to communicate directly with the White House and with Secretary Babbitt's office about Wisconsin's and Minnesota's opposition.

* Asking Governor Carlson of Minnesota to officially state in writing his opposition about the proposal to Governor Thompson.

* Getting letters of support from the Minnesota city Mayors of St. Paul, Woodbury, Cottage Grove, and St. Paul Park.

* Getting letters of support from the mayors of Wisconsin towns near Turtle Lake and Hudson.

* Encouraging the Department to hold public hearings in both Wisconsin and Minnesota.

* Involving the citizens group in Hudson who is against the proposal in our lobbying effort.

* Seeking the "active" support of other Wisconsin Tribes.

3.6 Finally, this project calls for a great deal of communication between the St. Croix Tribe, the Minnesota Tribes, and Washington D.C. I will work closely with the Minnesota Tribes through John Clarthy, the Executive Director of MIGA. Tom Corcoran will do the same in Washington D.C. by working with Frank Duchneaux who lobbies for MIGA.

DUCHENEAUX, TAYLOR & ASSOCIATES
303 MASSACHUSETTS AVENUE, N. E.
WASHINGTON, D. C. 20002

FRANKLIN DUCHENEAUX
PETER S. TAYLOR
ERNESTINE DUCHENEAUX, EX. ASST.

TELEPHONE: [redacted]
FAX: [redacted]

2/23/95

MEMORANDUM
TO : JOHN McCARTHY, MIGA
FROM : FRANK DUCHENEAUX
SUBJECT: THANK YOU LETTERS

Below is a draft thank you letter from Myron to the Minnesota congressional delegation for arranging the meeting on the Hudson track issue. One size fits all. I've added the addresses for each in case you don't know them. Please make whatever changes you feel necessary.

DRAFT LETTER

Honorable _____
*
*
*

Dear (Senator Wellstone, Congressman Oberstar etc. If Myron calls them by their first name, you can use that, e.g. Dear Jim or Dear Paul etc.)

On behalf of the MIGA tribes, I would like to thank you for your help in arranging a meeting for us with Mr. John Duffy on the Hudson Dog Tract issue. We feel that this was a very productive meeting in that we were able, for the first time, to get our concerns before an official of the Department of the Interior. Without the help of our congressional delegation, it is unlikely we would have had that opportunity.

You help and attendance at the meeting made it very clear to Mr. Duffy that the concerns of the Minnesota tribes are serious and well-founded. This meeting finally opened the door for us to get our case on the adverse impact the proposal would have on our member tribes before the Secretary. We know that you are very busy on many other important duties and we appreciate the time that you and your staff took to help on this matter.

Sincerely,

Myron Ellis
Chairman

Addresses:

Honorable Paul David Wellstone
U. S. Senate
Washington, D. C. 20510-2303

Honorable James L. Oberstar
U. S. House of Representatives
Washington, D. C. 20515-2308

Honorable Bruce F. Vento
U. S. House of Representatives
Washington, D. C. 20515-2304

Honorable David Minge
U. S. House of Representatives
Washington, D. C. 20515-2302

Honorable Bill Luther
U. S. House of Representatives
Washington, D. C. 20515-2306

DUCHENEAUX, TAYLOR & ASSOCIATES
303 MASSACHUSETTS AVENUE, N. E.
WASHINGTON, D. C. 20002

FRANKLIN DUCHENEAUX
PETER S. TAYLOR
ERNESTINE DUCHENEAUX, EX. ASST.

TELEPHONE: [redacted]
FAX [redacted]

MEMORANDUM

TO : JOHN McCARTHY, MIGA

FROM : FRANK DUCHENEAUX

SUBJECT: DRAFT LETTER TO INOUYE FROM MYRON ON HUDSON

Attached is a draft letter from Myron to Senator Inouye asking for his explanation of the intent of Congress in including the "nearby Indian tribes" language of section 20 of IGRA. Ginny Boylan suggested that MIGA send such a letter. She feels that she could then draft, for Pat Zell, an Inouye response which would buttress our case that the BIA did not carry out Congress' intent in consulting, or failing to consult, with the MIGA tries on the Hudson deal. What do you think?

DRAFT LETTER FROM MYRON ELLIS TO SENATOR INOUYE

Honorable Daniel K. Inouye
Vice-Chairman
Committee on Indian Affairs
U. S. Senate
Washington, D. C. 20510

Dear Senator Inouye:

In 1993, three tribes of northern Wisconsin (Red Cliff Band of Lake Superior Chippewa, Lac Courte Oreilles Band of Lake Superior Chippewa, and Sokaogon Chippewa Community) filed an application with the Bureau of Indian Affairs to take into trust, for class III gaming purposes, 55 acres containing the St. Croix Meadows Greyhound Racing Park. The site, located near the town of Hudson, Wisconsin, would be used for a class III tribal casino in conjunction with the existing race track. The reservation of the Lac Courte Oreilles Band is closest to Hudson at about 80 miles. The other two tribes are well over 100 miles from Hudson.

By contrast, Hudson, located on Interstate 94, is about 15 miles from downtown St. Paul, Minnesota. Four existing class III tribal casinos, within the market area of the Twin Cities, are nearer to Hudson than the applicant tribes and would be severely impacted by the operation of a tribal casino at Hudson. The tribes that would be affected are the Shakopee Sioux, Mille Lacs Chippewa, and Prairie Island Sioux in Minnesota, and the St. Croix Chippewa Band in Wisconsin.

The fee-to-trust transfer of the Hudson land is subject to the provisions of section 20 of the Indian Gaming Regulatory Act which regulates off-reservation land acquisition in trust for gaming purposes. The four tribes which would be adversely impacted by the transfer and the Minnesota Indian Gaming Association attempted to present evidence to the Minneapolis BIA Area Office about this adverse impact, but received little cooperation in that effort. MIGA continues to pursue its objections at the national BIA level.

In pursuing their efforts to doing so, it is important for MIGA and the affected tribe to know what the intent of Congress in requiring the Secretary to consult with nearby tribes. Section 20 states that the Secretary shall consult with "the Indian tribe and appropriate State and local officials, **including officials of other nearby Indian tribes**". There is little legislative history to illuminate the intent of Congress in including this phrase in section 20. The BIA is taking a very narrow, restrictive view of their obligation under the phrase.

It would be very helpful to MIGA, in protecting the interests of its member tribes, if you, as the author of S. 555 in the 100th Congress and as Chairman of the Indian Affairs Committee at the time of consideration of S. 555, could give us your intent in including that language.

TO: All M.I.G.A. Tribes and M.I.G.A. Representatives

FROM: John McCarthy, M.I.G.A. Consultant

RE: Hudson Dog Track Follow-up

DATE: February 24, 1995

Just a reminder to those tribes who have any documented material on the impact that the proposed Hudson Dog Track would have on surrounding tribes, please submit that data to the B.I.A. Central Office, C/O Mr. George Skebine, as soon as possible. As I mentioned at the M.I.G.A. meeting on the 22nd, the St. Croix Tribe of Wisconsin is conducting an expanded economic impact on this issue so you may want to touch base with Chairman Louis Taylor to discuss a joint effort.Please let me know if I can be of further assistance on this matter.I would appreciate being carbon copied on all materials submitted.

Rt. 2, Box 95 Cass Lake, MN 56633
Phone [redacted] *FAX* [redacted]

MIGA
Minnesota Indian Gaming Association

M.I.G.A.
RT 2 BOX 95
CASS LAKE MN 56633
Phone [redacted]
Fax [redacted]

TOTAL NUMBER OF PAGES: 3 (including fax cover)

TO: MIGA · TRIBES AND REPS

FROM: JOHN McCARTHY

If any difficulty is experienced with this transmission, please notify sender at (218)335-7921 and ask for John McCarthy. Thank you.

DATE: _____ TIME: _____

MESSAGES: For your information - Fred Cleveland and Jerry Boyles suggested that this might be an interesting way to get a better reading on the sec. 20 of I.G.R.A. I will let you know what response I get

Thank you
John McCarthy

Myron Ellis - Chairman

Honorable Daniel K.Inouye
Vice - Chairman
Committee on Indian Affairs
U.S. Senate
Washington, D.C. 20510

February 28, 1995

Dear Senator Inouye:

In 1993, three tribes of northern Wisconsin (Red Cliff Band of Lake Superior Chippewa, Lac Courte Oreilles Band of Lake Superior Chippewa, and Sokaogon Chippewa Community) filed an application with the Bureau of Indian Affairs to take into trust, for class III gaming purposes, 55 acres containing the St. Croix Meadows Greyhound Racing Park. The site, located near the town of Hudson, Wisconsin, would be used for a class III tribal casino in conjunction with the existing race track. The reservation of the Lac Courte Oreilles band is closest to Hudson at about 80 miles. The other two tribes are well over 100 miles from Hudson.

By contrast, Hudson located on Interstate 94, is about 20 miles from downtown St. Paul, Minnesota. Four existing class III tribal casinos, within the market area of the Twin Cities, are nearer to Hudson than the applicant tribes and would be severely impacted by the operation of a tribal casino at Hudson. The Minnesota tribes that would be directly affected are the Shakopee Sioux, Mille Lacs Chippewa, and Prairie Island Sioux and in Wisconsin the St. Croix Chippewa Band

The fee to trust transfer of the Hudson land is subject to the provisions of section 20 of the Indian Gaming Regulatory Act which regulates off-reservation land acquisition requests for fee to trust for gaming purposes. The four tribes which would be most adversely impacted by the transfer and the Minnesota Indian Gaming Association attempted to present evidence to the Minneapolis BIA Area Office about this adverse impact, but received little cooperation in that effort. M.I.G.A. continues to pursue its objections with the BIA at the national level.

In pursuing our efforts, it is important for MIGA and the affected tribes to know the intent of Congress in requiring the Secretary to consult with nearby tribes. Section 20 states that the Secretary shall consult with "the Indian tribe and appropriate State and local officials, including

Rt. 2, Box 95 Cass Lake, MN 56633

officials of other nearby Indian tribes". There is little legislative history to illuminate the intent of Congress in including this phrase in section 20. The BIA is taking a very narrow, restrictive view of their obligation under the phrase.

It would be very helpful to M.I.G.A., in protecting the interests of its member tribes, if you, as the author of S. 555 in the 100th Congress and as Chairman of the Indian Affairs Committee at the time of consideration of S. 555, could give us your intent in including that language.

Sincerely,

Myron Ellis, Chairman
Minnesota Indian Gaming Association

Stanley Crooks
Shakopee Mdewakanton Sioux Community
2330 Sioux Trail NW
Prior Lake, MN 55372

March 2, 1995

Dear Mr. Crooks,

I have just received some information that I felt I should pass on to you as soon as possible. It appears that Mr. George Skibine, Director of the Office of Indian Programs is fast approaching completion of his report on the fee to trust request concerning the Hudson Dog Track.

As you will recall at our meeting with Mr. Skibine and Mr Duffy in Washington D.C. we strongly opposed the approval of this request, suggesting that such an action would be very detrimental to Minnesota Tribes. We further indicated that we did not feel that the B.I.A. Area Office had given us an opportunity to be heard on this issue.

Mr Skibine and Mr. Duffy indicated that they would accept any documentation that we had on this issue and that they would hold off any decision pending our submittals. I am concerned that they haven't heard from us. I would urge you at this time to submit your data or to send a letter to Mr. Skibine letting him know a definite time line or when this data will be submitted.

I have asked Frank Ducheneaux to quietly look into this and keep us informed. In my 2-24-95 memo I did suggest that it might be wise to contact Chairman Louis Taylor at St. Croix and at least discuss the possibility of a joint study between Mille Lacs, Shakopee, St. Croix, and Prairie Island.

I will keep you informed on information I receive.

Sincerely,

John P. McCarthy

John McCarthy
M.I.G.A. Consultant

c.c. Marge Anderson
Louis Taylor
Curtis Campbell

Rt. 2, Box 95 Cass Lake, MN 56633

M P A

MANAGEMENT & PUBLIC AFFAIRS CONSULTANTS

1227 MARION STREET
ST. PAUL, MN 55117

LARRY KITTO
Phone (612) 488-4866
Pager (612) 327-1177
Fax (612) 487-6069

DATE : March 27, 1995
MEMO TO : Lewis Taylor
MEMO FROM : Larry Kitto and Tom Corcoran

REASON : Status Report on Hudson Dog Track Issue

On Wednesday, March 15, we along with Pat O'Connor held a series of meetings in Washington D.C. relative to the Hudson Dog Track proposal. The following is a brief description of those meetings.

1. OFFICE OF THE SECRETARY OF THE INTERIOR

1.1 The meeting took place with Tom Collier, Chief of Staff to Secretary Babbitt, and Heather Sibbison, the Special Assistant to John Duffy. The following issues were discussed:

* Proposed project itself
* IGRA issues involved
* Timetable at Interior for their evaluation of the application
* Committments made by Duffy and Skisbine at the Feb. 8, meeting
* Politics of the project
* Impact of this matter on Indian gaming across the country

1.2 Mr. Collier had been briefed in preparation for our meeting and had learned about specific's of the project for the first time. Although he had not looked into the arguments for or against the application prior to our meeting, he:

* Was aware of the many procedural questions and concerns surrounding the application, and was not overly sympathetic the affected tribes concerns.

* Was not overly concerned about the socio-economic impact this project would have on the surrounding communities, including other Indian reservations in the area.

- Since the Governor is on record as opposed to the project, send the application back to the tribes with a directive to start the process over if and when the Governor changes his position.

2. OTHER MEETINGS

2.1 CONGRESSMAN JIM OBERSTAR - Following up on comments made by George Skisbine that he was sending a letter to the Minnesota tribes informing them that they had thirty days to submit additional material, including economic impact data, Oberstar's office was asked to call Skisbine's office to verify such action.

2.1 CONGRESSMAN BRUCE VENTO - Vento's staff person informed us that the Congressman, who is on the National Resources Committee, will personally place a call to Secretary Babbitt, at the appropriate time, to express his concerns about and dissatisfaction towards the project

2.1 Donald Fowler, who is the new Director of the Democratic National Committee and Rita Lewis from Minnesota who is the new Assistant Director of the Democratic Senatorial Campaign Committee both said that they would communicate with the White House, at the appropriate time, about the political affect this proposal could have on the 1996 Presidential and Senatorial campaigns that are just now being launched.

2.4 Staff from both Senator Bob Kerry's office and Senator Tom Daschle's office said the respective Senators will also communicate with the White House about this issue. Note, Kerry, from Nebraska, is the new head of the Senate Campaign Committee and Daschle is the Senate Minority Leader.

3. FOLLOW-UP STRATEGY

3.1 Communicate with both Interior and BIA about why socio-economic considerations are important in this instance

3.1 Put together a coordinated effort on behalf of the Wisconsin Congressional delegation to keep pressure on the White House, Interior, and the Governor.

3.1 Work with the consultants to insure that economic studies project the best possible case for negative economic impact.

3.4 Make sure all tribes doing economic impact studies get their reports in on time.

* He did commit however, to giving the affected tribes thirty days to complete and submit economic impact studies and that such studies would be reviewed by Skisbine, and by himself for Secretary Babbitt.

* Stated that the final decision would be made by himself or Secretary Babbitt, depending on the level of controversy this application generates.

* Left the impression that an Interior decision would not be made until such time that the Governor makes a favorable determination.

1.3 Regarding IGRA issues, Collier made two key points.

* Usually, in a case like this the Secretary makes the decision on the merits, based on what he believes is in the best interest of the tribe.

* This is also the first time the action of a tribe or gorup of tribes in one state directly impacts the gaming activity or business market of tribes in another state.

* In the past, these cases involve "tribe vs. the surrounding non-Indian community". This is the first time another tribe or group of tribes have objected to a fee-to-trust transfer.

* The usual environmental impact evaluation may be too narrow, indicating that the socio-economic consideration may have to be taken into account as well.

1.4 Taking into consideration the fact that Governor Thompson is currently on record being opposed, we need to determine what action Interior will take when they receive the application from BIA. Their options are:

* Review the application, and make a determination: a favorable decision might help persuade the Governor to go along with the project and an unfavorable decision might kill the project forever.

* Hold the application until the Governor decides to support the project and then review it and make a decision.

* Review the application and hold the decision until such time as the Governor changes his position and supports the project.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAR 27 1995

Honorable Paul Wellstone
United States Senate
Washington, D.C. 20510

Dear Senator Wellstone:

I am writing to you as a follow up to a meeting held on February 8, 1995, to discuss concerns you raised with the application of the Sokaogon Chippewa Community, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, and the Red Cliff Band of Lake Superior Chippewa Indians, to place land located in Hudson, Wisconsin, in trust for gaming purposes.

At this meeting, tribal representatives indicated that they did not believe the Bureau of Indian Affairs had complied with the tribal consultation requirements of Section 20 of the Indian Gaming Regulatory Act and that they lacked sufficient information to adequately respond to this proposed acquisition. They specifically requested that they be granted additional time to submit reports detailing the impact of the proposed acquisition on nearby tribes. We agreed to this request, but did not set a deadline for the submission of information. In order not to unduly delay consideration of this proposed acquisition, please be advised that any additional information must be submitted to the Director, Indian Gaming Management Staff, Bureau of Indian Affairs, by April 30, 1995, in order to be considered by the Department of the Interior in making the Section 20 determination.

Please be assured that the interest of nearby tribes will be carefully evaluated in determining whether to approve the proposed trust acquisition.

Sincerely,

John J. Duffy
Counselor to the Secretary

THE HO-CHUNK NATION

P.O. Box 667, Highway 54 East
Black River Falls, WI 54615

For Immediate Release:
April 6, 1995

For Further Information Contact:
Tom Krajewski [redacted]

Ho-Chunk Nation Opposes Hudson Casino

Black River Falls - The Ho-Chunk Nation today announced their opposition to a casino at the Hudson dog track. The Ho-Chunk oppose the casino because it could cause the uncontrolled expansion of gambling and Wisconsin voters have consistently rejected gambling expansion.

"The Hudson casino would be a major expansion of gambling. It would put in operation 1000 to 2000 more slot machines and 50 to 100 more blackjack tables. It would become the largest or second largest casino in the state," Ho-Chunk President JoAnn Jones said.

"It is an expansion of gambling that the people do not want," Jones said.

Jones said the Ho-Chunk were not motivated by a projected decline in Ho-Chunk revenues but rather the reduction in support for all of Indian gaming. "We have worked hard for the support of Wisconsin citizens for on-reservation casinos, and those citizens do not support off-reservation gaming," Jones said.

"In 1993, Wisconsin citizens voted to restrict gambling. Hudson and La Crosse have both voted against casinos. Yesterday, Wisconsin voters rejected a sports lottery. Governor Thompson and Wisconsin citizens have both said 'no' to expanded gambling on numerous occasions," Jones said.

Jones said that if this casino is approved, it will lead to the approval of other off-reservation casinos. "Ultimately all of Indian gaming will suffer," Jones said.

"How can a Hudson casino be approved and a Delavan casino be denied? Then there will be proposals for more casinos at Kaukauna, Kenosha, Milwaukee and others locations," Jones said.

- 30 -

BROYDRICK
AND
ASSOCIATES

Public Affairs

DATE: April 10, 1995

TO: Frank Ducheneaux

FROM: Cindi Broydrick

RE: Tom Diehl

Please note stared items:

- page 12
- page 22

TMD Management is Tom M. Diehl. John Tries told me he would be given the management contract for St. Croix at 85%!

Stay tuned.

64 EAST MIFFLIN STREET, SUITE 501 MADISON WI 53703-2800 • (608) 255-0446 FAX (608) 225-4612
AFFILIATE OFFICES IN MILWAUKEE, WI., AND WASHINGTON, D.C

✱ 2nd Mortgage Holder
Delaware North Companies
One Delaware North Place
438 Main Street
Buffalo, NY 14202

D. State whether the applicant is aware of any potential hazard or toxic substance on the site which will affect public health, welfare or safety.

To our knowledge, no such hazards exist on this property.

Wiscasn Dells

Answer:

Name and Address	Wisconsin Resident	No. of Shares	% of Ownership
Thomson Bartlett 560 Wisconsin Dells Pkwy. Wisconsin Dells, WI 53965	Yes	100	20%
Jeffrey T. Diehl 560 Wisconsin Dells Pkwy. Wisconsin Dells, WI 53965	Yes	50	10%
Jill C. Diehl 5387 Mariner's Cove Drive, #312 Madison, WI 53704	Yes	50	10%

Name and Address	Wisconsin Resident	No. of Shares	% of Ownership
Margaret A. Diehl 560 Wisconsin Dells Pkwy. Wisconsin Dells, WI 53965	Yes	140	28%
Thomas M. Diehl 560 Wisconsin Dells Pkwy. Wisconsin Dells, WI 53965	Yes	135	27%
Bruce L. Harms 615 Summit Road Madison, WI 53704	Yes	20	4%
John Petersen, III 1114 Merrill Springs Road Madison, WI 53705	Yes	5	1%

N. State whether any of the applicant's assets or securities have been pledged as security for any debt. Explain fully, by stating names and addresses of parties holding security interests or promissory notes from the applicant, where the stock was pledged as security, and include a copy of any agreements creating the security interest as Attachment 4.

Answer:

Bank of Wisconsin Dells
716 Superior Street
Wisconsin Dells, WI 53965

Delaware North Companies, Incorporated
One Delaware North Place
Buffalo, NY 14209

Documents creating the security interests are on file with Wisconsin Gaming Commission

O. State whether the requirements of the Securities Act of 1933 and Securities Exchange Act of 1934, as amended, and SEC rules and regulations have been met in connection with registration and issuance of the applicant's securities, if applicable. Submit copies of the most recent registration statement, annual report, quarterly report, and any other periodic report filed within the last year with the SEC as Attachment 5.

Answer:

Not applicable.

P. State whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation or any other jurisdiction other than Wisconsin in which such filings are required have been met or whether an exemption from such registration has been relied on. Submit a copy of the most recent registration statement or notice of exemption, if any, filed with the securities regulator in that jurisdiction as Attachment 6.

Answer:

Yes, exemption relied on (no registration statement or notice of exemption filed).

Q. State whether the securities registration requirements of the State of Wisconsin or requirements for an exemption therefrom have been met. If they have not, the applicant must disclose the reasons why. Submit copies of all securities filings made with the Wisconsin Securities Commission during the past five years as Attachment 7.

Answer:

Yes, exemption relied on (no securities filings).

7. Submit copies of any agreements or understandings which the applicant or any individual or entity identified pursuant to this part has entered into regarding ownership, operation, management, or sponsorship of the applicant's facility. As to each such agreement or understanding, the names, in alphabetical order, addresses, and descriptions of business of all persons, corporations, or entities with which the applicant has contracted or reached an understanding, and a copy of any written agreement or understanding must be disclosed and submitted as Attachment 10.

None

8. State whether the applicant, any director, partner, officer, other policy-maker, or holder of a direct or indirect record or beneficial ownership interest or other interest in the applicant, has held or holds a license or permit issued by any other governmental authority to own and/or operate or to sponsor and/or manage a pari-mutuel or gambling facility. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and/or termination.

TMD Management, Inc. has been assigned a limited partner's interest in Croixland Properties Limited Partnership, subject to the approval of the Wisconsin Gaming Commission. Thomas M. Diehl is the sole shareholder of TMD Management, Inc.

9. State whether the applicant, any director, partner, officer, other policy maker, or holder of a direct or indirect record or beneficial ownership interest or other interest in the applicant has an ownership interest or is in an applicant for a license under s.562.05(1)(a), Wis. Stats., at any other location licensed by the Wisconsin Gaming Commission. If so, the applicant must disclose the identity of the individual, relationship with the applicant, including ownership interest and identification of the other license location under s.562.05(1)(a), Wis. Stats.

TMD Management, Inc. has been assigned a Limited Partner's Interest of 1.99% of Croixland Properties Limited Partnership, subject to the approval of the Wisconsin Gaming Commission.

10. State whether any entity which is a parent corporation of any holder of a direct of indirect record or beneficial ownership interest or other interest in the applicant has an ownership interest or is an applicant for a license under s.562.05(1)(a), Wis. Stats., at any other location licensed by the Wisconsin Gaming Commission. If so, the applicant must disclose the identity of the entity, relationship with the applicant including ownership interest and identification of the other license location under s.562.05(1)(a), Wis. Stats.

No

MIGA
Minnesota Indian Gaming Association

M.I.G.A.
RT 2 BOX 95
CASS LAKE MN 56633
Phone [redacted]
Fax [redacted]

TOTAL NUMBER OF PAGES: 4 (including fax cover)

TO: All Tribal Leaders and M.I.G.A. Reps

FROM: John McCarthy

If any difficulty is experienced with this transmission, please notify sender at (218)335-7921 and ask for John McCarthy. Thank you.

DATE: _____ TIME: _____

MESSAGES: For your info I have enclosed several items of interest. It appears as though the action of the three White Tribes involved in the Hudson Dog Track have created a split in the W.I.G.A. I have been informed that Oneida has pulled out as a result of the three tribes offer on the Brewers Stadium. I will send you more info as I get it.

J McC

Myron Ellis - Chairman

FRIDAY, APRIL 7, 1995 SAINT PAUL PIONEER PRESS

Hudson casino backers offer to help pay for Milwaukee baseball stadium

KARL J. KARLSON STAFF WRITER

HUDSON, WIS.

The Four Feathers Casino partnership, which wants to open a casino in Hudson, has offered an unspecified contribution from casino profits to help build a baseball stadium in Milwaukee.

In a statement issued after a sports lottery was overwhelmingly defeated at the polls on Tuesday, the partnership of three Chippewa bands and St. Croix Meadows greyhound track owners said they wanted to meet with elected officials and the owners of the Milwaukee Brewers.

"It is quite possible that our casino could go a long way toward completing the financial package the Brewers need to build their stadium," the statement said.

But Gov. Tommy Thompson's press spokesman Kevin Keane said help for a stadium from new casinos is not an alternative that will be considered.

"The governor rejected that idea when he closed the door on expansion of gambling in Wisconsin last year," Keane said Thursday.

Keane said Thompson supported the sports lottery, which would have helped finance a new stadium to keep the Brewers in Wisconsin. But that idea was rejected by state voters 617,000 to 348,000 on Tuesday.

"We'll have to find some other funding now, but money for new casinos is not acceptable," Keane said.

Thompson's approval is needed in the ongoing federal approval process that could lead to a casino at the track.

Laurel Prieb, vice president of corporate affairs for the Brewers, said the club has year-to-year leases with Milwaukee County for the 40-year-old stadium it now uses.

"As interested bystanders, we really are not going to judge what form of financing they use to build a new one," he said of the Four Feathers group's offer.

"There is no question that to remain viable in Milwaukee, professional baseball needs a new stadium. Our goal is to be in a new stadium by 1996 and to do that, you have start digging this fall," he said.

He said backers of a new stadium, which has been discussed for at least eight years, are in a "regrouping" mode after the defeat of the sports lottery.

LIMOT'C

House speaker under siege

Anderson takes political punches from both parties

LARY DAWSON and JACK B. COFFMAN
STAFF WRITER

The world closed in on Minnesota House speaker Irv Anderson last week, leaving him bobbled by enemies in his own party and an easy target for Independent Republicans who hope to step to power over the veteran DFLer's political body.

Things could get even more uncomfortable in the weeks ahead as Anderson and the DFL-controlled Legislature face tough policy and budget negotiations with a strong and confident Gov. Arne Carlson and an increasingly vocal IR minority. The situation won't be pleasant for the man who for years dreamed of being speaker.

He rose to that pinnacle in 1994 after the "Phonegate" scandal dragged down the previous DFL House leadership. IRs immediately began attacking him as a symbol of the old-guard, arrogant, tax-and-spend Democratic-Farmer-Labor Party that has dominated the statehouse for nearly a quarter of a century.

A flurry of political punches last week sought to pin Anderson against the ropes. The Carlson

ANDERSON continued on 3B

Analysis

CONTINUED FROM 1B

ministration accused him of failing to ll the taxpayers how he plans to cut the dget and blamed him as one of the ajor reasons no major bill had reached e governor's desk in the first 14 weeks the session. House Minority Leader ewt Sviggum predicted he, not Anderson, would be in the speaker's chair by xt year and called on the legislative dinor to probe the role of Anderson's p aide in a telephone scandal. The state chairman called for a criminal probe.

At midweek, Carlson held a news conference promoting his plan to create a w state department of children's programs. Key DFLers on the Senate sparred with him before the cameras, absent, of course, as Anderson, a situation that accentuated the split among DFLers, which IRs re working day and ight to exploit.

Anderson

While there is a coordinated IR attack involving the overnor, legislative leaders and the tate party, there is no coordinated DFL efense.

Senate DFLers who face their own reelection problems in 1996 aren't eager to et in the line of fire aimed at the House. ssiders say it is everybody for himself ow. Unlike the IR Party operation, targets at the Capitol on a regular basis, DFL Party officers have been nearly invisible. They have left Anderson to fend off attacks by himself.

Anderson is an easy target for IRs who will be pounding away on him continually as they campaign to take over the Legislature in the 1996 elections.

"He's a symbol of the 1940s and 1950s style of politics where deals are brokered in the back room," says Rep. Camille Weaver, IR-Anoka, an assistant minority leader and a rising star in IR ranks. "That's exactly what the last election was about and I predict what the next election will be about."

Translation: Anderson is an old-fashioned politician and IRs will try to demonize him as an example of everything the voters don't want. Then they will have a handy bogeyman to feature in their campaign ads. Personalizing things like that has worked well in recent years.

But IRs aren't the only problem facing Anderson. He's hamstrung by a rift in his own ranks.

Liberals within his caucus persuaded him to pass over popular, conservative DFL Rep. Loren Jennings of Harris for a key committee chairmanship. An upset Jennings said he may switch to the Republican Party, if not now, possibly after the 1996 election.

Rep. Jeff Bertram, DFL-Paynesville, who also was passed over for a committee chairmanship even though he is serving his fifth term in the House, has said he might switch parties, too.

On Tuesday, Anderson and his troops face a special election in Independent-Republicans in Coon Rapids to fill a seat vacated by former Rep. Joel Jacobs, who was named to the Public Utilities Commission by Carlson.

If Rep. Wayne Simoneau, DFL-Fridley, accepts an appointment to an administration job following the session, Anderson could lose another seat in a special election.

A week ago an Anderson-backed bill to legalize video slot machines in bars — a measure designed to raise money for education and ease the burden on property taxes — suffered embarrassing defeats in both houses. DFLers on a key committee ignored their leader's advice to give the full House a chance to vote on the bill.

Anderson, 71, a World War II Navy pilot, seemed undaunted, however.

"The Republicans are trying to cover up the division within their own ranks by attacking us," he said last week. He was referring to the attempt by defeated IR gubernatorial candidate Allen Quist to take over the leadership of the state Republican Party. Quist is the darling of the Republican religious right.

Regarding IR barbs about the budget and the phone situation, Anderson said he'd air a plan soon that would pump more money into education than the governor proposes, and that an audit report on the phone issue would be ready within 10 days. He's also politically confident.

"We will increase our majority in the 1996 election," he said.

IRs are saying, however, that their biggest obstacle to winning control in the 1996 election may be overconfidence.

ST PAUL PIONEER PRESS
4-9-95

← NOTE

717

SESSION WEEKLY

GAMBLING

'Video slots' bill fails

For the fifth consecutive year, an effort to win the right to install video slot machines in Minnesota bars and restaurants has stalled.

A video lottery bill sponsored by Rep. David Tomassoni (DFL-Chisholm) failed to win the approval of the House Governmental Operations Committee.

The 7-14 vote by the committee March 31 — the first deadline bills must meet in order to be considered further this legislative session — made the chances such legislation will pass the House this year seem remote.

HF1405 would have allowed up to 10 video slots in about 3,400 bars and restaurants and devoted a portion of the proceeds to schools and environmental programs.

Gamblers would have been allowed to play games such as blackjack, keno, and poker on the video terminals.

Tomassoni said the video slots could produce as much as $250 million annually to supplement the budget for Minnesota's schools, which he described as "grossly underfunded."

But the bill was criticized by some committee members who argued that the gambling revenue likely would not mean more money for schools. Instead, the money likely would replace — not supplement — traditional education funding sources. And others were concerned about allowing even more gambling in the state.

"This bill is not about education," said Rep. Bob Johnson (DFL-Bemidji). "This bill is about the expansion of gambling."

The liquor industry has lobbied for five consecutive years to win the right to install video lottery machines in bars and restaurants. Bar and restaurant owners say they need the gambling to compete with the American Indian-owned casinos in Minnesota.

The casinos, the business owners say, have an unfair competitive advantage and have lured away their customers.

Johnson said the casinos cannot be blamed for the decline in bar business. He said people's drinking habits have changed and tougher DWI laws have reduced the amount of drinking in bars.

But Tomassoni said the bill provided a way for the state to receive some benefit from the vast gambling industry that flourishes inside its borders.

"What I'm doing here is trying to tap into the industry," he said. "I don't think gambling is going away."

On the same day Tomassoni's bill was defeated, a Senate proposal (SF402) ran into opposition in the Senate Gaming Regulation Committee and was never put to a vote.

KPMG Peat Marwick LLP

4200 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402

Telephon[redacted]

Telefa[redacted]

April 28, 1995

Mr. George Skibine
Director
Office of Indian Gaming
Room 2070 Main Interior Building
1849 C Street, North West
Washington, D.C. 20240

Dear Mr. Skibine:

I have been asked to transmit the enclosed report directly to your attention. This report constitutes part of the official comments in opposition to the Hudson, Wisconsin gaming proposal from the :

- Minnestoa Indian Gaming Association
- Mille Lacs Band of Chippewa Indians
- St. Croix Chippewa Band
- Shakopee Mdewakanton Dakota Tribe

Please acknowledge receipt by return voice mail at[redacted] or fax[redacted]

Very truly yours,

KPMG Peat Marwick LLP

Steven W. Laible
Partner

SWL:lg

cc. Senator Paul Wellstone
Mr. Stanley Crooks
Ms. Marge Anderson
Mr. Lewis Taylor
Mr. John McCarthy
Mr. Larry Kitto

DAVID L. MERCER 4/29/95

Dear Frank -

It was a pleasure to meet you last Friday. You were very helpful in summarizing the gaming issue & its implications for Ohio and further. I hope you found the meeting encouraging.

Let's stay in touch on further developments. Let me know if I can be of further assistance.

Again it was nice to meet you!

Sincerely

David

DEMOCRATIC NATIONAL COMMITTEE [redacted]

720

May 4, 1995

David L. Mercer
Democratic National Committee
430 S. Capitol Street, S. E.
Washington, D. C. 20003

Dear David:

Thank you for your note regarding our recent meeting with Chairman Fowler on the Indian gaming issue. I was amazed and pleased that he would devote so much of his time to the issue. The tribal leaders appreciated his time and interest very much.

I am enclosing a copy of the quick-and-dirty assessment done by Peat Marwick on the potential adverse impact of the Hudson proposal on the existing tribal gaming enterprises in Minnesota and Wisconsin. As noted in the meeting, it is difficult to do a definitive study when BIA will not release the parameters of the Hudson proposal.

Also, for your information, I am enclosing a copy of a letter we sent to our tribal clients relating to a recent overture to Indian tribes from the Gramm campaign. As our letter makes clear, we are, in no way, recommending that our tribal clients support the Gramm campaign. In fact, we are not retained to provide political advice to our clients. However, we felt we were obliged to advise them of developments in Washington which could affect tribal interests. Heaven forfend that we should have a Gramm presidency. However, the Gramm overture does emphasis the kind of message the tribal leaders were trying to convey in our recent meeting.

As I noted in my parting comment, in a small way, I worked for the Clinton-Gore ticket with Kevin Gover as a part of the Native Americans for Clinton-Gore.' I am sure Kevin and the others (sans Ben Nighthorse Campbell) will be willing to rally 'round the Clinton-Gore flag in the coming months, but I must say there has been some disappointment in concrete White House support for Indian issues since the election. If I can be of any help, please let me know.

Sincerely,

Franklin Ducheneaux

DEMOCRATIC ★ NATIONAL ★ COMMITTEE

Donald L. Fowler
National Chair

May 8, 1995

Mr. Frank Ducheneaux
303 Massachusetts Avenue, N.E.
Washington, DC 20002

Dear ~~Mr.~~ Frank Ducheneaux:

It was a pleasure to meet you on your recent trip to Washington. The Native American community has always been important to the Democratic Party, and the DNC is committed to assisting in the solution of the problems we discussed in our meeting. I hope that this matter can be resolved in the near future and that all concerned can benefit and learn from the final outcome.

Thank you for bringing this matter to my attention. Please contact my office at (202) 863-8121 if there is anything that I can do in the future.

With all best wishes,

Sincerely,

Donald L. Fowler

DLF/nac

May 8, 1995
3820 Albemarle St., N.W.
Washington, D. C. 20016

Dear Myron:

(Material not covered by subpoena deleted.)

Again, while John may have updated you on Hudson, I will fill in from my perspective. At my suggestion in a private meeting in Green Bay, Kitto, using his new affiliation with the high-powered Democratic lobby firm of O'Conner-Hannon, set up a meeting for tribal reps from Shakopee, Mille Lacs, Ho Chunk, and St. Croix with the Chairman of the Democratic National Committee. I can't remember his first name, but his last name is Fowler. We put it to him on a strong partisan Democratic basis: "Why is a Democratic Administration apparently supporting a Republican Governor and a Republican tribal chairman against strong Democratic tribal leaders?". Fowler said he would talk with Harold Ickes, who is Clinton's Deputy Chief of Staff and handles much of the White House political issues. Also, letter have gone to Babbitt and the White House from both the Minnesota and Wisconsin congressional delegations in opposition. Finally, we finally got a quick-&-dirty economic analysis from Peat Marwick to Skibine at the BIA. It shows that the Hudson proposal would be devastating to Prairie Island and St. Croix, and would significantly hurt Shakopee and Mille Lacs. It would even hurt Ho Chunk. Progess is being made.

(Material not covered by subpoena deleted.)

Your Friend,

Frank Ducheneaux

DUCHENEAUX, TAYLOR & ASSOCIATES
303 MASSACHUSETTS AVENUE, N.E.
WASHINGTON, D.C. 20002
FRANKLIN DUCHENEAUX
PETER S. TAYLOR
ERNESTINE DUCHENEAUX, EXECUTIVE ASSISTANT
TELEPHONE: [redacted]
FAX [redacted]

July 27, 1995

Mr. David L. Mercer
Democratic National Committee
430 S. Capitol Street, S. E.
Washington, D. C. 20003

Dear Dave:

I want to thank you for your card regarding the decision of Secretary Babbitt on the proposed land acquisition of the Hudson Dog Track for Indian gaming purposes. The Minnesota Tribes are very grateful to you and the Chairman for your assistance in advising the President and the Secretary on this matter. I do want you to know that the tribes are heart-sick at the necessity of having to oppose the aspiration of other Indian tribes to achieve economic self-sufficiency.

In your card, you graciously offer to assist on other urgent Indian matters. While the Clinton Administration has, indeed, taken very positive positions on the general area of Indian affairs, this is some concern among the tribes about the actual commitment of the Administration to those public assurances. I would like to suggest an no-lose action that the White House could take in the next day or two which would cement the support of the tribes to the Administration.

Senator Slade Gorton, Chairman of the Senate Appropriations Subcommittee on Interior & Related Agencies and a long-time Indian fighter, recently declared war on Indian tribes in his markup of the FY 1995 appropriation for the Bureau of Indian Affairs. I am enclosing a copy of a memo we have done for our clients in this respect.

I understand that the Administration may consider a veto threat on this bill because of non-Indian related matter in both the House and Senate marks. If that is true, it would not take much more for the White House to take a strong position against the attack against Indian people taken in the Senate Subcommittee markup.

Sincerely,

Franklin Ducheneaux

United States Senate
COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

July 19, 1996

The Honorable William J. Clinton
President
United States of America
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. President:

I was profoundly disturbed to read in last Friday's *Wall Street Journal* that the White House actively intervened last year to resolve a dispute between Indian tribes. Ordinarily, I would be heartened by White House interest in Indian affairs. But the evidence cited by the *Journal* indicates that one group of tribes obtained the attention and support of the highest levels of your White House primarily because they gave more campaign contributions to the Democratic National Committee (DNC) than did a competing group of tribes. The following events reported in the *Journal* are troubling to me and, at a minimum, contribute to an appearance of impropriety.

- In early 1995, several Indian tribes hired Patrick O'Connor, a major fundraiser for the Democratic Party and former Treasurer of the DNC, in an effort to reverse a preliminary decision of the Interior Department -- the agency charged by law to resolve such matters -- that favored one group of tribes over another group of tribes seeking to acquire a racetrack.

- On April 24, 1995, O'Connor talked to you, Mr. President and your senior adviser, Bruce Lindsey, in person at a Democratic Party fundraising event about the problem his tribal clients had with the preliminary Interior Department decision.

- Between April 24 and 26, 1995, your deputy chief of staff, Harold Ickes, placed at least two calls to O'Connor about this same issue.

- On April 25, 1995, the director of the Minnesota Indian Gaming Association wrote other tribal leaders to inform them about an upcoming meeting on this issue with the DNC Co-Chairman, Donald Fowler, saying that "the people we will be meeting with are very close to President Clinton and can get the job done."

- The April 25, 1995 memorandum said the meeting would be with Fowler, accompanied by "top level staff" representing Senator Bob Kerrey, who serves as Chairman of the Democratic Senatorial Campaign Committee, and Senator Tom Daschle, who is of course the Democratic Leader in the Senate.

- On April 28, 1995, O'Connor took his tribal clients to see Fowler at the DNC headquarters to talk about this issue.

- Sometime between April 28 and May 8, 1995, Fowler sent Ickes a memo supporting the position taken by O'Connor.

- On May 8, 1995, O'Connor wrote Ickes about reversing the preliminary Interior Department decision, stating "I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee."

- Fowler has admitted that he "had a conversation with" Ickes on this same issue sometime after the April 28, 1995 meeting, a conversation an Ickes spokesman has said Ickes cannot recall.

- An Ickes aide, Jennifer O'Connor, placed what the Ickes spokesman called routine status calls to Interior officials on the issue after the April 28, 1995 meeting.

- Paul Eckstein, the lobbyist for Indian tribes on the other side of the dispute, has sworn that on July 14, 1995 he met with Interior Secretary Bruce Babbitt to seek a delay of the decision in favor of O'Connor's client tribes.

- Eckstein has sworn that on July 14, 1995 Secretary Babbitt told him that you called Babbitt and told Babbitt the decision had to be issued that day without delay. It was.

The appearance of impropriety raised in this article is quite obvious -- high-level White House attention goes to where the money is, reversing an Interior resolution of a dispute between Indian tribes in favor of the tribes who have given the most money to the Democratic National Committee.

I cannot help but assume that you will agree with me that Indian affairs policy decisions of the Interior Department should be made in strict isolation of how much money any of the tribes have contributed for partisan campaign purposes.

As Chairman of the Senate Committee on Indian Affairs, I would appreciate it very much if you would provide me with your response to several questions related to the story set out in the *Journal* article.

I have never before been aware of such active involvement by high-level White House staff on resolving disputes between competing Indian tribes. Would you please describe any other occasions when Mr. Ickes has personally intervened on your behalf on Interior Department policy or administrative decisions directly affecting Indian tribes?

Likewise, I have never before been aware of such active involvement by high-level officials of the Democratic National Committee to intercede with the White House to broker a dispute between Indian tribes. Would you please describe any other occasions when Mr. Fowler or other high-level DNC officials personally intervened on Interior Department policy or administrative decisions directly affecting Indian tribes?

Both Senator Inouye and I, as we have exchanged the positions of Chairman and Vice Chairman of the Senate Committee on Indian Affairs over the years, have always tried our utmost to ensure that our deliberations on Indian affairs policy be conducted in a fully non-partisan manner. It has been my view that matters directly affecting Indian tribes should be resolved not necessarily according to the Republican or Democratic philosophies prevailing at any given moment but instead according to fundamental principles of tribal self-determination and fairness that honor the government-to-government and trust relationships the United States has with Indian tribes.

After reviewing the White House activities recited in the *Journal* article, one could reasonably conclude that, in this instance, what influenced your Administration's determinations regarding Federal-Indian matters were campaign contributions rather than the long-standing fundamental principles that have guided Federal-Indian policy in recent decades. I know these are strong words, but can you tell me why it would not be reasonable for Indian tribes to conclude from the events described in the *Journal* article that they must give more money to Democrats than do their competitors if they are to gain White House attention and reversal of preliminary Interior decisions that would adversely affect them? Surely you would agree with me that White House attention should not be the subject of a bidding war among campaign donors. To the extent it is, American Indian people, and indeed, all Americans, lose.

I ask that you respond to the questions I have raised and provide me with some assurance that, from this point forward, you will personally ensure that campaign contributions made by Indian tribes, or the failure of an Indian tribe to make contributions, will have absolutely no impact on policy decisions. Thank you.

Sincerely,

John McCain

John McCain
Chairman

MGR\HUDSM.NCC

DUCHENEAUX, TAYLOR & ASSOCIATES, INC.
303 MASSACHUSETTS AVENUE, N. E.
WASHINGTON, D. C. 20002

FRANKLIN DUCHENEAUX
PETER S. TAYLOR
ERNESTINE DUCHENEAUX, EX. DIR.

TELEPHONE: [redacted]
FAX: [redacted]

August 11, 1997

MEMORANDUM

TO : JOHN McCARTHY, CONSULTANT, MIGA
FROM : FRANK DUCHENEAUX
SUBJECT: MY INVOLVEMENT IN THE HUDSON DOG TRACK ISSUE

As we discussed on Friday, I have again reviewed my computer files to determine my involvement in the Hudson dog track fee-to-trust transfer. As the MIGA D. C. lobbyist, my involvement was rather minimal. I did not represent any of the four affected tribes directly (Mille Lacs, Shakopee, & Prairie Island of Minnesota and St. Croix of Wisconsin). My major involvement was (1) in assisting in setting up meetings in D.C. with the Minnesota delegation, (2) drafting letters from MIGA to congressional offices, (3) attending meetings in D. C. on the issue, (4) and lending my background expertise on the congressional intend of section 20 of IGRA.

I did attend the meeting called by the Minnesota congressional delegation with John Duffy & George Skibine. I cannot find the date on that. It must have been in 1994. My contribution at the meeting was to advise the delegation and Duffy & Skibine on the legislative intent behind the section 20 requirement for consultation with "nearby tribes".

I did attend the 4/28/95 meeting at the DNC, but did not participate in the discussion.

In June of 1995, I was asked by Kitto to attend a meeting between Senator McCain, Chairman of the Indian Affairs Committee, and O'Conner & Corcoran. Here, again, my involvement was to review for McCain the legislative intent of section 20.

Attached is my schedule for 1995 on the Hudson issue. I started using the computer "Daytimer" in 1995 and my record of meetings etc. is pretty good. My records prior to then are not good. Did the Minnesota congressional delegation meeting take place in 1994? I am also faxing copies of some memos and draft I have done re Hudson. You may have these already.

Anything else?

DAYTIMER SCHEDULE RE HUDSON DOG TRACK ISSE

1995

1/9 - 3:45pm-4:00pm - Call from John McCarthy re Hudson etc.
1/12 - 11:00am-11:15am - Call from Jim Schoessler re Hudson & call to Myron Ellis
1/17 - 8:30 am-10:00am - Breakfast meeting with Myron Ellis and Jana McKeag on Leech Lake gaming issues - As MIGA Chairman, Myron raised Hudson generally

2/13 - 3:00pm-3:30pm - Meet with Scott Dacey re Hudson
2/22 - 2:45pm-4:15pm - Prepare & fax to McCarthy draft letter from Myron Ellis to Inouye on Hudson Dog track issue
- 4:15pm-4:45pm - draft & fax to McCarthy "Thank You" letter from Myron to Minnesota delegation for Duffy meeting

3/9 - 3:30pm-3:45pm - Call from Dacey re Hudson
3/31 - 2:15pm-3:45pm - Draft letter to McCain on Hudson

4/6 - 9:45am-10:00am - Call from Dacey & Cindy Broderick on Hudson
11:30am-11:45am - Call from Larry Kitto on Hudson
4/28 - 3:00pm-5:00pm - MGA meeting with DNC staff & staff from Kerry, Daschle, & Wellstone

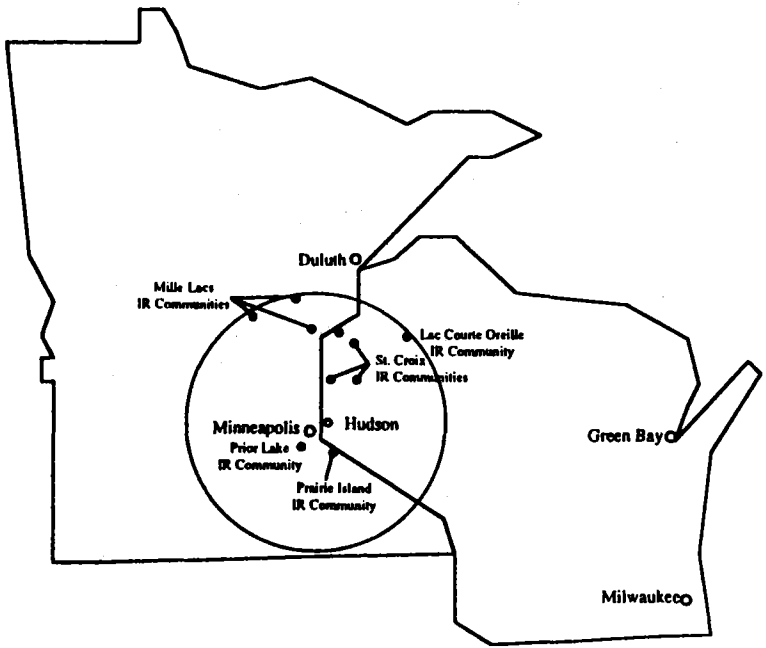
5/1 - 10:00am-10:30am - Call from McCarthy on Hudson
2:00pm-2:15pm - Call from George Skibine on Hudson & call to Steve Laible(?)
5/8 - 9:00am-9:30am - Call to Scott Dacey on Hudson
5/12 - 10:30am-11:00am - Call from Kitto on Hudson etc.

6/? - 2:15pm-3:15pm - Meeting with McCain with O'Conner & Corcoran on Hudson issue

KPMG

The Global Leader

COMMENTS REGARDING HUDSON CASINO PROPOSAL



KPMG Peat Marwick LLP

4200 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402

Telephone 612 341 2222

Telefax 612 341 0202

April 28, 1995

Mr. Myron Ellis, Chairman
Minnesota Indian Gaming Association
Route 3 Box 100
Cass Lake, MN 56633

Dear Mr. Ellis:

You have asked us to comment on materials gathered by MIGA that relate to a proposed casino in Hudson, Wisconsin. Our analysis presented in this report indicates that:

- The BIA has not used the required criteria of "not detrimental" in its analysis, but uses a more rigorous test of "not devastating".
- The current gaming market within 100 miles of the proposed Hudson location is reported at $495 million by the existing casinos in that market.
- The potential loss in market share to the existing casinos is in excess of $114 million based on the market share estimates used by the BIA in their analysis.
- The potential shift in jobs away from existing casinos approximates 1,000. The demographics of the potential Hudson gain in jobs could mean the loss of Indian employment in favor of non Indian employment.
- The potential market share losses and employment shifts are clearly "detrimental" to the existing Tribal casinos and in some cases could be "devastating".

Very truly yours,

KPMG Peat Marwick LLP

Steven W. Laible
Partner

Member Firm of
KPMG Peat Marwick Goerdeler

BACKGROUND

Three Tribes in Wisconsin have submitted a proposal for a trust acquisition of land at the site known as the St. Croix Meadows Greyhound Racing Park in Hudson, Wisconsin. The proposal was submitted by the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa and the Sokagon Chippewa Community (the proposing Tribes).

It is our understanding that an application for a trust acquisition of land for purposes of gaming must be independently reviewed for purposes of making a two part determination that the gaming establishment on newly acquired lands:

1) "will be in the best interest of the Indian Tribe and its members, and
2) will not be detrimental to the surrounding community."

It is further our understanding that the Great Lakes Agency and the area office of the Bureau of Indian Affairs (BIA) have represented that they have made an independent review and concluded that the application meets the two part determination criteria.

BIA FINDING OF NO IMPACT

A document signed by BIA Great Lakes Agency Superintendent Robert R. Jaeger, September 14, 1994, includes the following:

> "Possible negative impacts to Tribes with gaming facilities in the general area of the proposed facility are also addressed in the EA addendum and are expected to be minimal."

The addendum has the following BIA comment:

> "An analysis of the Market for the Addition of Casino Games to the Existing Greyhound Racetrack near the City of Hudson, Wisconsin by Dr. James M. Murray, Ph.D., indicates that the proposed Hudson Casino/Dog Track facility could have a 20% share of the blackjack market and a 24% (share) of the slot and video market in the primary market zone (predominantly St. Croix County in Wisconsin, and Washington and Ramsey Counties in Minnesota). Based upon this analysis, the **socioeconomic impact to surrounding Tribal casinos do not appear to be "devastating"**."

Comment: The test the BIA is supposed to perform uses the phrase "will not be detrimental". This is a less rigorous test than "devastating". Consider the definitions of the two key words found in the American Heritage Dictionary:

- detrimental - harm, disadvantage to wear away; and
- devastate - to lay waste, to overwhelm.

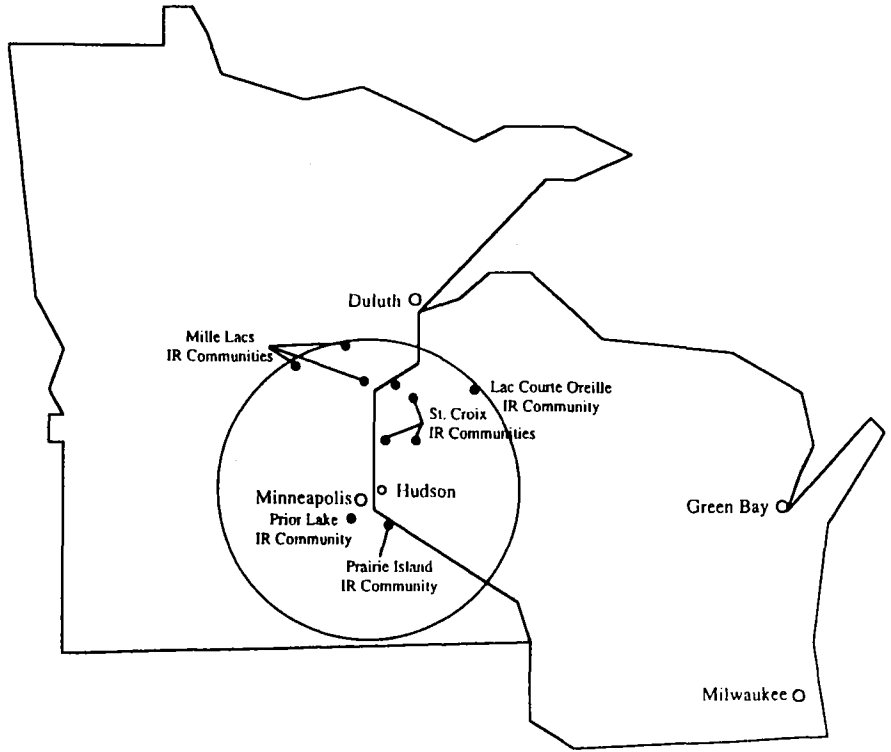
It can easily be argued that a 20% plus loss of market share is detrimental (i.e. harmful) even though it might not be devastating (i.e. overwhelming).

The BIA analysis uses the following phrase in a number of places:

> "The findings of Dr. Murray and Arthur Anderson, Inc., (project specific, independent studies), indicate that the market is of sufficient size to support an additional casino operation and will not saturate the market."

Comment: The BIA references studies and then concludes what they say. We requested MIGA to obtain copies of these studies. We were told that the BIA would not release certain information from the studies under the Freedom of Information Act because the studies were proprietary and confidential. These studies are being used by the BIA as part of their "independent determination" yet they are classified as proprietary to the proposing Tribes. This raises the question: Where is the support for an **independent** determination of no detriment?

Principal Cities and Tribal Government Locations:



MARKET SIZE

The BIA analysis does not include information on the size of the current market.

Comment: We believe it is essential to have an idea of the current market size to arrive at a finding of detriment.

Our approach starts with a definition of a two tier market: one tier with a 50 mile radius from Hudson Wisconsin and a second tier with a 100 mile radius. There are currently four Tribes and five casinos serving this market as follows:

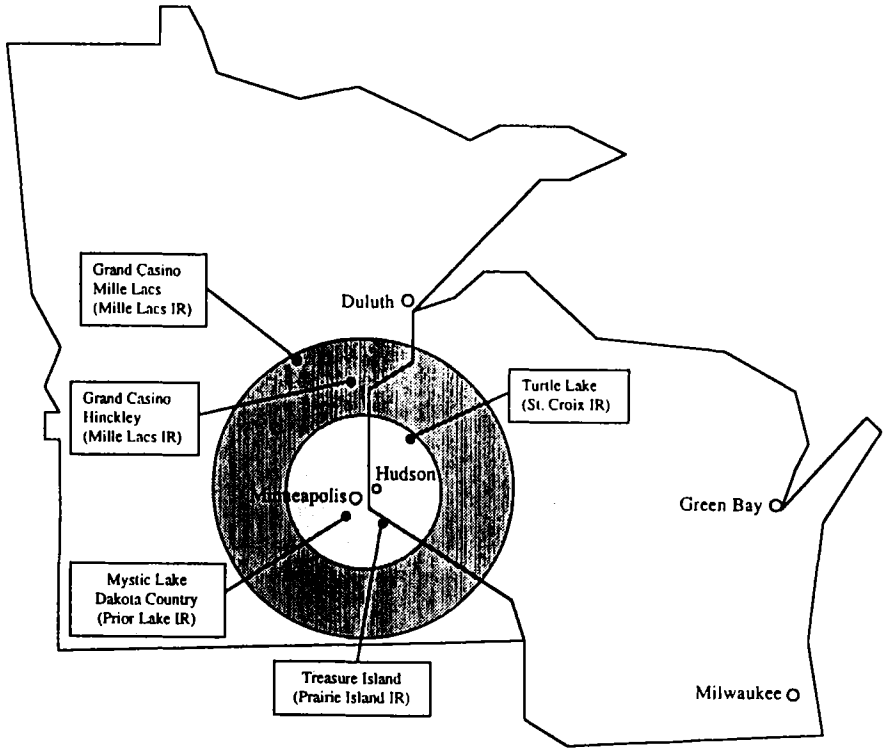
Tribes	Casinos
• Mille Lacs Band of Chippewa Indians (MLBCI)	• Grand Casino Mille Lacs • Grand Casino Hinckley
• Prairie Island Indian Community (PIIC)	• Treasure Island
• Shakopee Mdewakanton Dakota Tribe (SMDT)	• Mystic Lake - Dakota Country
• St. Croix Chippewa Band (SCCB)	• St. Croix Casino

Based on information obtained from the Tribes that will be adversely affected by the proposed casino at Hudson, the market size is as follows:

	Gaming Win by Fiscal Year		
	1994	1993	% Change
Video Slots	.390	350	11.4
Black jack	105	100	5.0
Total	495	450	10.0

Reports from all the casinos indicate that the first six months of Fiscal year 1995 have been flat in terms of growth. This indicates that the market is essentially mature with respect to the type of gaming offered (i.e. video and black jack only).

'er 18 Population:



County	State	Population >18
Within 50 mile		
Anoka	MN	169,140
Chisago	MN	21,080
Dakota	MN	192,952
Goodhue	MN	29,223
Hennepin	MN	793,059
Isanti	MN	17,800
Ramsey	MN	365,373
Wabasha	MN	14,035
Washington	MN	101,490
Dunn	WI	27,051
Pepin	WI	5,059
Pierce	WI	23,905
Polk	WI	24,853
St. Croix	WI	35,124
Total		1,820,144
Within 250 mile radius		
Benton	MN	21,148
Blue Earth	MN	41,654
Dodge	MN	10,775
Fillmore	MN	14,998
Freeborn	MN	24,520
Kanabec	MN	8,916
Le Sueur	MN	16,365
McLeod	MN	22,729
Meeker	MN	14,718
Mille Lacs	MN	13,224
Morrison	MN	20,316
Mower	MN	27,803
Nicollet	MN	20,728
Olmsted	MN	76,914
Pine	MN	15,239
Rice	MN	36,239
Scott	MN	39,814
Sherburne	MN	28,586
Sibley	MN	10,285
Stearns	MN	85,660
Steele	MN	21,913
Waseca	MN	12,888
Winona	MN	36,097
Wright	MN	46,298
Barron	WI	29,428
Buffalo	WI	9,909
Burnett	WI	9,811
Chippewa	WI	37,499
Clark	WI	22,066
Eau Claire	WI	64,068
Jackson	WI	12,076
Rusk	WI	10,919
Sawyer	WI	10,446
Taylor	WI	13,193
Trempealeau	WI	18,657
Washburn	WI	10,151
Sub-total		916,050
Total		2,736,194

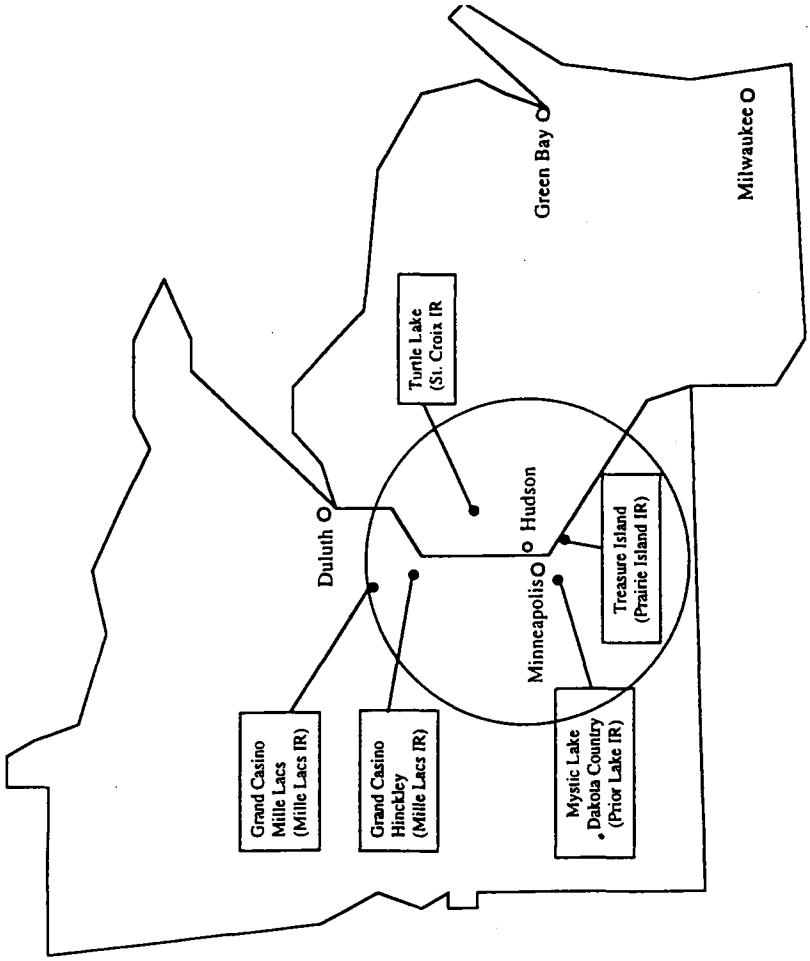
MARKET FACTORS

The Hudson location is, without question, an excellent place to build a casino. As shown on the facing page map it has the following attributes:

- There is a population base of 1.8 million people over 18 years of age within a 50 mile radius,
- There are an additional 900,000 people over age 18 if the radius is extended to 100 miles, and
- The Hudson location would have a significant advantage over four of the existing casinos by gaining a more immediate proximity to the largest population base in the area.

There are other factors that would give the Hudson location an advantage including:

- The road access, primarily interstate, is better than the access to any other casino, with the possible exception of Grand Casino Hinckley.
- The existing casinos have spent millions of dollars during the past four years establishing customer acceptance of Tribal gaming. A Hudson facility would take advantage of an established market paid for by the existing casinos.
- The Hudson Casino would be in a direct line between customers and the St. Croix Casino at Turtle Lake, Wisconsin. Since the Hudson Casino is closer to the market, it has the potential to render significant harm to that casino.


Green Bay
Milwaukee
Turtle Lake
(St. Croix IR
Duluth
Hudson
Minneapolis
Treasure Island
(Prairie Island IR)
Grand Casino
Mille Lacs
(Mille Lacs IR)
Grand Casino
Hinckley
(Mille Lacs IR)
Mystic Lake
Dakota Country
(Prior Lake IR)

TOTAL MARKET LOSS

According to the BIA correspondence previously referenced, the proposed Hudson facility "could have a 20% share of the black jack market and a 24% (share) of the slot and video market in the primary market zone". Based on factors cited above we believe the Hudson share could be much higher. The table below shows the dollar value of lost market share at three different ranges based on the 1994 market. All amounts are in millions of dollars.

Video Slots

'94 Market	Market Share Loss at 24%	30%	35%
390	$93.6	117.0	136.5

Black Jack

'94 Market	Market Share Loss at 20%	25%	30%
150	$21.0	26.3	31.5

Total Loss

'94 Market			
495	$114.6	143.3	168.0

Using the percentage that the BIA used in its conclusion, the loss to existing casinos would be in excess of $114 million. We looked at how this loss might affect the existing casinos using two approaches. One approach uses a simple average. The second approach uses a simple weighted average reflecting the relative harm to each of the casinos based on location factors.

AVERAGE MARKET LOSS PER CASINO
(Rounded in $Millions)

Casino	Scenario 1	2	3
St. Croix Casino	22	28	33
Treasure Island	23	28	33
Grand Casino Hinckley	23	29	34
Grand Casino Mille Lacs	23	29	34
Mystic Lake - Dakota Country	23	29	34
Total	114	143	168

WEIGHTED AVERAGE MARKET LOSS PER CASINO
(Rounded in $Millions)

Casino	Scenario 1	2	3
St. Croix Casino	37	47	55
Treasure Island	31	39	45
Grand Casino Hinckley	23	29	34
Grand Casino Mille Lacs	15	18	22
Mystic Lake - Dakota Country	8	10	12
Total	114	143	168

RANGE OF POTENTIAL MARKET LOSS PER CASINO
(Rounded in $Millions)

Casino	Low	to	High
St. Croix Casino	22		55
Treasure Island	23		45
Grand Casino Hinckley	23		34
Grand Casino Mille Lacs	15		34
Mystic Lake - Dakota Country	8		34

MARKET LOSS TO EXISTING CASINOS

Based on location and ease of access we believe that relative harm, as defined by loss of market share, would occur as follows from least harm to most harm.

Rank	Casino	Simple Weighted Average Percent
1	Mystic Lake - Dakota County	1/15 = 7%
2	Grand Casino Mille Lacs	2/15 = 13%
3	Grand Casino Hinckley	3/15 = 20%
4	Treasure Island	4/15 = 27%
5	St. Croix Casino	5/15 = 33%
15		

The tables show the following information for three different market loss scenarios and the two allocation methods:

- Average market loss per casino;
- Weighted average market loss per casino; and
- Range of potential market loss per casino.

The potential market loss is clearly "detrimental" to all casinos in the analysis and could be "devastating" to St. Croix Casino and Treasure Island.

EMPLOYMENT SHIFTS

Four of the five existing casinos are outside the seven county metropolitan area surrounding Minneapolis and St. Paul. During the past four years, the casinos have contributed greatly to the growth of the employment in non-urban areas. The four casinos have resulted in 4,000 direct jobs and have virtually eliminated Indian unemployment at Mille Lacs, Hinckley, St. Croix and Prairie Island.

A shift of $80 to $100 million of casino win from these four casinos to Hudson (where there are virtually no Indian job seekers) would also result in a shift of 1,000 jobs. The job shift would be detrimental for two reasons. First, it would be a shift of jobs from rural areas with limited job options back to the urban area where employment is at a historic low (approximately 3%). Second, it would shift jobs from Indians to non-Indians (unless the Indian job seekers relocate or commute 70 to 100 miles each way).

SUMMARY

This analysis indicates that there would be a significant loss of revenue and jobs to the existing casinos and Tribes that own these casinos. This result is clearly "detrimental" and in at least two cases could be "devastating".

DUCHENEAUX, TAYLOR & ASSOCIATES
1155 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON, D. C. 20036

FRANKLIN DUCHENEAUX
PETER S. TAYLOR
ERNESTINE DUCHENEAUX, EX. ASST.

TELEPHONE [redacted]
FAX [redacted]

MEMORANDUM
TO : KURT BLUEDOG ESQ.
FROM : FRANK DUCHENEAUX
SUBJECT: DRAFT MINNESOTA DELEGATION LETTER TO SECRETARY BABBITT RE HUDSON DOG TRACK

Myron reminded me that I was supposed to draft a proposed letter for the Minnesota congressional delegation to send to Secretary Babbitt opposing the fee-to-trust transfer for the St. Croix Meadow Dog Track. Attached hereto is such a draft. Please feel free to modify as much as you feel necessary.

It is very difficult to coordinate a delegation letter. It is even more so when it involves both Senators and Representatives. MIGA may wish to have two letter, perhaps identical; one from the two Senators and the other from the House delegation.

It is necessary to get one member of the delegation to agree to be the coordinating sponsor. I would suggest Oberstar. He (or, in reality, his staff) would then contact the other offices to see if they would be willing to co-sign the letter. This often result in rewrite compromises to satisfy one member or the other. If Oberstar or whoever we get to take the lead agrees, we could help in this process by contacting the other offices to urge them to sign the letter.

I am faxing a copy of this letter and the draft to Myron. I am going on vacation tomorrow (Friday, March 25th) and will not be back in the office until April 4th.

cc: Myron Ellis, Chairman, MIGA

EXHIBIT
FD - 2

DUCHENEAUX, TAYLOR & ASSOCIATES
303 MASSACHUSETTS AVENUE, N. E.
WASHINGTON, D. C. 20002

FRANKLIN DUCHENEAUX
PETER S. TAYLOR
ERNESTINE DUCHENEAUX, EX. ASST.

TELEPHONE: [redacted]
FAX: [redacted]

2/23/95

MEMORANDUM
TO : JOHN McCARTHY, MIGA
FROM : FRANK DUCHENEAUX
SUBJECT: THANK YOU LETTERS

Below is a draft thank you letter from Myron to the Minnesota congressional delegation for arranging the meeting on the Hudson track issue. One size fits all. I've added the addresses for each in case you don't know them. Please make whatever changes you feel necessary.

DRAFT LETTER

Honorable _____
*
*
*

Dear (Senator Wellstone, Congressman Oberstar etc. If Myron calls them by their first name, you can use that, e.g. Dear Jim or Dear Paul etc.)

On behalf of the MIGA tribes, I would like to thank you for your help in arranging a meeting for us with Mr. John Duffy on the Hudson Dog Tract issue. We feel that this was a very productive meeting in that we were able, for the first time, to get our concerns before an official of the Department of the Interior. Without the help of our congressional delegation, it is unlikely we would have had that opportunity.

You help and attendance at the meeting made it very clear to Mr. Duffy that the concerns of the Minnesota tribes are serious and well-founded. This meeting finally opened the door for us to get our case on the adverse impact the proposal would have on our member tribes before the Secretary. We know that you are very busy on many other important duties and we appreciate the time that you and your staff took to help on this matter.

Sincerely,

Myron Ellis
Chairman

Addresses:

Honorable Paul David Wellstone
U. S. Senate
Washington, D. C. 20510-2303

Honorable James L. Oberstar
U. S. House of Representatives
Washington, D. C. 20515-2308

Honorable Bruce F. Vento
U. S. House of Representatives
Washington, D. C. 20515-2304

Honorable David Minge
U. S. House of Representatives
Washington, D. C. 20515-2302

Honorable Bill Luther
U. S. House of Representatives
Washington, D. C. 20515-2306

DUCHENEAUX, TAYLOR & ASSOCIATES, INC.
303 MASSACHUSETTS AVENUE, N. E.
WASHINGTON, D. C. 20002

FRANKLIN DUCHENEAUX
PETER S. TAYLOR
ERNESTINE DUCHENEAUX, EX. DIR.

TELEPHONE: [redacted]
FAX: [redacted]

August 11, 1997

MEMORANDUM

TO : JOHN McCARTHY, CONSULTANT, MIGA
FROM : FRANK DUCHENEAUX
SUBJECT: MY INVOLVEMENT IN THE HUDSON DOG TRACK ISSUE

As we discussed on Friday, I have again reviewed my computer files to determine my involvement in the Hudson dog track fee-to-trust transfer. As the MIGA D. C. lobbyist, my involvement was rather minimal. I did not represent any of the four affected tribes directly (Mille Lacs, Shakopee, & Prairie Island of Minnesota and St. Croix of Wisconsin). My major involvement was (1) in assisting in setting up meetings in D.C. with the Minnesota delegation, (2) drafting letters from MIGA to congressional offices, (3) attending meetings in D. C. on the issue, (4) and lending my background expertise on the congressional intend of section 20 of IGRA.

I did attend the meeting called by the Minnesota congressional delegation with John Duffy & George Skibine. I cannot find the date on that. It must have been in 1994. My contribution at the meeting was to advise the delegation and Duffy & Skibine on the legislative intent behind the section 20 requirement for consultation with "nearby tribes".

I did attend the 4/28/95 meeting at the DNC, but did not participate in the discussion.

In June of 1995, I was asked by Kitto to attend a meeting between Senator McCain, Chairman of the Indian Affairs Committee, and O'Conner & Corcoran. Here, again, my involvement was to review for McCain the legislative intent of section 20.

Attached is my schedule for 1995 on the Hudson issue. I started using the computer "Daytimer" in 1995 and my record of meetings etc. is pretty good. My records prior to then are not good. Did the Minnesota congressional delegation meeting take place in 1994? I am also faxing copies of some memos and draft I have done re Hudson. You may have these already.

Anything else?

DUCHENEAUX, TAYLOR & ASSOCIATES
303 MASSACHUSETTS AVENUE, N.E.
WASHINGTON, D.C. 20002
FRANKLIN DUCHENEAUX
PETER S. TAYLOR
ERNESTINE DUCHENEAUX, EXECUTIVE ASSISTANT
TELEPHONE [redacted]
FAX [redacted]

July 27, 1995

Mr. David L. Mercer
Democratic National Committee
430 S. Capitol Street, S. E.
Washington, D. C. 20003

Dear Dave:

I want to thank you for your card regarding the decision of Secretary Babbitt on the proposed land acquisition of the Hudson Dog Track for Indian gaming purposes. The Minnesota Tribes are very grateful to you and the Chairman for your assistance in advising the President and the Secretary on this matter. I do want you to know that the tribes are heart-sick at the necessity of having to oppose the aspiration of other Indian tribes to achieve economic self-sufficiency.

In your card, you graciously offer to assist on other urgent Indian matters. While the Clinton Administration has, indeed, taken very positive positions on the general area of Indian affairs, this is some concern among the tribes about the actual commitment of the Administration to those public assurances. I would like to suggest an no-lose action that the White House could take in the next day or two which would cement the support of the tribes to the Administration.

Senator Slade Gorton, Chairman of the Senate Appropriations Subcommittee on Interior & Related Agencies and a long-time Indian fighter, recently declared war on Indian tribes in his markup of the FY 1995 appropriation for the Bureau of Indian Affairs. I am enclosing a copy of a memo we have done for our clients in this respect.

I understand that the Administration may consider a veto threat on this bill because of non-Indian related matter in both the House and Senate marks. If that is true, it would not take much more for the White House to take a strong position against the attack against Indian people taken in the Senate Subcommittee markup.

Sincerely,

Franklin Ducheneaux

DUCHENEAUX, TAYLOR & ASSOCIATES
303 MASSACHUSETTS AVENUE, N. E.
WASHINGTON, D. C. 20002

FRANCIS H. DUCHENEAUX
PETER S. TAYLOR
ERNESTINE DUCHENEAUX, EX. ASST.

TELEPHONE: [redacted]
FAX: [redacted]

MEMORANDUM

TO : JOHN McCARTHY, MIGA

FROM : FRANK DUCHENEAUX

SUBJECT: DRAFT LETTER TO INOUYE FROM MYRON ON HUDSON

Attached is a draft letter from Myron to Senator Inouye asking for his explanation of the intent of Congress in including the "nearby Indian tribes" language of section 20 of IGRA. Ginny Boylan suggested that MIGA send such a letter. She feels that she could then draft, for Pat Zell, an Inouye response which would buttress our case that the BIA did not carry out Congress' intent in consulting, or failing to consult, with the MIGA tries on the Hudson deal. What do you think?

DRAFT LETTER FROM MYRON ELLIS TO SENATOR INOUYE

Honorable Daniel K. Inouye
Vice-Chairman
Committee on Indian Affairs
U. S. Senate
Washington, D. C. 20510

Dear Senator Inouye:

In 1993, three tribes of northern Wisconsin (Red Cliff Band of Lake Superior Chippewa, Lac Courte Oreilles Band of Lake Superior Chippewa, and Sokaogon Chippewa Community) filed an application with the Bureau of Indian Affairs to take into trust, for class III gaming purposes, 55 acres containing the St. Croix Meadows Greyhound Racing Park. The site, located near the town of Hudson, Wisconsin, would be used for a class III tribal casino in conjunction with the existing race track. The reservation of the Lac Courte Oreilles Band is closest to Hudson at about 80 miles. The other two tribes are well over 100 miles from Hudson.

By contrast, Hudson, located on Interstate 94, is about 15 miles from downtown St. Paul, Minnesota. Four existing class III tribal casinos, within the market area of the Twin Cities, are nearer to Hudson than the applicant tribes and would be severely impacted by the operation of a tribal casino at Hudson. The tribes that would be affected are the Shakopee Sioux, Mille Lacs Chippewa, and Prairie Island Sioux in Minnesota, and the St. Croix Chippewa Band in Wisconsin.

The fee-to-trust transfer of the Hudson land is subject to the provisions of section 20 of the Indian Gaming Regulatory Act which regulates off-reservation land acquisition in trust for gaming purposes. The four tribes which would be adversely impacted by the transfer and the Minnesota Indian Gaming Association attempted to present evidence to the Minneapolis BIA Area Office about this adverse impact, but received little cooperation in that effort. MIGA continues to pursue its objections at the national BIA level.

In pursuing their efforts to doing so, it is important for MIGA and the affected tribe to know what the intent of Congress in requiring the Secretary to consult with nearby tribes. Section 20 states that the Secretary shall consult with "the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes". There is little legislative history to illuminate the intent of Congress in including this phrase in section 20. The BIA is taking a very narrow, restrictive view of their obligation under the phrase.

It would be very helpful to MIGA, in protecting the interests of its member tribes, if you, as the author of S. 555 in the 100th Congress and as Chairman of the Indian Affairs Committee at the time of consideration of S. 555, could give us your intent in including that language.

DUCHENEAUX, TAYLOR & ASSOCIATES, INC.
303 MASSACHUSETTS AVENUE, N. E.
WASHINGTON, D. C. 20002

FRANKLIN DUCHENEAUX
PETER S. TAYLOR
ERNESTINE DUCHENEAUX, EX. DIR.

TELEPHONE: [redacted]
FAX: [redacted]

August 11, 1997

MEMORANDUM

TO : JOHN McCARTHY, CONSULTANT, MIGA
FROM : FRANK DUCHENEAUX
SUBJECT: MY INVOLVEMENT IN THE HUDSON DOG TRACK ISSUE

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Attached is my schedule for 1995 on the Hudson issue. I started using the computer "Daytimer" in 1995 and my record of meetings etc. is pretty good. My records prior to then are not good. Did the Minnesota congressional delegation meeting take place in 1994? I am also faxing copies of some memos and draft I have done re Hudson. You may have these already.

Anything else?

EXHIBIT
FD - 3

O'CONNOR & HANNAN, L.L.P.

ATTORNEYS AT LAW

MINNEAPOLIS OFFICE
[redacted] BAKER BUILDING
SOUTH SECOND AVENUE
MINNEAPOLIS, MN 55402
[redacted]

SUITE 800
1919 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006-3483
[redacted]

MADRID OFFICE
LA RINCONADA, 6, 3°
28023 MADRID, SPAIN
[redacted]

FACSIMILE COVER PAGE

DATE: 5/9/95

PLEASE DELIVER TO: DAVID MERLEK

FAX NUMBER: [redacted]

FROM: TOM CORCORAN

CLIENT/MATTER NUMBER: [redacted]

NUMBER OF PAGES: 2 (INCLUDING COVER PAGE)

COMMENTS:

FYI

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FD - 4

M P A

MANAGEMENT & PUBLIC AFFAIRS CONSULTANTS

LARRY KITTO
Phone [redacted]
Pager [redacted]
Fax [redacted]

1227 MARION STREET
ST. PAUL, MN 55117

May 8, 1995

MEMO TO :Tom Corcoran
MEMO FROM :Larry Kitto
REASON :Chairman Don Fowler Meeting

Here is the list of the people who were at the meeting with Chairman Don Fowler. Please forward this information to Chairman Fowler's office.

Frank Ducheneaux
[redacted]

Lewis Taylor, President
St. Croix Tribal Council
P.O. Box 287
Hertel, WI 54845

JoAnn Jones, Chairperson
Ho-Chunk Nation
P.O. Box 667
Black River Falls, WI 54615

Kurt BlueDog, Attorney
5001 W. 80th St.-Suite 670
Bloomington, MN 55437

Stanley Crooks, Chairman
Shakopee Mdewakanton Sioux Community
2330 Sioux Trail N.W.
Prior Lake, MN 55372

Melanie Benjamin
Mille Lacs Band of Ojibwe
Grand Casino
777 Lady Luck Drive
Rt. 3 Box 15
Hinkley, MN 55037

If you have any questions, please call. Thank you.

O'CONNOR & HANNAN
MEMORANDUM

TO: Lewis Taylor

FROM: Thomas J. Corcoran

SUBJECT: Hudson Update

DATE: March 2, 1995

Today's report from Kevin Meisner in the office of the Solicitor of the U.S. Interior Department raises questions about the commitment of John Duffy and George Skibine to give us time to get our Coopers & Lybrand report into the review process of the Hudson application. In your February 8 meeting with Duffy and Skibine in Congressman Oberstar's office, you will recall they said they would want to get your economic impact studies into their review. Today Meisner said he expected to get from Skibine in about two weeks the Hudson application. Meisner is the lawyer who gives it a final review from a technical, legal standpoint before "it goes out" to the state and local governments.

After my discussion with Meisner, I asked Frank Ducheneaux to talk to George Skibine to clarify this matter and to ask Congressmen Oberstar and Vento, who were in the February 8 meeting, to call Skibine also. In addition, my partner Pat O'Connor and I will try to meet with Secretary Babbitt's Chief of Staff Tom Collier early next week to get a commitment that we be given adequate time to have your Coopers & Lybrand report be given meaningful consideration in BIA's review of this application.

/jj

EXHIBIT
FD - 5

Doc. 21285

O'CONNOR & HANNAN, L.L.P.
1919 Pennsylvania Avenue, N.W.
Washington, DC 20006-3483
[redacted]
FAX [redacted]

TELECOMMUNICATION COVER PAGE

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Lewis Taylor/Mary Hartmann

TELEFAX: [redacted]

FROM: Tom Corcoran

TOTAL NUMBER OF PAGES (INCLUDING COVER PAGE): 3

DATE: March 3, 1995

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IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE.

PHONE: [redacted] **Client/Matter No** [redacted]

COMMENTS: Lewis --

In view of my report yesterday about George Skibine and Kevin Meisner, I recommend you move the attached as quickly as possible and send me a signed copy for use out here.

DAVID L. MERCER

4/29/95

Dear Frank -

It was a pleasure to meet you last Friday. You were very helpful in summarizing the gaming issue & its implications for Chase and Fowler. I hope you found the meeting encouraging.

Lets stay in touch on further developments. Let me know if I can be of further assistance.

Again it was nice to meet you!

Sincerely

David

DEMOCRATIC NATIONAL COMMITTEE

[redacted]

May 4, 1995

David L. Mercer
Democratic National Committee
430 S. Capitol Street, S. E.
Washington, D. C. 20003

Dear David:

Thank you for your note regarding our recent meeting with Chairman Fowler on the Indian gaming issue. I was amazed and pleased that he would devote so much of his time to the issue. The tribal leaders appreciated his time and interest very much.

I am enclosing a copy of the quick-and-dirty assessment done by Peat Marwick on the potential adverse impact of the Hudson proposal on the existing tribal gaming enterprises in Minnesota and Wisconsin. As noted in the meeting, it is difficult to do a definitive study when BIA will not release the parameters of the Hudson proposal.

Also, for your information, I am enclosing a copy of a letter we sent to our tribal clients relating to a recent overture to Indian tribes from the Gramm campaign. As our letter makes clear, we are, in no way, recommending that our tribal clients support the Gramm campaign. In fact, we are not retained to provide political advice to our clients. However, we felt we were obliged to advise them of developments in Washington which could affect tribal interests. Heaven forfend that we should have a Gramm presidency. However, the Gramm overture does emphasis the kind of message the tribal leaders were trying to convey in our recent meeting.

As I noted in my parting comment, in a small way, I worked for the Clinton-Gore ticket with Kevin Gover as a part of the Native Americans for Clinton-Gore. ' I am sure Kevin and the others (sans Ben Nighthorse Campbell) will be willing to rally 'round the Clinton-Gore flag in the coming months, but I must say there has been some disappointment in concrete White House support for Indian issues since the election. If I can be of any help, please let me know.

Sincerely,

Franklin Ducheneaux

EXHIBIT
FD - 7

DUCHENEAUX, TAYLOR & ASSOCIATES
303 MASSACHUSETTS AVENUE, N.E.
WASHINGTON, D.C. 20002
FRANKLIN DUCHENEAUX
PETER S. TAYLOR
ERNESTINE DUCHENEAUX, EXECUTIVE ASSISTANT
TELEPHONE [redacted]
FAX [redacted]

July 27, 1995

Mr. David L. Mercer
Democratic National Committee
430 S. Capitol Street, S. E.
Washington, D. C. 20003

Dear Dave:

I want to thank you for your card regarding the decision of Secretary Babbitt on the proposed land acquisition of the Hudson Dog Track for Indian gaming purposes. The Minnesota Tribes are very grateful to you and the Chairman for your assistance in advising the President and the Secretary on this matter. I do want you to know that the tribes are heart-sick at the necessity of having to oppose the aspiration of other Indian tribes to achieve economic self-sufficiency.

In your card, you graciously offer to assist on other urgent Indian matters. While the Clinton Administration has, indeed, taken very positive positions on the general area of Indian affairs, this is some concern among the tribes about the actual commitment of the Administration to those public assurances. I would like to suggest an no-lose action that the White House could take in the next day or two which would cement the support of the tribes to the Administration.

Senator Slade Gorton, Chairman of the Senate Appropriations Subcommittee on Interior & Related Agencies and a long-time Indian fighter, recently declared war on Indian tribes in his markup of the FY 1995 appropriation for the Bureau of Indian Affairs. I am enclosing a copy of a memo we have done for our clients in this respect.

I understand that the Administration may consider a veto threat on this bill because of non-Indian related matter in both the House and Senate marks. If that is true, it would not take much more for the White House to take a strong position against the attack against Indian people taken in the Senate Subcommittee markup.

Sincerely,

Franklin Ducheneaux

EXHIBIT
FD - 8

To: Frank
From: Scott
Oct 5 '91

Thompson says no to casinos

Won't permit them at tracks

By CARY SPIVAK
Sentinel staff writer

Gov. Tommy G. Thompson will not allow any of the state's financially failing dog tracks to become Indian casinos, the governor said Tuesday.

There has been quite a bit of confusion in recent months concerning the governor's position on allowing Indian tribes to buy the tracks so slot machines and blackjack tables could be installed.

Thompson has continually voiced opposition to the expansion of gambling. But, at the same time, he has said he would allow off reservation Indian gaming if the local communities involved embraced the idea.

Asked Tuesday whether he had decided to totally shut the door on any type of casino gambling at the tracks, Thompson replied "yes."

"I don't know of any reason whatsoever (to approve it). I don't know of anybody who wants it," Thompson said in a brief interview following a Serb Hall speech to the City of Milwaukee Retired Employees Association.

As governor, Thompson has veto power over any proposal to place Wisconsin land in federal trust for gaming. Three tracks have proposed doing that so their facilities could offer both greyhound racing and casino gaming.

The governor has "always been opposed to the expansion of gambling," said Kevin J. Keane, his press secretary. "But he didn't want to shut the door totally because of economic development considerations."

But, Keane said, Thompson decided to end any possibility of turning tracks into casinos because he found little local support for the gambling halls.

Owners of St. Croix Meadows Greyhound Racing Park have said they would close the $40 million facility if they are unable to sell the track to three Chippewa bands. St. Croix Meadows lost $5.32 million last year and expects to lose $6.12 million this year, according to records filed with the State Gaming Commission.

Mark Goff, spokesman for the group attempting to turn the track into Four Feathers Casino and Racing, said Thompson's comments were cause for concern. But, he said, the group still hoped to open a casino at the track.

The St. Croix Meadows proposal is being reviewed by the U.S. Bureau of Indian Affairs. If the BIA and the U.S. Department of Interior agree to place the land in federal trust, Thompson would then be asked for his approval.

An amendment to the Indian Gaming Regulatory Act pending in Congress could eliminate Thompson's veto authority on the issue and instead allow him only to advise the Department of Interior.

Geneva Lakes Kennel Club in Delavan, which lost $3.16 million last year and expects to lose $3.17 million this year, has announced plans to sell its property to two tribes.

Fox Valley Greyhound Park in Kaukauna went out of business last year and its owners want to sell the facility to a tribe so it could reopen with casino games.

Owners of Dairyland Greyhound Park, the only profitable track in the state, have said they would consider casino games at the Kenosha facility if the state permitted it. Dairyland had a $781,000 profit last year and expects a $232,000 profit this year.

Wisconsin Dells Greyhound Park in Lake Delton lost $198,000 last year and expects to lose $498,000 this year. The track would have the toughest time converting to an Indian casino because it's only about 2 miles from the Ho-Chunk Casino that is owned by the Winnebago tribe.

EXHIBIT
FD - 9

May 8, 1995
3820 Albemarle St., N.W.
Washington, D. C. 20016

Dear Myron:

(Material not covered by subpoena deleted.)

Again, while John may have updated you on Hudson, I will fill in from my perspective. At my suggestion in a private meeting in Green Bay, Kitto, using his new affiliation with the high-powered Democratic lobby firm of O'Conner-Hannon, set up a meeting for tribal reps from Shakopee, Mille Lacs, Ho Chunk, and St. Croix with the Chairman of the Democratic National Committee. I can't remember his first name, but his last name is Fowler. We put it to him on a strong partisan Democratic basis: "Why is a Democratic Administration apparently supporting a Republican Governor and a Republican tribal chairman against strong Democratic tribal leaders?". Fowler said he would talk with Harold Ickes, who is Clinton's Deputy Chief of Staff and handles much of the White House political issues. Also, letter have gone to Babbitt and the White House from both the Minnesota and Wisconsin congressional delegations in opposition. Finally, we finally got a quick-&-dirty economic analysis from Peat Marwick to Skibine at the BIA. It shows that the Hudson proposal would be devastating to Prairie Island and St. Croix, and would significantly hurt Shakopee and Mille Lacs. It would even hurt Ho Chunk. Progess is being made.

(Material not covered by subpoena deleted.)

Your Friend,

Frank Ducheneaux

EXHIBIT
FD - 10

To: All Interested Parties
From: John McCarthy, M.I.G.A. Consultant
Date: Wed. Dec 28, 1994
RE: Wisconsin Dog Track Issue

CONFIDENTIAL

Enclosed please find documentation of our response to the request by the three Wisconsin Indian Bands to place off-reservation lands in trust for the purpose of gaming. I have developed a chronology of events that will provide a brief synopsis for your convenience.

I have talked with staff members from the offices of Congressman Oberstar, Congressman Minge, and Senator Wellstone, about assisting us in our effort to meet with the Secretary of the Interior on the dog track issue. It is our intention to try to schedule this meeting in Washington D.C. on either Tuesday afternoon, Jan. 17, or anytime on Jan. 18, as we will be in Washington on those dates.

Our goal is to secure a meeting with Secretary Babbit or his designee (probably John Duffy) to discuss this issue. We need to determine how best to request this meeting, through Senator Wellstone, Congressman Minge, Congressman Oberstar, or by delegation request. We also need to determine where the meeting will be held.

SPECIFIC STRATEGY

At this point it appears that the Assistant Secretary's office and the Minneapolis Area Office have succeeded in securing an affirmative recommendation from the B.I.A. for the three tribes requesting the fee to trust transfer. In order for the Secretary to overrule the recommendations of the Bureau, we need to point out the following:

1) We feel that the consultation was flawed and that we were not given a fair opportunity to present our case.

2) We challenge the validity of the Finding Of No Significant Impact (FONSI) as it relates to the socio-economic impact that this action will have on the neighboring tribes. (St. Croix Chippewa, Prairie Island, Shakopee, Mille Lacs, Fond Du Lac, Lower Sioux)

3) We feel that the whole issue of market share has been glossed over and has been unfairly slanted by the B.I.A. (It appears that they took most of the facts that they used to make the finding from the Bischof & Vasseur firm hired by the Lac Courte Oreilles tribe.

4) We suggest that the National Environmental Protection Act (NEPA) format is not an adequate evaluation tool to properly deal with the far-reaching implications of the socio-economic impacts of gaming on neighboring tribes, or in this case, border state issues. We need to show that while the B.I.A. tried to do its job by considering the positive social enhancements that would be experienced by the three Wisconsin tribes, via jobs, reduction in dependency on social services, etc., it failed to take into account the political impact this action would have on the Minnesota tribes.

Rt. 2, Box 95 Cass Lake, MN 56633
[redacted]

EXHIBIT
FD - 11

CONFIDENTIAL

This failure to consider the political impact gives us cause to challenge the use of NEPA. guidelines to determine true impact. The tribes in Minnesota have a solid working-relationship with the State Government, partly because we have not tried to build casinos in off-reservation sites. The pressure has always been on the State to allow one or two gambling operations in either downtown Minneapolis or St. Paul.

The Tribes have resisted the move even when it meant a potential loss of revenue to them. Now we have a situation that would allow a major gambling facility located less than twenty minutes from the Twin Cities, just off an interstate highway. If this facility is approved we will most assuredly have the local businessmen crying for the legislature to give them a "level playing field." They will cite the huge loss in revenue to Wisconsin and will now have the ammunition they need to expand gaming in Minnesota.

Finally, we have to emphasize that a meeting is needed to fairly address this issue. This meeting will help us to overcome the lack of understanding shown by the B.I.A.and better examine the inadequacy of NEPA in evaluating fee to trust decisions.

This lack of understanding on the part of the Bureau is most clearly evidenced by statements made by Superintendent Jaeger in his Sept. 14, 1994, letter to Stanley Crooks, "It is not the intent of the NEPA process to limit competition for business profits." A similar lack of understanding is found in the 'Response to Comments' section of the same correspondence, in which a commenter is listed as stating, "This action gives movement and impetus to the drive for more non-Indian gaming." and the Superintendent's response was "The movement for more non-Indian gaming is beyond the scope of this action and is more appropriately addressed in the IGRA process." The Superintendent seems to think that the sole concern of the Minnesota tribes is a profit-driven monve, when in fact our concern has much deeper roots in current political impacts and future impact on the Minnesota Indian Gaming Venue.

5) We might want to identify the potential for a conflict of interest on the part of the B.I.A. This should be discussed further as it is a drastic step that should not be considered lightly.

POLITICAL PERSPECTIVE

We have a few key political issues to keep in mind and to point out to the Secretary:

A) One of the key players in this issue is Chairman Gaiashkibos from Lac Courte Oreilles. Without in any way degrading him we do need to point out to the Secretary that he in fact is a Republican, that he worked for Republicans in the last election, and that he will no doubt work hard against Bill Clinton in the next two years. We also need to point out to the Secretary that it would not be in his best interest to in any way help the Republicans erode any additional Indian votes or Indian political contributions.

B) The Governor of Wisconsin, Tommy Thompson, is also a Republican. While he has publicly stated his opposition to this proposal we are still hearing rumors that he may consider it. He has ties to the dog racing industry from past years. It might be an opportunity for the Secretary to use the public denial of the Governor to concur and also turn it down, using the Governor's decision as part of his basis for denial.

C) Minnesota Tribes have been very active politically and are strong Democrats. We contributed heavily in the november elections and played a key role with our support for President Clinton in 1992. Every tribe in Minnesota had excellent voter drives this past November

CONFIDENTIAL

OTHER ISSUES

1) Remoteness as a Criteria

We also need to very clearly point out to the Secretary that the primary basis for the petition for fee to trust is that all three of the tribes petitioning are located in rural settings which are not conducive to drawing large crowds for gaming purposes. The rational of the B.I.A. and of these tribes is very directly tied to this fact. If the Secretary makes a determination based on this fact, most of Indian Country would then qualify under the same rationale. Unfortunately, when reservations were created the people laying them out intentionally put Indians where most folks did not want to go. That is a fact of life, and while it's not fair it is still a fact. We only have to look at Leech Lake, Red Lake, Grand Portage, Boise Forte, and Lower Sioux, to see that issue very clearly. If we want to start using remoteness as a criteria for approval of fee to trust requests, our guess is that the Secretary's office will be swamped with requests.

2) Precedent - Future Race Track Bailouts

The last concern we have also relates to a possible precedent that this action could establish. What we see here is another case of an ill-conceived race track that has gone under, not as a result of Indian Gaming, but because of poor planning, poor management, unfavorable economic conditions, and a variety of other reasons. The IGRA is what is being used to bail them out. We should point out to the Secretary that there are a lot of tracks throughout the country that are in trouble. Will this action become the solution for every troubled race track?

Ms. Denise Homer
Acting Area Director
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, MN 55401-2241

Date: July 20, 1994

Dear Mr. Homer:

Please accept this letter as the official response from the Minnesota Indian Gaming Association to both the Addendum and the FONSI in relation to the St. Croix Meadows Greyhound Racing Park project.

The M.I.G.A. members strongly oppose your findings and challenge there validity. We respectfully request an extension of the deadline date from July 23 to September 23 and ask that you meet with us to discuss this issue before any further action is taken. We do not feel that we have had adequate consultation as detailed in the Indian Gaming Regulatory Act. The comment in your draft Addendum under Project Alternatives and Possible Impacts states, "It Is Not The Intent Of The N.E.P.A. Process To Limit Competition For Business Profits". While this may be true for N.E.P.A. it does not hold true for I.G.R.A. as it is our contention that this action will have severe sociion/economic impacts on surrounding tribes. We would appreciate an immediate response to our request and if possible a meeting date when we can get together with you on this most serious issue. Please contact John McCarthy our Executive Director at our office in Cass Lake.

Sincerely,

Stanley Crooks

Stanley Crooks
Vice Chairman, M.I.G.A.

Rt. 2, Box 95 Cass Lake, MN 56633
Phone [redacted] *FAX* [redacted]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
Ashland, Wisconsin 54806-0373

IN REPLY REFER TO

Natural Resources

August 8, 1994

Stanley Crooks, Vice Chairman
Minnesota Indian Gaming Association
Rt. 2, Box 95
Cass Lake, MN 56633

Dear Mr. Crooks:

The Minneapolis Area Office sent a copy of your enclosed 7/20/94 letter to our Agency and asked us to respond to your request for an extension of the deadline for submitting comments to the environmental documents regarding the proposed Hudson Dog Track/Casino in Hudson, WI.

According to the regulations implemented regarding the National Environmental Policy Act (NEPA) in 40 CFR 1506.10(d) it states, "The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency."

These regulations allow the Agency to extend prescribed periods if a Federal agency shows that there is a compelling reason of national policy. Neither the "showing by any other Federal agency" or the "compelling reasons of national policy" qualifiers are applicable to your extension request.

It is noted that MIGA took advantage of the opportunity to comment about their concerns on the socio-economic impacts this proposal may have on surrounding Tribes on January 22, 1994, in a letter to the Minneapolis Area Director. This was the result of the Minneapolis Area Office's notice of a comment period in which comments regarding the Indian Gaming Regulatory Act and related matters concerning this proposal were solicited. I am aware that your organization has also sent their concerns to the Secretary of Interior during this same time period.

While the Agency would like to be open to any request at any time, we are bound by these regulations and must decline your request for extension.

Please contact me or Mark Kuester, Natural Resources Specialist, at [redacted] for any information we have available regarding this matter.

Sincerely,

Robert R. Jaeger

Superintendent

Enclosure

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, Minnesota 55401-2241

TRIBAL OPERATIONS

SEP 28 1994

Myron Ellis, Chairman
Minnesota Indian Gaming Association
Route 2, Box 95
Cass Lake, MN 56633

Dear Mr. Ellis:

This is in response to your letter dated September 21, 1994, with regard to the Superintendent of the Great Lakes Agency's letter of September 14, 1994. The Superintendent's letter issued the Finding Of No Significant Impact (FONSI) in relation to the proposed Dog Track Casino facility at Hudson, Wisconsin.

As you are aware, this proposed project is being reviewed under the Indian Gaming Regulatory Act (IGRA) of 1988, which governs the acquisition of land into trust when the intended use is for gaming purposes, 25 U.S.C. Section 2719. Pursuant to the "Two Part Determination" of Section 20 of the IGRA, the Minneapolis Area Office (MAO) conducted consultation with the affected tribes in the area. The Tribes were provided this opportunity and the input is considered in the MAO's Findings and Recommendations. The MAO also received comments from the Minnesota Indian Gaming Association (MIGA) on the proposal by letter dated January 22, 1994.

In compliance with the National Environmental Protection Act (NEPA) of 1969, the Great Lakes Agency performed the necessary action to consider the environmental consequences of the proposed project and which resulted in the issuance of the FONSI.

Because of the importance of keeping the two review processes separate, the NEPA and the IGRA, the letter from MIGA was referred to the Great Lakes Agency for response, since the letter dealt with the Environmental Assessment process. The MAO is aware that the Agency did, in fact, respond to the request for an extension of the deadline and the consultation process, by letter dated August 8, 1994. The Great Lakes Agency was the lead agency in the NEPA process and as such, the MAO referred MIGA's inquiry to them.

The MAO would like to thank the members of the MIGA for the invitation to meet on this matter. However, since the processes have closed, the MAO is of the opinion that a meeting would not accomplish the desired objective.

The MAO is aware of the opposition expressed by the MIGA to the Hudson Dog Track proposal.

If you have any questions or concerns, they may be directed to Elliott L. Moffett, Tribal Operations Officer, at [redacted]

Sincerely,

Area Director

Stanley Crooks
Shakopee Mdewakanton Sioux Community
2330 Sioux Trail NW
Prior Lake, MN 55372

March 2, 1995

Dear Mr. Crooks,

I have just received some information that I felt I should pass on to you as soon as possible. It appears that Mr. George Skibine, Director of the Office of Indian Programs is fast approaching completion of his report on the fee to trust request concerning the Hudson Dog Track.

As you will recall at our meeting with Mr. Skibine and Mr Duffy in Washington D.C. we strongly opposed the approval of this request, suggesting that such an action would be very detrimental to Minnesota Tribes. We further indicated that we did not feel that the B.I.A. Area Office had given us an opportunity to be heard on this issue.

Mr Skibine and Mr. Duffy indicated that they would accept any documentation that we had on this issue and that they would hold off any decision pending our submittals. I am concerned that they haven't heard from us. I would urge you at this time to submit your data or to send a letter to Mr. Skibine letting him know a definite time line or when this data will be submitted.

I have asked Frank Ducheneaux to quietly look into this and keep us informed. In my 2-24-95 memo I did suggest that it might be wise to contact Chairman Louis Taylor at St. Croix and at least discuss the possibility of a joint study between Mille Lacs, Shakopee, St. Croix, and Prairie Island.

I will keep you informed on information I receive.

Sincerely,

John P McCarthy

John McCarthy
M.I.G.A. Consultant

c.c. Marge Anderson
Louis Taylor
Curtis Campbell

Rt. 2, Box 95 Cass Lake, MN 56633
Phon[redacted] FA[redacted]

BROYDRICK
AND
ASSOCIATES

Public Affairs

DATE: April 10, 1995

TO: Frank Ducheneaux

FROM: Cindi Broydrick

RE: Tom Diehl

Please note stared items:

- page 12
- page 22

TMD Management is Tom M. Diehl. John Tries told me he would be given the management contract for St. Croix at 85%!

Stay tuned.

44 EAST MIFFLIN STREET, SUITE 801 MADISON WI 53703-2800 [redacted] FAX [redacted]
AFFILIATE OFFICES IN MILWAUKEE, WI, AND WASHINGTON, DC

EXHIBIT
FD-14

2nd Mortgage Holder
Delaware North Companies
One Delaware North Place
438 Main Street
Buffalo, NY 14202

D. State whether the applicant is aware of any potential hazard or toxic substance on the site which will affect public health, welfare or safety.

To our knowledge, no such hazards exist on this property.

Wisconsin Dells

Answer:

Name and Address	Wisconsin Resident	No. of Shares	% of Ownership
Thomson Bartlett 560 Wisconsin Dells Pkwy. Wisconsin Dells, WI 53965	Yes	100	20%
Jeffrey T. Diehl 560 Wisconsin Dells Pkwy. Wisconsin Dells, WI 53965	Yes	50	10%
Jill C. Diehl 5387 Mariner's Cove Drive, #312 Madison, WI 53704	Yes	50	10%

Name and Address	Wisconsin Resident	No. of Shares	% of Ownership
Margaret A. Diehl 560 Wisconsin Dells Pkwy. Wisconsin Dells, WI 53965	Yes	140	28%
Thomas M. Diehl 560 Wisconsin Dells Pkwy. Wisconsin Dells, WI 53965	Yes	135	27%
Bruce L. Harris 615 Summit Road Madison, WI 53704	Yes	20	4%
John Petersen, III 1114 Merrill Springs Road Madison, WI 53705	Yes	5	1%

N. State whether any of the applicant's assets or securities have been pledged as security for any debt. Explain fully, by stating names and addresses of parties holding security interests or promissory notes from the applicant, where the stock was pledged as security, and include a copy of any agreements creating the security interest as Attachment 4.

Answer:

Bank of Wisconsin Dells
716 Superior Street
Wisconsin Dells, WI 53965

Delaware North Companies, Incorporated
One Delaware North Place
Buffalo, NY 14209

Documents creating the security interests are on file with Wisconsin Gaming Commission

O. State whether the requirements of the Securities Act of 1933 and Securities Exchange Act of 1934, as amended, and SEC rules and regulations have been met in connection with registration and issuance of the applicant's securities, if applicable. Submit copies of the most recent registration statement, annual report, quarterly report, and any other periodic report filed within the last year with the SEC as Attachment 5.

Answer:

Not applicable.

P. State whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation or any other jurisdiction other than Wisconsin in which such filings are required have been met or whether an exemption from such registration has been relied on. Submit a copy of the most recent registration statement or notice of exemption, if any, filed with the securities regulator in that jurisdiction as Attachment 6.

Answer:

Yes, exemption relied on (no registration statement or notice of exemption filed).

Q. State whether the securities registration requirements of the State of Wisconsin or requirements for an exemption therefrom have been met. If they have not, the applicant must disclose the reasons why. Submit copies of all securities filings made with the Wisconsin Securities Commission during the past five years as Attachment 7.

Answer:

Yes, exemption relied on (no securities filings).

7. Submit copies of any agreements or understandings which the applicant or any individual or entity identified pursuant to this part has entered into regarding ownership, operation, management, or sponsorship of the applicant's facility. As to each such agreement or understanding, the names, in alphabetical order, addresses, and descriptions of business of all persons, corporations, or entities with which the applicant has contracted or reached an understanding, and a copy of any written agreement or understanding must be disclosed and submitted as Attachment 10.

None

8. State whether the applicant, any director, partner, officer, other policy-maker, or holder of a direct or indirect record or beneficial ownership interest or other interest in the applicant, has held or holds a license or permit issued by any other governmental authority to own and/or operate or to sponsor and/or manage a pari-mutuel or gambling facility. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and/or termination.

* TMD Management, Inc. has been assigned a limited partner's interest in Croixland Properties Limited Partnership, subject to the approval of the Wisconsin Gaming Commission. Thomas M. Diehl is the sole shareholder of TMD Management, Inc.

9. State whether the applicant, any director, partner, officer, other policy maker, or holder of a direct or indirect record or beneficial ownership interest or other interest in the applicant has an ownership interest or is in an applicant for a license under s.562.05(1)(a), Wis. Stats., at any other location licensed by the Wisconsin Gaming Commission. If so, the applicant must disclose the identity of the individual, relationship with the applicant, including ownership interest and identification of the other license location under s.562.05(1)(a), Wis. Stats.

* TMD Management, Inc. has been assigned a Limited Partner's Interest of 1.99% of Croixland Properties Limited Partnership, subject to the approval of the Wisconsin Gaming Commission.

10. State whether any entity which is a parent corporation of any holder of a direct or indirect record or beneficial ownership interest or other interest in the applicant has an ownership interest or is an applicant for a license under s.562.05(1)(a), Wis. Stats., at any other location licensed by the Wisconsin Gaming Commission. If so, the applicant must disclose the identity of the entity, relationship with the applicant including ownership interest and identification of the other license location under s.562.05(1)(a), Wis. Stats.

No

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483

FAX [redacted]

May 8, 1995

Mr. Harold Ickes
Deputy Chief of Staff for Policy
and Political Affairs
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Proposal pending at Interior to create trust lands at the Hudson Dog Track in Hudson, Wisconsin for an Indian Gaming Casino

Dear Mr. Ickes:

I appreciate your calling me concerning the above subject on Tuesday, April 25, and again on Wednesday, April 26. I assume these calls were prompted by my discussions with the President and Bruce Lindsey on April 24 when they were in Minneapolis. I returned your calls and talked to your assistant, Mr. Suttan, who advised that you were not in the office when I called. Since I had an appointment with Don Fowler on Friday, April 28, to discuss this matter, I decided not to try to contact you until after the Fowler meeting with the chairman of five of the many Minnesota and Wisconsin tribes that oppose the creation of the trust lands for gambling purposes and the bailout of the current dog track owners.

I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. Since the Fowler memo was sent to you, the City Council of Hudson, Wisconsin, passed a resolution opposing the construction and operation of a casino at the dog track.

The Secretary of Interior has the discretion to create such trust lands if he finds:

1. it creates an economic benefit for the applicants, and
2. it does not create economic hardship for others.

The Minnesota and Wisconsin tribes who met with Interior officials explained the economic losses they would suffer if another casino were established in this area, due to the close

EXHIBIT
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proximity of their casinos. In addition, Coopers & Lybrand as well as Peat Marwick recently submitted to Interior a detailed analysis outlining the adverse economic repercussions that would result from this happening.

I am concerned that those at Interior who are involved are leaning toward creating trust lands. We requested a copy of the Arthur Anderson report which the petitioners commissioned which found no adverse financial impact. The copy submitted to us "blocked out" all of the vital information relating to the size of the operation, how many machines, tables, etc., which we need to know, as well as the statistics and reasoning used in determining that the surrounding casinos would not suffer a serious economic impact. We need this data in order to put our best case forward to Interior. We have no objection to Interior's submitting the Coopers & Lybrand or the Peat Marwick reports to the petitioners.

I would also like to relate the politics involved in this situation:

1. Governor Thompson of Wisconsin supports this project.

2. Senator Al D'Amato supports this project because it bails out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Delaware North is located in Buffalo, New York.

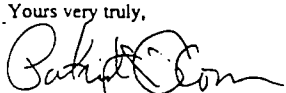
3. The chairman of the Indian tribe in the forefront of this project is active in Republican party politics; this year he was an unsuccessful Republican candidate for the Wisconsin State Senate.

4. All of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee.

5. The entire Minnesota (Democrats and Republicans) Congressional delegation oppose this project. The Wisconsin Democratic Congressional delegation (including Congressman Gunderson in whose district the dog track is located) oppose the project.

I certainly will appreciate it if you will meet with me and two representatives of the tribes as soon as you can work it into your schedule, since a decision by Interior is imminent. We are available on a 24-hour notice.

Yours very truly,



Patrick J. O'Connor

PJO:shy
Doc 26263

O'CONNOR & HANNAN
MEMORANDUM

Via Telefax

TO: David Mercer
Democratic National Committee

FROM: Larry Kitto

SUBJECT: 3:00 p.m. Meeting Today

DATE: April 28, 1995

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1. All tribal leaders at this meeting oppose the conversion of the dog track at Hudson, Wisconsin, to an Indian gambling casino. They are:

Lana Hempell, Chair
Lower Sioux Indians Community (Minnesota)

Marge Anderson, Chair
Mille Lacs Band of Ojibwe Indians (Minnesota)

Stanley Crooks, Chair
Shakopee Mdewakanton Sioux Community (Minnesota)

Lewis Taylor, Chair
St. Croix Tribal Council (Wisconsin)

JoAnn Jones, Chair
Ho-Chunk Nation (former Winnebago) (Wisconsin)

Carl Artman, Attorney
Oneida Tribe of Indians (Wisconsin)

Curt Bluedog, Attorney
Shakopee Sioux Tribe (Minnesota)

Patrick O'Connor, Larry Kitto, Frank Ducheneaux

EXHIBIT
FD - 16

2. The tribes that want to convert the dog track to this Indian gaming casino are:

Sokaogon Chippewa Community (Wisconsin)
Lac Courte Oreilles Band of Lake Superior Chippewa Indians (Wisconsin)
Red Cliff Bank of Lake Superior Chippewa Indians (Wisconsin)

Mr. gaiashkibos "Gosh" is the Tribal Chairman of the Lac Courte Oreilles Band, and he ran for the Wisconsin State Senate as a Republican. We believe that Republican Governor Tommy Thompson of Wisconsin will support this off-reservation Indian gambling project; we also believe it will become a huge off-reservation, destination-entertainment complex project vacuuming most of the existing tribal gaming customers in this region of the country. The present owners of the dog track are from New York, and Senator Al D'Amato is pushing their bail out very hard.

/jj

O'CONNOR & HANNAN, L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, DC 20006-3483
[redacted]
FAX [redacted]

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PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: David Mercer

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TOTAL NUMBER OF PAGES (INCLUDING COVER PAGE): 3

DATE: April 28, 1995

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COMMENTS:

[The deposition of John J. Duffy follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: JOHN J. DUFFY

MONDAY, JANUARY 26, 1998

The deposition in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 10:15 p.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Barbara Comstock, Chief Investigative Counsel; Rae Oliver, Majority staff; Kenneth Ballen, Minority Chief Investigative Counsel; and David Sadkin, Minority counsel.

Also Present: Representative Horn.

For MR. DUFFY:

WILLIAM W. TAYLOR, III, ESQ.
Zuckerman, Spaeder, Goldstein, Taylor & Kolker, L.L.P.
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036-2638

Ms. COMSTOCK. Good morning. On behalf of the members of the Committee on Government Reform and Oversight, we thank you for appearing here today, Mr. Duffy. This proceeding is known as a deposition. The person transcribing this proceeding is a House Reporter. I will also have him swear you in at this time and place you under oath.

THEREUPON, JOHN J. DUFFY, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Ms. COMSTOCK. I would like to note for the record those present at the beginning of the deposition. My name is Barbara Comstock. I am the chief investigative counsel for the committee and the designated Majority counsel today. I am accompanied today by Rae Oliver, who is also with the Majority staff.

Ken Ballen is the designated Minority counsel for today and he is also accompanied by David Sadkin. The deponent is represented by Bill Taylor.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a courtroom. If I ask you about conversations you have had in the past and you are unable to recall the exact words used in the conversation, I would ask that you state that you are unable to recall the exact words, but give me the gist or substance or any recollections that you do have or any knowledge that you have of any of the matters that are questioned upon.

Before we begin the questioning, I would like to give you some background about the investigation and your appearance here. Pursuant to its authority under House Rules X and XI of the House of Representatives, the committee is engaged in a wide-ranging review of possible political fund-raising improprieties and possible violations of law.

Pages 2 through 4 of the House Report 105-139 summarize the investigation as of June 19, 1997, and describes new matters which have arisen in the course of the investigation. Also pages 4 through 11 of the report explain the background.

All questions related either directly or indirectly to these issues or questions which have a tendency to make the existence of any pertinent fact more or less probable than it would be without the evidence, are proper.

The committee has been granted specific authorization to conduct this deposition pursuant to House Resolution 167, which passed the full House on June 20, 1997. Committee Rule 20 outlines the ground rules for the deposition.

Majority and Minority counsel will ask you questions regarding the subject matter. Majority counsel will ask questions first, and then there will be a second round with Minority questions. After the Minority Counsel has completed questioning, a new round of questioning may begin. Members of Congress who wish to ask questions will be afforded an immediate opportunity to ask their questions at any time

when they may be present. When they are finished, committee counsel will resume questioning.

Pursuant to the committee's rules, you are allowed to have an attorney present to advise you of your rights. Any objection raised during the course of the deposition shall be stated for the record. If the witness is instructed not to answer a question or otherwise refuses to answer a question, Majority and Minority counsel will confer to determine whether the objection is proper. If Majority and Minority counsel agree that a question is proper, the witness will be asked to answer the question. If an objection is not withdrawn, the Chairman or a Member designated by the Chairman may decide whether the objection is proper.

This deposition is considered as taken under executive session, which means it may not be made public without the consent of the committee. You are asked to abide by the rules of the House and not discuss with anyone other than your attorney this deposition and the issues and questions raised during this proceeding.

As you know, we are going to be having hearings on Wednesday and Thursday of this week, with Mr. Duffy being a witness on Wednesday, so we will ask that this deposition and transcript be expedited so you will have an immediate opportunity to review it, hopefully, as early as tomorrow morning, so you can make any corrections.

Mr. TAYLOR. When do you expect the deposition will be released to the public?

Ms. COMSTOCK. Probably when Mr. Duffy testifies, I imagine.

Finally, no later than 5 days—I will go through this because we will probably be doing it before that and if there are some issues, you can raise them with us tomorrow. Okay. Do you understand everything we have gone over so far?

The WITNESS. Yes.

Ms. COMSTOCK. Do you have any questions before we proceed?

The WITNESS. No.

EXAMINATION BY MS. COMSTOCK:

Question. Okay. I wonder if you would just give us a brief overview of the background from college forward?

Answer. You want to know where I went to college?

Question. Sure.

Answer. I went to college at Brown University; Providence, Rhode Island. I went to law school at Cornell University, Ithaca, New York.

Question. Could you provide the years you graduated, please?

Answer. I graduated in 1965 from Brown, and 1969 from Cornell. I became an associate at the firm of Pierson, Ball & Dowd in 1974. I became a partner in 1980. I left Pierson Ball & Dowd and became a partner at Piper & Marbury in 1988. I left Piper & Marbury in 1993 to go into the Department of Interior, where I had the position of Counselor to the Secretary.

Question. Maybe I missed it. Between '69 and '74?

Answer. I did what was called at that time alternative law. I worked here for Neighborhood Legal Services for a while. I worked for the United Farm Workers in Arizona for a period of time. I worked for the Native American Legal Defense and Education Fund for a period of time. I traveled in South America. I traveled around America.

Question. And you began your position at the Interior Department in January of 1993?

Answer. I think that is right, yes.

Question. And——

Answer. I was not counsel to the Secretary at that time.

Question. Can you describe——

Answer. I was a consultant to the Department in 1993, and then I later became counsel.

Question. What was the time frame on that, if you could provide it?

Answer. I don't really recall.

Question. Do you know approximately how long you were a consultant?

Answer. I don't.

Question. Was it throughout '93?

Answer. Sometime until '93 I became counselor.

Question. How did you come to get your consultant position at the Interior Department?

Answer. I talked to Bruce Babbitt about it, and became a consultant.

Question. How long have you known Secretary Babbitt?

Answer. Twenty years.

Question. And how did you come to know him?

Answer. I met him in Arizona.

Question. Could you elaborate on that?

Answer. His wife was assisting the United Farm Workers, and I met her, and then through her I met the Secretary.

Question. Have you assisted the Secretary on any campaigns over the years?

Answer. I assisted him in his 1988 Presidential campaign.

Question. What did you do in that campaign?

Answer. I worked, I gave some legal advice to him.

Question. What type of legal advice?

Answer. Federal election law advice.

Question. FEC law?

Answer. Yes.

Question. Could you just describe generally, was that a full-time position you had with him?

Answer. No.

Question. You were still at that point with Piper & Marbury?

Answer. I believe that is correct.

Question. You were providing Mr. Babbitt with FEC advice?

Answer. I think the committee was a client of the firm.

Question. Of Secretary Babbitt's Presidential Committee was a client of Piper & Marbury?

Answer. Yes.

Question. How did the committee come to be a client of Piper & Marbury?

Answer. Through me.

Question. And did you talk with the Secretary—why don't we call Secretary Babbitt Mr. Babbitt for today's purposes, since you have known him over 20 years.

Did you talk with him about taking on the campaign as a client?

Answer. He talked to me.

Question. What did he ask you to do?

Answer. Well, I am sort of reluctant to describe my relationship with the Secretary in our legal context.

Question. Were you doing legal work in this capacity then?

Answer. That is correct.

Question. Were you involved in any fund-raising in 1988?

Answer. No.

Question. Did you know Mr. Patrick O'Connor through your work in 1988 on the campaign?

Answer. No.

Question. Were you aware of him doing any fund-raising for the campaign?

Answer. No.

Question. So what you provided generally was just FEC guidance on the results that the campaign would have to follow?

Answer. Yeah. As a general matter, yes.

Question. And then you said you had talked with Mr. Babbitt about the consultant position. What did Mr. Babbitt ask you to do in that consultant position?

Answer. I assisted him in the transition into the Department of Interior.

Question. So were you assisting him prior to him coming on board as Secretary?

Answer. No, I think I entered the building with him, so-to-speak, just when he entered as Secretary, was sworn in, then I joined to help him transition into the Department.

Question. And was one of the things you were working on any Indian issues?

Answer. I worked on some Indian issues, along with other issues.

Question. Okay. Could you provide for us generally what your experience in Indian issues has been prior to joining the Interior Department?

Answer. I worked briefly for the Native American Legal Defense and Education Fund.

Question. Did you ever work on any cases with Mr. Babbitt?

Answer. No.

Question. Over the years?

Answer. No.

Question. And then at some point you became counsel for Secretary Babbitt?

Answer. Counselor.

Question. And what did that job involve?

Answer. I was involved in individual projects as assigned by the Secretary or the Chief of Staff.

Mr. TAYLOR. Ms. Comstock, we have been assured you are not going to attempt to go over again his Senate deposition. These matters are all set out in the deposi-

tion which I know that everybody has. I just want to call to your attention that is the representation that has been made to us, and that is why we are here.

Ms. COMSTOCK. We are going to try and limit it to the extent that we can. I don't believe they had gone through his prior history and his background with Secretary Babbitt, which is what I was trying to get at here.

EXAMINATION BY MS. COMSTOCK:

Question. Could you tell us what your understanding of what your role was regarding Indian issues as counselor?

Answer. I am not sure what you are asking me, frankly.

Question. Could you just describe your role in the Secretary's office as counselor, what your involvement was with Indian issues?

Answer. Well, I was the chairman of the working group on Indian water rights settlements, and as part of that, I worked to negotiate Indian water rights settlements. I also, as part of those duties, had responsibility for negotiating Indian land claims, and I had responsibility within the Secretary's office on Indian gaming matters.

Question. Could you tell us what that responsibility included?

Answer. Well, depending on the nature of the particular matter that was at issue, for example, with respect to the amendments or proposed amendments to the Indian Gaming Regulatory Act, I interfaced with the Congress and others on that Act and on the proposed amendments to the Act.

Question. What did that include?

Answer. Having meetings with Congress and congressional staff.

Question. Did there come a time when you became involved in a matter generally referred to as the Hudson Dog Track Casino application?

Answer. I think on February 7th, 1995, I believe, I was asked to go to a meeting on the Hill the next day that concerned that matter.

Question. Do you recall who asked you to do that?

Answer. I do not, no.

Question. Was it somebody in the Secretary's office?

Answer. I don't know who asked me.

Question. I mean, was it someone from the outside, a lobbyist, or was it somebody from the inside, in the Interior Department?

Answer. It was someone within the Interior Department.

Question. But you don't know if it was somebody in the Secretary's office?

Answer. I don't recall who it was that asked me.

Question. But was it somebody within the Secretary's—in the office, the immediate office of the Secretary?

Answer. It is likely that it was somebody in that office, but I don't recall who asked me.

Question. Do you have any knowledge of Tom Collier being contacted by anyone about this meeting?

Answer. No.

Question. So as you sit here today, you have no recollection of how you were asked to go to this meeting?

Answer. I have no specific recollection of how I was asked to go to the meeting.

Question. All right. But you do think it was probably somebody within the office mentioned it to you?

Mr. TAYLOR. Are you asking him now to reconstruct?

Ms. COMSTOCK. I am assuming it is not a huge universe of people who would have suggested this to you. Someone didn't come off the street and say you need to be there tomorrow in Congressman Oberstar's office, right?

The WITNESS. No, that is correct.

EXAMINATION BY MS. COMSTOCK:

Question. It wasn't somebody from Congressman Oberstar's office that called you directly?

Answer. That is correct.

Question. It was somebody from the Interior Department?

Answer. That is correct.

Question. Can you tell us the names of all of the people in your offices then?

Answer. In the whole Interior Department?

Question. In the office where you worked. Why don't we just go through your office.

Answer. Well, the Office of the Secretary?

Question. Yes.

Answer. The Office of the Secretary includes the Solicitor's Office, the Office of Congressional and Legislative Affairs, the Office of the Assistant Secretary for Policy Management and Budget. I would imagine over several hundred people.

Question. Okay. Why don't we start with where was your office physically located?

Answer. I was located—I want to make sure I am accurate here. The Secretary's office, then there was down the hall from the Secretary's office there was an office in which he had his secretary and the secretary of the chief of staff. Then there was the chief of staff's office. Then there was the office of Heather Sibbison, who worked with me, and then there was my office.

Question. Okay. In the Secretary's actual immediate office, there is nobody else. He doesn't have a secretary in his immediate office. You have drawn out five squares here that you went through.

Answer. The Secretary's office is a large ceremonial office that he used as his actual working office. Outside of his door of that office, as I said, in the second room sat his secretary.

Question. Who is that?

Answer. The secretary to the chief of staff.

Question. Could you provide us with those names?

Answer. I don't know the name of the secretary of the chief of staff—wait a second. I don't remember the name of the chief of staff's secretary. I believe Barbara Adkinson was the Secretary's secretary during this period of time.

Question. Okay. And then the next office would be Tom Collier's?

Answer. Correct.

Question. And then Heather Sibbison?

Answer. Yes.

Question. Did she have anybody else in her office or an assistant or anything like that?

Answer. No.

Question. And then yourself?

Answer. Right.

Question. Did you have a secretary or any other type of assistant?

Answer. I did. The next down the road was my secretary.

Question. Who would that be?

Answer. Doris Johnson.

Question. Do you recall if any of these people, then, you have named were the individuals who told you about this meeting?

Answer. I said I don't recall who told me about this meeting.

Mr. TAYLOR. And he said that when he was asked that question in the Senate deposition at pages 10 and 11.

EXAMINATION BY MS. COMSTOCK:

Question. That is your recollection of the first contact that you had then regarding the Hudson Casino matter?

Answer. That was the first time I knew about it, yes.

Question. And could you tell us about that meeting?

Answer. It was a meeting——

Mr. TAYLOR. In addition to what he testified to in his deposition in the Senate, what is it you want to know? I assume you have read his Senate deposition, Ms. Comstock?

Ms. COMSTOCK. Yes, I have.

Mr. TAYLOR. On pages 181, 12, 13, 14, he talks about that meeting.

EXAMINATION BY MS. COMSTOCK:

Question. I think on page 13 of that he had testified that it was probably Tom Collier that had told you about the meeting. Do you recall that? Does that help refresh your recollection as to who might have told you about the meeting?

Mr. TAYLOR. That is a "probably," which is the witness' response to the most likely candidate.

EXAMINATION BY MS. COMSTOCK:

Question. Is that still the most likely candidate then?

Answer. I think it is the most likely that he initiated the meeting.

Question. Okay. Have you learned of other documentation showing that Mr. Collier was indeed contacted by Mr. O'Connor?

Answer. No.

Question. No one told you about anything like that?

Answer. I don't recall anything right now. Maybe you could point me to a document. What document are you referring to?

Question. I am not going to go into Mr. Collier's documents. I am going to stick with yours.

Could you tell us why George Skibine accompanied you to that meeting?

Answer. He was the head of the Indian Gaming Office.

Question. And did you ask him to attend with you?

Answer. I believe I asked my secretary to call him.

Question. Did anybody suggest to you that George Skibine accompany you to this meeting?

Answer. I don't believe so, no. I don't recall anybody suggesting that to me.

Question. At that meeting, which is described in your Senate deposition, is it a fair account you were asked to reopen the record and to allow the opponents to have an extension of the comment period?

Answer. I wouldn't characterize it that way, no.

Question. How would you characterize it?

Answer. I don't believe there was a comment period.

Question. And what were they asking you to do then?

Answer. I believe they were asking me if they could submit additional material before we made our decision.

Mr. TAYLOR. By "they" I take it you mean the collective 20 or so people in the meeting?

The WITNESS. Right. That was sort of the request that was being made.

Mr. TAYLOR. Actually, I was asking Ms. Comstock if that is what she meant by the question, but that is all right.

EXAMINATION BY MS. COMSTOCK:

Question. Do you recall any contacts with anybody regarding the Hudson Casino matter prior to this February contact?

Answer. I don't recall any, no.

Question. I am showing the witness a document I believe we received from the Interior Department of January 17, 1995, a letter to Kenneth Tilsen from John Duffy, Counselor to the Secretary. Attached to it is a December 19, 1994, letter to Mr. Duffy from Kenneth Tilsen.

Does that refresh your recollection as to whether you had any contacts about this matter prior to February 1995?

Answer. It doesn't, no.

Question. Do you recall receiving this letter?

Answer. I don't, no.

Question. Do you recall writing the letter of January 17th, 1995?

Answer. I do not.

Question. Directing your attention to the first paragraph, he is thanked for his letter——

Mr. BALLEN. Mr. Duffy, do you know who that is, Kenneth Tilsen?

The WITNESS. Maybe I better read the letter.

Ms. COMSTOCK. If I could ask Minority counsel, we would like to proceed with questioning by Majority counsel and then have Minority counsel do their questions after the Majority counsel has completed.

Mr. TAYLOR. You will accept the question of whether he knows who Mr. Tilsen is is a relevant question?

Ms. COMSTOCK. Yes. But I would like to follow the normal procedures that have been set out under the rules here that are intended to be followed. Certainly, the ones you followed with Mr. Taylor when you were over in the Senate, and have the Majority questioning and then the Minority can question when the Majority is completed.

Mr. TAYLOR. We don't want to get between you guys.

Mr. BALLEN. Well, for the record, the normal rule that has been occurring in depositions in the interest of time while he is reading the documents, is Majority counsel has allowed Minority counsel to ask clarifying questions that are relevant to the proceedings, and it does save time. In the interests of time, Majority counsel heretofore has allowed that. If this is a new policy the Majority is instituting, rather than the normal proceeding, we object to it.

Ms. COMSTOCK. It is not a new policy, it is the policy instituted in the rules.

Mr. BALLEN. It is a new policy. For the past 20 or so depositions I have attended, we have been allowed to ask clarifying questions, which seems only reasonable. Anything else is unreasonable.

Ms. COMSTOCK. I think, Mr. Ballen, you know that is not the normal course of matters in a normal deposition. It certainly is not the indication in the Senate. I am asking you to abide by the rules. That is how we intend to conduct things today.

EXAMINATION BY MS. COMSTOCK:

Question. Do you have any recollection of this letter as you review it?
Answer. I am not finished reviewing it.
[Discussion off the record.]
The WITNESS. Okay.

EXAMINATION BY MS. COMSTOCK:

Question. After reviewing the document, do you have any recollection of any conversations you had with Mr. Tilsen?
Answer. I don't know.
Question. Do you know who Mr. Tilsen is?
Answer. I do not.
Question. You don't recall everything speaking with him?
Answer. I don't recall speaking with Mr. Tilsen, no.
Question. Would it assist your recollection at all if you knew he was involved in opposition to the Hudson Casino?
Answer. I am sorry, I don't recall speaking to him.
Question. All right. Were you aware of any trips to this general area by the Secretary in the fall of 1994?
Mr. BALLEN. Objection. What is the general area?
Ms. COMSTOCK. The Hudson, Wisconsin, area.
Mr. BALLEN. Lack of foundation and specificity.
Mr. TAYLOR. Do you mean geographical area?

EXAMINATION BY MS. COMSTOCK:

Question. Yes, the geographical area.
Answer. Could you repeat the question. I have lost it.
Question. I am wondering if you recall any trips that Secretary Babbitt made to the geographical area in the fall of 1994?
Answer. I believe there is an article attached here from November of 1994 in which Secretary Babbitt was campaigning for a Congressional Democratic candidate, Harvey Stower.
Answer. Let me just read that article.
Mr. TAYLOR. Is this going to be Exhibit 1?
Ms. COMSTOCK. Yes.
[Duffy Deposition Exhibit No. 1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

The WITNESS. Do you want me to read the next article as well?

EXAMINATION BY MS. COMSTOCK:

Question. If you think that will assist you in your recollection.
Answer. I can always try.
Okay. Now?
Question. After reviewing this document and the articles attached to it, do you have any recollection of any discussions that you had with Mr. Tilsen?
Answer. I don't recall any discussions with Mr. Tilsen, no.
Question. Directing your attention to the second page of the document, which is the December 19, 1994, letter to you from Mr. Tilsen, the first paragraph there says, "Thank you for returning my call and for the time you spent discussing the process with me."
Do you generally recall ever discussing any of the procession about anything related to the Hudson Casino matter with anybody?
Answer. I don't recall.
Question. In this time frame, January of 1994? Or I am sorry, December 1994?
Answer. I don't recall this telephone call at all.
Question. To your knowledge, you do not recall anything about Mr. Tilsen then, or ever talking to him; is that correct?
Answer. I am not sure. You seem to be asking two questions.
Question. Do you recall ever talking to Mr. Tilsen?
Answer. No.

Question. About this matter?

Answer. No, not talking to Mr. Tilsen on this matter.

Question. And to this date, you do not know who Mr. Tilsen is?

Mr. TAYLOR. Other than what is set forth on the face of the letter?

The WITNESS. I don't now, other than what you have told me, have any understanding of who Mr. Tilsen is, and I don't recall talking to Mr. Tilsen.

EXAMINATION BY MS. COMSTOCK:

Question. Then directing your attention to the first page on the January 17th, 1995, letter from you to Mr. Tilsen, the third paragraph, you write I appreciate your offer and that of local business and community leaders to travel to Washington to discuss the matter with the Secretary. At this time, however, I do not believe the application has progressed to the point where such a trip would be necessary.

At or around January of 1995, what was your knowledge of the Hudson Casino application?

Answer. I don't recall having any knowledge of the Hudson Casino application at that time.

Question. Who would normally prepare a letter such as this for your signature?

Answer. It could have been Ms. Sibbison.

Question. Would there be anybody else who would prepare such a letter for you?

Answer. There could have been someone in one of the action bureaus, the Bureau of Indian Affairs.

Question. Is this the normal letter that you would have, it doesn't have any—at the bottom it doesn't have anything about who wrote the letter or anything like that.

Mr. TAYLOR. Obviously it doesn't. The letter speaks for itself in that respect.

EXAMINATION BY MS. COMSTOCK:

Question. I am wondering if it is your normal practice to have whoever the Secretary who was that typed it or whoever like that be on the bottom or if there are enclosures or such as that?

Answer. I don't have any normal practice on that.

Question. And do you normally sign letters such as this yourself or do you have other people sign letters for you?

Answer. I think this is my signature.

Question. Okay. So this letter, we will make Exhibit 1, you believe that is your signature?

Mr. TAYLOR. That is what he just said.

EXAMINATION BY MS. COMSTOCK:

Question. Last week a witness who talked to us, a Mrs. Bieraguel, told us that she had met with Secretary Babbitt on this occasion that is described at or around the same time of this visit when Secretary Babbitt was campaigning for the candidate that is noted in the article, Exhibit 1. Do you recall any discussions with the Secretary in general in the fall of '94 about the Hudson Casino matter?

Answer. I don't recall knowing about the Hudson Casino matter in 1994.

Question. Okay. And so——

Mr. TAYLOR. Bieraguel? Do you want to spell that?

Ms. COMSTOCK. I believe it is B-I-E-R-A-G-U-E-L.

Mr. TAYLOR. Thank you.

EXAMINATION BY MS. COMSTOCK:

Question. Nancy is the first name. I believe Ms. Bieraguel indicated that the Secretary had indicated to her that the casino proposal probably wouldn't go forward. Do you know the basis on which—how much information he had or what the basis of his information at that time would have been on the application?

Answer. I don't have any recollection of knowing about the application in this time frame.

Question. Okay. But if you could tell us, given your understanding of the Secretary's office, if you didn't know about it and you weren't provided with any information about this, do you know what the basis of the Secretary's knowledge would be in the fall of 1994?

Answer. I have no idea.

Question. Was this a matter that was Indian gambling or this particular Hudson Casino, was that a matter that the Secretary tended to follow fairly closely?

Answer. I don't have any recollection of knowing about this myself, so——

Mr. TAYLOR. So to finish the answer, you don't know what the state of the Secretary's knowledge was in the fall of 1994; is that your testimony? Let's not be elliptical. If what you mean to say is you don't know the state of the Secretary's knowledge——

The WITNESS. I don't know the state of the Secretary's knowledge at that time.

EXAMINATION BY MS. COMSTOCK:

Question. I guess, then, returning to the February meeting, you have testified that that is your first recollection of knowing about this?

Mr. TAYLOR. Five times at least he has testified to that.

EXAMINATION BY MS. COMSTOCK:

Question. And following that meeting, did you gain any additional information on it, or did you go about to learn anything else about it?

Answer. It is an extremely open-ended question.

Mr. TAYLOR. Would you accept his telling you what he learned and what he did about the Hudson Dog Track matter until July 14th?

Ms. COMSTOCK. If you could give us your complete recollection of all of the activities that you recall, we could proceed with that.

The WITNESS. I sort of thought I laid that out in my deposition.

Mr. TAYLOR. Is there anything in your deposition today which you believe is inaccurate or incomplete?

The WITNESS. I would have to look at it.

Mr. TAYLOR. If you don't know, then you don't know. I think rather than haggle, why don't you tell Ms. Comstock what you remember about your activities and the activities of others from the date of the meeting until July 14th, as best you can.

The WITNESS. Okay. Is that acceptable to you?

EXAMINATION BY MS. COMSTOCK:

Question. Why don't we start with that.

Answer. After the February 8th meeting, we had a series of meetings, as I recall it.

Question. Who is "we?"

Answer. Well, I remember myself, and I remember Mr. Skibine in meetings, and I remember Mr. Anderson, Michael Anderson.

Question. Would this be your meeting with Mr. Anderson in the February-March time frame?

Answer. No. I am talking about the entire time frame.

Question. If you could give us time frames, you are talking very generally.

Mr. TAYLOR. She is not going to accept our invitation. Let's just respond to the questions.

The WITNESS. Okay.

EXAMINATION BY MS. COMSTOCK:

Question. Is it your recollection that you don't recall any time frames of anything, you just recall meetings generally?

Answer. I just recall that we had a series of meetings on it. I don't recall the particular dates of these meetings.

Question. Following the February 8th meeting, do you recall contacting the applicant tribes to let them know that this was going to be the time period was going to be extended for comment?

Answer. I just recently reviewed a letter which had my name typed in on it.

Question. I am showing the witness a March 27th, 1995 document, which we will make Exhibit 2.

[Duffy Deposition Exhibit No. 2 was marked for identification.]

Ms. COMSTOCK. These are documents obtained from the Interior Department, which are not date stamped.

Mr. BALLEN. Can the Minority have a copy of the exhibit?

Mr. TAYLOR. I am going to want one, too. Thank you.

The WITNESS. May I ask a procedural question? Are these the exhibits for the reporter?

Ms. COMSTOCK. Yes.

The WITNESS. I won't doodle on them.

EXAMINATION BY MS. COMSTOCK:

Question. Is this the letter you are referring to?

Answer. Yes.

Question. And so is this the first thing you recall doing after the February 8th meeting, was a March 27th, 1995, letter?

Answer. I frankly didn't recall doing this letter. I don't recognize—this is not my signature here.

Question. Do you know whose handwriting that is?

Answer. I don't really.

Question. Directing your attention to the first paragraph of this letter, it says, as you may know, on February 8th, 1995, I met with, and it goes through the people who attended the February 8th meeting.

Do you recall why you believe Mr. Ackley would have known this?

Answer. I don't recall writing this letter.

Question. Do you recall any communications with Mr. Ackley in this time frame?

Answer. In what time frame?

Question. February-March 1995, spring 1995?

Answer. Who is Mr. Ackley?

Question. The letter indicates he is the Chairman of one of the applicant tribes.

Answer. You mean the letter is addressed to him?

Question. Yes.

Answer. I don't recall having any communication with Mr. Ackley in that February-March time frame, no.

Question. Then directing your attention to the second paragraph of the letter, it says they, meaning the tribal representatives, specifically requested that they be granted additional time to submit reports detailing the impact of the proposed acquisition on nearby tribes. We agreed to this request, but did not set a deadline for the submission of this information.

Do you recall agreeing to that request at the February 8th meeting?

Answer. I do recall agreeing to allowing them to submit additional information, yes.

Question. Did you make that agreement right there in the meeting on February 8th then?

Answer. I don't have a recollection of what I actually said at the meeting, but it is likely I told them that they could provide additional information.

Question. Do you know who you consulted about that prior to that agreement? Or was that just made in response to the request at the meeting itself?

Answer. They requested an opportunity to submit additional information, and I said that the Department would accept additional information.

Question. And then what this letter is indicating is when that request was made and you agreed to extend—to grant additional time, that a deadline had not been set. Do you recall discussing the need for a deadline on what additional information should be submitted?

Answer. I don't recall discussing that, no.

Question. Okay. But directing your attention to the end of the second paragraph here, it says any additional information must be submitted by April 30th, 1995.

Do you recall anything related to that time frame, setting a deadline?

Answer. I am not sure what you are asking me.

Question. I am just directing your attention to the letter to see if that refreshes your recollection as to any setting of a deadline or any discussions that you had with anybody about that?

Answer. This letter doesn't refresh my recollection, but I believe that I have seen information that suggested to me that this letter was something that was prepared by George Skibine.

Question. Okay. Well, at the bottom of it, it does indicate that it does have his name on there. Can you decipher the information on the bottom in order——

Answer. I cannot decipher that.

Question. Do you recall discussing this letter with George Skibine?

Answer. I don't recall discussing the letter.

Question. And the letter also indicates that the additional information must be submitted by April 30th in order to be considered by the Department of Interior in making the Section 20 determination.

Do you recall in particular discussing the Section 20 determination and how that additional information might affect the Section 20 determination?

Answer. I don't have a recollection of a specific discussion.

Question. So there is nothing else that you recall about anything related to this letter as you sit here today and look at it?

Answer. The letter itself does not refresh my recollection.

Question. Do you recall any discussions with Mr. Skibine in the spring of 1995 about a cut-off time on comments?

Answer. I don't have a specific recollection of that, no.

Question. In this time frame of the spring of 1995, do you recall any contact with the applicant tribes about any problems with their application?

Answer. Can I ask my attorney a question?

[Discussion off the record.]

The WITNESS. I am sorry.

EXAMINATION BY MS. COMSTOCK:

Question. In the spring of 1995, do you recall any discussions that you know of with the applicant tribes about problems with their application?

Mr. TAYLOR. I have to object as to form. Discussions by whom, with whom, when?

Ms. COMSTOCK. Any discussions you have knowledge of.

Mr. TAYLOR. Discussions between anybody at the Department of the Interior and the applicant tribe, is that your question?

Ms. COMSTOCK. Informing the applicant tribes about any problems in the application.

Mr. TAYLOR. That is a different question than does he know of any discussions. You are asking him whether he is aware of, and I don't know if he is aware or not, of communications between the Department of the Interior and the applicant tribes, then let's focus the question that way so he at least understands what discussions you want him to think about.

EXAMINATION BY MS. COMSTOCK:

Question. Do you have any knowledge of any discussions with the applicant tribes about any problems with their application?

Mr. TAYLOR. And do you mean by discussions, discussions between people at the Department of the Interior and the applicant tribes? This is not a trick.

Ms. COMSTOCK. Why don't we start with that.

Mr. TAYLOR. I just want to know whose discussions it is your question refers to.

EXAMINATION BY MS. COMSTOCK:

Question. Yes, the Interior Department informing in any manner you knew about, informing the applicant tribes about any problems with their application.

[Discussion off the record.]

Mr. TAYLOR. You are asking him, I take it, for the state of his knowledge at the time, not with regard to information or public accounts or other depositions that reflect on this question. You are not asking him to be a historian. You are asking him whether he now can tell you that he had any information about it at the time; am I correct?

Ms. COMSTOCK. Why don't we start with that. If you are a historian on this and have other knowledge, we can go into that also.

Mr. TAYLOR. We will stop that. But you can ask him about his state of mind at the time.

The WITNESS. Could you frame a question?

EXAMINATION BY MS. COMSTOCK:

Question. Did you contact—why don't we start with did you contact anybody about any problems with the applicant tribes' application?

Answer. In what time frame?

Question. In the spring of '95. Between any time you first learned of it in February of '95 through July 14, 1995.

[Discussion off the record.]

Mr. TAYLOR. What is "the spring?"

Ms. COMSTOCK. That is why I just defined it. Why don't we go with February, when you first learned of it, through when the rejection letter was in July, so we don't have any problems.

Mr. TAYLOR. What is the question? I don't understand the question.

EXAMINATION BY MS. COMSTOCK:

Question. If you are aware, if you ever contacted anybody with the applicant tribes about any problems in their application? You personally were involved in any contact?

Answer. What do you mean by the applicant tribes?

Question. Anyone in the applicant tribes or anyone representing. Was any information passed on to anyone connected with the applicant tribes by you at any time about problems with their application?

Answer. The only time that I believe I communicated with the tribes was through their representatives, Mr. Moody. I believe at my deposition in the Senate deposition, I was shown an affidavit of Mr. Eckstein that suggested that he met with me at some date. I believe it was May 17th, and that affidavit suggested that he brought along or he was accompanied by Mr. Moody and Mr. Newago.

I have testified as to my recollection with that in my Senate deposition. At that, I believe, and again I am saying this from memory, there is an Eckstein affidavit which suggests that at that time I said to somebody that this was not a slam dunk.

That is where I am. I testified in my Senate deposition that I was not on the frontline of this. I was monitoring and having oversight of it. This matter was being dealt with at the Bureau of Indian Affairs.

Ms. COMSTOCK. So the record is clear, we do have—go ahead and make Mr. Eckstein's affidavit that you referred to is Deposition Exhibit Number 3.

[Duffy Deposition Exhibit No. 3 was marked for identification.]

Ms. COMSTOCK. Would you mind sharing one? We have a Congressman here.

Mr. TAYLOR. Do you want the record to reflect he is here?

Ms. COMSTOCK. Yes, Congressman Horn joined us here.

Mr. HORN. As of 11:10.

Mr. TAYLOR. The Congressman needs a copy? I have written on mine.

Mr. HORN. Do you want it back then?

Mr. TAYLOR. I wrote a number on it. I would like to have it back.

Ms. COMSTOCK. As you know, Mr. Taylor, we don't have exhibits going out of the deposition itself. They are made part of the record.

Mr. TAYLOR. All right.

EXAMINATION BY MS. COMSTOCK:

Question. This is the affidavit you were just previously referring to of Mr. Eckstein?

Answer. Yes, I believe that is right.

Question. And I believe page 4, paragraph 3 and paragraph 4, discuss, I believe, the meeting that you were previously referring to; is that correct?

Mr. TAYLOR. It clearly does, May 17th, slam dunk.

Ms. COMSTOCK. I wanted to make clear for the record, that is the recollection you have of the discussion that you had about informing——

Mr. TAYLOR. Wait a minute. Now, wait a minute, Ms. Comstock.

The WITNESS. I have to take a break.

Mr. TAYLOR. We are not going to participate in this. Stay on the record. He has said he saw Mr. Eckstein's affidavit which described that. He did not say that he recalled it, and now you have turned it around and tried to make the record indicate that he recalls it. We are not going to have that.

Ms. COMSTOCK. For the record, why don't we have the record reflect the witness has left the room. Go off the record for a moment.

Mr. TAYLOR. Stay on the record. In justifiable frustration, at the fact you are incapable of phrasing a question that is a direct question that asks him a direct fact which has not yet been asked. He is entirely justified.

Ms. COMSTOCK. We will ask the witness when he returns to the room what his recollection is of this, other than this document.

Mr. TAYLOR. He has already told you what his recollection is. And he told the Senate what it was.

Ms. COMSTOCK. We can go off the record while we are waiting for the witness to return.

Mr. TAYLOR. We can go off the record now. We do not go off the record unless both parties agree.

[Discussion off the record.]

EXAMINATION BY MS. COMSTOCK:

Question. We were referring to Deposition Exhibit Number 3, which was Mr. Eckstein's affidavit and we were referring to page 4 of that. Is it your testimony, then, that you do not recall this—any type of—this meeting or any meeting in this time frame?

Answer. I recall a meeting with Mr.—with Congressman Moody. I believe that there is an excerpt from my schedule showing a meeting on the 17th with Congressman Moody. I remember Mr. Newago's—and Mr. Newago's remarks, and I remember the phrase "not a slam dunk," but I do not connect Mr. Eckstein with that meeting. I do not recall him being present at that meeting and I do not recall Mr. Moody and Mr. Newago together in the meeting.

So I don't recall these facts. All right? And I don't recall the particular date of the meeting with Congressman Moody. I am referring and relying here on the document, my schedule.

Question. Okay. What we had previously been discussing was your knowledge of any information that was given to the applicant tribes about any problems that there were in their application. And other than what you have just testified to as to your recollection that it was not a slam dunk, do you have any other recollection of any discussions you had about any problems with the application?

Mr. TAYLOR. With the applicant tribes?

Ms. COMSTOCK. With the applicant tribes or any other representatives.

The WITNESS. I don't recall having any.

EXAMINATION BY MS. COMSTOCK:

Question. Okay. Did you ever have any discussions with any of your staff about the problems with the application?

Answer. I believe—you mean Heather?

Question. Or any—who were the people that you discussed this application with over time?

Answer. Okay. I testified that I discussed it with Mr. Skibine and I discussed it with Mr. Anderson. I believe I testified to that in my Senate deposition. That's my recollection. I can recall discussing it with those two people.

Question. Do you recall outlining to any of them what you thought the defects in the application were?

Answer. I believe factual information was coming from them to me, not the other way around.

Question. All right. Do you have a recollection of what that information was as to the defects?

Answer. No.

Question. Okay. Do you recall any discussions about——

Mr. TAYLOR. I want the record to be clear. Your word is "defect."

Ms. COMSTOCK. Or any problems or any perceived things——

Mr. TAYLOR. Okay.

Ms. COMSTOCK.—with the application.

Mr. TAYLOR. Defect suggests to me a legal defect or technical problem.

EXAMINATION BY MS. COMSTOCK:

Question. I am talking generally about any problems that you perceived and you discussed with your staff or colleagues.

Answer. First, it is not my staff.

Question. Your colleagues.

Answer. I have testified that there was a series of meetings. During that series of meetings, I believe we discussed the nature of the information that had been developed by the Bureau of Indian Affairs, and I think we discussed various issues of policy. I don't recall the specifics of those discussions or the specifics of those meetings.

Question. Okay. Do you recall generally when a decision was made as to this application?

Answer. July 14th, 1995.

Question. All right. Prior to—that would be the formal rejection letter was on July 14th, 1995?

Answer. Yes, that's the decision.

Question. Prior to that decision, was it your—do you know when staff internally had decided which direction they were going to go in this matter?

Answer. I believe that since——

Mr. TAYLOR. Is it a relevant, fair question, staff internally deciding which direction they are going to go?

The WITNESS. I am trying to—I am struggling with these questions because of their great generality and broadness and lack of specificity, and I am trying to be as accurate as I can. And I am also trying to separate the time frame; that is, the time frame then and the time frame now.

EXAMINATION BY MS. COMSTOCK:

Question. I think the questions are general because I am struggling also with your lack of any specificity or recall on any particulars, so it does make it difficult. I don't want to ask a question——

Mr. TAYLOR. You haven't asked him, Ms. Comstock. That is absolutely unfair. You haven't asked him the first particular.

Ms. COMSTOCK. He doesn't seem to recall any particulars.
Mr. TAYLOR. You haven't asked him one.

EXAMINATION BY MS. COMSTOCK:

Question. That is what I am trying to find out, if you ever recall, and because you don't recall any particulars I have to ask general.
Mr. TAYLOR. You keep talking about staff, staff. Do you understand what his staff is?
Ms. COMSTOCK. That's why we have asked about colleagues now. We can get into definitions all day.
Mr. TAYLOR. I mean, you know who in the Bureau of Indian Affairs was tasked with deciding this. You know who works in the Secretary's office.
Ms. COMSTOCK. So does Mr. Duffy. So if he could explain to us who he discussed this with and when decisions were made and that's what we are trying to get at. If you want to play semantics games all day, we can.
Mr. TAYLOR. You are the one playing semantic games. If you want to ask him who he discussed it, that's fine. That's a good question.
Ms. COMSTOCK. And he has already told us that. Now we are trying to pin that down a little bit more, and if he can't pin down a date, then I am asking him generally if he recalls if he ever discussed it. I am not asking particulars because I am sure he won't remember the particulars.
Mr. TAYLOR. He has already told you who he recalls discussing it with. He calls discussing it with Anderson and Skibine. If I were you, if I were taking the deposition, I would ask him what did you all talk about. But you don't seem to want to hear that. I guess somebody will want to ask that question at some point, what you all talked about.
But I am leaving here at 12:30 because I have to take my wife to a doctor, and that's going to be the end of this deposition.
Ms. COMSTOCK. Mr. Taylor, that was not agreed to at all prior to this.
Mr. TAYLOR. I don't care whether it was agreed to or not. He is here voluntarily. You have wasted at least an hour. Let's go.
Ms. COMSTOCK. We will have to call him back in again if that's going to be the case. We did not make any agreement. If you would like to take a lunch break, we can come back after that. There were no discussions of wife's doctor's appointments before this.
Mr. TAYLOR. You are harassing this witness. You are absolutely wasting his and my time, forcing him to incur legal fees. You have almost 100 pages of deposition from the Senate. You haven't asked a single question that the answer to which doesn't come out of this deposition. Now let's move.

EXAMINATION BY MS. COMSTOCK:

Question. I was asking particulars about what you recall about any problem—did you discuss any problems with this—with your colleagues who you discussed this application with? Do you recall discussing any of the problems?
Answer. What do you mean by problems?
Question. Why don't you tell us what you discussed about in the application, Mr. Duffy.
Answer. I believe I testified in my Senate deposition that I recalled discussing two matters. One was who would sign the letter. And I believe this was—and the other one was whether or not we would rely on Section 151 alone or whether we would also rely on Section 20.
Question. All right. What did you say in those discussions?
Answer. I don't recall what I said specifically in those discussions.
Question. Do you recall if you were insisting that Section 20 be included?
Answer. I didn't insist that Section 20 be included. I believe that I recommended that Section 20 be included.
Question. And do you recall other views on that matter?
Answer. Well, I believe that Mr. Skibine had originally proposed that Section 151 should be the sole grounds for the decision.
Question. And why didn't you want that?
Answer. I thought that since this was a gaming matter and since we had started under Section 20 we should also address the Section 20 question.
Question. Okay. And were you aware that under Section 20 the career staff had indicated the finding of detriment could not be found under Section 20?
Answer. No, I don't know that.
Question. You were not aware of that?
Answer. No. I mean, I am not aware of it now.

Question. Okay. I am showing the witness a May 18th, 1995, memo. Do you have that?

Mr. BALLEN. No, I don't have a May 18th, 1995, memo.

Ms. COMSTOCK. Harold Ickes from Jennifer O'Connor.

Mr. BALLEN. Since Majority does not provide the Minority with exhibits in advance, I have no way of knowing what exhibits you are going to be using. And let the record reflect I don't have a copy of it.

Ms. COMSTOCK. Well, maybe if the witness and his attorney could share a copy, that would resolve the problem.

Mr. BALLEN. It would resolve the problem if we would be provided with exhibits in advance of the deposition.

Ms. COMSTOCK. I don't believe you have ever done that, Mr. Ballen.

Mr. BALLEN. No, but if Majority had any desire to work with Minority, they would.

Mr. TAYLOR. I am going to let Mr. Ballen read from my copy.

Ms. COMSTOCK. Thank you.

EXAMINATION BY MS. COMSTOCK:

Question. I know you have previously testified that I guess you—about the contacts between the White House and the Interior Department and your knowledge of them, and I am not going to go back into those in detail, but this memo indicates, directing your attention to the third paragraph, that staff met last night and came up with a preliminary decision that it would be a bad idea to create the trust land to allow the establishment of the casino.

Do you recall at or around mid-May 1995 a meeting in which such a decision was made?

Answer. I just can't, of my own recollection, place the dates of these meetings, no.

Question. Okay. But in terms of—do you recall—I mean, you have—we have the July 14th, 1995, rejection letter. Can you recall in time whether a preliminary decision among your colleagues, yourself and other people involved in this decision, was made a month or 2 months before that decision?

Answer. No, I can't. We were in discussions, is the way I phrased it before.

[Duffy Deposition Exhibit No. 4 was marked for identification.]

EXAMINATION BY MS. COMSTOCK:

Question. Okay. In reviewing this document, Deposition Exhibit Number 4, which is a May 18th memo, for Harold Ickes at the White House from Jennifer O'Connor, an assistant of his, regarding the Indian gaming in Wisconsin matter, does this accurately reflect where things—the state of play in this time frame, to your knowledge?

Mr. TAYLOR. He just said he didn't know, Ms. Comstock. Really, how can he possibly answer that question when he has just said he didn't know?

EXAMINATION BY MS. COMSTOCK:

Question. I mean, when you read this, do you say, boy, that's right, she knows what's going on in the Department at about this time or that was—this was totally inaccurate and I don't know where she got these facts from? That's what I am trying to understand.

Answer. And I have said I don't have any recollection of the specific time period and what—and the discussions that took place during that specific time period.

Mr. TAYLOR. You haven't even asked him if he was at a meeting at which this was discussed on May 17th.

EXAMINATION BY MS. COMSTOCK:

Question. I am asking if he has any recollection about the matters discussed in this memo.

Mr. TAYLOR. No, that's not the—I think he has answered it.

Ms. COMSTOCK. Well, he said he doesn't recollect any time frame. So is it going to help if I ask if you recall something in May?

Mr. TAYLOR. First of all——

Ms. COMSTOCK. On the May 17th, 1995, meeting.

Mr. TAYLOR. First of all, Mrs. Comstock, this is not rocket science. You have a memo written by someone else, which obviously is based upon facts told to her, presumably her because it says from Jennifer O'Connor, by someone else, neither of whom is here; both of whom or all of whom presumably you have had the chance to ask questions about.

Now, you are asking a man, who has said he has no specific recollection of a meeting or meetings, and certainly not of the time frame of them, and then you ask him whether this memo, written by somebody else based upon what someone else has told her, is consistent with his recollection. That is absurd. It's not just evidentiary—as a matter of evidence improper; it is absurd.

Ms. COMSTOCK. You don't have any information—this doesn't refresh your recollection?

Mr. TAYLOR. I think the question is, do you have any information bearing on the substance?

Ms. COMSTOCK. Other witnesses who have reviewed this document have been able to characterize whether this was accurate or not as to the state of play of events at that time. Now, if your witness is unable to do that and tell us what was going on or recollect anything——

Mr. TAYLOR. I believe he has told you in about 16 different ways that he is not able to do that.

EXAMINATION BY MS. COMSTOCK:

Question. So you recall no meeting on May—the evening of May 17th, 1995, which you may have participated in?

Answer. I don't have a recollection of the time of these meetings, no.

Question. Okay. Do you recall any meeting between February 8th and July 14th, 1995, where you made the decision, a preliminary decision, that it would be a bad idea?

Mr. TAYLOR. Who is you?

Ms. COMSTOCK. Any meeting that you were involved in where this decision was made.

Mr. TAYLOR. By—the decision, Ms. Comstock, the decision to deny the application, is that the decision?

Ms. COMSTOCK. Where there was a preliminary decision made to deny the application.

The WITNESS. I think I have already testified that my understanding of this is that we had a series of meetings and during that series of meetings, a consensus developed. Now, that's the best I can do from my recollection.

EXAMINATION BY MS. COMSTOCK:

Question. That's the extent of your recollection, that a consensus developed?

Answer. That a consensus was developed and I can't put a particular time on particular matters.

Question. Okay. So you don't know if the consensus developed February 9th or July 13th or any time in between?

Answer. I believe I have already testified to that.

Mr. TAYLOR. In great detail.

EXAMINATION BY MS. COMSTOCK:

Question. After the July 14th decision—why don't we discuss—do you have any—I mean, you have reviewed your Senate deposition; is that correct?

Answer. Yes.

Question. Are there any matters that you have since recollected that would assist the committee in terms of other meetings that you were involved in any way in the decision between February 8th and July 14th?

Answer. I can't recall any, no.

Question. After the July 14th, 1995, decision, are you aware of people contacting the White House about this decision, complaints about it?

Answer. After the July 14th decision?

Question. Yes.

Answer. No, I don't recall any.

Question. Okay. Do you have any knowledge of anybody contacting Loretta Avent at the White House?

Answer. I don't, no. I mean—we are talking about what time frame? Now, the time frame——

Question. In the weeks and months following the decision.

Answer. What is important here is what I know then and what I know now. Now, the newspapers—I have read newspaper articles on this. There has been a tremendous amount of information about this. All right? There has been a series of articles in the newspaper as to what occurred. All right?

During the period of time that you are talking about, while I was at the Department, I didn't know anything about contacts with Loretta Avent. I have no recollection of any information about Loretta Avent being involved in this.

Question. Okay. After the decision on July 14th, 1995, what was the next contact you had about anything relating to the Hudson Casino matter?

Answer. I believe we had a meeting with some attorneys who were proposing to file—from the tribes who were proposing to file, I believe, reconsideration or wanted to file for reconsideration. And I believe they may have filed for reconsideration. I really don't know.

Ms. COMSTOCK. This is a February 14th, 1996, memo, which I will make Deposition Exhibit Number 5.

[Duffy Deposition Exhibit No. 5 was marked for identification.]

EXAMINATION BY MS. COMSTOCK:

Question. Did you have any contact with the Solicitor's office about the—any problems in the record as the lawsuit went forward?

Why don't I back up. Did there come a time when you learned that the applicant tribes were going to be filing a lawsuit in this matter?

Answer. I think they filed a lawsuit.

Question. Okay. Do you know who told you about that?

Answer. I believe it was the Solicitor.

Question. Okay. Did you have any discussions in the Solicitor's office about any concerns that they had?

Answer. I recall meeting with the either the U.S. Attorney or her deputies, or her and her deputies, or just her deputies or somebody and people from the Solicitor's office with respect to responding to the lawsuit.

Question. Okay. Do you know who that was you met with?

Answer. I don't remember, other than their—I don't remember their names.

Question. Okay. Do you recall any discussions about anyone from the Solicitor's office telling you they were concerned with the way the decision-making process had been conducted?

Answer. I don't recall a discussion of that. My recollection is that we were talking about responding to some pleadings, either motions or we were preparing a motion or they were preparing a motion. It had to do with motions and it was during that time that I believe I executed an affidavit which was filed in a civil suit.

Question. Okay. Directing your attention to the second page, paragraph 3, of this document, the second page, the paragraph 3 there reads, "Now that we have reviewed the administrative record in greater depth, we have determined that the alleged problems with the Section 217 process are significant." Do you recall any discussion about that?

Answer. I don't recall a discussion of the particular issues here. I do recall that there was some discussion between the Solicitor's office and the U.S. Attorney, and I believe I was asked about my thoughts on whether or not we should consider some sort of settlement, and I believe I suggested that from my perspective we should just press on with the litigation. But that decision whether to litigate or not is entirely and exclusively a decision for the Office of the Solicitor. So I do not believe that I participated in any detailed way in this decision-making process.

Question. Okay. But then if you could continue, on page 2, the next sentence in that third paragraph reads: "We are primarily concerned about our ability to show that the plaintiffs were told about and given an opportunity to remedy the problems which the Department ultimately found were outcome-determinative."

Do you recall any discussions about those matters?

Answer. I don't recall any discussions about them, no.

Question. Do you recall if you were ever asked to provide any information showing that the plaintiffs were told about and given an opportunity to remedy the problems which the Department had identified?

Answer. I don't recall being asked to provide that information, no.

Question. Were you aware of concerns expressed that such communications weren't in the document of record?

Answer. Again, I don't recall I was involved in the details of this. I don't believe I ever saw this document. That's my recollection is that I did not see this document.

Question. Do you know if you had any discussions with the—about the lawsuit with Mr. Skibine?

Answer. Mr. Skibine? I don't recall having a discussion with Mr. Skibine. My sense is that I discussed this with Bob Anderson, the Associate Solicitor for Indian Affairs.

Question. Okay. Did there come a time when you became aware that Mr. Patrick O'Connor had done some fund-raising based on the killing of this application, represented that this application be killed and that he was doing fund-raising based upon that representation?

Mr. TAYLOR. Again, other than what has been in the media.

The WITNESS. Let me try to clarify the timing. I believe that when a civil suit was filed, that information was—well, let me back up for a second. We were shown some involvement, some activity, by Patrick O'Connor, by the U.S. Attorneys, when the civil suit—after the decision has been made, when the—after the civil suit had been filed, we, I believe met, as I think I just testified, and I think I drafted my affidavit at that time, and I have a very unclear recollection of this, but I seem to feel that that may have been the time when I heard about Patrick O'Connor's involvement.

I don't believe I knew about any contributions until after I left the Department in the fall of 1996 and I don't believe that I knew that Patrick O'Connor was making any representations until much later than that.

EXAMINATION BY MS. COMSTOCK:

Question. Do you recall how you learned about contributions?

Answer. In the newspaper, as I testified in my Senate deposition.

Question. Have you been provided with documents from the Interior Department to review prior to your deposition today?

Answer. I have been provided with certain documents by my attorney.

Question. All right. And I am wondering if anyone from the Interior Department has provided you with documents?

Answer. I got my documents from my attorney.

Question. Has anyone from the Justice Department task force or the FBI talked with you about the Hudson Dog Track Casino matter?

Answer. I believe someone from the—I know someone who identified herself as an FBI agent talked to me, and she was accompanied by two individuals who identified themselves as being attorneys of the Justice Department. But I don't know whether they were on the Task Force or not.

Question. Do you recall when that was?

Answer. It was after my Senate deposition. That also is something I testified to in my Senate deposition. No, that's not right.

Mr. TAYLOR. Couldn't have been.

The WITNESS. Couldn't have been. Sorry. I apologize.

EXAMINATION BY MS. COMSTOCK:

Question. All right. And currently, you are with Steptoe & Johnson; is that correct?

Answer. That's correct.

Question. And one of your clients is the Shakopees?

Answer. One of the firm's clients.

Question. Do you work on matters related to the Shakopees?

Mr. TAYLOR. You can answer that.

The WITNESS. Yes, I do.

EXAMINATION BY MS. COMSTOCK:

Question. Did Mr. Babbitt assist you in any way in getting your job at Steptoe & Johnson?

Answer. No.

Question. Did he discuss with you at all who you might be representing at the firm?

Answer. No.

Question. Had you represented the Shakopees before the Interior Department or had any occasion to have contact with people at the Interior Department about matters related to the Shakopees since you have left?

Mr. TAYLOR. We are being a little sensitive to this. I want to make sure that I understand your question. The question is, has he contacted anybody at the Department of Interior on behalf of the Shakopees?

Ms. COMSTOCK. Yes.

Mr. TAYLOR. Okay. You can answer that.

The WITNESS. I have, yes.

EXAMINATION BY MS. COMSTOCK:

Question. Can you tell us who you have contacted?
Mr. TAYLOR. Yes.
The WITNESS. I have had contacts with Michael Anderson. I believe I have had contacts with Hilda Manuel.

EXAMINATION BY MS. COMSTOCK:

Question. Is there anybody else?
Answer. Those are the only ones I recall right now.
Question. Are you aware of anyone recusing themselves from dealing with you on matters related to the Shakopees?
Answer. Recusing themselves?
Question. Yes.
Answer. I don't think formally. I think Heather has told me that she has voluntarily indicated that she is not going to be working on any Shakopee matters.
Question. Okay. Do you have any understanding as to why that is?
Answer. I have no idea. It is her decision. She just told me that.
Question. Do you recall when she told you that?
Answer. I don't recall. Sometime early in the process.
Question. Early in what process?
Answer. Early in the—after I left the—soon after I left the Department.
Question. And you left, is it July 1996?
Answer. Right.
Question. And do you recall what she told you?
Answer. I don't.
Question. But at or around the time when you left, she told you that she wasn't—you are not to contact her on any of these matters?
Answer. No. I think she just told me that she felt that she didn't want to be involved in any contacts that I made with the Department. It was just her own desire.
Question. Okay. That's the extent of the conversation that you had about that?
Answer. Yes.
Question. Can you give us an estimate on how much of your income is derived from your representation of the Shakopees?
Answer. My income is in no way related to the Shakopees.
Question. Okay. Are you the main attorney who works on matters related to them?
Answer. My—I have an arrangement, a fixed-fee arrangement, with Steptoe & Johnson. I get a certain amount of money. I am an of counsel.
Mr. TAYLOR. Her question was, are you the principal person?
The WITNESS. Tom Collier is the principal attorney.

EXAMINATION BY MS. COMSTOCK:

Question. Other than you and Mr. Collier, are there any other people who work on these matters at the firm?
Mr. TAYLOR. You can answer yes or no.
The WITNESS. Yes, there are other people.

EXAMINATION BY MS. COMSTOCK:

Question. Do you know approximately how many other people?
Answer. I don't. Let's see. It depends on the nature of the problem. Three or four maybe.
Question. Okay. But Mr. Collier is the main person who handles matters related to the Shakopees?
Answer. It is his client.
Question. Okay. And when you say it is his client, you said the firm represented them prior to—do you know when the firm first started representing the Shakopees?
Answer. Sometime after Mr. Collier left the Department of Interior.
Question. Okay. So Mr. Collier actually brought them on as a client then; is that correct?
Answer. That's my knowledge.
Question. Okay. He left in July of '95; is that correct?
Answer. I think he left in June. I really don't remember. I don't know when he left, frankly, to be honest with you. I really shouldn't say because I don't know.
Question. Okay. But it is your understanding that the firm did not represent the Shakopees prior to Mr. Collier coming to the firm?
Answer. That's my understanding.

Question. Do you know if Mr. Collier has met with people at the Department regarding the Shakopees?

Answer. I don't know what he has done—I don't know what Mr. Collier has done in the period before I joined Steptoe & Johnson.

Question. Okay. When he left at or around July of '95, did he ever have occasion between July of 1995 and when you left the Interior Department to contact you about matters related to the Shakopees?

Answer. No.

Question. Are you aware of Secretary Babbitt's comments that he was concerned that both of you were representing the Shakopees and the appearances of that?

Answer. I think I read an article in which he indicated that he would not himself have done it, or represented the Shakopees.

Question. Okay. Are you aware of comments that he made that he couldn't condone that?

Answer. I am not aware of that.

Question. Have you had any discussions with the Secretary about your representation?

Answer. No.

Question. Have you discussed it with Mr. Collier?

Answer. My representation of the Shakopees?

Question. Discussed the Secretary's comments. I am sorry.

Answer. Yes.

Question. Okay. Can you describe those discussions?

Answer. I think I—we read the article in the newspaper. It was sent to us by someone from Phoenix. We were surprised, and we concluded that he probably doesn't have all the facts.

Question. Why do you say that?

Answer. Because there is no impropriety.

Question. Do you have knowledge of Mr. Collier delivering contributions to the DNC from the Shakopees?

Answer. I don't have any knowledge, other than what I read in the newspapers subsequently.

Question. Okay. So at the time, at or around the fall of 1996, you were not aware that there had been contributions made?

Answer. I don't recall knowing about those contributions at that time, no.

Question. Okay. Did anyone from the DNC ever contact you about having the Shakopees make contributions?

Answer. No.

Ms. COMSTOCK. I need to take a short break.

Mr. TAYLOR. Okay.

[Recess.]

[Duffy Deposition Exhibits Nos. 6 and 7 were marked for identification.]

EXAMINATION BY MS. COMSTOCK:

Question. These are two letters that I will go ahead and make Deposition Exhibits 6 and 7, July 19th and July 25th letters to Secretary Babbitt from Senator McCain. I believe the date you left was July 17th, 1996; is that correct?

Answer. That's my recollection, yes.

Question. Were you contacted by anyone at the Interior Department about these letters from Senator McCain?

Answer. You mean to Senator McCain?

Question. Well, these two letters are from Senator McCain, and then there was a letter written back to Senator McCain responding to these. What I am asking is if you were contacted about these letters being received by the Secretary.

Answer. Are you asking whether I knew they had been received?

Question. Yes.

Answer. Yes. I was told that they had been received.

Question. And who told you?

Answer. I believe it was the solicitor.

Question. What did he tell you?

Answer. Just that, if my recollection is correct here, I think they prepared a memorandum—were preparing a memorandum in answer to one of these letters, I don't know which one, and they asked me to review the memorandum. I think it had been initially prepared by Heather.

Question. Okay. Were the letters sent, the actual letters sent, to you?

Answer. I don't recall.

Question. Why don't I give you all the letters. This is the response, August 30th, 1996, which I will make Deposition Exhibit Number 8.

Directing your attention——

Mr. HORN. Excuse me. Let me get these straight. You said on the one that was from McCain to Babbitt, that is Number 6, is it?

Ms. COMSTOCK. Yes. There are two letters there, July 19th and then July 25th.

Mr. HORN. Then there is a response. I had the response in here from the Secretary to McCain. Is that Number 7 or are we now saying that's Number 8?

Ms. COMSTOCK. It is Number 8.

Mr. HORN. But it is also included in this.

Ms. COMSTOCK. Yes. The July 19th letter is Exhibit Number 6, the July 25th is Exhibit Number 7, and then the August 30th response is Exhibit Number 8.

[Duffy Deposition Exhibit No. 8 was marked for identification.]

EXAMINATION BY MS. COMSTOCK:

Question. In the beginning of that response, it indicates that it is responding to Senator McCain's letters of July 19th and 25th. So this August 30th letter apparently was designed to respond to both of these letters. Could you just tell us your involvement in the process of responding to these letters from Senator McCain?

Answer. I believe my involvement was to review a memorandum prepared by the Department, which I thought went along with one of these letters.

Mr. TAYLOR. There is a memorandum attached to them.

The WITNESS. To 8?

Mr. TAYLOR. To 8.

Ms. COMSTOCK. The August 30th letter has a—the third page of that is an August 29th, 1996, memo to the Secretary from Heather Sibbison.

The WITNESS. I believe this was sent to me.

Mr. BALLEN. Could the Minority have a copy of that? We don't have a copy of that, the memo.

Ms. COMSTOCK. It is not attached to your copy of the 30th?

Mr. BALLEN. No, it is not attached.

Mr. TAYLOR. You have seen it before, I will bet.

Mr. BALLEN. I have.

EXAMINATION BY MS. COMSTOCK:

Question. The second page of the August 29th memo, which is page 4 of Exhibit 8, the top of the paragraph does indicate, it says, Mr.—the end of the top paragraph says, Mr. Anderson, Mr. Collier, and Mr. Duffy, who left the Department in July 1996, agree with the recollections I set forth here. The four of us are referred to below as "we."

Is this the memo then that you recall reviewing?

Answer. This is my understanding, that I reviewed this.

Question. Do you know if you had any edits or any drafts of this document that you have?

Answer. I didn't have any drafts of it, no.

Question. Can you just describe the process that you went through in reviewing this?

Answer. I really don't remember the process. All I can say is at some point I was consulted on the letter and—or the memo, and, you know, I think I reviewed the memo.

Question. Just so—it is hard for the court reporter, if you put your hands over your mouth, to catch your words.

Answer. That's a bad habit I have. There is—my recollection is that I reviewed a written document and that's it.

Question. Do you recall the entire document like being sent to you or faxed to you?

Answer. I really don't recall that. I mean, I just don't have a clear—I don't have a specific recollection of the mechanism.

Question. Do you know if you saved any paper or anything that you reviewed on this?

Answer. I don't think—let me back up for a second. I don't recall receiving more than one document. Okay? So I don't believe I made any changes to the document.

Question. Okay. Do you recall having conversations prior to your receiving the document about the general fax in question?

Answer. I don't, no.

Question. Then is the extent of your recollection that just a document was sent to you that you reviewed?

Answer. I think I reviewed this document, yes.

Question. The August 29th, 1996, memo?

Answer. Correct.

Question. Okay. Now, did you review any of the—the letter, the August 30th letter, to Senator McCain?

Answer. I don't recall reviewing that.

Question. Okay. Or the August 29th, 1996, memo to the Secretary from the solicitor, do you recall?

Answer. I don't recall seeing that, no.

Question. Okay. So your only recollection in this Deposition Exhibit Number 8 is that you reviewed the August 29th memo?

Mr. HORN. Let me ask a question here on the procedures in the Office of the Secretary. When you look at a letter that is coming from either the Deputy Secretary, Under Secretary, Assistant secretary, solicitor, do you put your initials on the official office file copy?

Mr. TAYLOR. Well, Congressman, I think Mr. Duffy was not in the Department as of August of 1996.

Mr. HORN. No; I am asking the process now. When he was counselor to the Secretary, what is the process within the Office of the Secretary?

The WITNESS. With respect to what?

Mr. HORN. With respect to the clearance of paper as to who sees it. I happen to have held that position under President Eisenhower, and I know there were 15 signatures usually by the time I got it and took it into the boss. And the question would be: Do you put your initials on the paper coming through so he knows you have seen it? That's usually what the Secretary wants to make sure, is that his principal staff assistant has looked at this and doesn't have a concern with it, so I will sign it.

How does the system work at Interior?

The WITNESS. Action documents that were created by the Bureau had what were called—I am blocking on the name, Congressman, but they were sheets that were——

Mr. HORN. Routing sheets?

The WITNESS. It wasn't routing sheets, no. These were surname sheets. If there was an action document, they would be surnamed by various people before it went—and this was—before it went to the Secretary or any particular decision maker.

Mr. HORN. How about nonaction documents, invitations to the Secretary to make a speech, this kind of thing? How was that handled?

The WITNESS. Those all were routed through the scheduling office.

Mr. HORN. And went directly to him, not through you?

The WITNESS. They did not go through me.

Mr. HORN. What paper did go through you, the action documents?

The WITNESS. It depended on what was the subject matter.

Mr. HORN. Well, give me an example.

The WITNESS. Well, for example——

Mr. HORN. I assume anything political went through you.

The WITNESS. No, that's incorrect.

Mr. HORN. Really? Who handled that?

The WITNESS. I only handled specific tasks within the Department of Interior.

Mr. HORN. That he personally delegated to you?

The WITNESS. That he or the chief of staff delegated to me.

Mr. HORN. So the chief of staff handled the political contacts?

The WITNESS. When you say—I am unclear what you mean by "political."

Mr. HORN. The Secretary is besieged in paper. You can drown a Cabinet Officer. I am trying to see who decided what went in to him or who ran the pen machine.

The WITNESS. He had an executive secretariat at the Department of Interior that received information and distributed it for action, and that was a group headed by Schedule C, I believe, who received——

Mr. HORN. So they determined what would go to you?

The WITNESS. They determined what would go where, right. Exactly.

EXAMINATION BY MS. COMSTOCK:

Question. Are you aware of anybody else reviewing this August 29th memo, other than the people that Ms. Sibbison had identified here, Mr. Anderson, Mr. Collier, and yourself?

Answer. I don't——

Mr. TAYLOR. Ms. Comstock, so that the record is clear, both of these memos are dated August 29th.

Ms. COMSTOCK. I am sorry. The August 29th memo from Heather Sibbison.

Mr. TAYLOR. You mean the Sibbison August 29th memo?

Ms. COMSTOCK. Yes.

The WITNESS. I don't know that the people mentioned in here reviewed it. All I know is that I reviewed it.

EXAMINATION BY MS. COMSTOCK:

Question. Okay. Did you discuss this with the Secretary at all in this time frame in 1996?

Answer. No. No.

Question. Okay. Your previous testimony in the Senate has been that you do not recall discussing any contacts from the White House from Harold Ickes with the Secretary on this matter; is that correct?

Answer. I am not sure what you are asking me.

Question. Okay. Why don't I—did you ever discuss with Secretary Babbitt any contacts that he had with Harold Ickes about the Hudson Casino matter?

Answer. He never told me that he had any contacts with Harold Ickes, no.

Question. Did anybody else ever tell you the Secretary had contacts with Harold Ickes about the Hudson Casino matter?

Answer. No.

Question. Have you ever heard of anyone else discussing that there were such contacts?

Answer. No.

Question. Okay. So you have no knowledge of any contacts between Harold Ickes and Secretary Babbitt about any matters relating to the Hudson Casino?

Answer. That's correct.

Question. I am assuming that's aside from anything in press accounts that have made suggestions to that effect. Would that be the only——

[Witness confers with counsel.]

Answer. I don't believe there's a shred of evidence that Mr. Ickes ever talked to the Secretary about this or the Secretary ever talked to Mr. Ickes about it.

EXAMINATION BY MS. COMSTOCK:

Question. And you yourself never talked to Mr. Ickes about any of these matters?

Answer. I have no recollection of talking to Mr. Ickes, no.

Question. Okay. And you have—you don't recall ever talking to Mr. Fowler about any of these matters?

Answer. I do not. I do not recall that.

Question. All right. You are aware that Mr. Fowler recalls calling somebody at the Interior Department about this?

Answer. I heard that later on. I can't place when, but after I left the Department.

Question. Do you have any knowledge as to who Mr. Fowler may have contacted?

Answer. No.

Question. Returning to this August 30th letter and these attachments, did you review any documents in addition to—to assist you in reviewing the August 29th memo that Ms. Sibbison did that was represented that you concurred with?

Answer. No. The action responsibility lay on Ms. Sibbison. As I understand it, she was simply sending us the material to ensure that we had no differing recollection. So I didn't do anything.

Question. In the course of responding to this letter to Senator McCain, were you aware that a similar letter from Senator McCain had gone to Harold Ickes at the White House?

Answer. At the time?

Question. Yes.

Answer. No.

Question. So at the time you were not aware of any coordination of responses from the solicitor's office?

Answer. I don't recall any of that, no. I was not involved in that, no.

Question. Okay. So no one ever asked you to review Mr. Ickes' letter or to look at that letter, the letter that Mr. Ickes sent to Senator McCain?

Answer. I didn't—I don't recall seeing any letter that Mr. Ickes ever wrote to Senator McCain.

Question. So nobody from the White House contacted you about that?

Answer. I don't recall any such contact, no.

Mr. HORN. Let me ask a question, Ms. Comstock.

One of your sentences was, I don't believe there is a shred of evidence that Mr. Ickes ever called the Secretary. Is that correct, what you said? I think I got the gist of that.

The WITNESS. Yes.

Mr. HORN. Was that because it had been shredded at either end of—between the White House and the Interior Department? Are you aware of any shredding that has gone on in either place?

The WITNESS. Do I have to answer that?

Mr. TAYLOR. The answer is no.

The WITNESS. No.

Mr. HORN. You are not aware of that?

The WITNESS. No.

Mr. HORN. And you did not do any?

The WITNESS. No.

Mr. HORN. Or did you?

The WITNESS. No.

Ms. COMSTOCK. This is an October 10, 1997, letter to Senator Thompson from Secretary Babbitt, and it will be Deposition Exhibit Number 9.

[Duffy Deposition Exhibit No. 9 was marked for identification.]

EXAMINATION BY MS. COMSTOCK:

Question. Were you consulted at all in the drafting of this letter from Secretary Babbitt to Senator Thompson?

Answer. I don't recall being consulted on this, no.

Question. I think the record is clear that you had left the Department at this point as you had with the prior letters, but given that the subject matter was kind of going back to the same matters, I was just wondering if anyone had contacted you for any points of clarification on these matters at or around the fall of 1997.

Answer. I don't recall any such contacts.

Question. Directing your attention to the last paragraph of this letter where——

Answer. Are you talking about Exhibit 9?

Question. Yes, October 10, 1997, letter, Exhibit 9. I'm sorry, the last paragraph on the first page.

It reads, "I do believe that Mr. Eckstein's recollection that I said something to the effect that Mr. Ickes wanted a decision is correct."

Do you recall reading about this letter in the fall of 1997 and reading anything to that effect?

Answer. Do you mean after this letter was sent to the committee?

Question. Yes.

Answer. I believe there were press reports.

Question. Actually what I'm getting at is were you surprised that the Secretary, to recount that he did think that he said something to the effect that Mr. Ickes wanted a decision?

Answer. I don't have any knowledge of what the Secretary said to Mr. Eckstein.

Question. But prior to this time, was it your understanding that the Secretary had indicated that he had never said anything like that, that he denied Mr. Eckstein's recollections of that meeting?

Mr. BALLEN. Objection. Based on the conversations he had with the Secretary or based on what he read?

EXAMINATION BY MS. COMSTOCK:

Question. I'm just asking what your understanding was prior to this letter of last fall. It was your understanding that the Secretary—Mr. Eckstein had said in his affidavit that the Secretary said something to the effect that Mr. Ickes wants a decision today, and in the prior letters that we've just gone through, the August 30 response, the indication was that there hadn't been any communication from the White House, and there was nothing to that effect. I was just wondering if you were surprised by this revelation of Secretary Babbitt saying that he did say that Mr. Ickes wanted a decision that day, and that that was a means of terminating the meeting. I'm wondering if you were surprised by that account by Secretary Babbitt.

Answer. I wasn't surprised by it.

Question. Was that consistent with your understanding of what went on in that meeting?

Answer. I had no understanding of what went on in that meeting other than what the Secretary had written, so I formed no particular opinion about it. The Secretary is the person who knows this, not me.

Question. And you had never discussed it with him, what actually went on in the meeting?

Answer. No, absolutely not. I had no conversations with him about that.

Question. Is there some reason you didn't ask him about the meeting?

Answer. No, I just never asked him about it.

Question. But in preparing the responses from you in December of '96 to the letters, was there ever any discussion about what actually went on in the meeting?

Answer. Well, I didn't prepare any information, to my knowledge, about what went on in the meeting. I had nothing to say about that. I had no input in it.

Question. Well, you reviewed Ms. Sibbison's memo, right?

Answer. Right, with respect to those matters that I had knowledge of.

Question. But in terms of your responding to what you had knowledge of, did you attempt to gain a general understanding of the entire situation of what had gone on in that meeting?

Answer. No, I don't know what went on in that meeting.

Question. But again, my question is, were you surprised by Secretary Babbitt's account?

Mr. TAYLOR. I think he's answered the question. Let's move on.

EXAMINATION BY MS. COMSTOCK:

Question. Your answer was you were not surprised by this account?

Mr. BALLEN. Objection. He answered the question. His answer is in the record. Why do you have to characterize it differently than was answered?

Ms. COMSTOCK. I don't know if—I don't believe he directly——

Mr. TAYLOR. The question has been specifically asked and specifically answered if he was surprised. The answer was no. He had no information whatsoever about what went on in the meeting; therefore, he formed no opinion about it.

EXAMINATION BY MS. COMSTOCK:

Question. So you have no opinion about this representation in the October 10, 1997, letter?

Answer. I have no opinion at all about it, no.

Question. Have you discussed this letter with Mr. Collier, this October 10 letter or any of the representations made by Secretary Babbitt about the July 14, 1995, meeting with Mr. Eckstein?

Answer. I think we were concerned when there was revelations in the press that people thought that these two letters were inconsistent.

Question. That's what you discussed with Mr. Collier?

Answer. We were concerned about the submission of letters that other people thought were inconsistent. I believe the Secretary has since explained the matter.

Question. But could you describe what your conversations were with Mr. Collier?

Answer. I really don't recall them in detail. It would be just a conversation—we were concerned about it.

Question. That's all you recall about the conversations?

Answer. That's all I recall.

Question. Did you discuss those accounts with—I mean, the letter or the representations made in the letter with Ms. Sibbison?

Answer. You mean after the letter was in the press? You mean after the——

Question. Yes, generally the testimony and the information that's reflected in the letter.

Answer. I'm trying to think whether I did or not. I don't recall a specific conversation with her about this, no. I think, and I'm trying to separate this from material that I read subsequently about her—about the drafting of the letter. I believe it was in her deposition. And I can't—I'm struggling to recall this here, but I just don't have a recollection of discussing the letter with her or the two—or the phraseology of the letter.

Question. You said that you did recall discussing it with Mr. Collier, though. Do you recall if Mr. Collier was surprised by the revelations in the October 10, 1997, letter?

Answer. I really couldn't characterize his response to it.

Question. He didn't say anything one way or the other about how——

Answer. Well, he didn't say he was surprised.

Question. Did he appear to know that the Secretary had said something to Mr. Eckstein about—made some reference to Mr. Ickes in the meeting?

Answer. I can't discern that from—I don't have any recollection of our conversation that would lead me to come to any such conclusion, no.

Question. So Mr. Collier has never told you anything about anything having to do with Mr. Ickes that was discussed in that July 14 meeting?

Answer. Mr. Collier was gone by the time of this.

Question. I understand that, but I was wondering if Mr. Collier ever said anything to you about that doesn't square with what someone told me about that meeting,

or that is what I know about that meeting? Has Mr. Collier ever indicated to you that he had any knowledge about what representations were made by the Secretary in that meeting?

Answer. No.

Ms. COMSTOCK. I don't think I have any other questions at this time.

Mr. HORN. At the bottom of Exhibit 8, the Secretary says in response to Mr. McCain, "I have never discussed the matter with"—it is Exhibit 9 at the bottom of the page. To Fred Thompson from the Secretary, dated October 10. This is on Mr. Eckstein's recollection. What I'm going to quote is the last sentence.

The Secretary says, "It was not the first time that I have dealt with lobbyists by stating that the administration expects me to use my good judgment to resolve controversial matters in a timely fashion, nor do I expect it to be the last."

Does this imply that there has been a series, whether one or more, of meetings of lobbyists with the Secretary where they have said, implied that, well, you know the White House is on our side, and we expect you to do the right thing, of course, and so forth? And, if so, do you ever remember any other events such as this as when you sat in a meeting, the lobbyists have been there, and the Secretary has been there, has he ever walked out of those meetings on other issues, or what? And how often do they occur, once a month, once a year, once every 6 months?

Mr. TAYLOR. Exactly which of those questions do you want him to answer?

Mr. HORN. I want him to answer all of them. Did such meetings occur besides this incident where the Secretary is sitting there, somebody implies that the White House is all for us, et cetera? Of course, you want to do the best thing possible. How much White House pressure did you get in the Office of the Secretary on anything, coal contracts, dams, whatever, that you sat in on and observed secretarial behavior? And is this generally true, what he says here?

The WITNESS. What he says here, Congressman, is that it's not the first time that I have dealt with lobbyists by stating that the administration expects me to use my good judgment.

Mr. HORN. That's right.

The WITNESS. Okay.

Mr. HORN. How many people come over and say, hey, I talked to the White House; they're all for this?

The WITNESS. I don't recall any other occasion.

Mr. HORN. Okay.

The WITNESS. But I was not in every meeting with the Secretary. In fact, I was probably not in the vast majority of the Secretary's meetings.

Mr. HORN. Who would usually be in those meetings?

The WITNESS. The Secretary often had no one in the meeting.

Mr. HORN. Just him?

The WITNESS. Just him.

Mr. HORN. My gosh, he didn't learn the first rule of this town: Always have a witness.

So the Chief of Staff didn't sit in on some of these things?

The WITNESS. He would sit in on some. I don't know how many of the meetings he sat in on.

Mr. HORN. Okay.

The WITNESS. While thinking about this, I was trying to respond to the question you asked me before about whether I had had a conversation with Heather about this letter after it had been created.

EXAMINATION BY MS. COMSTOCK:

Question. The October 10, 1997, letter?

Answer. Right, Exhibit 9. And it's possible that I did have a conversation with her about this, but I just cannot remember the nature of that conversation. I stated my recollection was not sufficient to allow me to do that.

Question. Generally what is your recall of how often somebody from Mr. Ickes' office would contact people in the Secretary's office?

Mr. BALLEN. Excuse me, Ms. Comstock, you said you had no more questions.

Ms. COMSTOCK. I'm just following up on this.

Mr. BALLEN. Well, I wasn't permitted to make a follow-up during my round, or your round.

EXAMINATION BY MS. COMSTOCK:

Question. Do you recall how often Mr. Ickes would contact the Secretary's office?

Answer. My sense is that it would be infrequent.

Question. Did Mr. Ickes ever call you on any matter?

Answer. He did, yes.

Question. And what were those matters?

Answer. He called me concerning the status of an application dealing with land in trust, I think, for the Wyandotte. Not the Wyandotte. I'm sorry. I'm trying to think here. Wait a minute and I'll think about the name of the tribe. It was a tribe in—well, I can't think where the tribe is located that wanted to take land into trust in Massachusetts. I believe I had a conversation or meeting with him about that, and I believe he called me on one other occasion, but I can't recall the——

Question. Is the Massachusetts one different from Connecticut?

Mr. TAYLOR. It is. The Gay Heads?

The WITNESS. This is the Gay Heads, yes.

Question. Is it a Martha's Vineyard?

Answer. Yes. And I believe that he also called to inquire about the status of an application for land in trust for thes Pequots.

Question. Do you recall when that was?

Answer. I don't. Sometime a long time ago.

Question. A long time ago, like in 1993?

Answer. '93 or '94. Early '94.

Question. Do you know if you have any documents or records relating to those contacts?

Answer. I don't.

Question. Do you recall what the nature of his inquiry was?

Answer. He just asked about the status of the application.

Question. Do you recall what you told him?

Answer. That we were working on it.

Question. Do you know why he was calling?

Answer. I don't know.

Question. Do you have any knowledge of why he needed that information?

Answer. I believe the matter was receiving a considerable amount of congressional attention at the time.

Question. That's the Connecticut matter?

Answer. Right.

Question. And then the Massachusetts matter that you referenced?

Answer. I think there was congressional interest in that as well.

Question. Do you recall when that inquiry was made?

Answer. I don't, no.

Question. Generally——

Answer. I don't believe he talked to me. I think he talked to—I think he first talked to the Chief of Staff.

Question. About both of those matters or just——

Answer. Just about—Anne Shields at the time.

Mr. TAYLOR. Just about which?

The WITNESS. About the Gay Head. Wampanoag.

Question. That would have been when Anne Shields was Chief of Staff?

Answer. Yes.

Question. So that would be after July of '95 or thereabouts?

Answer. Absolutely.

Question. Do you recall what the nature of the contact was?

Answer. He was interested, as there was congressional interest in our dealing with the application, he was interested in that. I don't know. We had a meeting. That's all I remember is we had a meeting with him.

Question. Was that a meeting at the White House?

Answer. I don't remember if it was the White House or the Executive Office Building.

Question. But you went there, he didn't come to the Interior Department?

Answer. No. And I went, I think, with the Chief of Staff is my recollection, right.

Question. Was there a meeting just on the Massachusetts matter, or was there a meeting on the Connecticut?

Answer. This was on the Wyandotte matter. There was no meeting on the Massachusetts matter. I believe I received a telephone call at some point in time on that matter.

Question. Is that all you recall about the contacts with Mr. Ickes?

Answer. Right, that's all I remember.

Ms. COMSTOCK. I have no further questions at this time.

EXAMINATION BY MR. BALLEN:

Question. Mr. Duffy, just to follow up on that, so Mr. Ickes made a number of contacts with you on matters relating to land in trust for Indians?

Answer. No, not a number of contacts.

Question. Two?

Answer. I've indicated two incidents.

Question. Two occasions?

Answer. Two occasions which I had contact with Mr. Ickes about these matters.

Question. Your testimony is he never had any contact with you on the Hudson Casino matter?

Answer. No, absolutely not.

Question. Just to put this in context, sir, as part of your responsibilities, did you have any line responsibility in deciding the Hudson Casino matter?

Answer. No.

Question. Did you have this as a policy matter within the Office of the Secretary? Is that how you were looking at it? How did you see your relationship to the staff?

Answer. I was, as I testified on my Senate deposition, in oversight. I was monitoring the decision-making process.

Question. And what was your concern in monitoring the decision-making process?

Answer. It wasn't the concern. It was there was—the matter had been brought to the Secretary's attention by the request for the February 8 meeting. It was a controversial issue. Therefore, in the gaming—it was a controversial issue in the gaming area, and I wanted to—and was supposed to monitor those type of issues and make sure that we understood in the Secretary's office the direction that those issues were taking.

Question. In monitoring those issue, did you ever instruct the staff on how to decide that issue one way or another?

Answer. No, I did not instruct them on how to decide the issue.

Question. Did you express any policy concerns to the staff?

Answer. I expressed what I thought was the Secretary's policy direction on this type of activity.

Question. Within the other matters you handled, if you could estimate, what percentage of time did you spend on this matter from February until the final—February '95 until the final decision was?

Answer. A very, very small amount. This was an application proceeding through the Bureau of Indian Affairs. So my job, as I testified on my Senate deposition, was to dip in and out and determine how things were going.

Question. So you did not see your role as being substantively involved in the details of the decision or the analysis?

Answer. No.

Question. Sir, are you aware of any improper conduct whatsoever within the Department of Interior in deciding this issue?

Answer. I'm not aware of any improper conduct, no.

Question. Are you aware of any political pressure from the White House or from the Democratic National Committee?

Answer. I personally am not aware of any White House pressure or any pressure from the Democratic National Committee to decide it one way or another, no.

Mr. BALLEN. I have nothing further.

EXAMINATION BY MS. COMSTOCK:

Question. I just have a couple of questions on another matter very briefly.

Were you aware of attempts to get Webster Hubbell's wife a job, Suzanne Hubbell a job at the Interior Department?

Mr. TAYLOR. What's the relevance of that to this inquiry?

Ms. COMSTOCK. The committee is looking at matters related to Mr. Hubbell, and there have been a number of meetings with Mr. Collier that Mr. Hubbell had at or around this time, so I was just wondering if this witness might have any knowledge of that.

The WITNESS. I have no knowledge other than that she got a job—that Suzy Hubbell was employed at the Department of Interior, I know that.

EXAMINATION BY MS. COMSTOCK:

Question. Were you aware of any contacts from the White House in order to secure that position for Mrs. Hubbell?

Answer. I was not aware of any, no.

Question. Were you aware of Mr. Collier meeting with Mr. Hubbell after he left the Justice Department in the spring of 1994?

Answer. I have no awareness of that, no. I'm not aware of that.

Question. And you have never discussed any matters relating to Mr. Hubbell with Mr. Collier?

Answer. No.

Ms. COMSTOCK. Thank you. That's all I have.

[Whereupon, at 12:45 p.m., the deposition concluded.]

[The exhibits referred to follow:]

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JAN 17 1995

Mr. Kenneth E. Tilsen
[redacted]

Dear Mr. Tilsen:

Thank you for your letter of December 19, 1994, and the kind words contained therein. The Clinton Administration is serious about reinventing Government, and that means being responsive to the concerns of our citizens.

I have sent a copy of your letter to the Indian Gaming Office and asked them to explain to you both the process for approval and the present status of the application.

I appreciate your offer and that of local business and community leaders to travel to Washington to discuss the matter with the Secretary. At this time, however, I do not believe that the application has progressed to the point where such a trip would be necessary.

Sincerely,

John J. Duffy
Counselor to the Secretary

TH 290

SURNAME

MAR 27 1995

Honorable Arlyn Ackley Sr.
Chairman
[redacted]

Document provided pursuant to Congressional subpoena

Dear Chairman Ackley:

As you may know, on February 8, 1995, I met with Senator Paul Wellstone, Representatives Jim Oberstar, David Minge, Bill Luther, Bruce Vento and tribal representatives from the Mille Lacs, Bois Forte, Leech Lake, Shakopee Mdewakanton Sioux, Red Lake and St. Croix Tribes, to discuss their concerns with your application to place land located in Hudson, Wisconsin, in trust for the Sokoagon Chippewa, Community, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and the Red Cliff Band of Lake Superior Chippewa Indians for gaming purposes.

At this meeting, tribal representatives indicated that they did not believe the Bureau of Indian Affairs (BIA) had complied with the tribal consultation requirements of Section 20 of the Indian Gaming Regulatory Act, and that they lacked sufficient information to adequately respond to your proposed acquisition. They specifically requested that they be granted additional time to submit reports detailing the impact of the proposed acquisition on nearby tribes. We agreed to this request, but did not set a deadline for the submission of this information. In order not to unduly delay consideration of this proposed acquisition, we have advised the parties with whom we met on February 8 that any additional information must be submitted by April 30, 1995, in order to be considered by the Department of the Interior in making the Section 20 determination.

Please be assured that our commitment regarding the submission of additional information will not delay consideration of other aspects of your application by the BIA's Indian Gaming Management Staff. Should areas of concerns with the application be identified, you will be so notified.

Sincerely,

EXHIBIT 2

/s/ John J. Duffy
John J. Duffy
Counselor to the Secretary

bcc: Secy Surname, Secy RF(2), 101-A, Bureau RF, Surname, Chron, Hold
BIA:GSkibine:trw:3/16/95:219-4068 wp:a:ackley.dog
corr per JDuffy:trw:3/27/95

Identical letters sent to: gaiashkibos, Lac Courte Oreilles Band of Chippewa
Rose Gurnoe, Red Cliff Band of Lake Superior Chippewas

Referendum of December, 1992 - Do you favor or oppose the proposed addition of a casino to the dog track?
Response: 71% opposed

Referendum of April, 1993

A. Do you favor restricting casinos?
Response: 81% in favor of restrictions

B. Do you approve or oppose expansion of Video Gaming?
Response: 78% opposed

C. Do you favor a Constitutional Amendment against Expansion of Gaming?
Response: 75% in favor of Constitutional Restriction

D. Do you favor the closing of the dog track?
Response: 62% Yes, and,

WHEREAS, it is not likely that anyone has overstated the objections of the Town of Troy to the proposed casino,

NOW, THEREFORE, BE IT RESOLVED that:

1) The Town of Troy hereby restates its vigorous objection to casino gambling at the St. Croix Meadows Greyhound Racing Facility.

2) The Town of Troy further states its position that casino gambling at the St. Croix Greyhound Racing Facility will be ~~determintal~~ detrimental to the *surrounding* community.

The Town of Troy Chairperson and Clerk shall direct copes of this resolution to all relevant State and Federal persons and bodies.

Adopted by the unanimous vote of the Supervisors of the Town of Troy on the 12th day of December, 1994.

Babbitt supports Stower's record

● BABBITT from Page 1C

where expansion of legalized casino gambling can take place.

Republican Gov. Tommy Thompson and his challenger in Tuesday's election, Democrat Chuck Chvala, have said they do not want to expand Indian gaming in the state. A gubernatorial veto would kill the plans for the Hudson casino.

"The law requires the governor's consent," Babbitt said at a political reception for Stower. "I doubt Congress will change that."

Babbitt, a former governor and attorney general of Arizona, now oversees the majority of the country's public lands, national parks and wildlife refuges, while also acting as a trustee for Native American tribes.

"If we really want rural America to find its place in the sun, we have to work together by bringing together conservation groups, agriculture, environmental protection agencies and economic development," Babbitt said. "That's what he [Stower] has done in the Wisconsin Legislature.

"Mark my words, you will have been present at the creation of something entirely new when Harvey Stower is elected to Congress.

"An entirely new type of person will come into Congress, this person has the strong character, integrity and vision to make a difference," Babbitt said.

Bulletin Board

RESOLUTION BY TOWN OF TROY
Regarding St. Croix MeadowsGreyhound Racing Park
Hudson, Wisconsin

WHEREAS, the United States Department of Interior, Bureau of Indian Affairs has made a "Finding of No Significant Impact" for a proposed trust acquisition of part of the St. Croix Meadows Greyhound Racing Facility for the purpose of Casino Gambling at the facility, and,

WHEREAS, the property involved is an integral part of the Town of Troy, was part of the Town of Troy before being annexed to the City of Hudson in order to build the facility and is *surrounded* on three sides by the Town of Troy and it residents, and,

WHEREAS, on February 17, 1994, the Acting Director of the Bureau of Indian Affairs for the Minneapolis Area Office wrote to the town requesting a response to the question:

> "Will a gaming establishment on the newly acquired land be detrimental to the surrounding community?" and,

WHEREAS, on March 14, 1994, the chairperson of the Town of Troy, acting on behalf of the Town responded to the letter from the Bureau of Indian Affairs. The responsive letter pointed out detrimental impacts in each of the seven separate areas identified by the Bureau and added twenty additional questions, and,

WHEREAS, attached to the "Finding of No Significant Impact" was a section entitled,"Response to Comments Regarding the Proposed Dog Track/Casino Facility in Hudson, Wisconsin." Among other things the document stated:

> "No official, nor unofficial, comments were received from representatives of the Town of Troy regarding these documents. It is expected that alleged objections from the Town of Troy may be overstated, or that the town's concerns have been resolved," and,

WHEREAS, the citizens of the town have spoken through their votes on three separate occasions as follows:

Referendum of March, 1989 - Do you favor or oppose the proposed Greyhound Racing Track?
Response: 89% opposed

Fold the hand on Hudson casino plan

Other Editors Say

By The Milwaukee Sentinel

It couldn't be any clearer.

Gov. Tommy G. Thompson, preparing to begin his third term, says he'll block any effort by American Indian tribes to turn the failing St. Croix Meadows dog track in Hudson into a casino.

Not even approval of the idea by regional federal officials fazes Thompson. Queried about preliminary approval by the U.S. Bureau of Indian Affairs of plans by a coalition of Indian bands to buy the track and operate it as a casino, Thompson said, "Not interested."

Thompson said repeatedly during his re-election campaign that he would oppose any expansion of gambling.

And since federal law requires his approval before any Indian casino can open in Hudson, things don't look bright for expanded gambling there — or for any other dog track site in the state, for that matter.

Months ago, Wisconsin voters expressed disapproval for any expansion of gambling in Wisconsin.

So, regardless of what Thompson might think, there already has been a clear public signal to government that Wisconsin has come far enough down the gambling trail and that there should be no further movement.

That Thompson now has expressed the same thought doubles the trouble for those who would transform tracks into full-scale casino operations.

Long ago, when the state first got into the gambling business andlicensed five dog tracks for operation in Wisconsin, there were some observers who believed that some day, the five would become one.

One track already has closed. Three of the other four are losing money.

The dog tracks all blame the advent of Indian gaming for most of their financial difficulties. They have sought changes in state law to keep them competitive and enhance their abilities to generate profits.

The tribes, on the other hand, see the tracks' difficulties as their chance to expand Indian gambling operations.

But Wisconsin has enough gambling.

Just because the tracks were overbuilt and then underutilized is no excuse to undo the will of the people.

Volume 140 Number 35

Hudson Star-Observer

ESTABLISHED IN 1854 (USPS) 253 660

Published Weekly by the Star-Observer Publishing Company, Inc., 226 Locust Street, P.O. Box 147, Hudson, Wisconsin 54016

Publisher Emeritus — Willis H. Miller
Publisher — Joy Griggs
Executive Editor — Douglas W. Stahlberg
Editor — Robert A. Zientara
News Reporters — Meg Heston, Joe Winter
Photographer — Margaret A. Ostl
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SUBSCRIPTION RATES
St. Croix, Pierce and Washington counties — $28
Elsewhere — $50
Second class postage paid at Hudson, Wisconsin 54016

In Wisconsin 715-386-9333
* In Minnesota 612-426-4433
Postmaster send form 3579 to
226 Locust St., P.O. Box 147 Hudson, WI 54016

WISCONSIN NEWSPAPER ASSOCIATION

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SOKAOGON CHIPPEWA COMMUNITY (MOLE LAKE BAND OF LAKE SUPERIOR CHIPPEWA), LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF WISCONSIN, and RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF WISCONSIN,

Plaintiffs,

v. Case No. 95C 0659

BRUCE C. BABBITT, Secretary, UNITED STATES DEPARTMENT OF INTERIOR, MICHAEL J. ANDERSON, Deputy Assistant Secretary, UNITED STATES DEPARTMENT OF INTERIOR, JOHN J. DUFFY, Counselor to the Secretary, UNITED STATES DEPARTMENT OF INTERIOR, and GEORGE SKIBINE, Director, Indian Gaming Management Staff, UNITED STATES DEPARTMENT OF INTERIOR,

Defendants.

AFFIDAVIT OF PAUL F. ECKSTEIN

STATE OF ARIZONA)
) SS.
MARICOPA COUNTY)

Paul F. Eckstein, being first duly sworn on oath, deposes and states as follows:

1. I am a member of the Phoenix, Arizona law firm of Brown & Bain, P.A., and I am making this affidavit to evidence statements made to me or that were made in

HAMLINE
UNIVERSITY
SCHOOL OF LAW

Clinic Office

cc Hilda Manuel
Kevin Meunier
Pam'a Hart
FYI - H. Jon

December 19, 1994

Mr. John Duffy
Office of the Secretary of Interior
[redacted]

RE: Proposed Transfer of Part of Dog Track Facility to Trust for Purpose of Casino Gambling, Hudson, Wisconsin

Dear Mr. Duffy:

Thank you for returning my call and for the time you spent discussing the process with me on December 12, 1994. Your courtesy, attention, and advice was most appreciated.

I do not intend to bombard you with a flurry of facts and paper, but we do want you to understand that the proposed bail-out of a failing dog racing venture in Hudson, Wisconsin, is a terrible idea. It is bad for all the people of Hudson and bad for all persons in the Minnesota-Wisconsin area.

The Milwaukee Sentinel said it very clearly in its recent editorial captioned "FOLD THE HAND ON HUDSON CASINO PLAN."

On Monday, December 12, 1994, the Town of Troy, which surrounds the dog track facility on three sides, unanimously resolved and restated its vigorous objection to casino gambling at the dog track.

For five years the cities of Hudson and all the surrounding areas have expressed themselves against the dog track and against any extension of gambling there by anyone. Citizens of Hudson, Town of Troy, Town of North Hudson, Village of Hudson and St. Croix County have all voted in favor of closing the dog track. These citizens recently presented the Governor with over 3,000 signatures in opposition to the casino plan.

Frankly, we have seen no evidence that those who processed the application to date have any sensitivity to the problems. Indeed, they seem too ready to accept the misrepresentations of the dog track public relations flacks as if they were true. The somewhat secretive and mechanistic process to date exacerbates the problems.

[redacted]

The December 15, 1994, edition of the local paper quotes Alicia Sandoval as stating that Assistant Secretary Ada Deer will have the final authority to say yes or no to the casino proposal. Ms. Sandoval is also quoted to the effect that the process "will probably take 45 days to complete."

I would like to again advise you and Secretary Babbitt that representatives of the major businesses and community leaders in the Hudson area are eager and ready to travel to Washington to explain our position to the Secretary at such time as he believes it would be appropriate.

Very truly yours,

Kenneth E. Tilsen

Enclosures:
1. Article, Eau Claire Leader-Telegram, 11/16/94
2. Editorial, Milwaukee Sentinel (reprint from Hudson Star Observer, 12/8/94
3. Resolution, Town of Troy

/klm

n

IT'S A CRIME: Eau Claire County is expecting to handle 35,195 criminal cases in 1995, compared with 33,292 criminal cases in 1993.

SUNDAY
November 6, 1994
Leader-Telegram

C
Section

Babbitt: Hudson casino unlikely

By Carrie Michael
Leader-Telegram staff

U.S. Secretary of the Interior Bruce Babbitt, while campaigning for Democratic Congressional candidate Harvey Stower in Eau Claire Saturday, indicated Wisconsin's next governor likely will override plans for a new Indian casino in Hudson.

■ Gunderson says moderates will hold power. Page 2C.

A 1988 Democratic presidential candidate, Babbitt explained that Indian casinos cannot be built on properties that are outside of tribal trust lands.

Three Wisconsin tribes have proposed a casino be built at the St. Croix Meadows Greyhound Racing Park in Hudson, an area outside of tribal trust.

Babbitt said both the interior secretary and the governor must approve any measures to expand the size of Indian reservations, which gives them control over

See BABBITT, Page 2C

Staff photo by David Joles

U.S. Secretary of the Interior Bruce Babbitt gestures while state Rep. Harvey Stower, D-Amery, listens Saturday night in Eau Claire. Babbitt came to west-central Wisconsin to campaign for Stower, who is challenging U.S. Rep. Steve Gunderson, R-Osseo, in Tuesday's election.

my presence by officers of the United States Department of Interior relating to the plaintiff Tribes' (the "Tribes") application to have property located in Hudson, Wisconsin approved for off-reservation gaming pursuant to § 2719(b)(1)(A) of the Indian Gaming Regulatory Act ("IGRA") and acquired in trust by the Secretary of the United States Department of Interior under § 465 of the Indian Reorganization Act ("IRA").

2. On or about May 1, 1995, I was retained by Galaxy Gaming and Racing Limited Partnership ("Galaxy") to assist Galaxy and the Tribes in their efforts to obtain Department of Interior approval for off-reservation gaming at Galaxy's greyhound racing facility in Hudson and for the trust acquisition described above. On May 8, 1995, Mark Goff, a consultant to Galaxy, faxed me a copy of a letter dated May 8, 1995 from Patrick O'Connor to Harold Ickes. Harold Ickes is the Deputy Chief of Staff to the President of the United States. The letter states, in part:

> I appreciate your calling me concerning the above subject [The Tribes' Hudson proposal] on Tuesday, April 25, and again on Wednesday, April 26. I assume these calls were prompted by my discussions with the President and Bruce Lindsey on April 24 when they were in Minneapolis. I returned your calls and talked to your assistant, Mr. Sultan, who advised that you were not in the office when I called. Since I had an appointment with Don Fowler on Friday, April 28, to discuss this matter, I decided not to try to contact you until after the Fowler meeting with the chairman of five of the many Minnesota and Wisconsin tribes that would oppose the creation of the trust lands for gambling purposes and the bail out of the current dog track owners.
>
> I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. Since the Fowler memo was sent to you, the City Council of Hudson, Wisconsin, passed a resolution opposing the construction and operation of a casino at the dog track.

The letter goes on to state:

> I am concerned that those at Interior who are involved are leaning toward creating trust lands. We requested a copy of the Arthur Andersen report which the petitioners commissioned which found no adverse financial impact. The copy submitted to us "blocked out" all the vital information relating to the size of the operation, how many machines, tables, etc., which we need to know, as well as the statistics and reasoning used in determining that the surrounding casinos would not suffer a serious economic impact. We need this data in order to put our best case forward to Interior. We have no objection to Interior's submitting the Coopers & Lybrand report or the Peat Marwick report to the petitioners.
>
> I would also like to relate the politics involved in this situation:
>
> 1. Governor Thompson of Wisconsin supports this project.
>
> 2. Senator Al D'Amato supports this project because it bails out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Delaware North is located in Buffalo, New York.
>
> 3. The Chairman of the Indian tribe in the forefront of this project is active in Republican Party politics; this year he was an unsuccessful Republican candidate for the Wisconsin State Senate.
>
> 4. All the representatives of the tribes that have met with Chairman Fowler are Democrats and have been for years. I can testify to their previous financial support to the DNC in the 1992 Clinton/Gore Campaign Committee.
>
> 5. The entire Minnesota (Democrats and Republicans) Congressional delegation oppose this project. The Wisconsin Democratic Congressional delegation (including Congressman Gunderson in whose district the dog track is located) oppose the project.

> I certainly will appreciate it if you will meet with me and two representatives of the tribes as soon as we can work it into your schedule, since the decision by Interior is imminent. We are available on 24-hour notice.

A copy of this letter is attached to this affidavit. Donald Fowler is Chairman of the Democratic National Committee. I understand that a copy of Mr. O'Connor's letter has been placed in the administrative record at pages 02880-81.

3. On May 16, 1995, I travelled to Washington to attend a meeting with defendant John Duffy. I attended the meeting with Mr. Duffy on May 17, 1995. Also in attendance were the chairpersons of the Tribes and Mr. Havenick. During the meeting, George Newago of the Red Cliff Tribe made an impassioned plea to Mr. Duffy relating his personal experience growing up in a poor family as a member of a poor tribe. Mr. Duffy listened to Mr. Newago but said very little during the meeting. In response to a comment by Mr. Havenick, however, Mr. Duffy did say that approval of the Tribes' application was not a "slam dunk" but did not elaborate further.

4. Following the May 17, 1995 meeting with Mr. Duffy, I was advised that Department of Interior officials would meet with me but that they would not meet again with the Tribes. I believe that the person who told me this was Barbara Atkinson, an administrative assistant in the Office of the Secretary.

5. On June 16, 1995, I telephoned Tom Hartman, a member of the Indian Gaming Management staff, who was working on the staff report on the Tribes'

application. I asked Mr. Hartman if there were any problems with the application and he said "nothing that isn't curable."

6. On June 26, 1995, I telephoned defendant George Skibine, Director of the Indian Gaming Management Staff, to ask about the status of the staff's report on the Tribes' application. Mr. Skibine said that he wanted to keep his job and therefore could not discuss what was in the staff's report.

7. At a result of Mr. Skibine's comments to me on June 26, 1995 and Galaxy's and the Tribes' growing alarm at the political pressure being asserted against the application and the failure of the Department to communicate with either the Tribes or their representatives about what was happening with the application, I telephoned Secretary Babbitt on July 11, 1995 and requested a meeting with the Secretary. At that time, the Secretary told me that he would have John Duffy call me. Mr. Duffy called me later that day from an airplane and said that the Department was ready to make a decision. I requested a meeting with Mr. Duffy for later that week. Mr. Duffy wanted to meet the next day in Washington but I could not make arrangements to travel that quickly. After some discussion, we agreed to meet the morning of July 14, 1995.

8. Former Congressman Jim Moody and I met with Mr. Duffy the morning of July 14, 1995. The meeting lasted slightly less than an hour. During the first 40 minutes of the meeting, Mr. Duffy listened to our arguments in support of the application and appeared to be receptive. Near the end of the meeting, however, Mr. Duffy said that the application was being denied and that a decision would be issued later that day.

Mr. Duffy said that there were two reasons for the denial: (1) the proposed gaming establishment would be harmful to the St. Croix Chippewas, and (2) the City Council of Hudson, the United States Congressman for the district, and other political officials were now on record against the project.

9. Later that day, on July 14, 1995, I met with Secretary Babbitt. I asked the Secretary if he would delay the release of the decision on the Tribes' application until the following Monday to allow time for the Tribes to attempt to respond to the political pressure being exerted against the application. Secretary Babbitt said that the decision could not be delayed because Presidential Deputy Chief of Staff Harold Ickes had called the Secretary and told him that the decision had to be issued that day.

10. I had never heard of Michael Anderson, the person who signed the July 14, 1995 letter denying the Tribes' application. Neither Secretary Babbitt, nor Messrs. Duffy, Skibine or Hartman nor anyone else I spoke to ever mentioned his name. My understanding was that Ms. Ada Deer, the Assistant Secretary - Indian Affairs, was the person who would make the decision on the Tribes' application for approval under IGRA. No one ever explained to me why Mr. Anderson rather than Ms. Deer signed the July 14, 1995 letter.

11. I was deeply disappointed by the decision denying the plaintiffs' application. In my over 30 years of practice of law, I had not been involved in a matter in which the merits were so strongly on the side of the parties I was representing.

Paul F. Eckstein

Subscribed and Sworn to before me
this 8th day of January, 1996.

Notary Public, State of Arizona
My Commission: _____

OFFICIAL SEAL
ROBIN NELSON BURRIS
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires JUNE 4, 1996

[redacted]

May 8, 1995

file - Hudson Dog Track

Mr. Harold Ickes
Deputy Chief of Staff for Policy
and Political Affairs
[redacted]

Re: Proposal pending at Interior to create trust lands at the Hudson Dog Track in Hudson, Wisconsin for an Indian Gaming Casino

Dear Mr. Ickes:

I appreciate your calling me concerning the above subject on Tuesday, April 25, and again on Wednesday, April 26. I assume those calls were prompted by my discussions with the President and Bruce Lindsey on April 24 when they were in Minneapolis. I returned your calls and talked to your assistant, Mr. Sutan, who advised that you were not in the office when I called. Since I had an appointment with Don Fowler on Friday, April 28, to discuss this matter, I decided not to try to contact you until after the Fowler meeting with the chairman of five of the many Minnesota and Wisconsin tribes that oppose the creation of the trust lands for gambling purposes and the bailout of the current dog track owners.

I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. Since the Fowler memo was sent to you, the City Council of Hudson, Wisconsin, passed a resolution opposing the construction and operation of a casino at the dog track.

The Secretary of Interior has the discretion to create such trust lands if he finds:

1. It creates an economic benefit for the applicants, and
2. It does not create economic hardship for others.

The Minnesota and Wisconsin tribes who met with Interior officials explained the economic losses they would suffer if another casino were established in this area, due to the close

proximity of their casinos. In addition, Coopers & Lybrand as well as Peat Marwick recently submitted to Interior a detailed analysis outlining the adverse economic repercussions that would result from this happening.

I am concerned that those at Interior who are involved are leaning toward creating trust lands. We requested a copy of the Arthur Anderson report which the petitioners commissioned which found no adverse financial impact. The copy submitted to us "blocked out" all of the vital information relating to the size of the operation, how many machines, tables, etc., which we need to know, as well as the statistics and reasoning used in determining that the surrounding casinos would not suffer a serious economic impact. We need this data in order to put our best case forward to Interior. We have no objection to Interior's submitting the Coopers & Lybrand or the Peat Marwick reports to the petitioners.

I would also like to relate the politics involved in this situation:

1. Governor Thompson of Wisconsin supports this project.

2. Senator Al D'Amato supports this project because it bails out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Delaware North is located in Buffalo, New York.

3. The chairman of the Indian tribe in the forefront of this project is active in Republican party politics; this year he was an unsuccessful Republican candidate for the Wisconsin State Senate.

4. All of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee.

5. The entire Minnesota (Democrats and Republicans) Congressional delegation oppose this project. The Wisconsin Democratic Congressional delegation (including Congressman Gunderson in whose district the dog track is located) oppose the project.

I certainly will appreciate it if you will meet with me and two representatives of the tribes as soon as you can work it into your schedule, since a decision by Interior is imminent. We are available on a 24-hour notice.

Yours very truly,

Patrick J. O'Connor

PJO:shy
Doc 96161

02881

May 18, 1995

EMORANDUM FOR HAROLD ICKES

ROM: JENNIFER O'CONNOR

UBJECT: INDIAN GAMING IN WISCONSIN

ne attached information from Patrick O'Connor refers to a proposal at Interior to allow three 'isconsin tribes to establish a casino at a bankrupt dog track in Hudson, Wisconsin.

he Secretary of the Interior has the discretionary ability to create trust lands to enable the ibes to establish the casinos. However, by statute, he must first assess the economic costs id benefits to the local community.

ne Department is reviewing the proposal. Staff met last night and came up with a 'eliminary decision, which will likely not be final for another month. The staff believe it is robably a bad idea to create the trust land to allow the establishment of the casino. Their asons are as follows (NOTE – this information is not public and is confidential at this oint):

The local community is almost uniformly opposed to the proposed casino. The tribes that want to establish it live 250 miles away, but no one in the immediate area wants it established, including the Mayor, City Council, other local officials and Congressman Gunderson. The Department feels that this local opposition is an indication of adverse impact on the local community.

The Minnesota delegation is also uniformly opposed to the proposal. Minnesota tribes located near the state border feel they would be adversely impacted by the competition.

It is likely that a decision to approve this proposal would result in a spotlight being shone on the Indian Gaming Regulatory Act, which is under some legislative pressure at the moment. The Department wants to avoid this kind of negative attention to the Act.

ne other side of the argument is the support of free market economics. Some Department aff think the bottom line here is the Minnesota and Wisconsin tribes who are benefitting iormously from gaming don't want the competition, and are able to hire bigger lobbyists an the three very poor tribes who want the casino. However, the staff don't think this 'gument negates the uniform opposition from the local community.

ne current status is this: the Department is reviewing the comments received during the omment period which ended April 30. It has committed to making a final decision within a onth.

EOP 064394

EXHIBIT 4

Western District of Wisconsin

February 14, 1996

Attorney/Client Communication

Privileged

MEMORANDUM FOR SCOTT KEEP, OFFICE OF THE SOLICITOR

From: David E. Jones, AUSA

Subject: Analysis of Litigation Risks in Sokaogon, et al. v. Babbitt, et al.

This responds to your request that litigation counsel provide a brief analysis of the litigation risks in Sokaogon, et al. v. Babbitt, et al., No. 95-C-659-C.

1. **Substantial Potential for Burdensome Extra-Record Discovery.**

In our February 2 hearing on the discovery motions, Judge Crabb's questioning indicated strongly that she would deny our request to limit discovery to the administrative record. She stated outright that "if this were a non-APA case, plaintiffs would easily have demonstrated a reasonable basis for the discovery they seek here" and she asked "What's a plaintiff to do when there is some evidence that outside influences may have affected an agency's decision." She also appeared to believe that the White House, through Harold Ickes's office, exerted influence over the Department, an allegation that plaintiffs pressed by observing that Secretary Babbitt did not provide an affidavit denying his alleged statement that Ickes had ordered the Department to deny the application on July 14, 1995.

A decision allowing extra-record discovery is therefore highly probable, and such a decision would create a difficult precedent affecting not only the Department but also every controversial agency decision. We can expect that the following individuals will be deposed: John Duffy, George Skibine, Michael Anderson, Heather Sibbison, Donald Fowler of the DNC, and perhaps Harold Ickes and Secretary Babbitt. (Note: Ickes has not been noticed by plaintiffs to date and Babbitt's initial notice of deposition has been withdrawn by plaintiffs.) We can also expect burdensome document requests and interrogatories, such as requests for a list of all persons who contacted the Department during the review of the plaintiff tribes' application.

2. **Section 465 Defense Will Not Prevent Remand.**

We do not believe that a defense based on 25 U.S.C. § 465 will prevent the Court from ordering a remand to remedy alleged defects in the § 2719 process. At most, a § 465 defense precludes the Court from ordering the Department to take the land into trust. But this defense will not constrain the Court from ordering a remand if it finds that the Department did not satisfy the consultation requirements imposed by § 2719, particularly given the factual circumstances of this case.

(1) We understand the Department's view that it first reviews an application under § 465 before engaging in the § 2719 analysis, but the record in this case shows that the sequence was reversed: the Department received the Area Office's § 2719 recommendation, and began its review of same, in November 1994, while the

Document provided pursuant to Congressional subpoena

Document produced pursuant to Congressional subpoena

EXHIBIT 5

Department did not receive the § 465 package from the Area Office until April 1995. Opposing counsel have pointed out this timing, and the Department's final decision letter of July 1995 can also be read as indicating that the § 2719 process occurred before the Department broadened its range of considerations under § 465.

The consequence of our factual posture is that the Court could reasonably remand this case with an order that the Department reconsider, as a threshold matter, its § 2719 analysis. Such an order would inhibit the Department's ability to dispose of future applications on § 465 grounds without reaching the § 2719 factors, as future litigants could point to a precedent establishing specific, threshold consultation requirements in these types of decisions.

2 **3. Alleged Defects in the § 2719 Process Are Problematic.**

Now that we have reviewed the administrative record in greater depth, we have determined that the alleged problems with the § 2719 process are significant. We are primarily concerned about our ability to show that plaintiffs were told about and given an opportunity to remedy the problems which the Department ultimately found were outcome-determinative. Area Directors are told to give applicants an opportunity to cure problems, and it will be hard to argue persuasively that applicants lose this opportunity once the Central Office begins its review. The administrative record, as far as we can tell, contains no record of Department meetings or communications with the applicant tribes in which the Department's concerns were expressed to plaintiffs. These communications may have occurred, but they simply are not documented in the record. The second, and related, problem is that the Department 3 appears to have changed in this case its past policy of requiring "hard" evidence of detriment to the community. The plaintiffs will therefore argue that they had no notice, either through past policy or through direct Departmental communication, that the "soft" concerns expressed by local officials would jeopardize their application. 4 Finally, the record shows that there was no consultation with the State, in contravention of § 2719.

In sum, the Court could take these problems and reasonably conclude that the Department should reconsider the application and provide the plaintiffs with "meaningful" consultation. The risk, of course, is that the Court could also specify what it means by "consultation," throwing further impediments in the Department's future review of those types of applications. These risks would be avoided through a voluntary reconsideration, which plaintiffs could obtain anyway with a new application.

4. Settlement Preserves Department's Flexibility in Defining Scope of § 465.

Finally, we understand that the Department is examining how it should exercise its § 465 discretion in light of the Eighth Circuit's recent decision. To have a chance of winning this case, litigation counsel will need to argue aggressively that the Department has extremely broad discretion, both substantively and procedurally, when it considers an application under § 465. This litigation position may not, as we explained above, be dispositive of all the issues before the Court. At the same time, this position may be inconsistent with wider Departmental goals. It may therefore

Document provided pursuant to Congressional subpoena

EXHIBIT 335-2

increase the Department's policy flexibility if this case were eliminated as an influence.

As you know, we need to move quickly on this opportunity for settlement before the Court reaches a decision on the discovery motions. Please advise us if you need any additional information.

Document provided pursuant to Congressional subpoena

Privileged

EXHIBIT
335-3

FEB 16 '96 11:09AM CIVIL MIN

[illegible]

United States Senate

COMMITTEE ON INDIAN AFFAIRS
WASHINGTON DC 20510-6450

July 19, 1996

The Honorable Bruce Babbitt
Secretary
[redacted]

Dear Mr. Secretary:

I was profoundly disturbed to read in last Friday's *Wall Street Journal* that top White House officials actively intervened last year to reverse a preliminary Interior Department decision to resolve a dispute between Indian tribes. Ordinarily, I would be heartened by White House interest in Indian affairs. But the evidence cited by the *Journal* indicates that one group of tribes obtained White House attention and support primarily because they gave more campaign contributions to the Democratic National Committee (DNC) than did a competing group of tribes. The following events reported in the *Journal* are troubling to me and, at a minimum, contribute to an appearance of impropriety.

- In early 1995, several Indian tribes hired Patrick O'Connor, a major fundraiser for the Democratic Party and former Treasurer of the DNC, in an effort to reverse a preliminary decision of the Interior Department -- the agency charged by law to resolve such matters -- that favored one group of tribes over another group of tribes seeking to acquire a racetrack.

- On April 24, 1995, O'Connor talked to the President and his senior adviser, Bruce Lindsey, in person at a Democratic Party fundraising event about the problem his tribal clients had with the preliminary Interior Department decision.

- Between April 24 and 26, 1995, Harold Ickes, deputy chief of staff to the President, placed at least two calls to O'Connor about this same issue.

- On April 25, 1995, the director of the Minnesota Indian Gaming Association wrote other tribal leaders to inform them about an upcoming meeting on this issue with the DNC Co-Chairman, Donald Fowler, saying that "the people we will be meeting with are very close to President Clinton and can get the job done."

- The April 25, 1995 memorandum said the meeting would be with Fowler, accompanied by "top level staff" representing Senator Bob Kerrey, who serves as Chairman of the Democratic Senatorial Campaign Committee, and Senator Tom Daschle, who is of course the Democratic Leader in the Senate.

- On April 28, 1995, O'Connor took his tribal clients to see Fowler at the DNC headquarters to talk about this issue.

- Sometime between April 28 and May 8, 1995, Fowler sent Ickes a memo supporting the position taken by O'Connor.

- On May 8, 1995, O'Connor wrote Ickes about reversing the preliminary Interior Department decision, stating "I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee."

- Fowler has admitted that he "had a conversation with" Ickes on this same issue sometime after the April 28, 1995 meeting, a conversation an Ickes spokesman has said Ickes cannot recall.

- An Ickes aide, Jennifer O'Connor, placed what the Ickes spokesman called routine status calls to Interior officials on the issue after the April 28, 1995 meeting.

- Paul Eckstein, the lobbyist for Indian tribes on the other side of the dispute, has sworn that on July 14, 1995 he met with you, Mr. Secretary, to seek a delay of the decision in favor of O'Connor's client tribes.

- Eckstein has sworn that on July 14, 1995 you told him that Ickes had called you and told you the decision had to be issued that day without delay. It was.

The appearance of impropriety raised in this article is quite obvious -- high-level White House attention goes to where the money is, reversing an Interior resolution of a dispute between Indian tribes in favor of the tribes who have given the most money to the Democratic National Committee.

I firmly believe Indian affairs policy decisions of the Interior Department should be made in strict isolation of how much money any of the tribes have contributed for partisan campaign purposes. From our years of working together on these and many issues, Mr. Secretary, I am certain you share my firm belief in this regard.

As Chairman of the Senate Committee on Indian Affairs, I would appreciate it very much if you would provide me with your response to several questions related to the story set out in the *Journal* article.

On or about July 14, 1995 was a telephone call made by Ickes or by someone on his behalf to you or someone on your behalf on this issue?

If so, did Ickes or his delegate convey to you a message that the Interior Department should not delay release of its decision to favor O'Connor's client tribes on this matter?

Paul Eckstein, the lobbyist for Indian tribes on the other side of the dispute, has sworn in an affidavit that he met with you on July 14, 1995 and that you told Eckstein that Ickes had called you and told you the decision in favor of Mr. O'Connor's client tribes had to be issued that day without delay? Is this true?

I have never before been aware of such active involvement by high-level White House staff on resolving disputes between competing Indian tribes. Would you please describe any other occasions during your tenure as Secretary of the Interior when top-level White House staff have personally intervened in Interior Department policy or administrative decisions directly affecting Indian tribes?

Likewise, I have never before been aware of such active involvement by high-level officials of the Democratic National Committee to intercede with the White House to broker a dispute between Indian tribes. Would you please describe any other occasions when Mr. Fowler or other high-level DNC officials have personally intervened with the White House or the Interior Department on policy or administrative decisions directly affecting Indian tribes?

Both Senator Inouye and I, as we have exchanged the positions of Chairman and Vice Chairman of the Senate Committee on Indian Affairs over the years, have always tried our utmost to ensure that our deliberations on Indian affairs policy be conducted in a fully non-partisan manner. It has been my view that matters directly affecting Indian tribes should be resolved not necessarily according to the Republican or Democratic philosophies prevailing at any given moment but instead according to fundamental principles of tribal self-determination and fairness that honor the government-to-government and trust relationships the United States has with Indian tribes.

After reviewing the activities recited in the *Journal* article, one could reasonably conclude that, in this instance, what influenced the Administration's determinations regarding Federal-Indian matters were campaign contributions rather than the long-standing fundamental principles that have guided Federal-Indian policy in recent decades. I know these are strong words, but can you tell me why it would not be reasonable for Indian tribes to conclude from the events described in the *Journal* article that they must give more money to Democrats than do their competitors if they are to gain White House attention and reversal of preliminary Interior decisions that would adversely affect them? Surely you would agree with me that White House attention should not be the subject of a bidding war among

campaign donors. To the extent it is, American Indian people, and indeed, all Americans, lose.

I ask that you respond to the questions I have raised and provide me with some assurance that, from this point forward, you will personally ensure that campaign contributions made by Indian tribes, or the failure of an Indian tribe to make contributions, will have absolutely no impact on Interior Department policy decisions affecting American Indians and Alaska Natives. Thank you.

Sincerely,

John McCain

John McCain
Chairman

THE SECRETARY OF THE INTERIOR

WASHINGTON

AUG 30 1996

Honorable John McCain
United States Senate
Washington, D.C. 20510-0303

Dear Senator McCain:

I apologize for the delay in responding to your letters of July 19 and 25, 1996, concerning allegations made in a July 12, 1996 Wall Street Journal article. This article falsely insinuated that this Department has allowed campaign contributions to dictate Indian policy.

I am enclosing two memoranda that answer most of the questions you ask. The first describes the background of the matter in question, and the contacts made by officials in the Executive Office of the President on that matter. It was prepared by Heather Sibbison, assistant to Counselor John Duffy (who, as you know, recently returned to private law practice). The second is a memorandum from the Solicitor discussing the court decision addressed in your July 25 letter.

Your letter also inquired about communications directly involving me. I have no recollection of being contacted by attorney Patrick O'Connor on this matter, nor do I recall ever being informed by anyone in the Executive Office of the President of Mr. O'Connor's involvement. Further, like members of my staff, I did not learn of the April 25, 1996 letter from the Director of the Minnesota Indian Gaming Commission until well after the decision on the trust land application was made, and I had no knowledge of any meetings, memoranda, telephone calls or any other communications between Executive Office persons and tribal representatives opposed to the acquisition discussed in your July 19 letter.

I met with Mr. Paul Eckstein, an attorney for the three tribes applying for the trust land acquisition, shortly before a decision was made on the application. Following this conversation, I instructed my staff to give Mr. Eckstein the opportunity to discuss the matter with John Duffy. I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision in this matter without delay. I never discussed the matter with Mr. Ickes; he never gave me any instructions as to what this Department's decision should be, nor when it should be made.

To the best of my recollection I have never been contacted by "top-level White House staff" on any Interior Department decision directly affecting Indian tribes nor, to the best of my recollection, have I ever been contacted by any official from the Democratic National Committee trying to influence the Department's decisionmaking process on such decisions.

Like you, I believe that this Department should make decisions like this one wholly on the merits, without any regard to campaign contributions or other partisan political considerations. We did just that in this matter.

Over the years, you and I have worked together on a wide variety of issues affecting Native Americans, with what I believe has been a shared determination to do our best to discharge our trust obligations in a nonpartisan manner. I regret that, relying solely on a newspaper article, you have chosen to so publicly call into question the integrity of our decisionmaking on this matter. I am pleased to have the opportunity to set the record straight.

Sincerely,

Enclosures

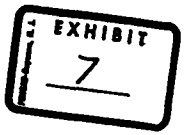
FRANK MURKOWSKI, ALASKA
SLADE GORTON, WASHINGTON
PETE V. DOMENICI, NEW MEXICO
NANCY LANDON KASSEBAUM, KANSAS
JOHN McCAIN, ARIZONA
BEN NIGHTHORSE CAMPBELL, COLORADO
CRAIG THOMAS, WYOMING
ORRIN G. HATCH, UTAH

HARRY REID, NEVADA
PAUL SIMON, ILLINOIS
DANIEL K. AKAKA, HAWAII
PAUL WELLSTONE, MINNESOTA
BYRON L. DORGAN, NORTH DAKOTA

STEVEN J. W. HEELEY,
MAJORITY STAFF DIRECTOR/CHIEF COUNSEL
PATRICIA M. ZELL,
MINORITY STAFF DIRECTOR/CHIEF COUNSEL

United States Senate

COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450



July 25, 1996

The Honorable Bruce Babbitt
Secretary
Department of the Interior
18th & C Streets, N.W.
Washington, D.C. 20240

Dear Mr. Secretary:

On July 19th I wrote you about the allegations in the *Wall Street Journal* story that partisan campaign contributions influenced the outcome of a preliminary Interior Department decision resolving a dispute between Indian tribes. In the July 20 issue of the *Washington Post*, an unidentified "spokeswoman" for the Interior Department said a federal judge recently found no relationship between the campaign contributions and Interior's handling of the matter, stating that Interior feels "vindicated by the courts."

I have reviewed the June 11, 1996 court order to which your spokeswoman referred. It denies the partial summary judgment sought by the three Indian tribes who allege that the Interior Department decision adverse to them was influenced by the campaign contributions of other tribes. It grants the motions of the United States for a protective order to limit discovery, to limit judicial review of the administrative record, to strike a portion of the administrative record, and for summary judgment that the Deputy Assistant Secretary - Indian Affairs had the legally-delegated authority to deny such an application, and that the Counselor to the Secretary had legal authority to reopen the consultation period under the Indian Gaming Regulatory Act.

As you know, summary judgment is a means by which a court and the parties may, early in a case, dispose of issues about which there is no real factual dispute. This is designed to avoid the necessity for a trial on issues which can be resolved by the judge as a matter of law.

As you can see from the attached order, at page 14, the Court stated that: "Given the parties' divergent views, it is difficult to determine where reality lies. At this point it is not necessary to determine the truth of the matter but only to decide whether the undisputed facts provide enough evidence of potential political impropriety to warrant extra-record discovery and judicial review." The Court merely said that the facts to which all parties agree do not

justify the "exceptional" relief of extra-record discovery and judicial review. The allegations raised in the *Wall Street Journal* article remain in substantial factual dispute and are not resolved by the Court's order of June 11, 1996. Although the record that can be considered by the Court is now limited by the June 11, 1996 order, I believe the matter remains subject to appellate review. In any event, the allegations themselves have yet to be tried by any Court and they remain of continuing interest to me and the Committee on Indian Affairs.

I would appreciate you informing me on what basis the Department has concluded it has been "vindicated" by the Court's June 11, 1996 order? Such a conclusion appears to me to be, at best, premature. If upon your review of the order you agree that it does not "vindicate" the Department on the disputed allegations of the influence of campaign contributions, I think it would be only fair for the Department to set the record straight and inform the news media that the Department has retracted its earlier statement of vindication.

Mr. Secretary, I have always appreciated the fine job you have done as Secretary in the efforts to improve our Nation's relations with the Indian tribes. I know this is due to your deep personal commitment to Native Americans. I also know you set high standards for yourself and for the Department on matters of ethics and fairness. That is why I would hope you agree with me that even if the courts eventually conclude that the decision of the Department was not influenced by campaign contributions, the fact remains that there is an unseemly appearance of impropriety that is produced when top-level Democratic National Committee and White House officials actively attempt to influence public policy decisions in favor of certain Indian tribes while at the same time mentioning these tribes' previous campaign contributions to the Democratic Party.

Sincerely,

John McCain

John McCain
Chairman

THE SECRETARY OF THE INTERIOR

WASHINGTON

AUG 30 1996

Honorable John McCain
United States Senate
Washington, D.C. 20510-0303

Dear Senator McCain:

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I am enclosing two memoranda that answer most of the questions you ask. The first describes the background of the matter in question, and the contacts made by officials in the Executive Office of the President on that matter. It was prepared by Heather Sibbison, assistant to Counselor John Duffy (who, as you know, recently returned to private law practice). The second is a memorandum from the Solicitor discussing the court decision addressed in your July 25 letter.

Your letter also inquired about communications directly involving me. I have no recollection of being contacted by attorney Patrick O'Connor on this matter, nor do I recall ever being informed by anyone in the Executive Office of the President of Mr. O'Connor's involvement. Further, like members of my staff, I did not learn of the April 25, 1996 letter from the Director of the Minnesota Indian Gaming Commission until well after the decision on the trust land application was made, and I had no knowledge of any meetings, memoranda, telephone calls or any other communications between Executive Office persons and tribal representatives opposed to the acquisition discussed in your July 19 letter.

I met with Mr. Paul Eckstein, an attorney for the three tribes applying for the trust land acquisition, shortly before a decision was made on the application. Following this conversation, I instructed my staff to give Mr. Eckstein the opportunity to discuss the matter with John Duffy. I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision in this matter without delay. I never discussed the matter with Mr. Ickes; he never gave me any instructions as to what this Department's decision should be, nor when it should be made.

To the best of my recollection I have never been contacted by "top-level White House staff" on any Interior Department decision directly affecting Indian tribes nor, to the best of my recollection, have I ever been contacted by any official from the Democratic National Committee trying to influence the Department's decisionmaking process on such decisions.

Like you, I believe that this Department should make decisions like this one wholly on the merits, without any regard to campaign contributions or other partisan political considerations. We did just that in this matter.

Over the years, you and I have worked together on a wide variety of issues affecting Native Americans, with what I believe has been a shared determination to do our best to discharge our trust obligations in a nonpartisan manner. I regret that, relying solely on a newspaper article, you have chosen to so publicly call into question the integrity of our decisionmaking on this matter. I am pleased to have the opportunity to set the record straight.

Sincerely,

Enclosures

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240
August 29, 1996

Memorandum

To: Secretary

From: Heather Sibbison, Special Assistant

Subject: Information responding to questions raised by Senator McCain in his July 19 letter.

Background

In November 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) sent to the BIA Central Office (through the Indian Gaming Management Staff) a routine transmittal of an application from three tribes in Wisconsin to take 55 acres of land in Hudson, Wisconsin, into trust for development of a casino. The three tribes are the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin. The primary focus of the application was an existing, failing, dog track (the St. Croix Meadows Greyhound Park).

The parcel is located a considerable distance from the three tribes' reservations: 85 miles from the boundary of the Lac Courte Oreilles reservation, 165 miles from the boundary of the Red Cliff reservation, and 188 miles from the boundary of the Sokaogon reservation.

The record before the Department showed strong opposition by local communities surrounding the dog track parcel to the concept of developing a casino on the property. For example, the Common Council of the City of Hudson adopted a resolution expressing opposition to casino gambling at the dog track, and the nearby Town of Troy adopted a similar resolution objecting to the trust acquisition for gaming purposes. The Department also received a letter signed by a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District (in whose district the dog track is located) expressing strong opposition to casino gaming at the dog track.

An Indian tribe closely situated to the dog track, the St. Croix Tribe of Wisconsin, also was adamantly opposed to the three tribes' application. The St. Croix tribe is within 50 miles of the track, and thus under BIA policy must be consulted on proposals by other tribes to take land into trust for off-reservation gaming. Furthermore, the Minnesota Indian Gaming Commission and all the Minnesota Indian tribes opposed the plan. Senator Wellstone and Representative Steve Gunderson also expressed concern about the proposed casino.

Given all the circumstances, including the strong opposition by

the neighboring tribe and the local communities and the distance of the parcel from the three tribal applicants' reservations, the Department declined to take the 55 acre parcel into trust for the three tribes. The people in the Secretariat who were involved in this were Michael Anderson, Deputy Assistant Secretary for Indian Affairs (who made the decision), myself, Tom Collier, Chief of Staff (before he left the Department at then end of June 1995) and John Duffy, Counselor to the Secretary. Mr. Anderson, Mr. Collier and Mr. Duffy (who left the Department in July 1996) agree with the recollections I set forth here. The four of us are referred to below as "we."

The "Events" Described in the Senator's Letter

The first three bulleted "events" concern involvement by Patrick O'Connor in representing tribal opponents in this matter. Mr. O'Connor and other members of his firm, representing the tribes opposed to taking this land in trust, met with Mr. Collier and me sometime in the early spring of 1995 seeking to ensure that a report from financial consultants would be included in the decisionmaking record. This was, to the best of our recollection, the only meeting any of us had with Mr. O'Connor. The fact that Mr. O'Connor represented the opposing tribes in this matter was not a factor in our decisionmaking.

The fourth "event" concerned a letter dated April 25, 1996, from the Director of the Minnesota Indian Gaming Commission to other tribal leaders. We had not seen nor even heard of this letter until a copy of it was given to the Department by the U.S. Attorney handling the three tribes' suit against the United States. This was well after the decision was made to deny the three tribes' application. It therefore had no impact on the Department's decisionmaking.

Regarding "events" five through nine, we had no knowledge of meetings, memoranda, telephone calls or any other communications between the staff of the Executive Office of the President and persons representing tribes opposed to the acquisition. If any such contacts took place, they had no effect on the Department's decisionmaking.

Regarding the tenth "event," it is accurate that Jennifer O'Connor, an aide to Harold Ickes, contacted me on or about June 26, 1995, regarding the three tribes' application. The purpose of her call was to ask for our assistance in providing information on this matter so that she could prepare a response to a June 12, 1996 letter written to Mr. Ickes by Senator Paul Wellstone and four Minnesota congressional representatives opposing the three tribes' application. She made clear in that call that the Executive Office of the President was not seeking in any way to influence the Department's decision on the matter. I responded to her request by sending her draft replies to the incoming correspondence.

Regarding the eleventh "event," John Duffy did, at the Secretary's request, have a meeting with Paul Eckstein, representing the three tribes who were applying to have the land taken into trust, shortly before the Department's decision denying the application was announced. Mr. Eckstein provided no new information, and shortly afterward the decision denying the application was announced.

Overall Response to the Senator's Inquiry

We have no recollection of being contacted by Harold Ickes or anyone on his staff on or about July 14, 1996, on this issue. The only relevant contact that any of us had was Ms. O'Connor's call to me a couple of weeks earlier, described above. At no time did anyone in the Executive Office of the President convey any message to us regarding what the decision should be on this matter or when it should be made. In short, the insinuation in the Journal article of political and Executive Office of the President interference in the Department's decision in this matter is false.

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240
August 29, 1996

To: Secretary

From: Solicitor

Re: Senator McCain's July 25, 1996 letter

The Senator's letter takes issue with the assertion, by a Departmental spokesperson as reported in the July 20 Washington Post, that the Department believes a recent federal district court decision vindicates the Department's decisionmaking process regarding the Wisconsin trust land application. The letter acknowledges that the court dismissed certain claims against the Department, but attempts to diminish the significance of the decision by claiming it did not deal with disputed matters of fact. I do not believe this characterization of the decision is correct.

The court ruling was made in a lawsuit brought by the tribes who had applied to have the U.S. take a parcel of land in Wisconsin located some distance from their reservations into trust so they could operate a casino on the land. Upon the Department's rejection of their application, the tribes sought to overturn that decision in federal court. Sokaogon Chippewa Community, et al., v. Babbitt, No. 95-C-659-C (W.D. Wis.). On June 11, 1996, the district court issued a forty-three page opinion and order on various motions filed by the plaintiffs and the defendants. Most pertinently, the court granted the United States' motion to limit judicial review in this case to the administrative record before the Department.

I believe it can fairly be said that this court decision vindicates our position that there was no improper political intrusion or influence in our decision on this matter. Although the decision was on the seemingly technical question of whether the court should make any inquiry beyond the administrative record, the material the plaintiff wanted to introduce outside that record was exactly the material referred to in the Wall Street Journal article and relied upon in Senator McCain's July 19 letter to you. The court's opinion reviewed that record in some detail (June 11 opinion, pp. 9-12).

Moreover, the court assumed, for purposes of deciding the motion, that the allegations that such contacts were made was true. While Senator McCain's July 25 letter points out that the allegations "remain in substantial factual dispute and are not resolved by the Court's order of June 11, 1996," he fails to point out that the reason the allegations are in dispute is because we dispute some of them. Put another way, the court was viewing the material from the point of view most favorable to the plaintiffs' allegation of improper political interference.

Looking at the material in question from the perspective most

favorable to the plaintiffs, the court's conclusion could not have been more clearly stated: "although plaintiffs have shown that congressional and presidential contacts were made with the Department of the Interior, they have not shown that the contacts could be deemed improper." (Opinion, p. 3, emphasis added) Turning to the details, the court found:

> "[T]here is surprisingly little evidence of interaction between congressional or presidential officials and Department of the Interior staff, as a recap of the three specific events constituting the actual contact among members of Congress, presidential staff and the department will show."

(Opinion, p. 29.)

Regarding the alleged meetings and letters involving opposition tribes, the Democratic National Committee Chairman, and White House staff, the court said: "The problem with this evidence is that plaintiffs do not link it any way to the Department of the Interior and to the official reviewing plaintiffs' application." (Opinion, p. 31, emphasis added.)

In sum, the court had before it, and treated as true for purposes of ruling on the motion, all of the materials discussed in the Wall Street Journal article. After careful, thorough examination and discussion (the court's opinion on this issue covers more than 30 pages) the court found no basis for the plaintiffs' allegations of bad faith or improper behavior and accordingly denied the plaintiffs' motion for extra-record review.

For that reason, I believe the Departmental spokesperson was fully justified in stating that the court decision vindicated the Department's decisionmaking here.

THE SECRETARY OF THE INTERIOR

WASHINGTON

October 10, 1997

Honorable Fred Thompson
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I understand your staff has requested written notification of my decision not to be privately interviewed on issues relating to the Department's denial of an application by three tribes in Wisconsin to place a parcel of land located in Hudson, Wisconsin in trust for a casino development.

Let me explain the reason for my decision against a private interview. Given that numerous allegations are now being aired in public before the Committee, I would respectfully request that the Committee make any inquiries of me in public as well. I of course remain fully willing to respond in public at any convenient time.

I am troubled by the fact that at least one deposition taken by your staff on this matter, that of Mr. Paul Eckstein, has found its way into the news media, while it and others taken by your staff remain unavailable to the public. The result has been the circulation of a good deal of incorrect information as to what actually occurred with respect to the tribal application here.

For example, while I did meet with Mr. Eckstein on this matter shortly before the Department made a decision on the application, I have never discussed the matter with Mr. Ickes or anyone else in the White House. Mr. Ickes never gave me instructions as to what this Department's decision should be, nor when it should be made.

I do believe that Mr. Eckstein's recollection that I said something to the effect that Mr. Ickes wanted a decision is correct. Mr. Eckstein was extremely persistent in our meeting, and I used this phrase simply as a means of terminating the discussion and getting him out the door. It was not the first time that I have dealt with lobbyists by stating that the Administration expects me to use my good judgment to resolve controversial matters in a timely fashion, nor do I expect it to be the last.

The Indian Gaming Regulatory Act (IGRA) lays out how the Department should make decisions on applications like this one, which was a request to take land not contiguous to an existing reservation into trust for gaming purposes. Indeed, the land applied for here is located between 85 and 188 miles from the reservations of the three applicant tribes.

Section 20 of IGRA says that the decision shall be made after consultation with the applicant tribe and "appropriate State and local officials, including officials of other nearby Indian tribes." Further, applications may be approved only if the Department determines that a "gaming establishment on [the] lands [proposed to be acquired] would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community."

In conducting the consultations required by this section, the Department learned that a Wisconsin Indian tribe situated within 50 miles of the land was adamantly opposed to the application because of the detrimental effect on its own gaming operation. (The three applicant tribes, incidentally, were already operating casino gaming on their own reservations, under compacts approved by the Department of the Interior.)

Further, these consultations revealed that local communities surrounding the land were, contrary to recent press reports, strongly opposed to the concept of developing a casino on the property. The Hudson City Council adopted a resolution expressing opposition, as did the nearby Town of Troy. The Department also received several letters signed by state and local elected officials, including the Wisconsin State Representative in whose district the land is located, expressing strong opposition to casino gaming on the site.

Given the strong opposition of the neighboring tribe and the local communities, and the distance of the site from the three applicant tribes - all undisputed facts in the record before the Department - the Department declined to take the land into trust.

Your staff has already spent many hours deposing officials of this Department who were directly involved in this decision, and who have provided full explanations of the Department's decisionmaking. Yet these basic facts were not presented during the Committee's discussion of this issue this week nor in any other documents that have found their way to the media.

I reiterate my willingness to address this matter publicly before the Committee.

Sincerely,

[The deposition of Thomas Hartman follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: THOMAS HARTMAN

MONDAY, DECEMBER 8, 1997

The deposition in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 10:00 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: James C. Wilson, Senior Investigative Counsel; Robert J. Dold, Jr., Investigative Counsel; and Michael J. Yeager, Minority Counsel.

For MR. HARTMAN:

TIMOTHY S. ELLIOTT, ESQ.
Deputy Associate Solicitor-General Law
Department of the Interior
1849 C Street. N.W.
Washington, D.C. 20240

Mr. DOLD. Good morning, Mr. Hartman. On behalf of the members of the Committee on Government Reform and Oversight, I appreciate and thank you for appearing here today. The person transcribing this deposition is a House reporter and a notary public, and I will now request that the reporter place you under oath.

THEREUPON, THOMAS HARTMAN, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. DOLD. I would like to note for the record those who are present at the beginning of this deposition. My name is Bob Dold, the designated Majority counsel for the committee. I am accompanied today by Jim Wilson, who is also Majority counsel for the committee. Mike Yeager is the designated Minority counsel. Mr. Hartman is accompanied today by Mr. Tim Elliott.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a court of law.

If I ask you about conversations you have had in the past and you are unable to recall the exact words used in the conversation, you may state that you are unable to recall the exact words and then you may give me the gist or substance of any such conversation to the best of your recollection.

If you recall only part of a conversation or only part of an event, please give me your best recollection of those events or parts of the conversation that you recall. If I ask you whether you have any information on a particular subject, you have overheard other persons conversing with each other regarding it or have seen correspondence or documentation regarding it, please tell me that you could have such information and indicate the source, either of a conversation or document or otherwise from which you derived such knowledge.

Majority and Minority committee counsels will ask you questions regarding the subject matter of the investigation. Minority counsel will ask questions after Majority counsel is finished. After Minority counsel has completed questioning, a new round of questioning may begin. Members of Congress who wish to ask questions will be afforded an immediate opportunity to ask their questions. When they are finished, committee counsel will resume their questioning.

Pursuant to the committee rules, you are allowed to have an attorney present to advise you of your rights. Any objection raised during the course of the deposition shall be stated for the record.

If the witness is instructed not to answer a question or otherwise refuses to answer a question, Majority and Minority counsel will confer to determine whether the objection is proper. If Majority and Minority counsel agree that a question is proper, the witness will be asked to answer the question. If an objection is not withdrawn, the Chairman or a Member designated by the Chairman may decide whether the objection is proper.

This deposition is considered as taken in executive session of the committee which means that it may not be made public without the consent of the committee pursuant to clause 2(k)7 of House Rule XI. You are asked to abide by the rules of the House and not discuss with anyone other than your attorney this deposition and the issues and questions raised during the proceeding.

Finally, no later than 5 days after your testimony is transcribed and you have been notified that your transcript is available, you may submit suggested changes, as we discussed earlier, to the Chairman. The transcript will be available for your review in the committee office.

Committee staff may make any typographical or technical changes requested by you, but substantive changes, modifications, clarifications or amendments to the deposition transcript must be accompanied by a letter requesting the changes and a statement for your reasons of each proposed change.

A letter requesting any substantive changes must be signed by you and shall be included in the appendix to the transcript, conditioned upon your signing of the transcript. Do you understand everything we have gone over so far?

The WITNESS. Yes.

Mr. DOLD. Do you have any questions about anything we have gone over?

The WITNESS. No.

Mr. DOLD. The ground rules. Okay. If you don't understand a question, please say so, and I will repeat it or rephrase it so that you understand the question. Do you understand that you should tell me if you do not understand a question?

The WITNESS. Yes.

Mr. DOLD. The reporter will be taking down everything we say and will make a written record of the deposition. You must give verbal and audible answers because the reporter cannot record what a nod of the head or gesture means. If you can't hear me, please say so and I will repeat the question or have the court reporter read the question to you.

Do you understand that?

The WITNESS. Yes.

Mr. DOLD. Your testimony is being taken under oath as if we were in a court, and if you answer a question it will be assumed that you understood the question and the answer was intended to be responsive to it. Do you understand that?

The WITNESS. Yes.

Mr. DOLD. I understand that you are here voluntarily today and not as a result of a subpoena?

The WITNESS. Yes.

Mr. DOLD. Do you have any questions about the deposition before we begin the substantive portion?

The WITNESS. No.

Mr. DOLD. Now would be an appropriate time if you have any comments or opening statement.

Mr. ELLIOTT. I have no real opening statement, Mr. Dold, but we have been asked by our lawyers who are concerned with the litigation that involves the Hudson Dog Track to try to stay away from speculation or questions or responses to questions that reflect directly on that litigation. So I may have to ask for a break at a time if I think the questions are coming that way and make an objection to that, since they are obviously in litigation and the U.S. Attorney's Office is controlling that.

Mr. YEAGER. I have a brief statement on behalf of the Minority.

This deposition relates to the Interior Department's denial of an application by three Indian tribes to place off-reservation land into trust for development of a casino in Hudson, Wisconsin. After the Interior Department rejected the request, the applicant tribes were led to the opponents of the casino project. Other Indian tribes improperly influenced the decisions by contacts with the Democratic Party and administration officials. These allegations are the subject of a well-publicized lawsuit pending in the U.S. District Court for the Western District of Wisconsin.

The Majority is aware that the Senate Governmental Affairs Committee has already investigated this matter. It has already interviewed and deposed dozens of witnesses and taken public testimony from those people central to any allegations of impropriety. For example, the Senate took public testimony from the Secretary of the Interior, Bruce Babbitt; former DNC Chairman, Donald Fowler; lobbyist Paul Eckstein, and former Deputy Chief of Staff Harold Ickes.

The Attorney General is looking into this issue, and I also understand that the House Resources Committee has commenced its own investigation.

I want to take this opportunity to lodge a continuing objection to this deposition and every deposition relating to the Hudson Casino matter. It is not that the committee lacks the power to pursue this inquiry; it is, however, an imprudent and op-

pressive use of that power to investigate and reinvestigate matters that have already seen the light of day.

On behalf of the Minority, I would like to thank Mr. Hartman for appearing today voluntarily. He was not called by the Senate so far as I understand to give deposition or hearing testimony. I suspect there was a good reason for that and it would have little to add to the public record.

Mr. DOLD. Thank you.

EXAMINATION BY MR. DOLD:

Question. Mr. Hartman, will you please state your name, full name and spell it for the record?

Answer. Yes. Thomas Hathaway Hartman, H-A-R-T-M-A-N.

Question. Did you attend college?

Answer. Yes.

Question. Can you tell us where you went to school and give us a brief educational background?

Answer. Grinnell College in Iowa for 2 years, and then an AB in psychology from UCLA. After some time in the Air Force, I went back to school at University of California at Berkeley and received an MBA in financial.

Question. And can you give us a brief employment history, just state each job you have had?

Answer. I am currently Acting Director of the Indian Gaming Management Staff, pending the selection of a permanent director. I am a financial analyst with the Indian Gaming Management Staff of the Bureau of Indian Affairs. Prior to that, I was self-employed until several entrepreneurial pursuits.

Prior to that, I was the chief financial officer with a bus company. Before that, I was chief financial officer of an engineering consulting firm of which I was one of the founders and owners. Prior to that, I was the manager of financial planning and analysis for Quadrex Corporation out in California. Before that, I was in aviation with a couple of small airlines. Before that, the Air Force. Before that, college.

Question. Okay. And how long have you been with the Department of Interior?

Answer. About 3 years, 3 months.

Question. And during that time, have you always been with the Indian Gaming Management Staff?

Answer. Management staff, that is correct.

Question. Have you discussed this deposition with anyone besides your attorney?

Answer. Just with the attorney, and the existence of the deposition with my wife. I spoke with George Skibine, the former Director of the Indian Gaming Management Staff after his deposition, just to ask him how it went and basically he said it went 4-1/2 hours.

Question. Well, it is my intention not to go 4-1/2 hours. We hope it will not go that long.

Did you have an opportunity to discuss any of the substantive portions of Mr. Skibine's deposition with him?

Answer. No, he declined to talk about any of that and I didn't ask.

Question. And have you had an opportunity to discuss any of the substantive portions of any of the depositions of Mr. Duffy, Mr. Collier, Mr. Anderson, Ms. Sibbison, or anyone else at the Department of Interior?

Answer. No.

Question. Have you given documents regarding the Hudson Dog Track, and just for simplification sake, the Fee-to-trust trust application, I will just refer to throughout the deposition as the Hudson Dog Track matter, something along those lines, just so you know what I am referring to, but have you given any documents regarding the Hudson Dog Track to the Department of Justice?

Answer. Yes.

Question. Has anybody from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. Yes.

Question. And who at the Department has contacted you?

Answer. Ed Pasarelli, Davey Jones, the ones involved in the litigation back in Wisconsin. Several attorneys whose names escape me, but it has all been relative to the preparation of the administrative record a couple of years ago in that related litigation.

Question. Apart from the deposition, this deposition and arranging for the logistics of this deposition, have you spoken with any Congressional personnel about the Hudson Dog Track before its decision or after its decision?

Answer. No.

Question. Do you have any documents——

Answer. At least to the best of my recollection. I am trying to run through a list of everyone I have spoken to. I can't think of any Congressional personnel before or after.

Question. Do you have any documents pertaining to the Hudson Dog Track in your personal possession?

Answer. No. Right now?

Question. Yes.

Answer. No. To clarify, you mean back at the office as well?

Question. Just like at home. I assume stuff back at your office would be under the——

Answer. Yes, I personally have no possession of any records.

Question. Just so I get an understanding, back at the Department, what is your involvement in Indian gaming?

Answer. As a financial analyst, I look at the various applications, agreements and documents that come into the office, and analyze them, primarily for their financial effect.

Question. When did you first learn that a Fee-to-trust trust application had been filed by a group of Wisconsin tribes to convert the greyhound racing track into a casino?

Answer. Somewhere in November or December of 1994. We have a receipt date stamped on the document, and by reference to that I can answer more precisely, but within a week or two after the receipt date, which would have been November or December.

Question. When you say receipt date, you were informed by a document that came into the Department or did someone tell you or inform you about it?

Answer. No, a document, the application came from the area office into our office.

Question. That was the first time you heard of it?

Answer. Right.

Question. Could you describe for me the steps really from beginning to end on how an application to take land into trust, what the process is to do that?

Answer. In the generic, we now have a checklist that addresses all of the 25 CFR, Part 151 factors, as well as the 25 USC Section 20 two-part determination for taking land in trust for gaming. So applications now would be reviewed basically in accordance with that particular checklist.

At the time of the Hudson application, the checklist had been in a draft form during the review and was issued at about the same time that our office got the Hudson Dog Track application. So I can tell you how we processed the Hudson Dog Track application, but not—I am much more vague in the specific, the general way that applications would have been reviewed at that time, because this was the first application I had worked on.

Question. Do you have an understanding if the application for the Hudson Dog Track followed the same steps as previously done? Do you have any kind of understanding?

Answer. Not specific, I don't, because that was the first one I worked on. Now, I worked with a very experienced person by the name of Emily Ramirez, who was in the Lakewood office with the Indian Gaming Management Staff, and she had worked on previous applications and had had a lot of years of experience in Indian real estate in general, and she is the one that guided the rest of the staff through the process in evaluating this particular application.

Question. Okay. And what are the steps that would go through?

Mr. ELLIOTT. You are asking specifically with this application?

Mr. DOLD. I am trying to get a general sense, at least at that point in time when you first came on and were doing work on this application, what the steps were, or at least your understanding at that time as to what the steps you needed to or they needed to go through in order to get this land put into trust.

Mr. ELLIOTT. I understand that, except you are going to have to extrapolate. He already said this is the first one he did and he didn't have generic office.

EXAMINATION BY MR. DOLD:

Question. What was your understanding at that point in time as to what was needed as far as the steps that needed to be gone through at that point in time?

Answer. Okay. The application was prepared by the area office at the request of the applicant Indian tribes, and arrived at our office with a recommendation from the area director and a findings of fact looking at both the Part 151 determination and the Section 20 determination, and then also had included with it the complete application package that had all of the other documents that come in as part of the

application, substantiating data for both 151 and Section 20 as well as the National Environmental Policy Act documents, comments that they had received in preparing the NEPA documents, as well as the area office's response to those comments that come in from the public, a finding of no significant impacts for the environmental documents. I think that it is in summary.

I am sorry, go ahead.

Question. So that was all done at the area office?

Answer. Right.

Question. Then what happened once it leaves the area office?

Answer. This is the package that arrived in our office. When it arrived, the copies of it were made, one was sent out to the Lakewood office for the staff people back there to begin reviewing it, and in the office copy, everybody pretty much read through the entire application, but then focused in on the area of their particular expertise, the environmental detection specialists looked at the NEPA with an eye towards the portion of the two-part test that is not detrimental to the surrounding community.

I looked at the financial and business portions, the best interested portions, as well as some of the not detrimental parts of it. We had a tribal relations specialist that looked at the tribal organic documents to make sure that the tribes were properly authorized to sign some of the agreements, to do what it was they were asking to do.

Another management analyst looked at the tribal State compacts that existed for the three tribes in Wisconsin to later be able to express an opinion on the tribal estate compacts. The two people that worked on real estate looked at the realty sections of it, to look at everything from land descriptions to title, to title insurance policies, all the real estate issues that were impacted.

After everybody had read through the application, looked at their sections, Emily Ramirez recommended to the then acting director of the office that the environmental protection specialist and I travel out to Lakewood in order to begin an intense review of the application package back there where the two real estate people and the tribal relations specialists were located. The environmental specialist and I did that sometime in January.

Question. Of 1994?

Answer. No, we are coming around to '95.

Mr. YEAGER. If I could just clarify, counsel, the Indian Gaming Management Staff was divided between the Lakewood office and the Washington D.C. office?

The WITNESS. That is correct.

Mr. YEAGER. Where is Lakewood?

The WITNESS. It is a superb of Denver. Basically Denver.

EXAMINATION BY MR. DOLD:

Question. Basically Denver.

Answer. A big government complex there.

Question. When you say you read through the application, was there one person that read through the entire application, or did each of these individuals read through the entire application, or was it kind of broken down and given to them individual sections to analyze?

Answer. I read the entire application, because I viewed what I was doing was going to be impacted by most of it. I really don't know what the other staff people did. I am sure they read at least those portions that they felt necessary for the job. I know Emily read the entire thing, because as we would discuss it, she was acquainted with everything in the application that we discussed.

Question. Okay. Recognizing that you now have new guidelines in place or at least guidelines that were adopted about the same time that the application went through on your checklist of things for 151 and Section 20 as well, if a group of Indians today were looking to put land into trust, what must happen for them to be able to put land into trust? What are the check list of things? What must happen in their steps, kind of an A, B, C, D as far as, if you know. I mean, is there——

Answer. The checklist that was approved and distributed in about November of '94 has been revised since that time. Earlier this year I believe, sometime in the spring or late winter, but the checklist is actually a guidance for the area offices. It is not a rule or a regulation, but it is a guide to the area offices on what they should look at for both 151 and Section 20, and in effect it sets out a format for doing it, so when we now review a package, the package is indexed and ordered in the same manner as the checklist. So if we are looking at a particular issue from the checklist, then we can turn to that particular tab in the application.

In the case of Hudson, we had to go into the application, in effect rematch the portions of that application with the checklist as it then existed, so that there was a lot of work that had gone into the checklist to try to make it comprehensive. So we felt all the factors in the checklist we should at least look for answers for in the application. It was not sequentially matched up with the checklist, but during the processing of the application, that did not exist. So we would compare it to the current checklist for completeness in the addressing of the issues.

Question. When you say that people did their sections, they looked at it and tried to analyze their particular area of expertise. Did they produce reports to the—would they produce reports to the area director, or would they go back to somebody at the central office?

Answer. No. What we were working on was a separate findings of fact, and after the completion of the findings of fact, the Director of the Indian Gaming Management Staff would write up recommendations to the Assistant Secretary of Indiana Affairs as to whether—for the Section 20 test it was in the best interests of the tribe and its members, and number 2, not detrimental to the surrounding community. And then separately, all the Part 151 issues that are addressed in any land acquisition, whether it is for gaming or not and whether it is for after-acquired land or not.

Question. So just so we know who would be the people that would make recommendations and who was the director? Mr. Skibine was the Director at that time?

Answer. At the time we were out in Lakewood, no, he came in as the office director sometime in February, I think, early February, but we were out in Lakewood prior to him being named as director for the office.

Question. And then once he became director, people made the recommendations to him on certain areas?

Answer. Yes. We were working on a single document so we combined everybody's comments into a single one. So if you look at the drafts of the documents, I couldn't tell you—some portions I could probably tell you I wrote, but it was a team and an office effort. We would sit around in a group, look at a particular issue or a particular document, and write up what it was and any comments we had on that particular document.

Question. Sure. I know in our office when we do things similar, there is usually one person that is kind of the recipient of all of the information that kind of puts it together.

Was there one person that was kind of in charge of the single report that was being prepared for the director?

Answer. Emily Ramirez was certainly the lead out there in Lakewood when we first started actually writing comments. Up to that point, I think the review, at least on my part, was to read the document, maybe put a couple post-it notes on it, to come back and look in depth at a particular section or issue more so.

Back in Lakewood, Emily had some formats laid out in a binder that broke down the Section 20 and the Part 151 issues, so when after we had read everything and talked about it and began writing it, I would say she did about half the word processing and I did about half the word processing.

Question. Who else amongst your group, amongst the team, would have had input into the document or draft that you would have given to the gaming management director?

Answer. I think everybody on the staff had some input. I guess the primary input was myself—well, the most input was Emily, because she had been the most experienced and because it is a real estate deal and she was a realty specialist, followed—I wouldn't guess on total portions, but on a review like this, NEPA is pretty important. So the environmental specialist had lots of comments on the NEPA documents and the way they impacted, the "not detrimental" to the surrounding community. And I had lots of comments on the best interests of the trying and its members, as well as the "not detrimental" to surrounding community.

So I would say the three key writers were myself, the realty specialist and the environmental specialist. But there were segments in it from the tribal relations specialist, the management analyst, the person who is now a paralegal specialist that looked at the tribal State compacts.

Question. And who was the NEPA specialist?

Answer. That is Edward Slaggel, nicknamed Ned.

Question. Okay. And the real estate specialist you said was Emily Ramirez?

Answer. Emily Ramirez, and then Larry Scribner, the actual title, I believe, was management analyst, but he had a strong real estate background. So Larry was in on a number of the meetings. And he may actually—at that time the job of acting director was rotated between Nancy Pearscola, Emily Ramirez and Larry Scribner.

So during the review, I would imagine that he made comments both as acting director and as a management analyst that knew a lot about real estate. The same way with Nancy Pearscola.

Question. Okay. Give me the importance of the finding of no significant impact, because it is my understanding the local area office in Minnesota did put out a finding of no significant impact with regard to the Hudson application.

Answer. They did. You would get the most complete answers talking with the environmental specialist, but upon the FONSI environmental assessment which determines that an environmental impact statement is not necessary, so the FONSI says based upon the environmental assessment, that all the significant factors have been mitigated and that there are no additional significant impacts.

Question. So what is the policy, if you know, of the Department of Interior under IGRA regarding the environmental matters when a FONSI has been given, one, a finding of no significant impact. Is it just that it is a recommendation that they don't need to do a further environmental report, or what is the policy?

Answer. Yes. It is the determination that an environmental impact statement is not required.

Question. Do you know the policy of the department regarding the Indian Gaming Regulatory Act before and after the decision on the Hudson Dog Track regarding local opposition to an application? Local people or whatever?

Mr. YEAGER. First of all, was there a definite policy of the department before and after?

The WITNESS. The Indian Gaming Regulatory Act in the Section 20 requires this two-part determination and consultation with appropriate local government officials and nearby Indian tribes, so that local opposition is required by law to be considered.

In other words, under the Indian Gaming Regulatory Act, political opinion, certainly by the local officials and State officials, is required to be a part of the administrative record. So the consultation with the local governments and nearby Indian tribes and the State is required by law. So I guess the policy, as it is stated in IGRA, is that you will consider local opposition.

EXAMINATION BY MR. DOLD:

Question. When we talk about local opposition, we are talking about just those of the elected officials or the county, city, State officials and Indian tribes. Not necessarily town residents or things like that?

Answer. Yes. It is appropriate government officials is the way it is worded.

Mr. ELLIOTT. That is the way the statute is worded?

The WITNESS. Yes. And then in the NEPA process, under the National Environmental Policy Act, you accept comments and address comments that are submitted on the various NEPA issues, which, of course, often impact on the concept of detriment from everyone that has come in. Under NEPA you ignore no one. If someone writes you from San Diego about an activity in Wisconsin, you have to address the issue.

EXAMINATION BY MR. DOLD:

Question. Who would send something like that? Who would that be, like a resident, or somebody that would be an environmentalist working on water, clean air, something like that?

Answer. Just someone that had concerns. In this particular case, we had received a fair number of letters, I would guess a dozen to two dozen, but it could be slightly less than that, letters on the St. Croix riverway and the potential impact of a casino on the riverway, and I don't remember the exact geographic distribution, but they were from all around the United States, and they were the result of an article that appeared in some environmental or wilderness-type magazine.

Question. Was an assessment ever done as far as the river was concerned?

Answer. They were added. Since the comments were received after the application was in Washington, those letters were added to the record and the environmental protection specialist looked at the issue, went back and reviewed the environmental documents in order to note the impact on the St. Croix River had not been analyzed as part of the NEPA process.

Question. Did they find anything, do you know, if they went back, having looked at it again?

Answer. To the best of my knowledge, nobody went back and evaluated the impact on the river.

Question. Do you know what they actually did do when they received these letters with regard to analyzing the documents? Did they just go back and review the docu-

ments and kind of take it in light of the river, or do you know if they did anything in particular?

Answer. I don't think there was any action taken to study the particular issue, so it was an open item.

Question. Did anybody ever go out to Hudson and take a look at the river or take a look at the facility from the Department of the Interior?

Answer. I don't know. I don't believe anybody from our office did, but I don't know if anyone else did.

Question. Is any weight given at the Department of Interior to local opposition, meaning from townspeople, excluding government officials, elected officials, from local, State, county?

Answer. In the NEPA process, yes. In order to address their specific environmental concerns. From the standpoint of the Section 20 analysis, again, it is the mandate is appropriate local government officials.

Question. Is local opposition common or unusual in a fee-to-trust application such as the one in Hudson, Wisconsin?

Answer. In the ones I am familiar with, it is not unusual. Now, when you say local opposition, I guess I would ask clarification of the question. Local government opposition, or local individual opposition?

Question. I would like to take both. It is a two-part question. Is it common for local government; is it common for people?

Answer. It is extremely common for individual opposition, not uncommon for governmental opposition, but sometimes governments are either fairly neutral or sometimes strongly supportive, sometimes slightly negative.

Mr. YEAGER. If I could interject, do the regulations specify who can convey information about the existence of local opposition?

The WITNESS. The Bureau accepts the comment letters from pretty much anyone who sends them in and often will write a letter in response to it. But the official mandate under Section 20 is local government, appropriate leaders of local government.

Mr. DOLD. I am showing Mr. Hartman what has been marked as TH–1.

[Hartman Deposition Exhibit No. TH–1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

EXAMINATION BY MR. DOLD:

Question. This is a memo to Debbie Doxtator from Scott Dacey. The date on the memo is May 25, 1995, regarding the meetings of May 23 and May 24 in Washington, D.C. Regarding the May 22 portion on the first page here, it says under the BIA, "In an effort to better understand the current status of the Hudson Dog Track proposal, Debbie, Carl Artman and I met with Mike Anderson, Deputy Assistant Secretary for Indiana Affairs, George Skibine, Director of the Office of Indian Gaming Management, and Tom Hartman, a member of Skibine's staff."

Do you recall having a meeting with these folks?

Answer. Yes.

Question. And who is Scott Dacey, if you know?

Answer. I don't know.

Question. Can you just tell us to the best of your recollection anything you recall about this meeting?

Answer. Let me read the letter here first.

Question. I am sorry, please, take your time. I apologize for jumping in.

Answer. I recall the meeting, and it was the—the setting was a tribal delegation headed by the tribal chief that wanted to meet with the Assistant Secretary of Indian Affairs, Ada Deer, to present their letter of opposition to the application. We met with them up in the conference room, listened to the concerns, and my recollection is that the BIA people over there basically listened attentively and said that their concerns, their comments, would be considered, and it was mostly a public relations-type meeting, because they had been asked to submit their comments by April 30th, I believe. They had sent the letter in.

Their delegation was in Washington, so they just wanted to meet personally there at the Bureau.

Question. Sure. And was there anybody else there besides—from the Indian side of things, besides Ms. Doxtator, the chairman of the Oneida Business Committee. Is she also the chairman of the Oneida tribe right now?

Answer. Yes. She was at that time.

Question. Were there any other persons?

Answer. I don't recall the most recent election. That looks like—I don't recall anyone else being there. It was a fairly large tribal delegation. I would say somewhere between 6 and 10 people from the tribe.

Question. And was that the extent of the Oneida's involvement in the application process? For the Hudson Dog Track, I should say?

Answer. In person. They had responded, I believe, to the original consultation letter that had been sent out by the area office, and they had submitted another letter here to the central office during the extended comment period.

Question. Turning to page 2 of Exhibit 1, it says halfway through that top paragraph, public sentiment or opinion is not considered detrimental. Therefore, little weight is given to communities which pass resolutions in opposition to gaming unless they demonstrate an impact on the community.

Do you have any idea where Mr. Dacey would have gotten that notion or do you know if that was discussed at all in the meeting you had with them?

Answer. I don't remember specific issues in that meeting, but that would be a correct portrayal. In other words, if they asked George, what do we have to do, I am sure Mr. Skibine would have made a description like that. It is not that they—again, where is that quote?

Question. It is about halfway down here, starting on the right side. The first part says public sentiment or opinion, all the way down. Right there, public sentiment.

Answer. When you read it, it sounded like we were a little cavalier and ignoring it. We looked for factual assertions of detriment in the two-part test, so if the letter is general and says I am against a casino there, I don't like it, it has no real factual weight to help the study. If it says the intersection of First and Elm Street will be gridlocked between 3:00 and 5 o'clock, then it becomes an important consideration.

Question. Sure. Down a little further——

Mr. YEAGER. If I could interrupt, do you think Mr. Skibine would have been the one to answer this sort of query?

The WITNESS. Yes.

Mr. YEAGER. Thank you.

EXAMINATION BY MR. DOLD:

Question. Down, skipping a paragraph there, it begins, "Mike Anderson clearly does not want to establish a precedent against tribes wanting to bring lands into trust in the future." Was this your understanding as well or something you would have gleaned from this meeting?

Answer. I think this was the first time I had met Mike Anderson, so I don't—it is in general, as I understand the BIA's or Mr. Anderson's view on it. So if he spoke up on the issue, it wouldn't surprise me if he said that.

Question. All right. In going back, than I apologize for not covering this, going back up here, a little bit below where we were talking about when we were talking about public sentiment, it says, "moreover, the economic impact a gaming establishment might have on other gaming or nongaming establishments is also of little concern to the BIA because it falls into the definition of a normal competitive pressure."

Is that also a correct statement, or at least one that he would have been able to get from that meeting?

Answer. Yes, that is correct, normal competitive pressure wasn't considered to be detriment.

Question. We will go to the next page, page 3 of our exhibit, right under analysis. The first line says, "With respect to the Hudson Dog Track, things don't look good."

Do you have any idea where he might have gotten this? Was this something he might have taken away from that meeting as well?

Answer. I would say it is his conclusions.

Question. Certainly, under his analysis. I will stipulate it is his conclusions, without question. But just trying to get an understanding of where he might have gotten this analysis or at least where he was coming from at that point in time?

Answer. I couldn't—I don't know.

Question. The second paragraph under analysis, it reads, "Reaching the detrimental standard, and detrimental is in quotes, it is difficult to. According to Tom Hartman, all of the economic impact statements are of no value in this assessment." Would that have been something you might have spoken with him about or at least to Ms. Doxtator at that time or at that meeting?

Answer. Yes. By that time I had analyzed economic impact statements that came in and hadn't been able to find anything other than normal competitive pressure, so I don't think they are of no value in the assessment, but they didn't, to me, indicate detriment.

Question. Down at the last paragraph on the page we are on, it says, "Mike Anderson said to me after our meeting that they are trying to keep this issue on the merits and they will try to thread—they will try to thread the needle on this request." It then goes to the next page, "Things might change when the politicians like Babbitt and Duffy become involved, but without the law on their side it will be difficult to kill the deal."

Recognizing that this is a conversation that he might have had with Mike Anderson after this meeting, at least so it says here, did you overhear any kind of conversation or at least in talking with Mike Anderson at any time was this kind of an assessment that he had reached and you had discussed?

Answer. I really don't know. I didn't hear the conversation, and I guess the concept—because there are two things that go on in the review. One is the Part 151, which allows extremely wide secretarial discretion, and then there is the Section 2 two-part determination. So I didn't hear the conversation. I really just don't know what he means by it.

Mr. YEAGER. Do you know if he said that?

The WITNESS. No, I do not know if he said that.

EXAMINATION BY MR. DOLD:

Question. Did you ever have any conversations at any time amongst groups that got together to discuss the application process where something along those lines was discussed?

Answer. Well, I guess I am guessing what "try to thread the needle" means, because it doesn't mean anything to me. Like I say, there were ongoing discussions as to the Section 20 decision and the Part 151 decision, so the next section there, where it says, I don't know about find his excuse, but the secretarial discretion under Section 151 was the issue based upon the strong local governmental opposition.

Question. Going back up still here I guess on page 3, it would be the third from the bottom, it says, "In the case of the Hudson Dog Track or for that matter, the Kaukauna Track, many of the environmental issues were addressed when the sites were originally established."

Do you know what Mr. Dacey is talking about there?

Answer. I think that other track, there is another dog track in Wisconsin. I don't know if that is the name of it, where the concept of an Indian tribal takeover has been brought up. So I expect that is one that the Oneida were acquainted with. But I don't specifically recall the name of that track or where it might be.

Question. When he says that many of the environmental issues were addressed where the sites were originally established, the sites, there was an established site already in Hudson, Wisconsin?

Answer. They had done an environmental assessment when the private developers built the dog racing track, yes.

Question. So there was an existing facility where they wanted to actually take it over; they wouldn't have to construct anything new as far as a building or parking lots or roadways or anything like that?

Answer. Right.

Question. They were just talking about changing some of the names on the paperwork, taking the land into trust and doing some additional gaming facility?

Answer. Right. Mainly interior modifications to the building.

Question. So nothing exterior?

Answer. No.

Question. Do you know if anyone at the central office in Washington went out and interviewed any of the tribal chiefs of the applicant tribes, or any tribal——

Answer. I'm not aware of anybody doing that.

Question. I know we had discussed before local opposition in talking about the elected officials, which I recognize is important. How much weight do local elected officials have in the process if they were to come out and say, we are opposed to taking land into trust—I mean, if you know?

Answer. I don't. I don't really know, because that is not a decision that I was involved in or that the staff really looks at. We looked—in the section 20 test, even for governmental comments, we look at the objective factors on the issue of "detriment." So to the extent that what the local government opposition was because it was changing zoning or ruining a neighborhood or air pollution, traffic, in the two-part determination, I think the staff had looked at that fairly strongly. As to the part 151 determination, I have no idea what the weight is.

Question. Do you have anything as far as your dealings with the 151 determinations; or do you deal basically, the gaming staff deals mainly with section 20?

Answer. Primarily, section 20, because in 151 the area office contacts the local government to assess the impact on zoning, tax rolls, et cetera, and the rest of 151 is real estate title-type work, whether or not you have accurate descriptions, whether you're complying with all of the provisions of 151. So there is not—there is criteria under 151, but there is not a two-part test where you are looking for detriment to the local community if the tax rolls are reduced by 10 percent or whatever. So I had looked at that issue much less than the two-part test.

Question. Do you know, under IGRA, I guess it is 2719(b)(1)(A) of the Indian Gaming Regulatory Act, if there was a policy with regard to competing tribes in the area?

Answer. The only policy I was aware of, and it was articulated verbally by the Deputy Commissioner of Indian Affairs, was that economic competition was "not detrimental", that we couldn't pick one tribe out over another. And even from a business standpoint, the reason you have a McDonald's on one corner and a Burger King on another and a Wendy's on the third corner is because there are synergisms in a lot of these, so you can't—it is very difficult from an econometric standpoint to say, when you add another casino that it ruins everybody else's business. If that was the case, then the second person moving into Las Vegas would have ruined it for everybody, and I think we know that that is not the case.

Question. Who was the Deputy Commissioner at this time?

Answer. Hilda Manuel.

Question. And what is the policy, if there is one, under IGRA with regard to—and when I say that, if there was a change before or after Hudson, please let me know. But what is the policy under IGRA with regard to consultation with applicant tribes in the process? Where in the process, if any, would you consult with the applicant tribes?

Answer. In IGRA—actually, when I said in consultation with, it is in consultation with the applicant tribe and appropriate officials of nearby governments, or appropriate local governments and including nearby Indian tribes. So all of this consultation is done with the applicant tribe as well as the local governments and nearby tribes.

Question. Now, when you say you consult with them, my understanding—and correct me if I'm wrong—is that the Department of Interior, once they make a determination either for or against an application, will consult with the tribes and let them know what is going to happen, or at least—especially in the case of a negative, that they will consult the tribes and let them know why they are turning them down.

Is that a true statement or is that not a true statement?

Answer. That's correct.

Question. Do you know if that was done in this case with regard to Hudson, if you know?

Answer. It was done extensively at the area office. They kind of work hand in glove there, where the area office worked with the tribes and when the responses came in to the environmental documents and when the responses came in to the consultation letters, the tribe and the area office worked to address those issues; and there's a lot of pages of documents that resulted from that.

In our office, we did—when the application was at the central office, we met with the applicant tribes' representatives several times and discussed various issues, both on the "best interests" and the "not detrimental" portions of the two-part test. So we consulted with them even while it was in the central office.

Question. Between the area office—because my understanding is that when the area office sends their recommendations up to the central office, they kind of are done with it for a while and let the central office deal with the application at that point in time—did you have any meetings with any of the tribal folks after you got the application as far as consulting back and forth on questions you might have had?

Answer. Yes. I think all three tribes came in at one time, together, although it might only have been two of the three tribes.

Question. Do you recall when that was?

Answer. No, I don't.

Question. Okay.

Answer. And their representatives, I know Duane Derrickson, economic development person for the Sokaogon was in more than once; I believe I saw Mr. Ackley, Chairman Ackley, only once. So there were several occasions when we personally met with the tribes, and I had several phone calls with the tribes and the representatives on some minor issues that needed to be cleared up.

Question. Do you recall when in the process this was? Was it after they had learned about the rejection? Was it before they had learned about the rejection?

Answer. Most of it was before they learned about the rejection. I even—it seems to me we even called when we were meeting out in Lakewood; when we got back to the central office from Lakewood there were several title and land description issues, some deed work, that we contacted both them and the area office; and the tribe was actively encouraging the review and wanted a speedy response, so Duane Derrickson and others contacted us fairly regularly to find out the status and see if we had any questions or if there was anything they could address.

Question. Now, in those meetings—and you say you might have had maybe more than one—you say you saw Chairman Ackley once. Do you recall who else was in these meetings, whether it was a meeting just with you or was it with Mr. Skibine as well?

Answer. It was in the office, so it was other members of the staff, certainly Mr. Skibine if he was in town. I just don't recall other staffers, but I expect they were there.

Question. And being fair, having meetings with the applicant tribes, did you also have meetings with the opposing tribes? I know you had a meeting obviously with Ms. Doxtator. Were there other officials that came in from the surrounding area that wanted to have meetings with the Department officials?

Answer. Besides the Oneida tribe, I recall that the St. Croix Chippewa at Turtle Lake came in; the chairman was there with one or more other tribal members.

Question. And the reason for contacting and allowing the tribes the—I should say, I assume the reason for contacting them was to allow the tribes to correct any deficiencies that might be in the application. Or was there another reason? Is there a time or a place where they can correct those deficiencies for their own application?

Answer. Yes.

Question. And when is that time? Normally, when is that time?

Answer. When they are revealed, if it is something that would obstruct or cause the rejection of it, then they are notified of what it is to see if there is some sort of corrective action that can be taken.

Question. And do you know if they were given—the applicant tribes for the Hudson job track, do you know if they were given this opportunity after the denial came down on the 14th of July, 1995?

Answer. No. That decision was final for the Department, so at that point, there wasn't corrective action to that particular application.

Mr. YEAGER. If I might, is the opportunity for—is the opportunity to correct the application typically provided before the final decision or after the final decision?

The WITNESS. Before.

EXAMINATION BY MR. DOLD:

Question. Do you know—because obviously there were some deficiencies in the application—do you know when the people or the applicant tribes were given the opportunity to correct the application prior to the decision of July 14th, 1995?

Answer. On the items like survey and title work, deeds and other deficiencies that we have notified them about, they had supplied some additional information. Some of the smaller items, I can't recall exactly which, were cleared up, but there were even a couple that had a quitclaim deed for some access that the Bureau doesn't accept quitclaim deeds, so that one had not been cleared up.

We had—after the comment period was opened, we—George decided to focus on the "not detrimental", because there were so many deficiencies on the "best interest" portion of the test that it seemed unfair to the tribe to begin to work renegotiating all of these agreements and other documents that they had if there were fatal flaws in the "not detrimental" portion of it. So I was working on a laundry list of deficiencies for the "best interests" that we never really presented to the tribe because we were focusing on the "not detrimental."

But, for example, on the "best interests", they had a management contract that the NIGC ultimately rejected just before the July 14th decision, but without having an approved management contract and all of its collateral agreements, you can't even accurately assess the "best interest" issue, because you don't know what the deal is until the NIGC has approved the deal. So the laundry list on defects on "best interests" was extremely long, and the tribe really hadn't even been asked to address them yet.

Question. I assume something like the management contract, if you say as it was, it was not approved by NIGC?

Answer. Yes.

Question. I assume that that would be something that could be changed fairly easily?

Answer. Not easily, because the—I don't mean to second-guess them, but these were the commercial terms of the agreement between the manager and the tribe; and if the tribe had been required to go back to the management contractor and say, no, you can't have that, they might have said, well, we don't want to do this deal then because we won't be making the money we expect to make.

So, no, a lot of the issues were not trivial at all.

Question. Okay. I just want to, if I can, because this is obviously very important, follow up with you on not only that aspect of the management contracts, but some of the other areas that went against the "best interests" of the tribe.

My understanding was that employment was going to increase for the tribes; economic impact was going to be a benefit for the tribes; certainly the town would have gotten more jobs through the assessments. So I was just interested if you followed up with the tribes about any of your laundry list, or whether that was just a conscious decision by the other people in the office to focus in on the "not detrimental" instead of worrying about the benefit of the tribe, if you follow my question.

Answer. Yes. State it again. I'm not sure I understand.

Question. The "best interest" of the tribe, you said you had a laundry list?

Answer. Yes.

Question. And I was just wondering if you followed up with the tribes on any of those concerns that you had on the "best interest." Did you follow up with any of the three applicant tribes on those?

Answer. Any of the "best interests"? Not in a manner that would clear them up. One difficulty was that it appeared that the trust land was going to be surrounded by land they didn't have control over, so we were concerned that they would be, in effect, a landlocked reservation that would require them to accede to potentially unreasonable demands by the organization that surrounded them, which the manager would have had veto power over, so we call it a "doughnut effect" where the tribe is surrounded by the manager for access.

Question. Sure.

Answer. So we had mentioned that concept, but we hadn't—we hadn't actually asked them to clear it up and correct it as a defect. So we made them aware of some of our concerns, but we didn't ask them to come up with specific proposals to remedy it.

Question. Do you know if—I know just for one instance Mystic Lake was also, I think, in Minnesota, right across the river there. Do you know if they have a similar problem with the doughnut effect, or if any of those tribes do?

Answer. I don't think they do. The one I am thinking of I believe is the Mille Lacs up north where they found themselves surrounded. I think the Shakopee at Mystic Lake have public access to the land. But I could be wrong

[Hartman Deposition Exhibit No. TH–2 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I'm showing Mr. Hartman what has been marked as TH–2, which is a letter from the Department of the Interior to Ms. Rose M. Gurnoe, who is the Tribal Chairperson of the Red Cliff Band of the Lake Superior Chippewas; Alfred Trepania, who is the Tribal Chairperson of Lac Courte Oreilles Band of Lake Superior; and Arlyn Ackley, Sr., who is the Tribal chairman of the Sokaogon Chippewa Community in Crandon, Wisconsin.

This is the denial letter; is it not?

Answer. That is correct.

Question. And I just wanted to ask you who actually made the decision to deny this application?

Answer. Michael J. Anderson.

Question. Okay. Was there anybody else involved in that decision to assist him in the actual decision process?

Answer. In the discussions, yes.

Question. And who else would have been involved in that discussion?

Answer. I was in meetings, although not with him, on this decision, other than, as I said, the Oneida; but I recall in the discussions, besides myself, George Skibine, Robert Anderson, John Duffy, Heather Sibbison, Paula Hart.

Question. How many meetings like that—did you have meetings like that regularly? Was it a once-a-week-type deal where you would meet to discuss applications such as this; or was it, you had a special meeting to discuss this application?

Answer. I don't think they are regularly scheduled meetings. At least for me they weren't regularly scheduled. They were occasional meetings. Usually the ones I was in, I think were specifically to discuss the Hudson Dog Track.

Question. Do you know if Mr. Anderson actually drafted this letter, or if somebody drafted it for him?

Answer. I don't know.

Question. Do you know if there were drafts of a denial letter done prior to July 14th, 1995?

Answer. Yes.

Question. Do you know who drafted those?

Answer. I saw one that George Skibine drafted. I don't think—I think that's the only one I saw.

Question. And do you know about when that would have been drafted or when you saw that?

Answer. Late June.

Question. Late June?

Answer. Yes.

Question. Okay. And do you know, was it for Michael Anderson's signature?

Answer. Actually, it was prepared with two possibilities. One was Ada Deer's signature and the other one was Hilda Manuel, Deputy Commissioner's signature.

Question. And why the two? Who would normally sign a letter?

Answer. I don't know who normally would sign it. The way it was drawn up is that if the Deputy Commissioner had turned it down, then it wouldn't have been final for the Department and there would have been an administrative appeal process. If it was signed by the Assistant Secretary, then it would be final for the Department. That's the only thing I recall as being a material difference between the signature blocks.

Question. And do you know why Ms. Deer didn't sign this particular one?

Answer. No.

Question. And do you know if Mr. Anderson, or what documentation Mr. Anderson had when writing this? Did he have all of the——

Answer. I don't know.

Mr. YEAGER. I think your question assumes that Mr. Anderson wrote that.

Mr. DOLD. I think we established that Mr. Anderson wrote this.

Mr. YEAGER. That he signed it.

Mr. DOLD. That he signed it.

Mr. ELLIOTT. I don't think you established that he wrote it. You asked him if he knew who had drafted this letter, and he said he did not.

EXAMINATION BY MR. DOLD:

Question. Do you know if Mr. Anderson had—when he signed this letter, do you know what documentation he would have had before he signed it?

Answer. No.

Question. I know that you stated moments ago that you had seen a draft letter that Mr. Skibine had written for either Ada Deer's signature or for Hilda Manuel's signature. We have not seen a document prepared for Hilda Manuel's signature. Was that the same letter drafted in the same form, or was it one signature line right underneath one? Do you recall what the document looked like?

Answer. That was a draft letter, and then my recollection is that it had one closing paragraph if it was for Ada Deer's signature, and a different closing paragraph if it was going to be for Hilda Manuel's signature.

Question. And the second paragraph that you said would be prepared for Hilda Manuel, did it actually have the signature block for Hilda Manuel on the draft that you saw?

Answer. As in "Sincerely"—yes, yes, it had "Sincerely, Hilda Manuel, Deputy Commissioner."

Question. When did you first become aware that the deed of trust application in Hudson, Wisconsin, was going to be denied?

Answer. Well, the possibilities of denial had been talked about for quite some time. I guess I didn't know that it was going to be denied until I saw the July 14th letter. Since I hadn't seen a draft of the letter saying it is going to be approved, I guess I could intuit that it was going to be denied from the late June letter.

Question. Do you recall whether the people that you were meeting with at the Department were leaning one way or the other towards accepting or rejecting this application in early June, mid-June, late June? Was there kind of a sway of sentiment at the Department?

Mr. YEAGER. I have some concern about the question.

The WITNESS. I don't know about "sway."

Mr. YEAGER. What does that mean, "a sway"?

Mr. DOLD. My question is just trying to get at if Mr. Hartman had some sort of a sense, attending meetings or whatever, in his day-to-day operations, whether he felt that things were mounting up against the application process, or if things looked better for the application process during the stages at the Department in Washington.

The WITNESS. I don't recall any meeting where somebody said, well, this is dead, write it up; but the fact that somebody said, well, all right, we have surmounted the difficulties, let's go to work on the "best interests" section, nobody said that either. So I don't know if that is a sway one way or the other, but nobody said—that I heard said, this is a dead deal in February.

EXAMINATION BY MR. DOLD:

Question. Did you ever attend any meetings when you were talking about the casino or the deed of trust application? Did you ever have any meetings with Secretary Babbitt——

Answer. No.

Question [continuing]. In which he might have attended?

Answer. No.

Question. Have you ever had any meetings with Tom Collier or ones that he might have sat in and attended?

Answer. No.

Mr. YEAGER. Just so I understand, there were people who were involved in the decision-making whom you never talked to?

The WITNESS. Yes.

Mr. YEAGER. So you wouldn't know whether they favored or opposed the application at any given point in time?

The WITNESS. No.

[Hartman Deposition Exhibit No. TH–3 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I am showing Mr. Hartman what has been marked as TH–3, which is a memo for Harold Ickes from Jennifer O'Connor regarding the Indian gaming in Wisconsin. I will just give you an opportunity to review that.

I apologize; the copy that we received is not the best. Its left side is cut down a little bit, so we are missing, I think, the first letter from most all of the lines on down. If yours is worse, let me know.

[Brief pause for document examination.]

EXAMINATION BY MR. DOLD:

Question. And again, I apologize about our copy. The first letter off the left side is taken off, or at least not copied well, but I think we can still get the gist of the memo.

The memo on, I guess paragraph 3 states, second sentence: "The staff met last night and came up with the preliminary decision," and they are talking about the Department staff. I was wanting to know if you were a part of that meeting?

Answer. No. Well, I don't know.

Question. Okay. And just for the record, it is a May 18, 1995, memo, so the meeting would have been May 17th.

Do you know how Ms. O'Connor might have received such information?

Answer. No.

Question. Ms. O'Connor is an employee of the White House, who would she have contacted at the Department of Interior?

Mr. YEAGER. I think you are asking this witness to speculate about——

The WITNESS. I don't know.

EXAMINATION BY MR. DOLD:

Question. Is there is a procedure, if you know, that the White House would contact; or somebody would direct them to somebody, if you know?

Answer. Not that I'm aware of.

Question. Okay. The memo also indicates that Ms. O'Connor was told by someone at the Department of Interior, "The staff believe it is probably a bad idea to create the trust land to allow the establishment of the casino." Is that your understanding as to what the staff was believing at—around May 17th?

Answer. I don't know what she means by "the staff," whether she meant Indian Gaming Management Staff or whether she meant staff at Interior.

Question. What would be the difference between the Indian Gaming Staff and staff?

Answer. Well, she might be talking about whoever she was in contact with, and I don't know who that would be.

Question. I will represent to you that we do have, we do know of contacts through previous depositions that we know she at least was in contact with Heather Sibbison. We do know of at least two contacts with Heather Sibbison. We don't know about much contact elsewhere. We don't know for sure, but would that have been a logical person for her to speak with?

Mr. YEAGER. Again, I have the same sorts of concerns. You are asking the witness to speculate about a memo apparently from Jennifer O'Connor to Harold Ickes. If you are asking about the underlying facts, that's one thing, but if you are trying to discern her thought processes through this witness, I have a problem with that.

Mr. DOLD. And I don't want to have you speculate on her thought process.

The WITNESS. I don't know.

EXAMINATION BY MR. DOLD:

Question. Okay. But you don't really realize at this point in time whether the staff was—that is an accurate statement with regard to "staff believe it is probably a bad idea to create land in trust to establish the establishment of the casino" at around May 17, 1995?

Answer. In the meetings I had been in, the negatives of taking the land into trust had certainly been discussed. A concept that had been tossed out was that in a Democratic administration and a Republican governor, to ignore the local input and impose a casino on an unwilling community and then have the Republican governor say, well, look at those ridiculous Democrats doing this again, was not viewed as being the best position to be in. So I know when they say "probably a bad idea to create a land trust," there were plenty of ideas thrown out to indicate that some people in those meetings thought it was a bad idea to create a land trust in this case.

Mr. YEAGER. Just to clarify while counsel is conferring, you have no independent knowledge of a meeting described in the third paragraph of this memo?

The WITNESS. I don't—I was in meetings at about that time, but whether the meeting—there's a lot of meetings that I'm not in that I don't know about, so whether this is referring to a meeting I was in, I just don't know.

EXAMINATION BY MR. DOLD:

Question. When you say that the political ramifications of the Democrats taking land into trust on an unwilling group, was this a main concern in your meetings with regard to the local politics in Wisconsin?

Answer. It was a factor being discussed in the 151 discretionary part of the decision. Again, I don't recall anyone expressing sentiment that pure, naked political opposition would be defined as "detriment," so as to the section 20 two-part determination, there is the consultation aspect, but unless the local government articulates specific, objective reasons upon which they base that opinion of detriment, then the concept of probably a bad idea to create the land trust is one that impacts a 151 basis for the decision.

Question. And what other factors, when you say this would just be a factor, what other factors were there for the determination, besides the—were there other non—let me rephrase it.

Were there other factors not articulated in your section 20 checklist, such as the one you just indicated, that would have been a factor as well?

Answer. We had received a number of letters that are part of the administrative record for Minnesota tribes in the Minnesota Indian Gaming Association; and they had, and I think they still have, an agreement between the tribes in Minnesota not to make off-reservation land acquisitions because they think that might bring general gambling to the State of Minnesota to everybody's detriment.

They didn't want one tribe leapfrogging over the other tribes. So the Minnesota tribes had agreed that it simply wasn't politically feasible to have these kinds of land acquisitions, and they were urging that concept to the people that were reading the letters and reading the record.

So I guess besides the concurrence of the governor that would be required later on, which governor was of a different political party, on this other political consideration, the pressure that the Indian Gaming Regulatory Act would be under if suddenly tribes everywhere were leapfrogging other tribes to get into better markets.

So I view both of those as being political concepts as opposed to something that could be studied objectively.

Question. In the indented paragraphs here, there are three, but the first one states, "The local community is almost uniformly opposed to the proposed casino. The tribes that want to establish it live approximately 250 miles away, but no one in the immediate area wants it established, including the Mayor, City Council, other local officials and Congressman Gunderson."

Is that your—recognizing that you did not write this memo, is that your understanding as well?

Answer. Some of the tribes are as far as 250 miles, but some were closer. I think to say, no one in the immediate area wants it established—there had been one referendum where 51 to 49 percent supported an Indian tribe taking over the casino in an election where you would expect that the opposing parties would show up in huge numbers and the people who just really didn't care one way or the other would stay home.

Initially, when the application was at the area office, the mayor and the city council and the local officials, except for the town of Troy, were either neutral or nominally on board for the project. So I think it is an overstatement to say that no one in the immediate area wants it established.

As to Congressman Gunderson, he wrote a number of letters, but most of those letters conveyed constituents' sentiments; and he actually wrote the Department asking whether or not it was appropriate for him to comment. Since he couldn't see that he was clearly a party in the consultation, he didn't want to take an official position without finding out from the Department whether or not he would be interfering in the process.

He got a letter back from, I believe it was John Duffy, saying it was okay to comment, and then he did write in. I would have to look at dates to see if his letter is before or after that May 18th, it was in about that time frame.

So I would argue with some parts of that statement. I think that's an exaggerated assessment.

Question. Okay.

Mr. YEAGER. If I could just interject and clarify the question.

Did I understand you to say that local opposition coalesced after the recommendation had been forwarded from the local office?

The WITNESS. That's correct. In other words, it was in the reopened and extended comment period that we heard from the City of Hudson that they were opposed.

EXAMINATION BY MR. DOLD:

Question. How often are applications like this reopened?

Answer. I don't know. This is the first one I had worked on.

Question. Have you worked on other trust applications?

Answer. Yes.

Question. Have many of them been reopened?

Answer. We take additional information in the office. It's, in a certain sense, a de novo review, so the one we worked on recently we—it was supported, happened to be supported by the local town, but the mayor of Spokane came in and visited us and said we strongly support it and wrote letters and these were all made a part of the record. So the germane comments are entertained even after an application has left the area office.

Question. But they have not been—the official comment period has not been reopened?

Answer. I'm not acquainted with another letter going out saying "it is reopened and you have until April 30th" type thing, but if asked to do so, it's probably a request that would be considered.

Mr. ELLIOTT. Could I——

Mr. DOLD. Oh, of course, sure.

The WITNESS. There's not—in other words, there is not a formal comment period. When they send out their consultation letters, they ask for a response within 30 days, but I'm not aware of anybody ever turning down a communication that came in from an elected official or a citizen alike; and I don't think we want to be in the position of telling a United States Senator, no, we won't, here is your letter back, we are not going to read it.

Mr. DOLD. Of course.

The WITNESS. I mean, you might, but——

EXAMINATION BY MR. DOLD:

Question. The second-to-last paragraph in this memo, it states, "Some department staff think the bottom line here is the Minnesota and Wisconsin tribes who are benefiting enormously from gaming do not want competition and are able to hire bigger

lobbyists," I believe, "than the three very poor tribes who want the casino. However, the staff don't think this argument negates the uniform opposition from the local community."

At least with regard to the first portion of that statement, is that something you believe to be true as well?

Answer. I——

Mr. ELLIOTT. Which portion are you talking about? The whole paragraph?

Mr. DOLD. The "Some Department staff think the bottom line here is the Minnesota and Wisconsin tribes who are benefiting enormously from gaming don't want competition and are able to hire bigger lobbyists than the three very poor tribes who want the casino."

The WITNESS. I never heard lobbyists being brought up during the application with the possible exception of a meeting with the Sokaogon tribe. They were supplying information during this comment period, as well as afterwards, which was made a part of the record, and I recall them talking about how the Minnesota tribes that bought the election for the prevailing city council in Hudson and that they were making donations, but from staff or anybody inside the government, I never heard anybody talking about who had lobbyists and who had more money. We met with lobbyists from the applicant tribes. I remember Jim Moody, a former Congressman, and perhaps others. So there were lobbyists on both sides, but nobody indicated what the payroll was.

Question. Sure. Do you recall—I know you mentioned Jim Moody—what other people you might have met with, lobbyists, lawyers, Congressmen, Senators from the applicant—people in favor of the tribes, and those opposed, I mean if there are people that stick out in your mind?

Answer. I can't think of any. He is the only one I recall as being a lobbyist, but I think there might have been others from the applicant tribes.

Mr. YEAGER. Before we move on from that, do you recall who was in on that meeting with Congressman Moody, former Congressman Moody?

The WITNESS. My best recollection is that I went into that meeting, and I recall myself and George in there, but there might have been other staffers, and I had thought it was a meeting with tribal representatives and it turned out that everybody that was in there was from GGR, Galaxy Gaming and Racing. So actually Mr. Moody might have been a lobbyist for the management company as opposed to the tribe.

Mr. YEAGER. George refers to George Skibine?

The WITNESS. Yes.

Mr. YEAGER. Who is the director of the Indian Gaming——

The WITNESS. Right. So I guess I kind of assumed when we went into the meeting that these were tribal representatives, but they were actually all there from GGR.

Mr. DOLD. Let the record reflect that I am showing Mr. Hartman what has been marked as TH–4, which is a letter from the Mayor of the City of Hudson, Thomas Redner, I believe is how you pronounce his name, with enclosures and attachments which are the proposed casino development impact on the City of Hudson and its finding. I will just give you a minute or two or as much time as you need to review that document.

[Hartman Deposition Exhibit No. TH–4 was marked for identification.]

The WITNESS. I read it extensively reviewing the record. I may need time to read specific sections as you get to it, but——

Mr. DOLD. Okay. If that is the case, just let me know and we will give you all the time you need.

EXAMINATION BY MR. DOLD:

Question. As we discussed earlier, I think the letter shows at least at this point in time that the mayor was very much, or at least on board, in favor of this casino proposal, correct?

Answer. Yes.

Question. And the letter is addressed to Mr. Jaeger, J-A-E-G-E-R. Do you know who Mr. Jaeger is?

Answer. I have never met him. I have seen his signature and he was acting area director.

Question. The attached material on the proposed casino development and the impact on the City of Hudson goes through the environmental impacts, the traffic, the lights, impacts on the social structure of the community, impacts on the infrastructure, the sanitary sewer, the wastewater, water service, storm sewer, emergency medical services, fire service, the police, the transportation, projected costs that the city would endure, income and employment, and then the last page is a table with

estimated costs, and then the last thing is proposed programs for any compulsive gamblers.

Is this part of a record that the area office would require of the City of Hudson that they would want them to thoroughly research some of the impacts that a casino would have?

Answer. This is what they expect back when they send out a consultation letter to an appropriate local government official.

Question. So this is not out of the ordinary; this is something that is expected for each of the area offices, if you want to do this?

Answer. Right.

Question. And having reviewed this, at least back when you made your recommendations or when you reviewed it, did it appear to take most things into account that needed to be taken into account at that time?

Answer. Yes.

Question. Page 2 of the attached materials, which is actually page 3 of the exhibit, the underlying portion down there goes to the question put to the voters of Hudson in a referendum, which reads, "Do you support the transfer of the St. Croix Meadows to an Indian tribe and the conduct of casino gaming at St. Croix Meadows if the tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" and then it goes on to say that "The results of the referendum were 1,351, 'yes,'" which translates to 51.2 percent, "and 1,288 no, 48.8 percent," which translates in the overall picture to about 53.9 percent of the voters.

I know we discussed this a little bit earlier, but does the vote at all seem odd to you, or I guess I should say, is that a normal thing that you would have townspeople supporting a casino coming in, or would that be not really the norm?

Answer. No, I think again, when asked for a norm, it implies I know about all of the other 50,000——

Question. Right, but I just want to know of the ones that you worked with.

Answer. I wasn't surprised by it and the fact that if you look at the voter turnout, it is fairly small, so the highly motivated people opposing gambling—and this community had a lot of opposition back when the dog track was established—I think that most people fall somewhere in the middle; they don't care.

Question. But out of the 53 or, actually, almost 54 percent of the people that did show up to vote, the referendum did pass?

Answer. That's correct.

Question. So we have a majority of the people voting, giving a thumbs-up to the Hudson proposal?

Answer. And the ones that stayed home, my bias is that they are probably—if they are neutral to it, that means they don't oppose it, because if they were really opposed to gambling, they would have showed up. This is a very vocal group.

Mr. YEAGER. That is your supposition?

The WITNESS. Yes, that is my supposition.

Mr. DOLD. Of the people that stayed home, of course?

The WITNESS. Right.

EXAMINATION BY MR. DOLD:

Question. I guess my follow-up on that is, having done some of the applications after the Hudson proposal, or having personal knowledge, do you know if other deed of trust applications have had referendums supporting or against? Do you know of any other referendums? I should just leave it at that?

Answer. No. That is the only referendum I have ever seen.

Question. Okay.

Mr. DOLD. Why don't we take a break for about 3 minutes, 4 minutes. Off the record.

[Discussion off the record.]

EXAMINATION BY MR. DOLD:

Question. I think where we left off was I had just handed out TH–4, which is a memo to the Assistant Secretary of Indian Affairs from the Office of the Area Director, who I believe at that time was Denise Homer, and I believe the date is November 14, 1994, and the area director was from the Minneapolis area office. I will just give you an opportunity to review the document briefly so you can familiarize yourself with it.

Answer. Yes. I have seen it extensively. I may need time on specific sections.

Mr. DOLD. Let me scratch that. I think we need to mark this as TH–5, which is the Department of the Interior memo from the Assistant Secretary of Indian Affairs,

who at that time I believe—who was the Assistant Secretary of Indian affairs at that time, if you recall?

The WITNESS. Ada Deer.

[Hartman Deposition Exhibit No. TH–5 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. Ada Deer, from Denise Homer, the Office of the Area Director, and the subject was the request for Off-Reservation Gaming for Land in Hudson, Wisconsin.

Have you seen this memo before?

Answer. Yes.

Question. And you reviewed it a while ago?

Answer. Yes.

Question. When you first received it?

Answer. Yes.

Question. And did you have the opportunity to review the 32-page recommendation from the area director?

Answer. Yes.

Question. In your opinion, did the area office address the necessary areas for a recommendation of this sort?

Answer. Yes.

Question. And correct me if I'm wrong, but the recommendation on, I guess it would be page 5 of the exhibit, under Roman numeral VI, recommends that "Because the establishment of a gaming facility on the proposed trust land is in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, I recommend that the Secretary determine that the proposed trust property be acquired by Lac Courte Oreilles, Red Cliff and Sokaogon Tribes for gaming purposes. Signed, Denise Homer."

Is that as you read it, as well?

Answer. Yes.

Question. Do you know how many times a recommendation from an area office director has been overturned?

Answer. I guess it comes down to what the universe of application and documents you are looking at is. I have examined records of, oh, between half a dozen and a dozen land acquisitions where the central office determination or decision is different than what the area office recommended. It is not necessarily a wholesale rejection like we are talking about in the Hudson case, but in some cases the recommendation that comes in from the area office states the wrong basis; it makes a recommendation on an off-reservation land acquisition, when in fact later on it becomes subject to an exception to section 20, so that it is an on-reservation or contiguous acquisition. So the central office disagrees regularly with area office recommendations.

Question. Is that really more with the specifics or the details of recommendations, or is that really with the end result?

Answer. Lots of times there are items that are remedied in it, so that ultimately the land goes into trust. But there was an area recommendation, Area Director recommendation, to take land in trust for the Santee Sioux Tribe in, I believe, Nebraska that was just flatly overturned by Secretary Luhan.

Question. Do you recall when that was?

Answer. Well, if it was Secretary Lujan, it would have been prior to '92. So I guess between 1990 and '92.

Question. And that was approved by the area office?

Answer. Yes. And it was off-reservation land acquisition that was opposed by the community and other tribes, and the Secretary disagreed with the Area Director's recommendation.

Question. Have there been any other times that you can recall?

Answer. Lot of times the—a lot of proposed acquisitions, everything from the conceptual stage to some preliminary documents that get sufficiently discouraged along the way, sometimes by the area office, so that they never really arrive for a secretarial determination.

Since 1988, there is only one parcel of land that has been taken in trust off reservation, Forest County, Potawotomy, in Milwaukee. So you are not talking about an activity that occurs on a real regular basis. The off-reservation land acquisition for gaming purposes after October 17th of 1988 is a rare bird, so a statistical sample of that size, I won't say it is something that is regular or something that is irregular.

Question. But there have been other applications that have been approved by the Department of Interior?

Answer. Yes.

Question. So the one you referred to is just one that actually happened?

Answer. It is the only one that happened—right—in almost 10 years.

Mr. YEAGER. If I could interject a clarifying question. Taking your attention back to Denise Homer's November 14, 1994, recommendation——

The WITNESS. Actually I think it is the 15th.

Mr. YEAGER. Fifteenth. She concludes that establishment of a gaming facility on the river post-trust land is in the best interests of the tribe.

You testified earlier that you found significant problems, or if you walked down that road you would have encountered significant problems on that prong of the section 20 analysis.

The WITNESS. Yes. Just as a technical staffer, I disagreed with that conclusion with the documents as submitted.

Mr. YEAGER. Thank you.

EXAMINATION BY MR. DOLD:

Question. And for the record, we would certainly be interested in taking a look, if you have those anywhere, of what those things were that were in the hindrance of those Indian tribes. I don't know if you have got any documents on that or if you have written down in your notes.

Answer. On the "best interests?"

Question. On the "best interest" type stuff. That is obviously important to this matter.

Answer. I guess for starters, there is a letter of rejection of a management contract by the National Indian Gaming Commission. So as I recall that letter, they said they were attaching a deficiency. They they sent them a deficiency list; they hadn't heard from them, and if they didn't hear from them in 30 days, it would be disapproved. The NIGC identified major flaws that the tribe had not corrected at that point.

Question. We discussed that. If there are other ones back in the office that you may have a list of. If you remember any other ones right now, we would be happy to hear those. Those are obviously crucial to the application process.

Answer. The numbers 2 years later are a little hazy, but they were paying for a portion of the property there, as much as the entire property was worth, and the largest portion of the property, one part was actually being kept by GGR. There are some arguments that the purchase price was going to be well in excess of an appraisal, and BIA has regulations that prevent tribes from spending more money on a property than you can get an appraisal for.

The surrounding parking lot would have been a partnership between the three tribes and GGR, with veto power by any one of the parties that would have lasted, I think, at least 25 if not 50 years, and would have caused the tribes to pay in excess of $20 million, I believe it was net present value, for a parcel of land that I don't think you are likely to get an appraisal of more than about $1 million.

So with all the interlocking agreements, it was fairly clear to me that they were exceeding the statutory limits on what a management company can be paid for being involved in a gaming operation. They are generally limited to 30 percent of net revenues and a 5-year management contract.

This would have been a means to siphon off through this parking lot deal a significant sum of money in excess of that, as well as allow GGR to participate through the rental payments on the parking lot lease for 25 years instead of just five. So those spring to mind.

Question. Are there any other that spring to mind?

Mr. ELLIOTT. You mentioned earlier a quit claim deed.

The WITNESS. It was on what appeared to be the best public access to the property, it seemed to have a quit claim deed to the county, so it could have created this donut effect. There was a big chunk out towards the south part of the property that was being kept by GG&R, and there wasn't any real documentation as to why they were keeping it, what was on it, what was going to be on it.

All of those things need to be disclosed before we can assess what is going on in the deal.

Because the management contract hadn't been approved, there hadn't been any background checks done on any of the principals involved in it to find out if they were suitable for inclusion in Indian gaming, and BIA doesn't have separate authority to do those background checks, so any suitability for Indian gaming would have been determined by the NIGC.

Those background checks can sometimes drag on and on and on. If it turns out they have a foreign owner/investor and you have to get into the State Department and do overseas background checks, they can go into years.

It seems to me I had a lot more small items, but these were the big items that I think would have caused some fairly intense negotiations by the parties.

EXAMINATION BY MR. DOLD:

Question. Sure. The quick claim deed is not—would that be something that would be easily remedied, or was it something they just needed to provide more documentation on?

Answer. I don't know. You would need a realty specialist to actually look at that and make the determination on how easily that can be remedied.

Question. As far as the background of the other people involved in the track, because it was my understanding there is one private investor who was the head of what, Galaxy Gaming, Fred Havenick; was that your understanding too?

Answer. Yes.

Question. Did anything come up about a management company, Delaware North, in your documents, in your discussions or anything like that, regarding the management operation of Hudson?

Answer. I became aware of, what was it, North?

Question. Delaware North.

Answer. Delaware North; but I think it was long after—I think it was well past the July 14th memo.

Question. Sure.

Answer. And at first when I saw it, I said well, that is an entirely different dog track. We are not talking the same thing. I don't think it came up as an issue, because we simply had no background information on GGR or any of the other principals.

Question. Now, as far as the "best interests" of the tribes which you said you had some deficiencies on, and it is normally the process, I think we covered before that you allow the tribes the opportunity to remedy the deficiencies in their application, did you talk to any of the tribes regarding how to remedy—did you specifically talk to the tribes or did you know of anyone that specifically talked to the three applicant tribes on how to remedy any of the deficiencies we have talked about?

Answer. On "best interests?"

Question. First on "best interests", and then we will go

into "detrimental."

Answer. I sent them some information on some of the issues, but I don't recall exactly which issue. But we hadn't sat down with a deficiency list like they obviously got from the NIGC to say these items need to be fixed in order for us to find it is in the "best interests."

Question. Did you talk to them about recommending any detriment to the community? Did you find anything as far as—let me withdrew that.

Did you find anything at the Department regarding detriment to the community under the two-prong test?

Answer. I didn't.

Question. Did somebody find—I mean, what was found as far as detriment to the community, that you know of?

Answer. In looking at the objective measures, I didn't hear anybody articulate any strong foundation for any of the objective measures. But the concept of local community opposition and whether or not that would be called detriment or whether that would be the basis for a 151 determination had come up in discussions.

I would imagine back as early as, what was it, the March, when Debbie Doxtator's—no, May; certainly by May that concept was being strongly discussed, and I spoke several times with Sokaogon and Duane Derrickson saying the local government opposition is a major factor. If all you are talking about here is a little bit of money, if you need to beef up the government services agreement because they are not happy with $1.1 million or whatever it was they were getting annually, you should make sure that if you can take care of their objections by modifying the government services agreement, that you do that if it is a major factor that you need to correct now while they are still considering it. And I never saw any end product that would indicate they renegotiated or made the City Council happy.

Question. So in talking to Duane Derrickson or any of the other tribes that you might have contacted regarding the local opposition from the community leaders, was that considered your consultation or allowing them to remedy the problem?

Answer. That is consultation. Consultation is done both orally or in writing, and those things are necessary.

Question. Is that the only consultation that you know of with regard to your meetings with Duane Derrickson or on the phone contact? Do you know if anybody else the at the Department did——

Answer. No, I don't know. I only know my contacts.

Question. In talking with some of the tribal leaders, it was my impression that when they came to Washington fairly close to the July 14, 1995 decision, they were under the impression that things were proceeding smoothly. Obviously not, or at least not to their understanding.

At that point in time, is there usually an opportunity for them to remedy the deficiencies in their application anywhere close, or is there a deadline that is articulated to them saying we will make our final decision on this day and unless it is remedied by that day, we will take appropriate action as far as the decision?

Answer. No deadline had been set. I guess I had envisioned that kind of like when the NIGC responded on the management contract, they said if we don't hear from you in 30 days, we will disapprove it and return it. I could envision reaching a point where we did that. We had not reached that point because we had not gone over a laundry list of the "best interests," and I guess since we had informed them that we were doing the "not detrimental" before we did the "best interests," if they were optimistic that everything was going smoothly, although I am not sure that was a real good read of the signals they were getting.

Question. Do you know why they weren't given more time?

Answer. You mean past July 14th?

Question. Past July 14th.

Answer. No, I really don't. If a decision, a 151 decision, is made that the Secretary is not going to exercise discretion because of strong local opposition and the tribe hasn't been able to mobilize strong local support, then I guess you have reached the point where it is not doing anybody any good to drag it out forever. So it is possible that since the tribes were pressing for a decision, that the powers that be didn't want to drag it out forever for the tribe, if in fact there was an irremedial defect.

Question. When you say the tribes were pressing for the decision, you are talking about the three applicant tribes?

Answer. Yes.

Question. Do you believe the three applicant tribes would be pressing for a decision, knowing they have some deficiencies in their application that would have prevented them from getting their application approved?

Answer. I don't know. It is tough to second-guess that one.

Mr. DOLD. I am showing Mr. Hartman what has been marked as TH–6. This is a memorandum dated April 20, 1996, from Denise Homer, the Office of the Area Director, to the Assistant Secretary of Indian Affairs at the Department of Interior.

[Hartman Deposition Exhibit No. TH–6 was marked for identification.]

Mr. ELLIOTT. Excuse me, is there a page 3? Oh, it is behind 4. I am sorry.

Mr. DOLD. I apologize. That is my error, considering I did the photocopying here. I apologize. We will note page 3 is behind page 4, at least on my copy as well.

EXAMINATION BY MR. DOLD:

Question. The subject of this memo is the Trust Acquisition Request - St. Croix Meadows Dog Track Property, which is also known as what we have been referring to as as the Hudson Dog Track.

I just wanted to pick your brain, if I may, Mr. Hartman, regarding is this a normal step in the process for the Area Director to follow up on her November 15, 1994, regarding title commitment, the level I hazardous waste survey, the finding of no significant impact, maps of the property, tribal resolutions, notification letters addressed to the local units of State government, et cetera?

Answer. Yes.

Question. Or is this in addition to something?

Answer. Well, there is a parallel although sometimes sequential process, where the first findings of fact addressed section 20 of IGRA, and this addresses 25 CFR 151. So in fact you need to do both of them. Even were a Secretary to make a favorable two-part determination and get the concurrence of a Governor, you still have to go through the 151 requirements in order to take the land in the trust.

Section 20 determination says the gaming can be conducted on after-acquired land. It doesn't cite any authority to take land into trust, and it doesn't comply with the 25 CFR 151 to actually take land into trust. It is strictly whether you can conduct gaming on land if and when you acquire it.

Mr. YEAGER. Just to clarify, 25 CFR 151 implements the Indian Reorganization Act?

The WITNESS. Yes. I think in part. I think there may be other—besides the IRA, I think there may be other authorities that can be—to take other authorizations, other laws to take land into trust that also have to go through 151. That is what it primarily does; yes.

EXAMINATION BY MR. DOLD:

Question. And have you seen this document before as well?

Answer. Yes.

Question. And is it your understanding that this document from Denise Homer, the Area Director, is also recommending that the land be taken into trust?

Answer. Yes.

Mr. DOLD. I have shown the deponent what has been marked as TH–7. For the record, the exhibit has got some highlighting on it that is mine, and it is not one that came with the document.

[Hartman Deposition Exhibit No. TH–7 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. It is a June 8, 1995 memo from the Indian Gaming Management Staff to the Director of the Indian Gaming Management Staff regarding the application of the Sokaogon Community, the Lac Courte Oreilles Band and the Red Cliff Band to place land located in Hudson, Wisconsin in trust for gaming purposes.

On the "From" line there is a signature to the right. Is that your signature, Mr. Hartman?

Answer. Yes.

Question. Did you draft this, or was this the compilation as we discussed before?

Answer. It is some of each. I took the electronic version of what existed for "best interests," "not detrimental," stripped out all the "best interests" language on what the staff had been working on, and then added sections that addressed the newly-delivered information. It was actually an intervening draft somewhere in the record that shows it is a red-line, but this one isn't. So I had wrote up all the additional comments on the economic studies that had been submitted and the additional input from the local communities.

Question. So you used the input from local communities, other drafts of other people that the Indian Gaming Management Staff put together?

Answer. Right.

Question. Did you use any other documents to draft this?

Answer. Used just the input from the City of Hudson, the nearby Indian tribes, and the economic studies they had submitted.

Question. Were there other reports drafted from the Indian Gaming Management Staff?

Answer. There is a—yes.

Question. And when were they drafted?

Answer. From between the time we had the meeting in January out of Lakewood, and June, we had done a little bit of wordsmithing on the staff draft, both on "best interests" and "not detrimental."

Question. Was there any other drafts done between June 8th and July 14th?

Answer. Not that I am aware of.

Question. Do you know why this draft was not finalized?

Answer. First of all, it only touched on the "not detrimental to surrounding community." There is no section in it on "best interests." I had been asked for a draft report of the staff comments on "not detrimental" by Mr. Skibine, so he asked that it be a draft.

Question. Okay. On page 3 of this, under "Consultation with City and Town," you again comment down here about Thomas H. Redner, the Mayor, states "... the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

Did you believe him when he wrote that; and I believe that was from his letter, is it not?

Answer. Yes, I believe that is a quote out of what you put here, one of your exhibits.

Question. Do you have any reason to know that that is not the case?

Answer. No.

Question. On page 4 under "Consultation with the County," the bottom two lines starting in quote, "The City Council of Hudson unanimously approved this," and in brackets, "Agreement for Government Services," end bracket, "on March 23 by a

vote of 6 to nothing, and the County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

That is your understanding as to what the local community was voting on with regard to the government services of the Hudson casino?

Answer. Yes.

Question. Both of those show a pretty clear indication that the local town elected officials at least were in favor as far as the government contract was concerned?

Answer. Yes.

Question. And then D, on that same page 5 of your draft, comments about the fact that the Area Director consulted with all the tribes except the Menominee Tribe of Wisconsin; and further, it goes on to state that six of the Minnesota tribes did not respond to the Area Director's request for comments, while five responded by objecting to the proposed acquisition for gaming.

As far as the Wisconsin tribes, you commented down here that two objected and two did not object to the proposed acquisition for gaming.

I just wanted to get a sense as to whether that was normal as far as—recognizing that you have not worked on many of the off-reservation gaming—if this was a normal occurrence as far as opposing tribes to taking land into trust?

Answer. Yes, it is often the case that tribes object.

Question. And then it goes on extensively to quote some of the tribes' concerns and their comments. You went on to do that; is that correct?

Answer. Yes.

Question. On page 6 you talk about the Coopers & Lybrand impact study. Can you just tell us a little bit about what you learned from the Coopers & Lybrand study, if anything, with regard to the impact it would have?

Answer. As it says here, it was commissioned by the St. Croix Tribe, and they started out by estimating a large increase, and then indicated the detriment that they would suffer from that large increase; whereas if you took out the increase, it turns out they were talking about a 1.25 percent drop in actual total attendance as an impact of the Hudson—of a casino at the Hudson.

So I looked at it, looked at its economic bases, looked at distances, and arrived at the conclusion that it did not show that the economic impact of a casino at Hudson would be detrimental to the St. Croix Tribe, which was approximately 60 road miles distant. Casino customers from Minneapolis already had to decide not to go to a lot of other closer casinos, to go to Turtle Lake Casino anyway, and the addition of one at Hudson didn't seem to me to have too likely an impact on a casino that was that far away.

Question. And you also had access to a Peat Marwick report regarding gaming at Hudson; is that also correct?

Answer. Yes.

Question. And that was done, according to your report; that was commissioned on behalf of the Minnesota Indian Gaming Association, MIGA?

Answer. Yes.

Question. Turning attention to page 8 of your report, if you could just go over kind of what you found out with regard to that first paragraph at the top, the proposed market share and its effects, especially with regard to the Mystic Lake tribes, and how you gleaned that information?

Answer. Did you want a dramatic reading?

Question. No, no. I am just saying—I will read this. If you have anything else to add, by all means. Start in the middle of the paragraph. "Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact." Also, "Mystic Lake Casino was estimated to have a $98.6 million net profit in 1993. A reduction of $8 million would be about 8 percent, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact tribal expenditures on programs under IGRA Section 11."

Having done just the basic, do you have anything else to add regarding its effect on it?

Answer. No, those are my thoughts. That was assuming that you bought into the fact that there would be a reduction. Since that time, we have had a test bed up in Connecticut with a major casino moved in 10 miles away from the Foxwoods Casino, and Foxwoods' revenues grew this year, at the same time another casino carved out several hundred million dollars of revenues. So the econometric interactions are complex.

Question. And was this—scratch that.

And having taken all of this information into account—I will let the record reflect that Michele White of the Majority staff just came in—having taken all this information into account, your recommendation was to approve the application?

Answer. No; my recommendation was that we still hadn't found an objective measure of "detriment," although if you look in this draft, there are still some areas to be addressed. I have to do this from memory.

Question. Take all the time you need, please.

Answer. For example, on page 14, under "Proposed Programs, If Any, for Compulsive Gamblers and Source of Funding," the staff's summary is that the Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the problems of problem gaming.

So even on this particular draft, there is still at least one open issue for the tribes to address before I think the staff would agree that everything has been appropriately mitigated.

Question. Sure. Taking into account the fact that they don't have an adequate, according to the staff, program for the compulsive gamblers, your summary conclusion at the bottom reads, "Strong opposition to gambling is on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact."

Then it continues on. Is that still your belief?

Answer. Yes.

Question. And then as we were talking about before, the very last paragraph here I think encapsulizes some of what we were talking about before. It reads, "Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed."

So correct me if I am wrong. You are saying the detrimental impact would pass, but you still need to complete the "best interests" portion, is that correct?

Answer. That is correct.

Question. And do you know—you didn't do the "best interests" portion, you did some of your own; but do you know if there was a draft done on the "best interests" portion?

Answer. Yes. In other words, the printout just before this that addresses both of them has at least the draft staff comments on the "best interests."

Question. The one just before——

Answer. I don't know when it would have been printed out. Usually the date on it is the date that is printed out. The one that had existed since the Lakewood meetings in January addressed the "best interest" issues.

Question. Do you know who drafted that?

Answer. Staff and myself; Emily.

Question. This analysis here that you wrote on June 8, 1995 came after that memo that Jennifer O'Connor wrote to Mr. Ickes, and let me get the date on that. I think that was—I think our Exhibit TH–3, which was a May 18, 1995 memo, in which you said, the Department is reviewing the proposal and the staff met last night and came up with a preliminary decision which will not likely be filed for a month. The staff believed it is probably a bad idea to take land into trust to allow the establishment of a casino.

Because I am not involved with the Department of the Interior and don't understand it, it just doesn't seem to me to jive, the two don't seem to jive; that the May 18th memo where she says the Department of Interior staff had a meeting and things don't look good in a sense, and then your June 8th memo seems to say that you found—your conclusion, although it needs to be established further on the "best interests" of the tribe, that the impacts are not detrimental to the surrounding community, as you wrote in this one, seem to be inconsistent.

Correct me if I am wrong. Is that your understanding as well; they would be inconsistent between that——

Answer. Actually, they got my copy. Again, I think you may be talking about the difference between the 151 secretarial discretion and the—the Secretary doesn't have to find detriment to take land into trust. That is not one of the criteria. The criteria of detriment is one as to whether you can game on the land if it is taken into trust.

Question. So was it your understanding, then, that the decision was based——

Answer. The staff believes it is probably a bad idea to create trust land to allow establishment of a casino. Detriment to the surrounding community is not an issue in arriving at that conclusion.

Question. So then how are you reading that? Are you reading that the decision would be based solely on a 151 analysis?

Mr. YEAGER. You are talking about the Jennifer O'Connor memo?

EXAMINATION BY MR. DOLD:

Question. Talking about the reading he just read.

Answer. I don't know what she is talking about in there. But I don't find them inconsistent, because she could be talking about a 151 determination with him looking strictly at the issue of whether there is an objective finding of detriment, if you could write up a findings of fact that said this is "detrimental" and have it likely to prevail in court if tested.

Mr. YEAGER. If I could interject, I have one or two questions to clarify, this is a convenient time.

Mr. DOLD. Sure.

Mr. YEAGER. This June 8th memo, which is Exhibit 7, is from the Indian Gaming Management Staff. It is signed by you, to Director of the Indian Gaming Management Staff. And there is a draft stamp I see on each page.

The WITNESS. It is actually an electronic footer on there. It is a permanent part of that record.

Mr. YEAGER. Okay. Are you a senior member or were you at that time the senior member of the Indian Gaming Management Staff?

The WITNESS. No.

Mr. YEAGER. Were you speaking for all of the members of the Indian Gaming Management Staff in this memo? Let me rephrase that. Did they all collaborate in drafting this document here?

The WITNESS. No. We had collaborated on many of the portions in there, but I was the only one that wrote addressing the new input, the letters we got from the City of Hudson and the MIGA and St. Croix Chippewa Tribe.

So before it would come out of draft—because the earlier comments that came out of January and later were other staff member comments—before they wrote them they would would have agreed to them. Before this came out of a draft form and was signed by anybody than myself, they would have reviewed it, made sure it said what they intended.

So no, this was not a draft approved by the other staff members in there, although they had substantial input in writing portions of it.

Mr. YEAGER. One other quick question—and I am sorry to interrupt—is it possible that other members, other staff members of the Department of Interior, above your level, had a different view about this whole thing than you did at this time?

The WITNESS. Yes.

Mr. YEAGER. Thank you.

The WITNESS. I think if you put 10 financial analysts in the room, you could get 10 answers, and somebody else could look at it and say well, 3 percent drop in tribal revenues is significant, that that is a detrimental impact, and we would probably have a very heated discussion. But, no, I think reasonable minds can differ on some things, on some things and manners of interpretation.

EXAMINATION BY MR. DOLD:

Question. Let me ask you your personal thing, because I can't really ask you to comment with regard to how other people at the Department feel. But a change, according to your draft, taking the worst case scenario of 8 percent, at least taking Mystic Lake into account, going from approximately $396,000 per tribal member a year down to $363,000 per tribal member a year, do you consider that to be a detriment?

Answer. No. I thought the case that the Shakopee were making was the weakest. Turtle Lake, it is a closer casino and more remotely located, so the possibility of taking part of their market share is present. But I didn't find the MIGA assertions particularly persuading.

Question. Do you know what the per capita dollar figure is for the Red Cliffs, the Lac Courte, or any of the other applicant tribes?

Answer. No.

Question. Going back to the discretionary considerations, were any of the discretionary considerations under I guess 151 shared with either you or any other members of the Indian Gaming Management Staff?

Answer. I really don't know. I wasn't asked whether I thought the secretarial discretion under 151 should be exercised one way or another, and I don't—in the meetings I was in, I heard it discussed, but I just don't really remember who discussed it. So I don't recall if somebody like George Skibine gave an opinion one way or the other.

Question. In your dealings at the Indian Gaming Management Staff and in your tenure at the Department of Interior, do you know if there are any discretionary concerns under 151 that are irremediable or irreconcilable?

Answer. No, I just don't know. For non-gaming, those decisions are made at area offices, so a lot of them go on. It could be Area Directors decline to take land in the trust on a regular basis and I am not aware of it.

Question. Do you know what 151 concerns were raised in this matter and do you know if they could have been fixed?

Answer. Well, the strong opposition of the Hudson City Council was obviously key, and I don't know if they could have been fixed or not. I personally recommended to the Sokaogon Tribe that they make sure that a modification of the government services agreement couldn't cure everybody's—couldn't cure the problem of lack of local governmental support, and they didn't renegotiate. I don't know if they asked or not.

Question. Were there any other problems with 151 besides the one you just mentioned?

Answer. Not that I am aware of, just the local government support, or lack thereof.

Question. It is my understanding that Ada Deer in this matter recused herself, is that your understanding as well?

Answer. Yes.

Mr. YEAGER. Did you know that at that time?

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. Thank you. My next question was when did you first find out that Ms. Dear had recused herself?

Answer. When I saw the letter and saw Mike Anderson's signature on it.

Question. Were you aware of any inquiries about the Hudson Dog Track by any White House personnel in 1996?

Answer. No.

Question. Or before?

Answer. Oh, 1996? Yes. In assembling the administrative record, I was the point man on that, because it was when they couldn't arrive at continuing resolutions for the budget, so we were trying to get it done before everybody was sent home, and one of the inclusions in there was a fax between some of the parties; I have even forgotten what the fax was, but you will probably remind me.

Question. That was with somebody at the White House? You don't recall who it was?

Answer. No, I don't.

Question. Do you recall if it was counsel's office or somebody else? I am not going to ask the substance if it was counsel's office.

Answer. I would recognize it if I looked at it, if it has names on it, but I can't recall what names it had on it.

Mr. YEAGER. Just for clarity, you were assembling the administrative record in connection with an appeal to the agency decision to the U.S. District Court for the Western District of Wisconsin?

Answer. Yes, for the litigation.

EXAMINATION BY MR. DOLD:

Question. Did you have any contact with anyone at the White House or did you know of anybody from the White House inquiring about the Hudson project during the application process?

Answer. No.

Question. Do you know why anybody at the White House would have been interested in it?

Answer. No.

Mr. ELLIOTT. Excuse me a minute. Was your last question do you know or did you know?

Mr. DOLD. Do you know? I asked do you know why the White House would be interested in it.

Mr. ELLIOTT. You mean does he know now?

Mr. DOLD. Sure. Why the White House would be interested in something like this.
The WITNESS. Do I know now? I have read the newspapers.

EXAMINATION BY MR. DOLD:

Question. Besides the newspaper accounts?
Answer. No.
Mr. YEAGER. I am sorry, I wasn't sure what you were referring to. Interested in this? Were you referring to the litigation——
Mr. DOLD. No, the application process. Not the litigation. I am not concerned with the litigation. I am concerned only with the litigation process.
The WITNESS. Until the press reports, it was a mystery to me.
Mr. YEAGER. Do you have any reason to believe the White House was interested in the decision?
The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. Now, did you have a meeting at any time with Paul Eckstein?
Answer. I believe I have met him, because I was looking in my business card file and I have his business card.
Mr. DOLD. Mr. Eckstein has—in fact, give me one moment here.
I am showing the witness what has been marked as TH–8, which is an affidavit of Paul Eckstein, who it was my understanding represented the applicant tribes in this matter. And just to draw your attention I believe to the fourth and fifth page, and again, I apologize for this copy. This is the best, and we have a number of these affidavits from a number of sources. But it appears this bottom line has been cut off or is almost illegible in all of them.
[Hartman Deposition Exhibit No. TH–8 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. But my question is with regards to the fourth and fifth page, the number 5. "On June 16, 1995, I telephoned Tom Hartman, a member of the Indian Gaming Management Staff, who was working," and then the rest is illegible.
Answer. Well, on the——
Question. I assume it is on the—I can't even make it out. It continues on the next page. The next sentence is, "I asked Mr. Hartman if there were any problems with the application, and he said 'nothing that isn't curable.'"
I just wanted to know if you recall ever making that statement to Mr. Eckstein, or if that sounds like something you would have said?
Answer. It is pretty unlikely I would have been that categorical as to say nothing that isn't curable, because I know up that time, June 16th, I know I had been speaking with the tribe and telling them that if they can fix the problem with the City of Hudson, with their government services agreement, they better do it and they better do it fast.
So I think it is pretty unlikely I would have said something as categorical as "nothing that isn't curable." I already told the tribe if that wasn't cured, it could be deadly.
Question. Assuming that that was cured, that they took care of the government contract for services, was that your understanding at that point in time, that nothing else would have been necessarily not curable?
Answer. No. Because even there that would have been an overstatement of the "best interest" portion of it. I might have said something like there is nothing in the detrimental section that isn't curable, but you have some tough negotiations ahead on the "best interests."
Question. Do you recall this document?
Answer. But I think——
Mr. YEAGER. Does this refresh your recollection of that conversation?
The WITNESS. Only vaguely, because, of course, I was talking to GGR, its representatives, the tribe, and if I thought he was the lobbyist or the representative of GGR, because the Bureau of Indian Affairs has a trust responsibility to the tribes and not the management companies, I would not have revealed to him the problems I had with the "best interests" until I discussed them with the tribe.
So I might—it is possible I would have just blown him off, saying there isn't anything incurable on that portion of it, and we will get back to the tribe and talk about the others. If I thought he was a representative of GGR, I would not have said much to him until I spoke with the tribe first.
Mr. YEAGER. Do you remember what you said, just so the record is clear, to Mr. Eckstein, if you said anything at all?

The WITNESS. No, I don't remember. I don't doubt I may have spoken with him, but I just don't remember the specific conversation.

EXAMINATION BY MR. DOLD:

Question. Has anybody ever discussed with you the political affiliation of any of the tribal representatives in favor of the Hudson Dog Track?

Answer. No.

Question. Have you ever seen any memos or letters written to any of the Department of Interior employees by Patrick O'Connor who is a lobbyist, I believe, for the Minnesota tribes that were opposed?

Answer. Yes. In assembling the administrative record and in searching everybody's files, there was a fax or a letter that had his name on it, at least one fax or letter that had his name on it.

Mr. YEAGER. That was after the decision was made?

The WITNESS. It was after the decision was made. My recollection is when we finally got down to really examining the administrative record and keeping in mind the rush in which it was submitted, and we asked the court to remove that because it was an after-acquired document. I couldn't guarantee that actually happened, but when we looked at it, the date on the fax was later.

EXAMINATION BY MR. DOLD:

Question. Around the time of the application?

Answer. No; the date on the fax, or at least the copy we got, was long after the decision had been made.

Question. Has anybody ever mentioned to you or to anybody else in the Indian Gaming Management Staff that you know of regarding Minnesota tribes being strong Democratic Party supporters?

Answer. No.

Question. Has anyone ever discussed with you in person or by other means the political contributions of the tribes that opposed the Hudson Dog Track application?

Answer. No, except that one of the representatives of the applicant tribe, before the decision, was mentioning that the process was being swayed by Minnesota money coming into the City of Hudson and reelecting a new City Council. But that is the only thing I think I ever heard on campaign donations or elections or politics.

Question. Was that ever followed up or was blown off as kind of a theory? I am just asking what the process would be at the Department of Interior. It could be something that you have to follow up, like the environmental things; whether whatever anybody mentions you have to follow up? Is there a policy?

Mr. YEAGER. I don't understand the question.

EXAMINATION BY MR. DOLD:

Question. We discussed earlier in the deposition when somebody may write in even from San Diego, I believe was your example, regarding an environmental problem involving a casino in Hudson, Wisconsin, somebody has to go check it out and follow up on it.

I am inquiring whether it was a policy whether somebody saying there was campaign money being funneled in to buy the election of a City Council, whether that had to be followed up on or whether that just could be like a kook call, somebody calls in and says they don't have a policy to follow up on?

Mr. ELLIOTT. I think you can ask what was done in this case, but to ask a general policy, that is not his job. He is not a part of the policymaking crowd at the Department of Interior.

Mr. DOLD. Certainly.

Mr. ELLIOTT. What was done here as opposed to generically.

Mr. DOLD. We can certainly ask if he knew there was a policy. If you don't know if there was a policy, that is fine.

The WITNESS. I think my recollection was the assertion was put in written form in a chronology of the applicant tribe supplied to us and we added it to the record. But I didn't personally follow up any further on that, and I don't know if there is a policy.

Mr. YEAGER. Do you know if anybody did follow up on it?

The WITNESS. No, I don't.

Mr. YEAGER. Would it have been your job to follow up on it?

The WITNESS. No, and I think probably if we looked at the issue, we probably would not get into the business of concluding from campaign donations whether or not the City Council of Hudson is duly constituted or not. If they had been elected and certified by the County Clerk, I think we have to accept their comments.

Question. Prior to the July 14th, 1995, decision coming out of Mr. Anderson's office, did you have an understanding of positions taken by Interior officials regarding the Hudson Dog Track and meetings that you might have attended?

Answer. No.

Question. You wouldn't have an—do you know where Denise Homer stood? Right?

Answer. Right.

Question. Mr. Jaeger, Robert Jaeger, do you know where he stood? Was he in favor of the application, do you know, or do we not know that? Can we not assume that?

Answer. Well, we are testing our memory. If they had signed off on memos as acting area director, area director, yes, then that was the recommendation.

Question. How about, do you know where Mr. Skibine stood?

Answer. We were studying the issue, so I think he was—had comments one way or the other, but he hadn't formulated a position. He hadn't said, okay, we are approving it; or we are turning it down now, write it up.

Question. How about Mr. Chapman?

Answer. I'm not sure I recall seeing him in a meeting, so I don't know.

Mr. ELLIOTT. Wait a minute. Your question goes to prior to July 14th?

Mr. DOLD. Correct, prior to July 14th.

The WITNESS. Okay. Yeah. That is correct. So in the process, in the months leading up to, say, late June and the drafting and the writing of that memo, I wasn't aware that he had taken a fixed position. But he did draw up the draft in late June—George Skibine.

EXAMINATION BY MR. DOLD:

Question. We are talking about Skibine, okay.

Answer. Right. He did draw up the preliminary drafts from which the final letter was presumably a modification, so, yes, at that time I guess he was writing up a memo on the conclusion.

Question. Do you know of any interest any personnel associated with the Democratic National Committee had in this application, if any?

Answer. None I'm aware of.

Question. Going back, just if I may, to the question with regard to people having positions, I think we talked about Chapman, Mr. Chapman. Did Mr. Anderson—do you know if he had a position one way or the other, or was he just reviewing and had his decision come down on the 14th?

Mr. ELLIOTT. Michael Anderson?

Mr. DOLD. Correct.

The WITNESS. I am not aware of any decision he made prior to the drafting of the iterations of his letter.

EXAMINATION BY MR. DOLD:

Question. How about Mr. Duffy?

Mr. YEAGER. By "position" you're referring to a specific issue?

Mr. DOLD. On the application in the meetings if they had a position one way or against, arguing against the——

Mr. YEAGER. Granting or denial?

Mr. DOLD. Right.

The WITNESS. Well, he was the one that had articulated the position, the 151 position that the political heat from overriding the local community and then having a governor of the other party, of the Republican Party, come back and say, look, there they go again, these Democrats are imposing Indian gaming on unwilling communities.

But that's—it fell well short of saying, this is the decision I want you to make. It was strictly, it was just an input that he had provided. So, no, I guess I didn't see any decision that had been made on his part.

EXAMINATION BY MR. DOLD:

Question. And correct me if I'm wrong on the way section 20 works, and perhaps—I don't know if section 151 works the same way. Once the department says, we are going to take the land into trust, we are going to recommend that the land be put into trust, it then goes to the governor's office for approval and that can be vetoed or not?

Answer. No, it is whether or not gaming can be conducted on land acquired after October 17 of 1988. So the section 20 determination is not a determination to take land into trust, but whether or not you can conduct gaming on it if you do take it into trust. So you could theoretically have an affirmative two-part determination by

the Secretary of the Interior and have the governor concur in it and have the Secretary come back and say, no, I'm not going to do it because of its devastating impact on tax rolls, or—the Secretary has very wide discretionary authority, I am told by the solicitors under part 151. He is not obligated to take land into trust.

Question. If such land is decided to be taken into trust, does the governor of the State have a veto power to say, we don't want to have that land taken into trust for Indians here, or is it just under section 20?

Answer. He has a veto power over whether gaming can be conducted on the land, but even if the governor does not concur in the secretarial finding, the land could go into trust for nongaming purposes.

Question. So that if in this case the concern—you have answered my question.

So the governor can stop gaming if—he has the veto power over gaming; is that correct?

Answer. Correct, but not land acquisition.

Question. Do you know of any interests the Chairman of the Democratic National Committee, Don Fowler, had in this application, if any?

Answer. None I'm aware of.

Question. How about with the Clinton-Gore '96 campaign?

Answer. None I'm aware of. Actually, I should say none I am personally aware of, keeping in mind I have read the newspaper, so I know the allegations.

Question. Just personal.

Do you know or have you heard about a position Secretary Babbitt, if he took a position on this matter, do you know if he took one?

Answer. None I'm aware of.

Question. I know we discussed that Ada Deer recused herself from the decision-making process. Did she have any other role as far as gathering information or any other role in the process?

Answer. I don't believe I'm aware of any, except for that one meeting with the Oneida tribe, and I am not aware that she was—she certainly wasn't in any meeting I was in except that one, to the best of my recollection.

Question. I am going to, if I may, just revisit one last thing before I turn the questioning over to Mr. Yeager.

We had talked about a number of individuals and what positions they at least were—they had prior to July 14th on the Hudson Dog Track application, and we went over Homer and Mr. Jaeger, Mr. Skibine.

Where did Mr. Chapman fall again? I thought we had answered that, but I might have been talking about Skibine.

Answer. I don't recall seeing him at any of the meetings. I have seen him in the hallways. I would be hard-pressed to tell you his exact job title.

Question. Okay.

Mr. DOLD. I'm sure I am going to have one or two more questions, but at this point in time why don't I turn it over to Mr. Yeager to see if he has any questions at this point in time.

Mr. YEAGER. I do, but I am grateful for a few minutes.

Mr. DOLD. Do you want to just take a couple minutes?

[Recess.]

Mr. DOLD. I guess before you take it over, I just have one last question.

Actually, go ahead.

EXAMINATION BY MR. YEAGER:

Question. Let me ask you—actually, Mr. Hartman, before I ask you any questions, I just want to thank you on behalf of the Minority members of the committee for coming in voluntarily today and spending so much time with us.

Let me ask you a bottom line question. Do you have any reason to believe that any improper influence was brought to bear on the Interior Department's decision-making in the Hudson matter?

Answer. No.

Question. You had made reference to discussion about one political factor and that is an observation made by one staff member that if the casino application were approved, the Interior Department would be, and I'm paraphrasing, obviously, would be subject to criticism by the Republican Governor of Wisconsin for approving the project over the objections of a local community?

Answer. Correct.

Question. Is that the only political issue that you're aware of that came up, or any observation that smelled of politics?

Answer. That's the only one I can think of right now. I mean, that's a big political consideration in exercising secretarial discretion, so they all—it might have been

stated different ways at different times, but it all came down to the Federal Government needs to be very careful when it runs around imposing Indian gaming off reservation on unwilling communities, that there is a political price to be paid for that, and the politicians are hired to pay attention to that.

Question. While you were reviewing the application, was there a policy debate going on over the proper place in the analysis, the section 20 and 151 analysis of local opposition?

Answer. Yes, because—I'm not sure I heard anybody advocate that naked political objection should be defined as "detriment." So the debate was whether or not unsupported assertions, whether it is by a government or not, is "detriment" per se; and I guess, as is apparent from my memo, I was of the opinion that, no, naked objections in themselves don't show "detriment," but at least—as a staffer, I have been asked to look at the objective definitions, but that was again my personal opinion.

Question. Is it fair to say that others disagreed with that position?

Answer. Yes, to varying degrees.

Question. Now, when you made your recommendation, you understood that your—I shouldn't even refer to it as your recommendation, but as you made your thoughts known to others in the Department, you understood that officials at the higher level would actually make the decision?

Answer. Yes. It was definitely a draft document that I think at that time I certainly didn't expect to see the light of day, that there was going to be considerably more input to it.

Question. I'm going to show you a document which I will mark TH–9.

[Hartman Deposition Exhibit No. TH–9 was marked for identification.]

EXAMINATION BY MR. YEAGER:

Question. This is an e-mail, or what appears to be an e-mail printout, from Scott Keep—or strike that.

It's from yourself to Michael Anderson and others. Do you recognize this?

Answer. Yes.

Question. Beneath it is a message from George Skibine, and I will read from the message: "Having now read Judge Crabb's March 19th order, I must register my concern over the statement on page 19 that IGMS recommended approval of plaintiff's application in a June 8th, 1995, report. This statement is totally untrue, and I hope our attorneys can find a way to advise the court of this error. This same mistake can also be found in the court's previous order, as I recall. The June 8th draft report, to the best of my recollection, did not even discuss the 'best interest of the tribe' portion of the two-part determination. I do not think we should let the court indulge in its delusion with respect to IGMS's position on the overall application. For various reasons, neither the IGMS Director, nor, I believe, any of the IGMS staff would have recommended approval of that application as a whole. Also, we should clarify that the views expressed in the report reflect the views of one staffer within IGMS and do not reflect the views of the Director or other IGMS staff on this issue at this time."

Let me ask you, Mr. Hartman, are you the IGMS staffer referred to in this message?

Answer. Yes.

Question. And the message above reflects your response?

Answer. Yes.

Question. And it says, "I concur. I had, and have, a long list of deficiencies for the 'best interests' determination and have no doubt that the NIGC would have had substantial objections to the management contract."

Do you recall writing that?

Answer. Yes.

Question. You have already specified your views, enumerated to the best of your recollection, what those deficiencies would be, so I won't ask you to do that again, I just wanted to make that document a part of the record.

Mr. DOLD. Are you finished?

Mr. YEAGER. Yes.

EXAMINATION BY MR. DOLD:

Question. Let me just start out by saying, Mr. Hartman, that on behalf of Mr. Wilson and myself and the rest of the committee and the members of the Committee on Government Reform and Oversight, we want to thank you for coming out and taking your time today to answer these questions. It is indeed most helpful to get clear, concise answers on issues that we can then evaluate, and at least it allows us to take a look at what went on during this time frame.

This e-mail that just came out, which is marked as TH–9, was written in 1997, April of 1997; is that correct?

Answer. March, I think originally, 3-26.

Question. 3-26 was the one by Skibine, and then—no, yours is still 3-27. Okay.

Answer. Yes.

Question. And the deficiencies, the long list of deficiencies are the ones that we went over earlier in the deposition?

Answer. Yes, in part, yes; without sitting down and looking at the list, but I expounded on a couple—three of them.

Question. And you do have a list somewhere? You said looking at the list. There is a list?

Answer. I'm not sure there is a list, one, two, three, but there's an itemization of the defects.

Question. And again, if we can get a copy of that, because I'm not sure we have that, but that again would be most helpful.

Answer. Okay.

Question. I also wanted to touch base, if I could, when you say that your memo, your work product that the Indian Gaming Management Staff put together, which you signed, you said that it wouldn't see the light of day, or you didn't think that it was going to see the light of day.

Why did you not expect that memo—being that you are part of the career staff, why did you not expect that memo, which you researched and dealt with the tribes and the area office, to see the light of day?

Answer. Because it's an intermediate draft and ultimately we would have come out with a finding of fact similar to what is out of the area office; and certainly drafts are part of the administrative record, but normally you end up focusing on what the final findings of fact are in the determination. So I wouldn't——

Question. When you say it wouldn't have seen the light of day, you would mean it would not be published, it would not be seen in its final form?

Answer. Right. In other words, it sees the light of day because it is part of an administrative record, but then it becomes subjected to either controversy or lawsuit. In the normal course of business, everybody reads the final. You will notice in here you don't have any draft copies of Denise Homer's report.

Question. Would something like the memo that you drafted for the Director of the Gaming—Indian Gaming Management Staff, ever be shown to the Secretary?

Answer. You mean in its draft form?

Question. In, I guess, in its draft form, any kind of material that you put together for the Gaming Management Staff Director, would anything like that ever be shown to the Secretary of the Interior?

Answer. I wouldn't think so normally. I mean, I can't think of any reason why it would be withheld, but normally you would have a—the final findings of fact that would address it, and he would certainly see that; but intermediate drafts, they even get protection to the extent that they are predecisional.

Question. I guess really the point I am trying to narrow in on is, what documentation would the Secretary have available to him to make his decision?

Answer. I'm not aware that either the Secretary or the Assistant Secretary or Deputy Assistant Secretary had a copy of my draft memo.

Question. Do you have any idea what they did have copies of?

Answer. No.

Question. Apart from your involvement in the civil litigation, which does not interest us in the slightest, or even the litigation going on in the Federal courts or Wisconsin courts, you say that you had talked with people at the Department of Justice with regard to clearing out the administrative record and getting everything together.

Have you talked to anyone at the Department of Justice or spoken with anyone at the Department of Justice from their Campaign Task Force?

Answer. No.

Question. Do you know if the Campaign Task Force has asked for documents from the Department of Justice or from your office?

Answer. They haven't asked me, but on the others, I don't know.

Mr. DOLD. I have nothing further.

Mr. Hartman, thank you very much for your time. Mr. Elliott, thank you for coming in.

Mr. ELLIOTT. Thanks.

The WITNESS. You're quite welcome.

[Whereupon, at 1:23 p.m., the deposition was concluded.]

[The exhibits referred to follow:]

TO: Debbie Doxtator, Chairwoman
Oneida Business Committee

FROM: Scott Dacey

DATE: May 25, 1995

RE: Meetings of May 23 and 24 in Washington, D.C.

The following is a report concerning the meetings I participated in during your trip to Washington, D.C. on May 22&23.

May 22

BIA: In an effort to better understand the current status of the Hudson track proposal, Debbie, Carl Artman and I met with Mike Anderson, Deputy Assistant Secretary for Indian Affairs, George Skibine, Director of the Office of Indian Gaming Management, and Tom Hartman, a member of Skibine's staff. The Indian Gaming Management Office will send a letter to the Red Cliff Tribal Council this week stating that their office expects to complete the review of the request within one month. The paperwork will then be sent to the Solicitors Office at Interior to make certain the Office of Indian Gaming and the BIA Minneapolis Area Office have complied with all of the requirements outlined under Section 20 of the Indian Gaming Regulatory Act. The Solicitor would then pass the paperwork along to the Secretary's office for the approval or rejection of the petition. The Secretary has the ability to approve the transfer of land into trust under two areas of the law, first Section 20 of IGRA and second, Section 151 of the Code of Federal Regulations which governs land acquisitions by Indian Tribal Governments and individual Indians.

Section 20 of IGRA states that the Secretary must determine that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. Skibine stated that their office is first attempting to assess whether this transfer would be "detrimental" to the "surrounding community".

Because neither "detrimental" nor "surrounding community" are defined in IGRA, the BIA has written guidelines, "Checklist for Acquisition for Gaming Purposes". "Surrounding community" includes most forms of non-Indian

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KKM
Date 2/24/97

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government within a 30 mile radius of the lands in question and all Indian governments within a 50 mile radius of the lands in question. (The definition for Indian governments has been enlarged to a 100 mile radius for all future petitions.) The term "detrimental" means activities which might arise other than normal competitive pressures. For example, an argument establishing detriment might include increased auto traffic, a drain on the area water supply, or other environmental concerns. However, even environmental concerns can be offset by parties willing to negotiate new traffic patterns, additional parking lots, new roads, new sewers, etc. Public sentiment or opinion is not considered "detrimental", therefore, little weight is given to communities which pass resolutions in opposition to gaming unless they demonstrate an impact on the community. Moreover, the economic impact a gaming establishment might have on other gaming or non-gaming establishments is also of little concern to the BIA because it falls into the definition of a "normal competitive pressure".

Should BIA find the petition not to be detrimental to the surrounding community, they would then move to consider the impact such action would have on the tribe(s) requesting the transfer.

Mike Anderson clearly does not want to establish a precedent against tribes wishing to bring land into trust in the future. He largely wanted to know what justification the Oneida had in opposing the sovereign actions of another Indian Nation or group of Nations.

Mary Frances Repko, Staff to Sen. Feingold: Debbie and I discussed the Hudson track and the recent conversations Debbie has had with representatives of the Stockbridge Munsee. She stated that Sen. Feingold intended to stay out of this issue. She said that he did not want to take sides against any tribe wishing to engage in gaming.

Senator Feingold is using the accord which Oneida reached with Ashwaebenon to illustrate how Tribal governments and local units of government can work together when bringing land into trust. This illustration is usually sent to constituents who complain about tribes taking land off the tax rolls.

(Note: Debbie and Bill Gollnick met with Senator Feingold on Tuesday evening. I was not present at that meeting.)

<u>May 23</u>

Senator Kohl: Debbie outlined the Oneida's opposition to the Hudson track and explained the Stockbridge proposal. We pressed Senator Kohl to contact Secretary Babbitt to let them know of his interest in the track issue, and he agreed.

Debbie also thanked the Senator for all of his help in securing funds for additional police officers on the Reservation. Funds were provided under the crime legislation passed last year and the Oneida were successful grant applicants.

Congressman Roth: Debbie outlined the Oneida's opposition to the Hudson track and explained the Stockbridge proposal. We thanked him for his letter to Secretary Babbitt in opposition to the Hudson Track. We also offered to get him any information he might need relative to the activity of the Stockbridge proposal. He had no immediate reaction to the proposal.

Analysis

With respect to the Hudson track, things don't look good. BIA staff is interested in protecting the rights of tribes who might one day wish to take off reservation lands into trust for gaming purposes. Mike Anderson asks what criteria should be established to prohibit a tribe from moving off reservation land into trust for gaming purposes. An answer which does not threaten sovereignty is difficult to find.

Reaching the "detrimental" standard is difficult, too. According to Tom Hartman, all of the economic impact statements are of no value in this assessment. The addition of a new Indian gaming establishment to a market area brings "normal competitive pressures". The BIA has difficulty saying "no" to one tribe in favor of another, especially when the statute gives them no direction. BIA feels this decision is proper, and in the long run, will work to assist tribes when they are challenged by non-Indian groups with economic arguments alone.

In the case of the Hudson track, or for that matter the Kaukauna track, many of the environmental issues were addressed when the sites were originally established. Although one could argue that casino style gaming will bring more cars, busses, and people, it is likely that accommodations can be made to bring the facilities into line with current laws.

Finally, The political opposition from St. Croix County, the City of Hudson, Obey, Roth, and Gunderson may not be worth very much under the BIA definition of "detrimental." None of these letters say much other than to voice a general objection to the spread of gaming. BIA, in their willingness to uphold the interests of the greater number of tribes, has decided not to give such statements very much weight.

Mike Anderson said to me after our meeting that they are trying to keep this issue on the merits and they will "try to thread the needle" on this request.

Things might change when the politicians like Babbitt and Duffy become involved, but without the law on their side it will be difficult to kill the deal.

Should Babbitt come out against Hudson, he will likely find his excuse in Section 151 of the CFR. I would strongly suggest we look into this area of the law to help Babbitt reach his conclusion.

As we know, Governor Thompson remains the key to stopping this effort.

Please let me know if you have any questions.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 14 1995

Honorable Rose M. Gurnoe
Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Bayfield, Wisconsin 54814

Honorable Alfred Trepania
Tribal Chairperson
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
Route 2, Box 2700
Hayward, Wisconsin 54843

Honorable Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520

Dear Ms. Gurnoe and Messrs. Trepania and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes. Following receipt of this recommendation and at the request of nearby Indian tribes, the Secretary extended the period for the submission of comments concerning the impact of this proposed trust acquisition to April 30, 1995.

The property, located in a commercial area in the southeast corner of the City of Hudson, Wisconsin, is approximately 85 miles from the boundaries of the Lac Courte Oreilles Reservation, 165 miles from the boundaries of the Red Cliff Reservation, and 188 miles from the boundaries of the Sokaogon Reservation. The St. Croix Band of Chippewa Indians, one of the eight Wisconsin tribes (not including the three applicant tribes), is located on a reservation within the 50-mile radius used by the Minneapolis Area Director to determine which tribes can be considered "nearby" Indian tribes within the meaning of Section 20 of the Indian Gaming Regulatory Act (IGRA).

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Section 20 of the IGRA, 25 U.S.C. § 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community.

The decision to place land in trust status is committed to the sound discretion of the Secretary of the Interior. Each case is reviewed and decided on the unique or particular circumstances of the applicant tribe.

For the following reasons, we regret we are unable to concur with the Minneapolis Area Director's recommendation and cannot make a finding that the proposed gaming establishment would not be detrimental to the surrounding community.

The record before us indicates that the surrounding communities are strongly opposed to this proposed off-reservation trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to this trust acquisition for gaming purposes. In addition, in a March 28, 1995, letter, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District in whose district the St. Croix Meadows Greyhound Track is located, have expressed strong opposition to the proposed acquisition. The communities' and State officials' objections are based on a variety of factors, including increased expenses due to potential growth in traffic congestion and adverse effect on the communities' future residential, industrial and commercial development plans. Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by this proposed off-reservation gaming acquisition.

In addition, the record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin. Their opposition is based on the potential harmful effect of the acquisition on their gaming establishments. The record indicates that the St. Croix Casino in Turtle Lake, which is located within a 50-mile radius of the proposed trust acquisition, would be impacted. And, while competition alone would generally not be enough to conclude that any acquisition would be detrimental, it is a significant factor in this particular case. The Tribes' reservations are located approximately 85, 165, and 188 miles respectively from the proposed acquisition. Rather than seek acquisition of land closer to their own reservations, the Tribes chose to "migrate" to a location in close proximity to another tribe's market area and casino. Without question, St. Croix will suffer a loss of market share and revenues. Thus, we believe the proposed acquisition would be detrimental to the St. Croix Tribe within the meaning of Section 20(b)(1)(A) of the IGRA.

We have also received numerous complaints from individuals because of the proximity of the proposed Class III gaming establishment to the St. Croix National Scenic Riverway and the potential harmful impact of a casino located one-half mile from the Riverway. We are concerned that the potential impact of the proposed casino on the Riverway was not adequately addressed in environmental documents submitted in connection with the application.

Finally, even if the factors discussed above were insufficient to support our determination under Section 20(b)(1)(A) of the IGRA, the Secretary would still rely on these factors, including the opposition of the local communities, state elected officials and nearby Indian tribes, to decline to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465, to acquire title to this property in Hudson, Wisconsin, in trust for the Tribes. This decision is final for the Department.

Sincerely,

Michael J. Anderson

Michael J. Anderson
Deputy Assistant Secretary - Indian Affairs

cc: Minneapolis Area Director
National Indian Gaming Commission

May 18, 1995

EMORANDUM FOR HAROLD ICKES

ROM: JENNIFER O'CONNOR

UBJECT: INDIAN GAMING IN WISCONSIN

ne attached information from Patrick O'Connor refers to a proposal at Interior to allow three isconsin tribes to establish a casino at a bankrupt dog track in Hudson, Wisconsin.

ne Secretary of the Interior has the discretionary ability to create trust lands to enable the ibes to establish the casinos. However, by statute, he must first assess the economic costs id benefits to the local community.

ne Department is reviewing the proposal. Staff met last night and came up with a eliminary decision, which will likely not be final for another month. The staff believe it is obably a bad idea to create the trust land to allow the establishment of the casino. Their asons are as follows (NOTE -- this information is not public and is confidential at this oint.):

> The local community is almost uniformly opposed to the proposed casino. The tribes at want to establish it live 250 miles away, but no one in the immediate area wants it established, including the Mayor, City Council, other local officials and Congressman Gunderson. The Department feels that this local opposition is an indication of adverse impact on the local community.
>
> The Minnesota delegation is also uniformly opposed to the proposal. Minnesota tribes located near the state border feel they would be adversely impacted by the competition.
>
> It is likely that a decision to approve this proposal would result in a spotlight being shone on the Indian Gaming Regulatory Act, which is under some legislative pressure at the moment. The Department wants to avoid this kind of negative attention to the Act.

: other side of the argument is the support of free market economics. Some Department f think the bottom line here is the Minnesota and Wisconsin tribes who are benefitting rmously from gaming don't want the competition, and are able to hire bigger lobbyists the three very poor tribes who want the casino. However, the staff don't think this ment negates the uniform opposition from the local community.

current status is this: the Department is reviewing the comments received during the men' period which ended April 30. It has committed to making a final decision within a

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City of Hudson
505 Third Street
Hudson, Wisconsin 54016-1694
FAX (715) 386-3385

Office of the Mayor

March 17, 1994

United States Department of the Interior
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, MN 55401-2241

ATTN: Robert R. Jaeger, Acting Area Director

Dear Mr. Jaeger:

This letter is in response to your request for input on whether the gaming establishment on newly acquired land is detrimental to the surrounding community. This is in relation to the application from the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians and the Sokaogon Chippewa Community.

I think you will find, as you review the attached material, that the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size.

The attached material has been gathered and submitted by members of our City staff and reviewed by me. I trust that this material satisfies your needs in this matter. In the event you have any further questions or desire further clarification on anything presented here, please contact me at your convenience.

Sincerely,

Thomas R. Redner
Mayor

THR/lm
Enclosures

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PROPOSED CASINO DEVELOPMENT
IMPACT ON THE CITY OF HUDSON

The Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Red Cliff Band of Lake Superior Chippewa Indians and Sokaogon Chippewa Community propose to purchase and place in Trust, 55 acres consisting of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building. The general user parking lot located west of the principal structure will be owned and operated by a business coalition of the tribal organizations and Croixland Properties Limited Partnership and will not be placed in Trust land status.

The Trust property and associated parking lot facilities are entirely located in the City of Hudson, St. Croix County, Wisconsin. Properties in the Town of Hudson and Town of Troy are adjacent to or close proximity of the proposed Trust lands. Refer to Map 1.

This response is presented in the same order as the questions are presented in the Minneapolis Area BIA letter dated February 17, 1994. These comments are limited to the various direct impacting factors due to a Casino operation. It is recognized that there may be additional impacting factors due to ancillary developments in the area. These additional factors have been partially taken into account through the City's long range comprehensive plan.

1. Evidence of environmental impacts and plans for reducing any adverse impacts.

Environmental Impacts. There are two potential environmental concerns: 1) increase in traffic due to additional attendance and 2) additional hours of parking lot lighting due to extended hours of the casino operation.

Traffic. As a condition of having a parking lot which could accommodate 1,000 autos or more and construction of the Carmichael Interchange, air monitoring stations were constructed at the track exit and southeast corner of the interchange. Air quality has not been a concern, and there are no known instances of air quality being monitored at levels not acceptable to EPA standards. The traffic flow to and from the casino and track facility should be dispersed sufficiently to maintain air quality standards well within acceptable limits.

Lights. During the review of the greyhound racing facility plans, it was required for the track to develop a lighting system in the parking lot which reduced the light spillage at the property lines to an amount equivalent to residential streets. The lights may be on for extended periods of time because the casino operation is

PROPOSED CASINO DEVELOPMENT
IMPACT ON THE CITY OF HUDSON

likely to be open until 2:00 a.m. or possibly 24 hours per day with employees staying later than that hour to complete end of day functions. There are no known plans to expand the parking lot facility modifying the existing lighting system.

2. Impacts on the social structure in the community.

Just as with any new venture, there will probably be some impact on the social structure in the community caused by the introduction of a casino. However, this potential impact would appear to be readily handled and accepted by the community as a whole. The City of Hudson and St. Croix County are not significantly different than other communities in Western Wisconsin and in the Twin Cities area of Minnesota. There are both proponents and opponents of gambling in the community just as there are both proponents and opponents of the Greyhound Racing Facility. St. Croix Meadows first opened in 1990 after a long and involved approval process. Since it opened, none of the earlier negative predictions concerning increased crime, etc., have come true; and the residents of the community have come to accept its existence.

In late 1992, the St. Croix Band of Chippewa commenced negotiations with the owners of St. Croix Meadows to install a casino at the site (essentially equivalent to the current proposal). A citizens' petition was circulated calling for a special referendum in the City which was held on December 3, 1992. The question put to the voters in this referendum was, "Do you support the transfer of St. Croix Meadows to an Indian tribe and the conduct of casino gaming at St. Croix Meadows if the tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" The results of that Referendum were 1351 'yes' (51.2%) and 1288 'no' (48.8%). The total of 2543 votes cast represented 53.9% of the 4907 registered voters in the City.

As evidenced by these results, there does not appear to be an overwhelming majority of citizens either in favor of or opposed to: gambling, parimutuel wagering, or an Indian Casino on this site and in this community. For this reason, it would appear that this potential impact of an Indian Casino would appear to be readily handled and accepted by the community as a whole.

3. Impacts on the infrastructure.

Public service and facility needs to adequately serve a casino/greyhound racing facility and related land uses in the area can be summarized as follows:

Sanitary Sewer. Sanitary trunk sewer mains are adequately sized to

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accommodate existing and future development south of I-94.

Wastewater Treatment Plant. The average daily attendance projected by the Tribal Organizations for the casino/track operation is unknown at this time. The greyhound race track was projected to have patronage of 6,800 persons/day and wastewater flows of 40-60,000 gallons/day according to Report on Municipal Services Croixland/Carmichael Properties, November 1988. The Director of Public Works indicates that when attendance at the greyhound race facility has exceeded 5,000, the flows have been approximately 29,000 gallons/day.

Thus, it would appear that there would be sufficient Wastewater Treatment Plant capacity for the proposed Casino.

The City does have a concern that if significant additions to the casino/track facility are made to greatly increase the average daily attendance and thus increase the potential discharge to the wastewater treatment plant, then additional sewer hook-up fees should be collected to account for increased use of the treatment plant.

Water Service. Water trunk mains and storage facilities are adequate to provide water service to the proposed casino/track operation and ancillary development south of I-94.

Storm Sewer. The trunk storm sewer system currently in place will accommodate development of the casino/track facility. Ancillary development can be accommodated with additional improvements made in conformance with the 1992 City of Hudson Comprehensive Surface Water Drainage Plan in areas that are currently undeveloped.

EMS (Emergency Medical Services). Services are provided for emergency medical calls by the St. Croix EMS. If additional service calls result due to increased patronage of the casino/track facility over levels acknowledged in 1994, the Emergency Medical Services may have to place additional responders on duty reflective of service demands. It is anticipated that most calls relative to the track are non-residents and user fees will cover operating costs.

Fire Service. No major changes are foreseen in the fire protection services if the existing Greyhound Racing Facility was modified to incorporate a casino.

Dependent on the rate of the ancillary development and potential expansion of the casino/track operations, the Hudson Fire Department may have to supplement the existing equipment and provide additional personnel. Projected under this expanded

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scenario is the addition of a pumper truck - $250,000; additional fire inspector at approximately $37,500 per year (1997) including salary and benefits; and additional fire fighters (costs not determined because specific need not determined).

Police Department. In the next five years the Police Department foresees a need to expand the police force by five officers and one clerical employee. If the casino operation is opened in 1994, the Police Chief projects that one investigator crime prevention officer be added to the staff. Currently, the City of Hudson is above the statewide crime index rate principally due to bad checks and other business related activities which require investigative services.

Transportation. The street system between the casino/track location and Exit 2/Carmichael Road Interchange - I-94 is in place and will accommodate the projected traffic needs based on 40,000 average daily trips. Ancillary development north of the site on each direction of Carmichael Road may eventually require the City of Hudson to add traffic regulatory signals at the interchange of Carmichael Road and Hanley Road.

4. Impact on land use patterns in the surrounding community.

The site is zoned general commercial district (B-2) for the principal structure and ancillary track, kennel and parking facilities and R-1 one-family residential districts on the east, south and westerly perimeters to serve as a buffer area between the track operation and surrounding land uses. Included partially in the south buffer area is a stormwater retention ponding area and stormwater lift station. Of the 55 acres identified for the Trust, approximately 25 acres are currently developed, 6 acres are zoned single family residence and have limited development potential and 24 acres can potentially be developed; however, except for approximately 5.5 acres, this land is located in the area of the bluff east of the track and generally not suited for development. Refer to Map 2. There are no known plans to expand the present facilities. Plans discussed with City/County officials have indicated improvements will be limited to the interior only in the grandstand facility.

There is sufficient land in the City of Hudson and zoned appropriately or identified for future commercial land use to address potential ancillary development such as hotels, motels or restaurants. This land is located north of the proposed casino/track site along the Carmichael Road corridor between I-94 Exit 2 Interchange and the existing track facility. Development of these properties would be subject to zoning and subdivision standards of the City of Hudson. Refer to Maps 2 & 3.

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PROPOSED CASINO DEVELOPMENT
IMPACT ON THE CITY OF HUDSON

5. Impact on the income and employment of the community.

Income & Employment. It is projected by Tribal representatives that the casino/greyhound racing facility will provide approximately 1500 jobs and including the retention of existing jobs at the greyhound racing facility. Tribal representatives indicate that 95% of the casino jobs will be full time. The current employment level at the track facility is 153 full time positions and 144 part time positions (approximately 100 additional jobs will be created during the summer months).

The 1989 median household income for the City of Hudson was $38,037 for all households and $22,604 for non-family households. Because wage rates have not been provided by the Tribal representatives, it is difficult to determine what percentage of employment would be above these figures at this time.

6. Additional and existing services required or impacts, costs of additional services to be supplied by the community and source of revenue for doing so.

Projected Costs Due to Proposed Casino & Potential Ancillary Development. The capital and operating costs projected from the development of a casino and ancillary development are summarized on an annual basis in Table A based on projections submitted by department administrators of the City of Hudson.

It must be noted that most of the identified need for staff and capital expenditures is due to the ancillary development that may occur due to existence of a casino operation in conjunction with the greyhound racing facility. These costs should be offset by the taxes generated by the ancillary development; the City's pro-rata share of service fees paid by the Tribal Coalition; and other contractual sources of revenue.

Representatives of the local governmental entities; the City of Hudson, the Hudson School District and St. Croix County, are currently negotiating with representatives of the Red Cliff and Lac Courts Oreilles Bands and the Sokaogon Chippewa Community for payment of governmental services in the event that an Indian Casino is installed on this property, in order to ensure sufficient revenue to cover the costs of additional services to be supplied by the community. To date, there have been three meetings; and a great deal of progress has been made on the agreement. It is anticipated that an agreement will be agreed to and approved by the Tribal Councils and Governmental bodies within the next three to four weeks.

PROPOSED CASINO DEVELOPMENT
IMPACT ON THE CITY OF HUDSON

TABLE A

	Qty	Item/Position	Dept	Est Costs	
4+	c - 1	Investigator	Police	$51,000 (salary & benefits)	
	c - 1	Pistol	"	1,400	
	c/a - 1	Patrol car	"	18,000	
					$ 70,400
5+	a - 1	Captain	Police	$55,000	
	a - 1	Patrol officer	"	40,900	
	a - 2	Pistols	"	2,800	
					$ 98,700
6+	a - 1	Patrol officer	Police	$43,763	
	a - 1	Pistol	"	1,400	
	a - 1	Fire inspector	Fire	35,000	
					$ 80,163
97+	a - 1	Office staff	Police	$28,900	
	a - 1	Pumper truck	Fire	25,000	
		(annual payments $25,000-$250,000/10)			
					$ 53,900
98+	a - 1	Patrol car	Police	$19,700	
					$ 19,700

+ casino generated
= ancillary development generated

---

7. Proposed programs, if any, for compulsive gamblers and the source of funding.

The City of Hudson does not have any current programs or proposed programs for compulsive gamblers. We rely upon this service which is provided by the St. Croix County Human Services Department.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

MINNEAPOLIS AREA OFFICE
331 SOUTH 2ND AVENUE
MINNEAPOLIS, MINNESOTA 55401-2241

IN REPLY REFER TO

Tribal Operations

1994

MEMORANDUM

TO: Assistant Secretary - Indian Affairs

FROM: Office of the Area Director

SUBJECT: Request for Off-Reservation Gaming for Land in Hudson, Wisconsin

On March 4, 1994, the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes"), together, pursuant to Section 2719(b) of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988), filed an application with the Minneapolis Area Director requesting that the United States take a certain parcel of real property located in Hudson, Wisconsin, into trust for the benefit of the Tribes for gaming purposes. The Tribes do not currently own the property, but they have an agreement to purchase the land if and when the Secretary of the Interior makes the findings necessary under Section 2719, the Governor concurs in the Secretary's findings, the steps necessary to place the land into trust have been completed, the National Indian Gaming Commission approves the management contract and collateral agreements and the Tribes have amended their gaming compacts of 1991 to permit the operation of pari-mutuel greyhound racing.

This memorandum outlines the Minneapolis Area Office's review and analysis of the Tribe's application and transmits; (1) the Area Director's Findings and Recommendations, (2) the comments of the Field Solicitor, Twin Cities, and (3) the Documentary Support required for the Secretary's Determination concerning the request for off-reservation gaming on proposed Trust Acquisition of the Tribes.

I. APPLICATION INFORMATION

A. Sokaogon Tribe: The Sokaogon Chippewa Community of Wisconsin occupy a small reservation in Forest County, Wisconsin with the central community in Mole Lake. There

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are 1,528 persons enrolled in the Tribe. 512 members live on or near the reservation. According to figures provided by the Tribe, 42% are unemployed and actively seeking employment.

The Sokaogon Chippewa Community Tribal Council is authorized by Article VII, Section (e), to manage all economic affairs and enterprises of the Community. The Sokaogon Chippewa Community Tribal Council included two resolutions as part of the Tribes application package. Resolution No. 9-11A-93 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 2-4A-94 approved the St. Croix Meadows-Joint Operating Agreement and authorized the Tribal Chairman to sign the agreement.

B. Lac Courte Oreilles Tribe: The Lac Courte Oreilles Band of Lake Superior Chippewa had a reported enrollment of 5,431 people in 1991. In 1991, 1,923 of these people lived on the reservation and another 1,126 lived within 150 miles of the reservation.

The Lac Courte Oreilles Tribal Governing Board is empowered by Article V, Section 1(f) of the Lac Courte Oreilles Constitution to purchase lands within or without the boundary of the Tribe's reservation. The Tribal Governing Board is empowered by Article V, section 1(h) to engage in any business that will further the social or economic well-being of members of the Band. The Lac Courte Oreilles Governing Board submitted three resolutions as part of the Tribes application package. Resolution No. 93-82 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 94-08 approved the Joint Operating Agreement and directed the Tribal Chairman to execute the agreement on behalf of the Lac Courte Oreilles Band of Lake Superior Chippewa. Resolution 94-09 created the Lac Courte Oreilles Economic Development Commission to act on behalf of Lac Courte Oreilles.

C. Red Cliff Tribe: The Red Cliff Band of Lake Superior Chippewa occupy a small reservation in Bayfield County, Wisconsin, on the shores of Lake Superior. There are 3,180 persons enrolled in the band. 1,651 members live on or near the reservation.

The Red Cliff Tribal Council is authorized by the Red Cliff Constitution Article VI, Section 1(e) to manage all economic affairs and enterprises of the Tribe. The Red Cliff Tribal Council included two resolutions as part of the Tribes application package. Resolution 9/23/93C requests the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust. Resolution 2/7/94A authorized the Tribal Chairperson to sign the Joint Operating Agreement on behalf of the Red Cliff Band of Lake Superior Chippewa and also authorized the Chairperson to take such other actions necessary to effectuate the agreement.

These Tribes continue to have high rates of unemployment and poverty in spite of having developed gaming facilities on their reservations. We agree with the Tribes determination that this is true largely because they are located at great distances away from urban markets.

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Each of these Tribes also have relatively small populations and land holdings. The Hudson location will provide the tribes with access to an urban market for the gaming facility. However, since it is unlikely that many of the residents of these three communities will chose to relocate to be employed at this location, the benefits which will accrue to each of these communities will come not from direct employment in the gaming facility, but, rather, from employment and the goods and services which would be generated by the spending of each community's share of the net income.

The average amount estimated to be received by each of the three Tribes over the next five years from the operation of the Hudson Gaming Facility is approximately $10 million per year. This money would be used by the Tribes to improve health care facilities on their reservations, purchase land, improve housing facilities, improve community and elderly programs, improve educational facilities and as educational grants, and to invest in economic development in the communities.

1. Description of Land:

The Tribes have requested that land located in the City of Hudson, County of St. Croix and State of Wisconsin, be taken into trust pursuant to 25 C.F.R. Parts 151 and 25 U.S.C. § 465 and § 2719. The land is currently owned by Croixland Properties Limited Partnership.

This request is for a parcel of land located in the fractional NE¼ of the NE¼, and SE¼ of the NE¼, Section 6, T28N, R19W, City of Hudson, Saint Croix County, Wisconsin, described as follows:

The fractional NE¼ of the NE¼ of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional NE¼ of the NE¼ of said Section 6.

ALSO, that part of the SE¼ of the NE¼ of said Section 6 described as follows: Commencing at the NE corner of said Section 6: thence S02°49'01"W 1,891.74 feet along the East line of the fractional NE¼ of said Section 6 to the NE corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the SE¼ of the NE¼ of said Section 6; thence N02°48'30"E along the west line of said SE¼ of the NE¼ to the NW corner thereof; thence Easterly along the North line of said SE¼ of the NE¼ to the NE corner thereof; thence S02°49'01"W, along the East line of said SE¼ of the NE¼ to the point of beginning.

The properties listed above encompass an area of approximately 55.82 acres currently consisting of the St. Croix Meadows Greyhound Racing Facility. The site is served by all necessary utilities and a highway system which includes Interstate Highway 94.

2. Third Parties:

The Tribes have entered into a Joint Operating Agreement with Galaxy Gaming and Racing Limited Partnership, an affiliate of Croixland, in order to provide management of the proposed gaming facility. We have informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Association. The National Indian Gaming Commission concurred in our determination and the Tribes have requested their approval.

II. GOVERNMENTAL ACTIONS REQUIRED

The process of taking Off-Reservation land into trust requires a tribal applicant to meet the requirements of 25 C.F.R. Part 151 - Land Acquisition, and Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988). Section 2719(b)(1)(A)requires the following two part determination:

> "The Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's Determination;"

This report does not contain information written specifically to meet the requirements of 25 C.F.R. Part 151, Land Acquisition. This report only outlines the Minneapolis Area Office's review and analysis of the Tribe's proposal to meet the two part determination required by the Indian Gaming Regulatory Act. 25 C.F.R. Part 151 requires specific actions within real estate services that exceeds Section 2719 action under the Indian Gaming Regulatory Act. If and when it becomes necessary, the requirements of 25 C.F.R. Part 151 will be addressed by the Area Office in a separate document.

The Indian Gaming Regulatory Act has several requirements that have been met by the Tribes; first, all three Tribes have successfully negotiated Class III Gaming Compacts with the State of Wisconsin as required by Section 2710(d)(1)(C) of the Indian Gaming Regulatory Act and the Secretary of Interior published the Approval Notice of the Gaming Compacts in the Federal Register; second, in accordance with 2710(d)(1)(A), each Tribe has adopted tribal gaming ordinances that have been approved by the Chairman of the National Indian Gaming Commission.

II. CONSULTATION PROCESS

The Bureau of Indian Affairs consultations with the City of Hudson, Local Officials, and Tribal Officials are described in detail in the Recommended Findings of Fact and

Conclusions. As the Recommended Findings of Fact and Conclusions indicate, the Tribes' application has received mixed support from the Community and nearby Tribes.

IV DOCUMENTARY RECORD

The Minneapolis Area Office has prepared four volumes of documentary support required for the Secretary's determination. The documentary support consists of documents the Tribes have submitted in support of their application and documents the Area Office has compiled during the course of the review and analysis of this application. The documentary record contains a complete index of documents.

Volume I contains proprietary information that is privileged commercial and financial information, which is confidential and exempt from disclosure pursuant to 5 U.S.C. 552 (b)4.

V. RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the documentary support that was prepared during the course of the review and analysis of the Tribes' Application, the Area Office has prepared the attached Recommended Findings of Fact and Conclusions.

Based upon the Tribes' application, the documentary support and the consultations between the Great Lakes Agency Superintendent, the City of Hudson, St. Croix County, and other federally acknowledged Indian Tribes located in Wisconsin and Minnesota, the Recommended Findings of Fact and Conclusions conclude that allowing gaming on the proposed trust property is in the best interests of the Tribe and its members and would not be detrimental to the surrounding community.

VI. RECOMMENDATION

Because the establishment of a gaming facility on the proposed trust land is in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, I recommend that the Secretary determine that the proposed trust property be acquired by the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes for Gaming purposes.

Area Director

Attachments

MINNEAPOLIS AREA OFFICE'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

November 15, 1994

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RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

INTRODUCTION:

The Sokaogon Chippewa Community of Wisconsin, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (Collectively referred to as the "Tribes") have entered into an agreement with the current owners (Croixland Properties Limited Partnership or "Croixland") of the St. Croix Meadow Greyhound Park located in the City of Hudson, Wisconsin, to purchase the assets of the pari-mutual dog track. The Tribes have requested that the land currently comprising St. Croix Meadows, as well as land immediately surrounding the dog track (totaling approximately 55 acres), be placed into trust. The stated purpose of the acquisition is to begin Class III gaming at the facility with the introduction of 1,500 - 2,000 slot machines and 30 - 40 blackjack tables.

Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988) states, in part, that lands can be acquired for gaming only if "the Secretary, after consultation with the Indian Tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a Gaming Establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community..." 25 U.S.C. § 2719 (b)(1)(A). The following is the Minneapolis Area Office's analysis and recommendations of the Tribes application under this section.

I. BEST INTEREST OF THE TRIBES

A. GROSS AND NET INCOME TO THE TRIBES:

Two separate market studies were prepared regarding this proposal. One by Arthur Andersen & Co. (AA)(Tab 3)[1] which used the "comparative market analysis approach" to estimate the Hudson market potential, and one by James M. Murray, PhD. (Tab 4) which used the gravity model and Reilly's Law of Retail Gravitation to establish the sphere of influence of the Hudson facility both currently and as projected. Although the specific findings of the two reports do differ significantly in some respects, we will incorporate both reports into our analysis.

The AA Study estimates the total market gaming revenues in the primary market of Minneapolis/St. Paul to be between $550 - $630

[1] Unless otherwise stated, the tabs are located in Volume I.

million, with the proposed Hudson Casino share projected to be $80 million (excluding the dog track) (Tab 3, pages 21 & 22). AA projects Total Revenues for the first year to be $88,367,000. The Net Income is projected to be $30,910,000 in the first year of operation. Pursuant to the Joint Operating Agreement (Tab 7D, page 8) each tribe would receive 25% of the net revenue. Thus, under this study, each tribe is projected to receive $7,727,000 in the first year of operation and $11,506,000 by the fifth year (V-I, Tab 3, page 30).

Dr. Murphy estimates the total gaming revenues in the primary market to be currently at $406,906,108 a year (Tab 4, page 15). He estimates the proposed Hudson Casino take (including income from the dog track) would be $104.1 million in the first year of operation and $131.4 million by the fifth year (Tab 4, page 18). He projects Net Revenues to be $31.1 million in the first year and 48.8 million by the fifth year (Tab 5, page 1). Dr. Murphy did not provide an estimate of the total market gaming revenues. However, we note that his estimate of total revenues of $511,124,739 (Tab 4, page 15) is consistent with the estimate made by the Arthur Andersen study.

The two reports differ notably in amount of gross income projected and the total amount of expenses expected to be incurred by the Hudson Venture in the first year (See Table 1 of this report). As a result, we combined the two reports to calculate a best case scenario and a worst case scenario.

Dr. Murphy does not give a breakdown of the expected expenses since his report focuses more on the overall impact to the Tribes and surrounding community from the spending of the net proceeds. Nevertheless, we feel it is important to include this information since it substantiates the Tribes position.

If you combine Dr. Murphy's total expenses ($73 million) with AA's estimated Total Revenues ($88,367,000), the Tribes would net approximately $3.84 million each (15,367,00 multiplied by 25%). This number represents the worst case scenario under a combination of the two studies.

The best case scenario under a combination of the two studies is a Net Revenue of approximately $46.6 million ($104.10 million in Gross Revenue under Dr. Murphy's study minus $57.45 million in total expenses in AA's study) to be divided equally among the three Tribes and current owner. Under this scenario each Tribe would receive $11.65 million in the first year of operation.

We find that due to the sheer size of the market of the urban area, the Tribes would enjoy a financial benefit well beyond any financial benefits generated from reservation located casinos. Also, an urban location would be more likely to produce a relatively stable annual cash flow for the Tribes. It would also

Table 1

COMPARISON OF THE MARKET STUDIES FOR THE FIRST YEAR OF OPERATION

Revenues:	Arthur Andersen:	Dr. James Murray:
Casino	$70,000,000	
Dog Track	11,367,000	
Food & Beverage	7,000,000	
Total Gross Revenues:	88,367,000	104,100,000
Expenses:		
Casino	20,300,000	
Dog Track	7,131,000	
Food & Beverage	5,600,000	
G&A, Marketing, Sec, Property	17,673,000	
Operating Expenses		60,000,000
Depreciation	3,111,000	
Interest	3,641,000	
Debt Service per Year		13,000,000
Total Expenses:	57,456,000	73,000,000
PROJECTED NET INCOME:	*$30,911,000*	*$31,100,000*

provide each Tribe a source of income which it can use to further Self-Determination and economic independence.

B. PROJECTIONS OF MANAGEMENT AND TRIBAL EXPENSES:

For the first five to seven years the Hudson Venture will be operated by the three Tribal Economic Development Commissions and Galaxy Gaming pursuant to the terms of the Joint Operating Agreement (Tab 7D, page 11, § 3.1). We informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Commission. The National Indian Gaming Commission concurred verbally in our determination. The Tribes have submitted the Joint Operating Agreement and the collateral agreements to NIGC for approval.

Under the Joint Operating Agreement, the "Business Board" will have general oversight and authority over the operation. It will be composed of eight persons: two Galaxy Gaming representatives and two representatives from each of the three Tribes (Tab 7D, page 4, § 2.7). The primary management officials include any person with the authority to hire and fire employees and any person with the authority to set working policy (Tab 7D, page 10, § 2.31). The Business Board will unanimously select four of the primary management officials. They include the Chief Executive Officer, General Manager, Chief Financial Officer and the Human Resource Director Id.

The Chief Executive Officer will be a member of the Business Board. This position will be unanimously selected by the Business Board and will be granted the power and authority to oversee the daily business affairs and operations of the Enterprise (Tab 7D, page 5, § 2.9). The CEO is required to report to the Business Board and under the Joint Operating Agreement, will not be able to undermine the Boards authority. Thus, even though the CEO must be a Galaxy Gaming Representative as long as the Financing Debt remains outstanding, the three Tribes will have substantial control of the operation (Tab 7D, page 16, § 5.1).

Each Tribe will also select their own Tribal Inspector. The three Tribal Inspectors will have full access to all aspects of the Enterprise (Tab 7D, page 20, § 5.6.3).

Under the Joint Operating Agreement, each Tribe is guaranteed a minimum monthly payment of $66,667.67 from the net revenues. Galaxy Gaming will then receive the next $66,667.67 for that month. Anything over $266,667.67 for any particular month will be distributed equally between the three Tribes and Galaxy Gaming (Tab 7D, § 2.26 and § 7.1). Galaxy will be entitled to a 25% share in the net revenues for the first seven years of operation with the Tribes maintaining the authority to "buy-out" all of Galaxy's rights in the agreement after the completion of the

fifth full year of the operation (Tab 7D, page 41, § 24).

The Joint Operating Agreement requires Galaxy to loan[2] the Enterprise the amount necessary to fully pay the Tribe for any yearly shortfall of the guaranteed payments (Tab 7D, page 8, § 2.26). However, the market studies indicate that loans will not be necessary to fulfill this minimum monthly obligation.

1. Assumed Liabilities and Nonrecourse Liability:

The Economic Development Commissions (EDCs) of the Tribes have agreed to purchase the St. Croix Meadows real property for $10.00. The assets necessary to run the operation (the building and improvements constructed on the land) will also be transferred to the EDCs subject to certain obligations of the seller. Under the Asset Purchase Agreement, the obligations will be paid as operating expenses and are referred to as the "Nonrecourse Liability" (Tab 7, pages 6 & 7). They include the debt owed to First Union National Bank of Florida (principal of $37,900,000 plus certain accrued interest arrearage which has been or will be capitalized) and the debt owed to the First National Bank of Hudson (Principal in the amount of $1,230,000). Although the agreement provides no limitation on the amount of interest that the Tribes will eventually pay, it does state that "in no event shall the aggregate principal amount of the Nonrecourse Liability exceed $39,200,000" (Tab 7, page 7).

The EDCs have also agreed to take the assets subject to certain "Assumed Liabilities" (Tab 7, pages 7 & 8). They include the following:

(a) Real property lease obligations;
(b) Personal property lease obligations;
(c) Obligations under contracts and licenses;
(d) Deposits held by seller under the real property and personal property leases.

The Tribes have not provided the dollar amount of the obligations these assumed liabilities will total. However, we do note the Tribes have estimated a yearly total expenditure in both market studies which includes these expenses.

Croixland will continue to own and pay taxes only on 6.96 acres of land next to the Hudson proposal (Tab 7B). The remaining land will be transferred to the Land Venture and leased to the Tribe's EDCs (Tab 7E). The EDCs will pay all taxes, assessments, water and sewer rents, rates and charges, charges for public utilities,

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[2] The interest rate on this loan is equal to the prime commercial lending rate of First Union plus 1% (Tab 7D, page 9, § 2.27).

and maintenance of the Parking Lot Land (Tab 7E, page 7, Article 4).

2. **Joint Venture Agreement of Meadows Parking Lot Joint Venture:**

Croixland and the Tribes have also agreed to form a joint venture partnership (Tab 7F). It will be called the Meadows Parking Lot Joint Venture and is not scheduled to terminate until December 31, 2045 (Tab 7F, page 6, Article 3). The purpose of this agreement is to transfer ownership of the parking lot to the partnership. To accomplish this, Croixland has agreed to sell the parking lot land to the Joint Venture at closing (Tab 7, page 27, § 9.03(g)). The property shall be deemed to be owned by the Venture as an entity and no Venturer will own the parking lot individually (Tab 7F, page 6, Article 2).

Under the Asset Purchase Agreement, Croixland will transfer the parking lot land to the venture for $10.00 and the portion of the First Union Debt equal to the fair market value of the parking lot land (Tab 7, page 11, Article III). The venture will then lease the parking lot to the Tribe's EDCs. Thus, the Meadows Parking Lot Joint Venture will be the landlord and the Tribal EDCs will be the tenants under terms of the Parking Lot Lease (Tab 7E). Rent payable by the EDCs under the Net Lease will initially be "a sum equal to 110 percent of the aggregate of the monthly debt service payable over the initial Lease Year with respect to the portion of the... (First Union Debt) allocable to the Demised Premises" (Tab 7E, page 4, Article 3). The annual base rent after the initial lease year will be determined by multiplying the annual base rent for the preceding year by a fraction (adjustment level divided by the base level) Id. The lease is to terminate in the year 2018 (Tab 7E, page 2).

We have advised the Tribes of the troublesome aspects of this arrangement. Specifically, we informed the Tribes that the ownership arrangement does not appear to be beneficial to the Tribes and seems likely to cause friction in the future. However, it is our determination that this arrangement, by itself, is not a basis to reject the application.

3. **Agreement for Government Services:**

The three Tribes, City of Hudson and the County of St. Croix entered into an *Agreement for Government Services* on April 18, 1994 (Tab 9). Under this agreement, the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other services that are under the control of the City or County or are

customarily provided to other commercial properties within the City or County (Tab 9, page 2).

The Tribes have agreed to initially pay the City and County $1,150,000 for the services Id. The payments will be paid on a semi-annual basis beginning on January 31, 1995. The first payment will be pro-rated from the date the land is actually accepted into trust.

Beginning in 1999, the Tribes will begin paying the City and County an amount equal to the allocable amount for the preceding year ($1,150,000 in 1998 with no adjustments) multiplied by 1.05 (Tab 9, page 3). The following table provides a comparison of the amount the Tribes will initially pay the city and county and the future value of $1,150,000:

ALLOCABLE AMOUNT PROJECTIONS ASSUMING NO ADJUSTMENT

Year:	Actual Amount Owed:	Future Value of 1,150,000:[3] A	B
1999	1,207,500	1,240,850	1,195,425
2000	1,267,875	1,338,877	1,242,644
2001	1,331,269	1,444,649	1,291,729
2002	1,397,832	1,558,776	1,342,752
2003	1,467,724	1,681,919	1,395,791
2004	1,541,110	1,814,791	1,450,925
2005	1,618,166	1,958,159	1,508,236
2006	1,699,074	2,112,854	1,567,811
2007	1,784,028	2,279,769	1,629,740
2008	1,873,229	2,459,871	1,694,115
10 YEAR TOTALS	15,187,807	17,890,515	14,319,168
2025	4,293,477	8,959,357	3,273,099

As the above chart indicates, the yearly 1.05 increase in the payment by the Tribes to the City and County for services is reasonable. The Office of the Field Solicitor, Twin Cities, has also indicated the Government Services Agreement is an agreement in which the Tribes may participate (Volume II, Tab 2, page 3). Thus, we find this agreement acceptable.

The Agreement for Government Services states that "any real estate taxes and assessments and personal property taxes paid with respect to the Non-Trust Property with respect to any calendar year shall be treated as a credit against the payment by the Tribes of the Allocable Amount (as adjusted) for such

[3] Formula Used to determine the future value:
For Column A: Annual Interest Rate is 7.9% for 1 period a year.
For Column B: Annual Interest Rate is 7.9% for 2 periods a year.

calendar year" (Tab 9, page 4). However, this does not apply to taxes paid by Croixland for improvements or special assessments Id. The Tribes will also receive a total reimbursement from Galaxy Gaming and Racing Limited Partnership in the amount of $297,500 in years 1995, 1996 and 1997 (Tab 9, page 18). This amount represents the difference in the Tribes proposal and the City's proposal for payment of government services.

The Agreement for Government Services states that the Tribes will cause Croixland to pay the delinquent and overdue real estate taxes and assessments and personal property taxes due through 1993 (Tab 9, page 4). Thus, all encumbrances on the land will be removed prior to placing the land into trust. However, to verify this, we have requested the Tribes submit title evidence prior to beginning the 25 C.F.R. Part 151 process. The Tribes responded by providing a copy of the Title Insurance Commitment (Tab 10). Also see the Tribe's letter to the Minneapolis Area Office dated October 14, 1994 (Volume II, Tab 4).

4. Ground Lease:

This lease agreement is between Croixland Properties Limited Partnership and the Tribe's EDCs. The Asset Purchase Agreement provides that the land will be leased to the Tribe's EDCs at the same time the conveyance of the Assets[4] takes place and immediately prior to the conveyance of the land (Tab 7, page 3 § 1.01(a)). The Asset Purchase Agreement then calls for the land and the Croixland's interest in the Ground Lease to be conveyed to the Tribes Id. Thus, the Tribes will become the landlord and the EDC's the tenants under the terms of the Ground Lease.

Initially, we had concern over the language in Article I, Section 1.03(d) of the Ground Lease and Article II, Section 2.01 of Asset Purchase Agreement since it appeared as if these agreements required the United States to become the landlord and a party to the Ground Lease. We informed the Tribes that this type of arrangement is not acceptable. As a result, the Tribes and Croixland amended the requisite sections to make clear that the United States, as trustee for the Tribes, will not be assigned or conveyed the landlord's interest in the Ground Lease or have any obligations or responsibilities under its terms (Tab 7, Amendments). We are satisfied that the Ground Lease is now only between the Tribes (as the assignee of the Seller), as landlord, and the EDCs, as tenant.

The Ground Lease is for 25 years and may be extended by the EDCs for an additional 25 year term (Tab 7C, page 1). All rent is payable directly to the Tribes. The EDCs will be required to pay

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[4] We note that the land is not defined as an "Asset" in any of the agreements.

rent of $12 a year and all costs expenses and other payments which the EDCs assume or agree to pay. The EDCs will also be required to pay to the Tribes rent from the net revenue pursuant to the terms of the Joint Operating Agreement. The EDCs also agree to pay all real estate taxes, assessments, water and sewer rents, and other governmental charges imposed against the facility, or imposed against any personal property or any Rent or Additional Rent (Tab 7C, page 4, Article 3).

The tenant may construct any building on the land after obtaining approval of the Landlord (Tab 7C, Article 4). The tenant is obligated to provide indemnification for any work on the facility, any use, non-use, possession, occupation, condition, operation, maintenance or management of the facility, any negligence on the part of the Tenant or their agents, contractors, employees, invitee or tenants, and any injury or death to any person or damage to or loss of property occurring in, on or about the facility. Galaxy Gaming is not required to provide any indemnification. The tenant is also required to provide insurance, Galaxy is not required to pay for any of it (Tab 7C, Articles 7 & 8).

5. **Activities Loan:**

The Joint Operating Agreement is between the Tribe's EDCs and Galaxy Gaming and Racing Limited Partnership. This agreement also provides that Galaxy Gaming will assist the Business Board in securing financing to the EDCs for the funds necessary to renovate and remodel the existing dog track facility and to begin operation. Galaxy guarantees the obtainment of this financing (Tab 7D, page 2, § 1.6).

To fund renovation of the third floor of the existing building, an "Activities Loan" (Tab 7D, page 3, § 2.1) will be made by a third-party lender to the EDCs and Galaxy Gaming and Racing Limited Partnership in an amount of up to $10,000,000 (any amount over $5,000,000 must be approved unanimously by the Business Board). This money will be used for costs, expenses and expenditures set forth in the Renovation Budget, for initial working capital as needed and for payments of expenditures necessary to "protect and keep perfected the Activities Loan."

C. **BASIS FOR PROJECTIONS AND COMPARISONS:**

The Proposed facility will be located at 2200 Carmichael Road in Hudson, Wisconsin. The site is approximately one mile south of the Carmichael Road/Interstate 94 interchange in a rural area in the southeast corner of Hudson. The existing grandstand building of the greyhound track has three floors with over 160,000 square feet of space. The property includes parking for approximately 4,000 vehicles.

The Las Vegas office of Arthur Andersen & Co., an international "Big 6" accounting firm performed a market demand and feasibility study. Dr. James M. Murray, PhD. performed an analysis of the market for the addition of casino games to the existing greyhound track and an analysis of the economic impact of the proposed Venture on the Tribal Reservations and the communities where the proposed facility would be located. We relied heavily on both studies to reach our recommendations and findings.

Our review of the market studies indicates that there was a substantial amount of time involved in accumulating the data in the studies. We find the sources of data to be reliable. The Arthur Andersen & Co. study contains pro forma financials which were reviewed and found to be acceptable by the Minneapolis Area Branch of Credit (Volume II, Tab 5).

D. **PROJECTED TRIBAL EMPLOYMENT:**

The Tribes have stated they plan to "actively recruit Native American candidates for positions at all levels." For employees at the Hudson Venture, a hiring preference will be given in the following manner: first, to members of the three Tribes and their spouses and children, second, to other Tribal members and third, to local residents from communities surrounding Hudson (Tab 7D, page 22).

Each of the three Tribes have stated that due to the location of their reservations, they do not anticipate many Tribal members who are currently living on the reservations to move to Hudson for employment in the casino (Tab 1, page 4). Since the Lac Courte Oreilles Reservation is located approximately 117 road miles from Hudson, the Red Cliff Reservation is located approximately 221 road miles away and the Sokaogon Reservation is located approximately 290 road miles away from Hudson, we have no reason to dispute the Band's assessment. The Tribes do anticipate 10 - 20 percent of the 1,600 positions at the Hudson Venture to be filled by Tribal members already living near the Hudson, Wisconsin area (Tab 1, page 5).

The three Tribes expect to receive an average of $10 million annually over the next five years as their share of the profits (Tab 5, S-1). They have identified areas of "high priority"[5] for which this money will be spent at each reservation. We have advised each Tribe that if they are going to provide a per capita payment from their gaming proceed, a Revenue Allocation Plan must be submitted and approved under the December 21, 1992, Guidelines

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[5] Activities Identified as High Priorities by all three Bands: improved health care facilities, educational facilities and grants, housing, economic and community development, programs for the elderly, land purchases and community programs.

to Govern the Review and Approval of Per Capita Distribution Plans and Section 2710 of the Indian Gaming Regulatory Act. Currently, only the Sokaogon Community has indicated that per capita payments will be made. The Sokaogon Community did submit a Revenue Allocation Plan. We returned the plan to the Community and recommended minor changes. We expect to approve the plan when these changes are made.

Each Band anticipates increased employment on the reservations due directly to the spending of their share of the net income generated by the Hudson Venture. In his analysis of the economic impact of the proposed Hudson Gaming Facility on the three Tribes, Dr. Murray estimates the creation of 150 new jobs on each reservation over the next five years (Tab 5, S-1). Although the Tribes may have to recruit non-Indians to fill many of the new positions due to a lack of training, the Tribes anticipate that the majority of these jobs will eventually be held by Tribal members.

E. BASIS FOR PROJECTING THE INCREASE IN TRIBAL EMPLOYMENT:

When we assume the figures provided by Dr. Murphy are accurate, the impact of a total of 450 new jobs on the reservations will have a substantial beneficial impact on tribal unemployment. The following figures provided by the three Tribes bolster this contention (Tab 5):

TRIBE	TOTAL ENROLLMENT:	NUMBER LIVING ON THE RESERVATION:	LABOR FORCE:	UNEMPLOYMENT RATE:
Red Cliff:	3,180	1,651	821	39% (321)
Lac Courte Oreilles:	5,431	1,923	1,362	58% (800)
Sokaogon:	1,528	512	198	42% (83)

Since each Tribe has a high unemployment rate, the jobs created on the reservation will provide incentive to Tribal members to work on the reservation rather than moving to Hudson for employment. Tribal members living off the reservation would also have incentive to move back.

F. PROJECTED BENEFITS FROM TOURISM:

As with any project of this nature, the success of the Tribe's proposed facility will depend on the volume of people/visitors who come to gamble at the Tribe's proposed facility. Based on the Market Analysis prepared by Dr. Murray, the Tribes estimates that 3,184,330 people will visit the facility annually (Tab 4,

page 15). Of that number, 95% are expected to come from the Twin Cities area and are expected to drop $199,399,166; 5% of the visitors will come from outside the Twin Cities Area and are expected to add $5 million to the net profit of the facility Id.

G. PROJECTED TRAINING BENEFITS:

In their cover letter, the three Tribes stated that the Hudson Venture will "provide both jobs and training at the supervisory and managerial levels for our people" (Tab 1, page 5). They plan to implement a cross training internship program to accomplish this goal. The Tribe's representative has stated that the internship program will last one year and will obligate the trainee to stay on an additional year to help train other employees.

Under the Joint Operating Agreement (Tab 7D, § 5.8.2) as positions in the facility become available, preference in recruiting, training, and employment in all job categories of the Enterprise, including management positions, shall be given first to qualified members of the Tribes and their spouses and children; second to qualified members of other Tribes and their spouses and children; third, to residents of the City of Hudson; fourth, to residents of the Township of Troy; fifth, to residents of the County of St. Croix.

H. PROJECTED BENEFITS TO THE TRIBAL COMMUNITIES FROM THE INCREASE IN TRIBAL INCOME:

The Tribes contend that substantial benefits would accrue to their Tribal members and surrounding communities. Specifically, they show the following benefits will result (Tab 1, page 7):

* The creation of approximately 150 new jobs on each reservation.

* The employment will generate an annual average of about $3 million per Tribe in added earnings for these employees.

* A total of over $11 million in additional earnings and 600 additional jobs will be created as a recirculation of the gaming revenue.

* The proceeds will be applied to health, education, scholarship funds, housing, elderly care, early child care, land purchases and other community support services and as per-capita payments. The Tribes expect that a substantial increase in the quality of life will be directly experienced by all members.

Our data indicates that the three Tribes have high rates of unemployment and poverty in spite of having developed local

tribal gaming facilities. This is true in part because they are located farther away from urban markets than other tribes in Wisconsin and Minnesota. The Hudson proposal will help remedy this problem by providing these Tribes with access to a urban market for gaming.

As we have already indicated, the Tribes have relatively small populations and land holdings. Thus, the proposal is expected to have a significant positive impact. However, the positive impact is not expected to be employment in the proposed facility, but from the spending of the income by the Tribes on their respective reservations.

I. **PROJECTED BENEFITS TO THE RELATIONSHIP BETWEEN THE TRIBES AND SURROUNDING COMMUNITY:**

The Tribes anticipate that between 80 and 90 percent of the 1600 employees will be from the non-Indian surrounding community (Tab 5, Page S-2). The Tribes are also committed to providing funding for the increased infrastructure costs to the City of Hudson (Tab 1, page 12). This indicates the Tribes willingness to cooperate with the surrounding community as well as the local governments. Once the Casino goes into operation and begins generating income for the community, we anticipate an improvement in the relationship between those persons now opposed to the Hudson Venture, casino management, and the three Tribes.

J. **POSSIBLE ADVERSE IMPACTS ON THE TRIBES AND PLANS FOR DEALING WITH THOSE IMPACTS:**

The Tribes have stated that they do not anticipate any adverse impacts as a result of this proposal.

The Minneapolis Area Office recognizes possible conflict between some members of the local community and the proposed management of the Hudson Venture. In fact, a member of the local Hudson community has formed her own activist group to oppose the Casino. The group has submitted a petition in opposition to the Venture and claims to have collected over 3,000 signatures. Please note, the petition was submitted after the City of Hudson, County of St. Croix and the School District of Hudson, held public hearings, made findings and submitted their own comments on the proposal. Thus, we have only provided cursory review of the petition. We have not determined whether all the people who signed the petition are registered voters in the State of Wisconsin or Minnesota. Since the group has not provided any additional specific substantive reasons as to why the Hudson Venture should not be approved, other than those already addressed, we have informed the local activist group that the petitions should be directed to the Governor of Wisconsin.

Nevertheless, we do not regard the possibility of friction

between some members of the local community and the three Tribes or the management of the proposed Venture, as grounds to reject the proposal.

II. NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

A. CONSULTATION:

To satisfy the consultation required by Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719 (1988), the Bureau of Indian Affairs, Minneapolis Area Office, consulted with State and local government officials and nearby tribes on the impacts of the gaming operation to the surrounding community (Volume III). The Bureau's consultation process consisted of letters to local government officials, including the applicant Tribe, seeking responses to several suggested areas of discussion for an analysis of the "best interest of the tribe and its members" and "not detrimental to the surrounding community" determination Id.

1. Consultation with the Governor of the State of Wisconsin:

There has been no consultation with the Governor of Wisconsin by the Minneapolis Area Office or the Great Lakes Agency since it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings.

2. Consultation with the City of Hudson:

(a) Mayor: The Mayor of the City of Hudson, Thomas H. Redner, responded to our request for input by providing detailed material addressing possible impacts on the environmental, social structure, infrastructure, land use patterns, income and employment, the possible need for additional services and compulsive gamblers programs. The Mayor stated in his cover letter, that "the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size" (Volume III, Tab 1).

(b) Common Council: The Common Council of the City of Hudson adopted a resolution with a stated purpose of protecting the "city's interest in the event the transfer takes place." The Council only sought to protect the City's financial interest and did not take a position on the proposal (Volume III, Tab 1, page 12).

(c) School District: The School District of Hudson provided considerable correspondence on the proposal (Volume III, Tab 4). Their primary concern was insuring that the tax revenue that would be lost after the land was placed into trust be replaced. To accomplish this, the School District passed a resolution to protect their financial interests (Volume III, Tab 4). However, the resolution did not approve or disapprove the purpose of the proposal. An agreement between the City, County and Tribes was

eventually finalized (Volume I, Tab 9). It provides for a distribution formula for services to be paid by the Tribes. The School District approved the distribution formula in an intergovernmental agreement with the County on April 12, 1994. The particular financial aspects of the agreement are discussed in Part I of this report. The School District then wrote to the Governor of the State of Wisconsin calling for in-depth investigations regarding the impact on education (Volume III, Tab 4, page 7). They expressed their desire for additional funding, earlier growth escalators and the possible need for a reversionary clause in the deed. This indicates weak support for the current proposal.

3. Consultation with the County of St. Croix:

The County Board Office of St. Croix County, Wisconsin also provided correspondence on the proposal (Volume III, Tab 2). On March 13, 1994, prior to the signing of the "Agreement for Government Services", they wrote to the Governor to advise him that significant back real estate taxes are owed on St. Croix Meadows (Volume III, Tab 2, page 8). The Board requested that the Governor not approve any agreement in relation to the proposal until the county has received payment of all real estate taxes, penalties, and interest due and unpaid on the St. Croix Meadows dog track property. They also noted strong public opposition to the proposal. However, after the signing of the agreement, the Board showed their support of the proposal by criticizing the Hudson School District in their call for in-depth investigations by the Governor (Volume III, Tab 2, page 10). No mention was made of the public opposition. This indicates that the Board fully supports the proposal.

The St. Croix County Board Office also prepared an "Impact Assessment" of the proposed gaming establishment (Volume III, Tab 2, page 1). It focused on the impact of the proposal to the County as a whole, including the City specifically. The assessment was prepared by the County Planning Department Staff and reviewed by the Chairman, Richard Peterson. Although each of the seven subject matters were addressed, Mr. Peterson stated in the cover letter that the County could not conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. We note that this assessment was completed prior to the signing of the *Agreement for Government Services*.

4. Consultation with the Town of Troy:

The Town of Troy provided their response to our consultation letter on March 14, 1994 (Volume III, Tab 3). The town had several areas of concern dealing with, increased traffic, lowered standard of living, limited housing, and the possible additional cost services.

The town's concern over increased traffic is addressed in the Finding of No Significant Impact. The concern over a lower standard of living as an argument against the proposal is without merit since the Tribes have indicated that the proposed gaming facility will require many supervisory and managerial positions as well as training programs. Additionally, Dr. James M. Murray estimates that 85 percent of the employment and payroll in the expanded operation will accrue to Wisconsin residents and that 90 percent of the spending at the proposed gaming facility will originate from outside the state of Wisconsin (Volume I, Tab 5, page 12). The concern of limited housing does have merit. However, we find that any growth to the community as a result of gaming facility would not have a detrimental affect on Hudson. The towns concern over additional cost of services has been addressed in the Agreement for Government Services.

5. General Public Response:

(a) Public Opposition: Approximately 76 letters[6], written by people in the Hudson community, were sent to the Department of the Interior expressing opposition to the proposal. Their arguments against approval of this proposal are based primarily on social concerns, i.e. concern over increased crime; concern over the impact of gaming on the children in the area; concern over the projected increased traffic; concern over a possible increased cost to the city; possible increased cost to the social programs that problem gamblers would cause; concern over organized crime; and general concern over the diminishment of the aesthetical values to the city. The people against this proposal also cited the referendum of April 1993, to show that a majority of people were against the expansion of gambling in Wisconsin. Many stated that the market is already saturated and that the dog track was a failure so the Casino will be too. As a result, it is only serving as a "bailout" for the current owners of the St. Croix Meadows. Many people stated that Hudson is fine economically without the casino and does not need the low paying jobs that would be created. A few people were morally opposed to the idea of gambling.

Approximately 3,100 people signed a petition expressing opposition to the proposal. We have not verified the legitimacy of the signatures. Nor have we determined how may people who signed the petition are registered voters in Hudson. It is our determination that these petitions should be directed to the Governor of the State of Wisconsin.

A thorough report was sent in by one member of the Hudson community to provide evidence to form a basis to reject the application. However, each of the issues raised in the report

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[6] These letters are attached.

have been addressed by the Tribe's application, in the Finding of No Significant Impact, by the local governments of Hudson, or in other areas of our findings. Many of the arguments advanced by people opposed to the proposal are also political in nature and raise policy issues for the Department of the Interior. It is our determination that none of these issues form a basis to reject the proposal.

(b) Public Support: One letter, written by Wisconsin State Legislature, Doni Burns, was sent expressing support for the proposal. He stated that the majority of people in Hudson were in support of this proposal. To support his position he referred to a referendum passed in 1992 in regard to the possibility of a casino at St. Croix Meadows.

The referendum voted on in 1992 asked the following question:[7]

> *Do you support the Transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?*

Results: 1,351 people voted "yes", (51.2%);
1,288 voted "no" (48.8%)

The survey results were provided by the City of Hudson and referred to in a number of the responses by people in favor as well as people opposed to the casino.

This referendum differs from the April 1993 statewide referendum in that it is site specific. The 1993 statewide referendum (Volume II, Tab 8) which has been cited by people opposed to the proposal, asked:

> *"Do you favor a constitutional amendment that would restrict gambling casinos in this state?"*

St. Croix County results: 6,328 voted "yes" (65.4%)
3,352 voted "no" (34.6%)

While the Hudson Proposal may be an expansion of a type of gaming in Hudson, it will not be an expansion of a gaming facility. Additionally, since the Tribes have agreed to a limited number of Class III facilities with the State of Wisconsin, it will also not be an expansion of gaming in Wisconsin. It may also be argued (indeed, the Tribes have done so) that this is not an expansion of gaming even in Hudson since the building is already

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[7] The question and results where obtained from the City of Hudson (Volume III, Tab 1, page 11).

in place and the dog track is currently in operation. At any rate, it is our determination that the 1993 referendum, standing alone, does not preclude the Secretary of the Interior from making a determination the Hudson proposal would not be detrimental to the surrounding community.

Approximately 800 people signed a petition supporting the Hudson proposal. They did not provide any supporting reasons. No evidence has been provided to show that these signatures are not legitimate. However, we have not verified the residency of these supporters or determined whether or not they are registered voters in the State of Wisconsin or elsewhere.

6. Consultation with Neighboring Tribes:

18 Tribes in the State of Minnesota and Wisconsin were informed of the proposal (Volume III, Tabs 5 - 16). We requested that these Tribes provide input on the impact the proposal would have on their respective reservations by letter, all dated December 30, 1993. Nine of the eleven responses that we received were emphatically against the proposed Hudson project. However, none of the Tribes that responded provided reliable or scientific data to support their views. The following are the Tribes and Tribal Organizations that responded as a result of our inquires and a summation of their comments and our response:

(a) St. Croix Band of Chippewa Indians of Wisconsin: St. Croix is strongly opposed to the project (Volume III, Tab 12). They stated, "the proposed Hudson fee to trust acquisition will have an extreme detrimental and crippling impact on the St. Croix Casino located in Turtle Lake, Wisconsin." They supported this position by providing a detailed response to the seven questions and an *Impact Statement*. This material focused heavily on the probable loss of revenue at the Tribe's Turtle Lake Casino. The St. Croix Tribe stated that the Hudson proposal would cut into the revenue generated at their Turtle Lake Casino because the Hudson proposal is larger, in a better location and has a better highway system. St. Croix also stated that the gaming market is already saturated and as a result, they would have to increase marketing expenditures just to survive and would lose current qualified employees to the Hudson project. The Tribe did not provide any data to support their position.

St. Croix provided a casino density illustration to show that "the market is becoming saturated". However, they did not provide any financial studies to back up this or any other claim dealing with a loss of income.

We question St. Croix's opposition to this project since initially, they were the first Tribe to consider purchasing the St. Croix Meadows Dog Track for gaming purposes. We also find that their economic position is overstated since they have two

casinos currently in operation and may also be working to purchase the Lake Geneva Dog Track to add a casino.

(b) Wisconsin Winnebago Nation: The Wisconsin Winnebago Business Committee responded by stating that they do not want this proposal to even be considered until the State of Wisconsin has fulfilled its commitment under the Tribal/State Compact to agree to a fourth Class III gaming site for the Wisconsin Winnebago Nation (Volume III, Tab 13).

We find that the conflict over the Gaming Compact between the Wisconsin Winnebago Nation and the State of Wisconsin provides no legal basis to reject the Hudson's proposal.

(c) Leech Lake Band of Chippewa Indians: The Leech Lake Tribal Council passed a resolution against the proposal (Volume III, Tab 6). They stated that numerous problems will arise for the State and the gaming Tribes in Minnesota if gaming is expanded to off-reservation locations. According to the Tribe, the problems would not only be a monetary loss to the surrounding Tribes but also political in nature due to the unfair use of the "special trust and tax status" of the Tribes. However, they did not elaborate as to what the political ramifications would be. Nor did the Leech Lake Band provide any justification for limiting the expansion of gaming to "off-reservation" locations.

(d) Shakopee Mdewakanton Sioux Community: The Shakopee Mdewakanton Sioux Community's Business Council passed a resolution stating their opposition to the proposed Hudson Venture (Volume III, Tab 11, page 3). Their objections were based on loss of income for the surrounding gaming Tribes and the political ramifications. Specifically, the Business Council stated the proposed casino would have a "detrimental political impact in Minnesota since Minnesota Tribes have agreed by formal tribal/state compacts to not expand Tribal gaming off-reservation..."

The Community also argued that the proposed area is actually Mdewakanton Sioux territory Id. As a result, they feel that approval of an off-reservation gaming facility in Hudson should be reserved for the Mdewakanton Sioux Tribe. We have found no legal basis for this argument. Our Fee to Trust review under 25 C.F.R. Part 151 will identify any interest this Tribe may hold in the land at Hudson.

The Chairman and CEO of the Little Six, Inc., also responded on behalf of the Mdewakanton Dakota Community (Volume III, Tab ii, pages 8 - 11) . He stated that the Community "vehemently opposes" the proposal for the following reasons:

1) This is only an off-reservation gaming experiment which could have devastating impacts on the negotiation process

among the National Indian Gaming Association, Congress, State Governors, and Attorneys General.

2) This proposal could damage the national efforts to protect gaming and could have severe political ramifications in Minnesota. They did not elaborate or provide any scientific information to support this claim.

3) The proposal could cause the State of Minnesota to open up gaming around the State thereby diminishing the beneficial economic impact of Indian Gaming. The Tribe has not provided any legal justification to show why gaming should not be expanded by Wisconsin Tribes in Wisconsin.

4) The market is at or very near the saturation point and cannot absorb another casino in the Twin Cities area without having a negative impact on jobs. A market study has not been provided by the Shakopee Mdewakanton.

5) The proposal could damage the current cooperative government to government relationship between the State of Minnesota and the Tribes. The Tribe has yet to explain how this will happen.

(e) Prairie Island Dakota Community: The Prairie Island Dakota-Community passed a resolution voicing their opposition to the proposal (Volume III, Tab 10). They stated that the Hudson Casino would "saturate the already extremely competitive Minneapolis-St. Paul market area." In addition, the Tribe contends that they would not be able to compete due to the advantages the Hudson site offers. Specifically, the Tribe stated that they would suffer a severe loss of revenue (they estimate a 30%-50% reduction in customers) due to the following reasons: the proximity of Hudson to the metro area, the proximity of the proposed casino to an interstate highway and because the dog track is already an existing "first-class facility".

(f) Lower Sioux Community: The Lower Sioux Community did not pass a resolution opposing the proposal. However, the Chairman did write a letter indicating his opposition (Volume III, Tab 7). He stated that the Lower Sioux Community would be severely and unfairly damaged economically. He also indicated that the Community would be damaged politically since all of the Minnesota Tribes have not sought to locate a gaming establishment away from the reservations and to do so would cause a region-wide and probably a nation-wide race by other Tribes to do the same. No data was provided to validate his arguments.

(g) Minnesota Chippewa Tribe: The Minnesota Chippewa Tribe passed a resolution opposing the Hudson Project (Volume III, Tab 14). They stated this proposal could set a dangerous precedent by creating an open market for expansion by other Tribes.

(h) Mille Lacs Band of Chippewa Indians: Although the Mille Lacs Band did not pass a resolution to declare their opposition to the proposal, the Chief Executive did write a letter stating the Tribe's opposition and referred to letters written by the Minnesota Indian Gaming Association (Volume III, Tab 8). She also asserted that the Indian Gaming Regulatory Act was designed to act as a reservation based economic development tool and that the Hudson proposal is inconsistent with that intent. She said that reservation based gaming has allowed Mille Lacs to take a 45% unemployment rate to "effectively zero". She feels this number would increase should the proposal go through. No studies or data was provided to support these claims.

(i) Minnesota Indian Gaming Association: The Minnesota Indian Gaming Association passed a resolution and wrote a number of letters expressing their opposition to the Hudson Proposal (Volume III, Tab 15). They stated that since Minnesota Tribes oppose off-reservation gaming activity and have promised not to expand tribal gaming off-reservation, the Hudson proposal is an infringement upon their own inherent sovereign rights. In addition, the following reasons were given for their opposition:

1) Other gaming Tribes would suffer economically due to the Hudson proposal's close proximity to the metro area. In particular, the more remote casinos would be hurt.

2) The St. Croix area has historically been considered to be Dakota land. Findings: This issue will be addressed in the actual transferring of the land into trust pursuant to 25 C.F.R. Part 151. The objections identified in the Preliminary Title Opinion, if any, will have to be satisfied before the land may be transferred.

3) An off-reservation expansion of this magnitude would create huge political problems for Minnesota Tribes. The Minnesota Indian Gaming Association stated that State Legislators have been under political pressure from private businesses who want to expand gaming by placing video games in bars among other things. They also stated that they have fought hard to keep this from happening and the this proposal would jeopardize what they have fought to maintain.

MIGA also argues that the National Governors Association and other adversaries have been stating that tribes would expand gaming off-reservation into major cities in direct competition with non-Indian businesses. MIGA does not want them to be proven right.

(j) Lac du Flambeau Band of Lake Superior Chippewa Indians: The Lac du Flambeau Band stated that they do not oppose the Hudson project (Volume III, Tab 1). They also stated that their experience in gaming indicates that there would be a beneficial

impact.

(k) Oneida Tribe of Indians of Wisconsin: The Oneida Tribe stated that since they are located 250 miles away from Hudson, Wisconsin, they are not in a position to offer detailed comments or analysis on the impacts of the proposal (Volume III, Tab 9). They did state that they do not perceive that there would be any serious detrimental impacts on their reservation or gaming operations.

B. IMPACT ON NEARBY TRIBES:

1. Economic:

None of the Tribes who have written to our office to protest this proposal has provided us with any figures to back up their claim that the Hudson Venture would be "devastating economically" to the other casinos in the area. As a result, we must rely heavily on the study prepared by Arthur Andersen and Dr. Murphy to estimate the impact on the other Tribes economically.

Arthur Anderson's study estimates current market revenue for the six existing casinos in the Minneapolis/St. Paul area to be $510 million with a total estimated market revenue between $550 and $630 million[1] (Volume I, Tab 3, page 21).

Since the Hudson Venture's share of the market is estimated to be $80 Million, AA has found that even though the existing casinos would suffer some economic loss, the "proposed Hudson casino should not significantly impact aggregate revenues of the existing casinos" Id. We have particular concern over the economic impact of those casinos located within 55 road miles from Hudson. They include the Mystic Lake Casino, Turtle Lake Casino and Treasure Island Casino. Each of the Tribes operating these casinos have voiced strong opposition to the Hudson Proposal based on economic reasons. However, none of these Tribes have provided our office with any hard figures to back up their claims.

On August 12, 1994, we requested the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes provide an analysis which focuses on the particular economic impact of the proposed casino on the

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[1] The market was estimated by Arthur Andersen & Co. using the following figures:.

Population within 100 miles.... 3,800,000
MULTIPLIED BY: Estimated per capita gaming revenue.... $145 - $165

We also note that the Hole in the Wall Casino in Danbury, Wisconsin, was not included in figuring the total estimated market revenue.

Mystic Lake, Turtle Lake and Treasure Island Casinos. The Tribes did not respond in writing. Their representative, Bill Cadotte, did state that there is no legal basis to reject the proposal based on what the potential political ramifications "might" be. We concur. Specifically, we find that additional market studies cannot be completed by the three Tribes without financial data supplied by the three casinos in question.

2. **Political:**

A number of Tribes and commentators have indicated that expansion of off-reservation gaming erodes their political power and will eventually undermine their ability to limit States from expanding gaming. However, it can be argued that each new gaming operation, whether or not on land placed into trust prior to October 17, 1988, erodes Tribal political power to protect the gaming industry. We find that the Tribal Sovereignty of the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes is far more important than limiting the expansion of Tribal Gaming. In fact, each Tribe currently operating gaming facilities went into the industry knowing that expansion into major metropolitan areas was a possibility and maybe even likely. We find that it is up to each individual Tribe to operate within the limits of the Indian Gaming Regulatory Act, their Class III Gaming Compacts and their existing governing documents. The Minneapolis Area Office will not restrict Lac Courte Oreilles's, Red Cliff's, Sokaogon's or any other Tribe from operating within these limits and find that any negative political ramifications from this proposal would be minimal.

C. **EVIDENCE OF ENVIRONMENTAL IMPACTS AND PLANS FOR REDUCING ANY ADVERSE IMPACTS:**

The Lac Courte Oreilles and Red Cliff Bands Lake Superior Chippewa Indians and the Sokaogon Chippewa Community propose to purchase, and place into federal trust 55.82 acres of land. The proposed trust site consists of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building, for the purpose of operating a Class III gaming facility in addition to the existing pari-mutuel dog track operation. The main parking lot west of the grandstand building is not intended for trust acquisition.

The existing grandstand would be remodeled to accommodate gaming activities, however, most support facilities (kitchen, washrooms, office space, etc.) would be maintained.

1. **Environmental Considerations:**

An "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" was prepared by

Mid-State Associates, Inc., in accordance with the requirements of the Wisconsin Racing Board Application for License (Volume IV, Tab 4). An addendum to the Environmental Assessment was prepared by Bischof & Vasseur for the proposed trust acquisition (Volume IV, Tab 3). Based on the findings of the EA and the Addendum, the Superintendent, Great Lakes Agency, found that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary. The *Finding of No Significant Impact* was issued on September 14, 1994 (Volume IV, Tab 1).

A Level I Hazardous Waste Survey has not yet been completed. However, we do note that a Phase I Environmental Property Assessment has been prepared by Braun Intertec for the Tribes. It indicates that there are no documented or observable environmental concerns associated with asbestos containing building materials or underground storage tanks. It also states that there is no documented evidence indicating any past or current land-use activities that have had an adverse environmental impact on the site. We also note that prior to the United States taking the land into trust, a Level I Hazardous Waste Survey must be completed and approved at the Area Office. We will satisfy this requirement under the 25 C.F.R. Part 151 process.

2. **Natural and Cultural Resources:**

The addendum to the Environmental Assessment states that the proposed facility will have no new significant short-term, long-term, or cumulative impacts on the regional geology, including bedrock and soils, ground water/water quality, or climate (Volume IV, Tab 3).

The Addendum also states that the facility is not expected to impact any natural areas such as native trees or wildlife habitat. Additionally, there are no anticipated impacts from the planned action on wetlands or other surface waters in the area. According to the National Wetlands Inventory Map for the site, there are no designated wetland areas located on the site. No rare plant or animal species or other significant natural feature will be adversely impacted.

(a) Land Resources: The topography of St. Croix County ranges from gently rolling to hilly and rough (Volume IV, Tab 4, pages 3 & 4). All of the county has been covered by continental glaciation. The St. Croix River has also had a major impact on the topography of the area. The St. Croix River is bounded by 100' - 200' bluffs along its eastern shore. The Hudson Casino Venture would be located on the plateau above these river bluffs.

The site where the proposed facility would be located and the

immediate area surrounding the site is "mostly gently rolling with an average elevation of 840 feet" Id.

The site surrounding the facility is a combination of many soils. Pillot silt loam is the most common Id. The slope of this soil is 0 to 3 percent so runoff is slow and there is slight hazard of erosion. Most of the remaining soil at the site is Burkhardt-Sattre complex of differing slopes. Since most areas of the Burkhardt-Sattre complex are cultivated, there is no identified erosion or soil blowing problem.

Since the planned action will utilize the existing racetrack facilities, there will be no significant impact on prime or unique farmlands in the Farmland Protection Policy Act (Volume IV, Tab 3, page 3).

(b) Water Resources: The Hudson area has an abundance of groundwater. All potable water used in St. Croix County is groundwater. The supply of water is presently determined by the ability to pump it out of the ground. The source of the groundwater is precipitation (Volume IV, Tab 4, page 3).

The Hudson area surface waters occupy two major drainage systems. The St. Croix River drains the western two-thirds of St. Croix County. The balance of the county is mostly drained by the Chippewa River which flows into the Mississippi River Id.

The St. Croix River is located approximately 4800 feet to the west of the proposed facility. There are no other existing surface water bodies in the EA study area Id.

(c) Air Quality: Both the City of Hudson and St. Croix County have stated that the projected traffic increase will not cause the air quality to exceed applicable standards (Volume III, Tab 1, page 1 and Volume III, Tab 2, page 2). Air monitoring stations are currently in place at the track exit and the southeast corner of the Carmichael Interchange to detect any change in the air quality which could be harmful to the area Id.

(d) Threatened and Endangered Species: St. Croix County is listed as a habitat for the following three endangered or threatened species (Volume IV, Tab 4, page 4):

(1) Peregrine Falcon - Potential breeding habitat; Endangered.
(2) Bald Eagle - Breeding and wintering habitat; Threatened.
(3) Higgins' Eye Pearly Mussel - River habitat; Endangered.

According to the EA, site visits in 1988 to the area around the proposed facility did not detect any of these species Id. The development site may serve as a habitat for the Peregrine Falcon and Bald Eagle. However, none have yet been located. Additionally, there is no habitat for the Higgins' Eye Pearly

Mussel at the site. At any rate, the natural area consisting of vegetation or wildlife habitat will not be impacted by the internal construction or additional traffic flow Id.

(e) Cultural Resources: No specific cultural resources or structures are known to exist on the site.

The State Historical Society of Wisconsin has stated that there are no buildings in the study area that are listed in the National Register of Historic places (Volume IV, Tab 2, page 2).

The Mississippi Valley Archaeology Center, Inc., stated that there are no known archeological sites in the proposed project area (Volume IV, Tab 2, page 3).

D. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY:

Concern over an increase in crime has been expressed by most of those people who wrote to oppose the Hudson Venture. However, none of the letters contained any scientific or statistical evidence to back up this claim. The City of Hudson has stated that similar predictions were made in regard to the St. Croix Meadows dog track before it went into operation in 1990. The City stated, to date, "none of the earlier negative predictions concerning increased crime, etc., have come true..." (Volume III, Tab 1, page 2). To prevent any crime escalation in the City of Hudson, and to help offset any fear among the community, the City has stated that they will hire an additional Investigator Crime Prevention Office in the year the Casino is opened (Volume III, Tab 1, page 4). The City also expects the Police Department to expand the police force by five officers and one clerical employee within the next five years Id. Additionally, the Tribes have stated that they are committed to paying for the reasonable costs of these services (Volume I, Tab 1, page 12).

The City stated that the residents of the community have come to accept the dog track's existence and that there is no overwhelming majority of citizens either in favor of or opposed to the casino (Volume III, Tab 1, page 2). Nevertheless, the city is prepared to handle any negative reaction by the community over the casino.

E. IMPACT ON THE INFRASTRUCTURE:

1. Utilities:

The current facility is supplied by existing public water, sanitary sewer, electric, and telephone utilities. No additional infrastructure is scheduled to be constructed as part of the proposed action.

2. **Zoning:**

According to the City of Hudson, most of the proposed trust site is zoned general commercial district (B-2) for the principal structure and ancillary track, kennel and parking facilities (Volume III, Tab 1, page 4). Six acres of the proposed trust site are currently zoned single family residence Id. The east, south and westerly perimeters are classified as on-family residential districts (R-1) and serve as a buffer area between the track operation and other surrounding land uses Id.

3. **Water:**

The City of Hudson stated that the water trunk mains and storage facilities are adequate for providing water service to the proposed casino and "ancillary development south of I-94" (Volume III, Tab 1, page 3).

4. **Sewer and Storm Drainage:**

According to the Impact Assessment of the Proposed Casino on St. Croix County which was prepared by the County, St. Croix County anticipates an increase in waste generation from the proposed casino (Volume III, Tab 2, page 1). Currently, the St. Croix Meadows generates .5 pounds per person Id. This equals approximately 104 tons of waste per year. Based on the anticipated average daily attendance of 7,000 people, the proposed casino would result in a production of 639 tons of waste per year, an increase of 535 tons. The County has stated that the waste-to-energy facility that services St. Croix County has adequate capacity to handle the increase Id. To verify the figures, the County compared their estimates to the St. Croix Bingo and Casino gaming facility in Turtle Lake, Wisconsin. That facility averages .53 pounds per person or 677 tons per years.

An existing storm water collection system collects storm water runoff and directs it towards a retention pond located near the southwest corner of the parking area. From there, collected storm water is allowed to evaporate, percolate into site sils, or slowly flow along a regional storm water control system towards the St. Croix River (Volume IV, Tab 4, pages 7 & 8). According to Hudson officials, the existing storm water control system is adequate to handle storm water runoff from the site (Volume III, Tab 1, page 3).

5. **Lighting:**

The County has stated that although the City of Hudson has jurisdiction to control and monitor the lighting, the County has a responsibility to surrounding neighbors in other jurisdictions (Volume III, Tab 2, page 2). As a result, the County expressed that any changes made to the current lighting system take into

consideration the larger community which may be affected. They did not express any dissatisfaction with the current system.

The City of Hudson stated that this concern was addressed at the time St. Croix Meadows was constructed. Specifically, a lighting system is already in place which reduces the light spillage at the property lines "to an amount equivalent to residential streets" (Volume III, Tab 1, pages 1 & 2). The City also acknowledged that the lights may be on for extended periods of time because the casino operation is likely to be open until 2:00 a.m. or 24 hours per day Id.

6. Roads:

(a) Access: The City of Hudson stated that the current street system is sufficient enough to accommodate projected traffic needs based on 40,000 average daily trips (Volume III, Tab 1, page 4). However, development on Carmichael Road north of the proposed casino may be necessary. Specifically, traffic regulatory signals will likely be needed at the interchange of Carmichael Road and Hanley Road.

St. Croix County expressed particular concern with increases in traffic on USH 12, CTH UU, CTH A, and Carmichael Road (Volume III, Tab 2, pages 2 & 3). The County stated that even minimal traffic increases will have a negative impact on these roadways since they are already at capacity. However, information gathered from the Wisconsin Department of Transportation indicates that any negative impact from additional traffic will be minimal (Volume IV, Tab 3, pages 38 & 39).

(b) Traffic Impact Analysis: A traffic study was completed and is contained in the 1988 Environmental Assessment for the St. Croix Meadows dog track (Volume IV, Tab 2, page 18). It is based on traffic projections in the year 2011. Peak traffic estimates were provided to the Wisconsin Department of Transportation regarding the proposed Hudson Casino Venture. No significant problems were identified regarding the proposed traffic increase on the Interstate 94/Carmichael Road Interchange.

The *Finding of No Significant Impact* (Volume IV, Tab 1) also indicates that although no transportation system is likely to be developed in Hudson that would assure there will be no slow-down or delays during peak traffic periods, various methods would be utilized to manage delays should they occur. These methods include varying dog track racing times so as not to coincide with peak casino attendance times, elimination of parking fees and gates for easy parking lot entry, use of shuttle buses and remote parking areas, possible adjustment of time delays on traffic lights during peak attendance times, and installation of traffic lights.

F. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY:

The City has stated that approximately 25 acres of the site is developed. The six acres that are zoned as single family residence have limited development potential; 18.5 acres are located in an area of the bluff east of the track and are generally not suited for development, although there may be some potential; 5.5 acres are suitable for development (Volume III, Tab 1, page 4).

The City of Hudson has stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses Id.

G. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY:

Total employment at the proposed facility is expected to be between 1,500 and 1,600 positions. Current employment figures at St. Croix meadows is approximately 175 full-time positions and 225 part-time positions (Volume III, Tab 2, page 4). All existing employees would be offered re-employment at their current wage rates. Thus, between 1,100 and 1,200 new positions are expected to be generated Id.

Even though the three Tribes will give hiring preference to their own tribal members, 80-90% of the new positions are expected to be filled by non-Tribal members already living in the Hudson area Id. Wage rates for these jobs are estimated at between $5 and $10 per hour, not including salaried positions Id.

According to statistics provided by the St. Croix County, the service industry accounts for 20 percent of the County's 1993 total labor force of 28,300 people. Since the casino is expected to pull some employment from existing service jobs within the county, County officials estimate that approximately 175 service positions will be filled by currently unemployed County residents either through direct employment at the casino or by other service jobs Id.

The remaining 900-1025 positions are expected to be filled by people from the nearby Wisconsin counties.

According the Economic Impact Report by Dr. James Murray, over 90 percent of the spending at the proposed Hudson Gaming Facility is expected to originate from outside the state (Volume I, Tab 5, page S-2). Dr. Murray estimates the total impact of the gaming facility would be to support 2,691 jobs and generate over $56 million in annual earnings for residents of Wisconsin (Volume I, Tab 5, page 12).

H. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO:

Additional services will be needed in the City of Hudson, County of St. Croix and at the site of the Hudson Project. To assure that all necessary services are provided, the three Tribes, County of St. Croix and the City of Hudson have entered into an *Agreement for Government Services* (Volume I, Tab 9). In the agreement, the Tribes, through their EDC's, will pay the City and County for general government services, including, but not limited to, the following services: police, fire, water, sewer, ambulance, rescue, emergency medical and education. These services will be provided in the same manner and at the same level of the services provided to residents of the City and County and other commercial entities located in the city and county. The agreement will continue for as long as the land is held in trust or until Class III gaming is no longer operated on the land.

I. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING:

Currently, there is not a compulsive gamblers program within St. Croix County. The County has indicated that if the Hudson Project goes into operation, their Human Services Department would initiate staff training and would develop treatment programs, including initial on-site screening of potential problem gamblers, treatment and aftercare services (Volume III, Tab 2, page 5).

There are six State-Funded Compulsive Gambling Treatment Centers in Minnesota (Volume II, Tab 7, page 38). Two are in Minneapolis. The other four are located in St. Cloud, Bemidji, Granite Falls and Duluth. According to the Minnesota Council on Compulsive Gambling, since 1984, limited funds have been appropriated by the Minnesota Legislature for training, research, gamblers' hot-line services, rehabilitation and public awareness programs (Volume II, Tab 6, page 2). Unfortunately, Minnesota Planning has also found that current levels of treatment in Minnesota are inadequate and that some treatment facilities already have waiting lists while others are near capacity (Volume II, Tab 7, page 37).

Since there are no Wisconsin state-funded treatment facilities near Hudson, the three Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. Additionally, the Tribes have stated they will contribute money to local self help programs for compulsive gamblers (Volume I, Tab 1, page 12).

III. RECOMMENDATIONS

Based upon the discussion and conclusions provided above, we recommend that the Secretary of the Interior find that the proposed action will be in the best interest of the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes and that it will not have a detrimental effect on the surrounding community. We also recommend that the decision be made to take this particular parcel into trust for the three Tribes for gaming purpose.

I attest that I have reviewed this transaction and the case file is documented in compliance with all of the above stated regulations and facts. I further state that I will not accept the property in trust until I have received satisfactory title evidence in accordance with 25 C.F.R. Part 151.12.

ATTEST:

Area Director

11-15-94
Date

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, Minnesota 55401-2241

IN REPLY REFER TO:

Tribal Operations

April 20, 1995

Memorandum

To: Assistant Secretary - Indian Affairs

From: Office of the Area Director

Subject: Trust Acquisition Request - St. Croix Meadows Dogtrack Property

Attached is a request by the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the Tribes) to place 55.82 acres of land into trust status for the benefit of all three tribes. The property consists of the St. Croix Meadows Greyhound Racing Facility and is located in Hudson, Wisconsin. In addition to the land, the Tribes have also entered into an agreement to purchase the assets of the track from the current owners. Once the requirements of the Indian Gaming Regulatory Act of 1988 are satisfied, the agreements to purchase the assets of the dogtrack are executed, and the land is placed into trust, the Tribes will add casino type gaming to the facility.

The Tribes are currently awaiting satisfaction of the requirements of the Indian Gaming Regulatory Act of 1988 before executing the land and asset purchase agreements. We transmitted our Section 20 Recommended Findings of Fact and Conclusions for this project to you on November 15, 1994. Since that time, the Tribes have specifically requested that the Bureau of Indian Affairs begin the process of placing the land into trust status. As a result, we obtained the attached Preliminary Title Opinion from the Office of the Field Solicitor, Twin Cities. We have also attached the following material in support of the trust acquisition:

1) Title Insurance Commitment;

2) Level I Hazardous Waste Survey;

3) Finding of No Significant Impact;

EXHIBIT
TH-6

4) Maps of the property;

5) Tribal Resolutions requesting the land be placed into trust;

6) Notification letters addressed to the local units of state government.

Please note, the responses of the local units of state government and additional material were included in our November 15, 1994 transmittal.

We have completed our review and analysis of the request and the supporting documentation. The findings and recommendations to place the land into trust after satisfaction of all IGRA requirements are set forth in this memorandum for your approval or disapproval.

I. PROPERTY TO BE ACQUIRED

The property to be acquired is located at 2200 Carmichael Road in Hudson, Wisconsin, approximately one mile south of the Carmichael Road/Interstate "94" interchange. The site consists of approximately 55.82 acres located in the fractional Northeast Quarter of the Northeast Quarter and Southeast Quarter of the Northeast Quarter, Section 6, Township 28 North, Range 19 West, City of Hudson, Saint Croix County, Wisconsin, described as follows:

> The fractional Northeast Quarter of the Northeast Quarter of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional Northeast Quarter of the Northeast Quarter of said Section 6.
>
> Also, that part of the Southeast Quarter of the Northeast Quarter of said Section 6 described as follows: Commencing at the Northeast corner of said Section 6; thence S02°49'01"W, 1,891.74 feet along the East line of the fractional Northeast Quarter of said Section 6 to the Northeast corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the Southeast Quarter of the Northeast Quarter of said Section 6; thence N02°48'30"E along the West line of said Southeast Quarter of the Northeast Quarter to the Northwest corner thereof; thence Easterly along the North line of said Southeast Quarter of the Northeast Quarter to the Northeast corner thereof; thence S02°49'01"W, along the East line of said Southeast Quarter of the Northeast Quarter to the point of beginning.

In June, 1991, the St. Croix Meadows Greyhound Racing Park opened on the site. The facility consists of a racing area, enclosed grandstand and clubhouse, kennels,

purchase and placement into trust of St. Croix Meadows Greyhound Park is viewed by the Tribes as critical to their long-term economic benefit. The project would permit the tribal governments, as well as tribal members, to participate in the operation of a gaming facility in a large metropolitan market.

Only the Sokaogon Tribe distributes gaming revenue to tribal members in the form of per capita payments. As a result, the majority of net revenue generated by the proposed casino would be used to expand tribal social programs, tribal government operations and economic development activities well beyond the limits allowed by existing federal and state assistance.

C. 25 C.F.R. § 151.10(c) - The purpose for which the land will be used:

The Tribes intend to use the property for a Class III gaming facility. The Tribes have entered into an agreement with the current owners of the St. Croix Meadows Greyhound Park in Hudson, Wisconsin, to purchase the assets of the dogtrack. This track is located on the proposed 55.82 acres of trust land. Once the requirements of the Indian Gaming Regulatory Act of 1988 have been satisfied, and the land is placed into trust for the Tribes, casino type gaming will be added to the existing facility. No other use of the land is foreseen.

D. 25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls:

Notices of the proposed fee-to-trust conversion were sent to the Mayor of the City of Hudson, the Chairman of the City of Hudson, the Chairman of the St. Croix County Board of Supervisors, and the Chairman of the Town of Troy. The concerns not related to the removal of the property from the tax rolls that were raised by these local units of state government were fully addressed as part of the process under Section 20(b)(1)(A) of the Indian Gaming Regulatory Act of 1988 in the Recommended Findings of Fact and Conclusions prepared by the Minneapolis Area Director and sent to the Assistant Secretary-Indian Affairs on November 15, 1994.

Over 90 percent of the spending at the proposed Hudson gaming facility is expected to originate from outside the State of Wisconsin. The Hudson gaming facility is also expected to support 2,691 jobs and generate over $56 million in annual earning for residents of Wisconsin. Additionally, the Tribes, City of Hudson, and the County of St. Croix have entered into an *Agreement for Government Services*. Under this agreement the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other

and parking areas. The racetrack is open year round and has twenty kennels, each kennel having the capacity of housing up to 72 greyhounds each. The racetrack currently employs approximately 282 employees, including the food service employees. Prior to the construction of the racetrack, the site was used for agricultural purposes.

II. COMPLIANCE WITH LAND ACQUISITION REGULATIONS

25 C.F.R. § 151.10 identifies various factors which must be considered in all fee-to-trust acquisitions. Each factor for the placement of the St. Croix Meadows Property in trust for the three Tribes is discussed below:

A. 25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority:

The Sokaogon Chippewa, Lac Courte Oreilles Chippewa and the Red Cliff Chippewa are all organized under the Indian Reorganization Act of 1934. Each tribe has requested to place the land in Hudson, Wisconsin, in trust for the benefit of all three Tribes under 25 U.S.C. § 465. The Bureau of Indian Affairs is authorized to process this application under 25 C.F.R. 151.3(a)(3) which states that land not held in trust may be acquired for a tribe in trust status when such acquisition is authorized by an act of Congress, and when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

B. 25 C.F.R. § 151.10(b) - The need of the individual Indian or the tribe for additional land:

The trust acreage at the three tribal reservations totals 57,868.76 acres.[1] However, each of the Tribes lack an adequate land base to provide facilities for economic development. This is due to the fact that each of the three reservations is located in areas of Wisconsin which are remote from significant population centers.

The Tribes operate a total of five (5) gaming facilities within the exterior boundaries of the three reservations. To ensure the continuing stream of revenue necessary for tribal economic development, self-sufficiency and a strong tribal government, the Tribes must expand its gaming operations beyond the existing facilities. The

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[1] The trust acreage is broken down as follows:
Sokaogon Chippewa Community - 1,694.10 Acres
Red Cliff Tribe - 7,881.12 Acres
Lac Courte Oreilles Tribe - 48, 293.54 Acres

services that are under the control of the city or county or are customarily provided to other commercial properties within the city or county.

Under the *Agreement for Government Services*, the Tribes will pay the city and county $1,150,000 annually through 1998 to compensate for the services provided. Beginning in 1999, and for each year thereafter, the Tribes will increase the last annual payment by five (5) percent. Thus, the local units of state government should not be detrimentally impacted due to the removal of the land from its tax rolls.

E. 25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise:

1. Potential land use conflicts: According to the City of Hudson, the proposed trust site is zoned general commercial district for the principal structure and ancillary track, kennel and parking facilities. Six acres of the proposed trust site are currently zoned single family residence. The east, south and westerly perimeters are classified as on-family residential districts and serve as a buffer area between the track operation and other surrounding land uses.

The City of Hudson has also stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses. We conclude that there are no land use conflicts that would result from the acquisition of this land into trust status and its development as a gaming facility. In fact, the current plans do not require construction of any buildings for the addition of casino type gaming to the dogtrack facility. The remodeling of the existing building which already contains pari-mutuel dog racing is the only construction that will be necessary. As a result, no zoning conflicts are foreseen.

2. Jurisdictional Issues: As trust land, the property would be considered "Indian Country" for jurisdictional purposes within the meaning of 18 U.S.C. § 1151. As a result, the United States would gain additional law enforcement jurisdiction in connection with the property. However, the local units of state government would have the primary law enforcement roll since the State of Wisconsin is a mandatory Public Law 280 State. The Tribes have agreed to pay for these services even though it is not required. Accordingly, jurisdictional conflicts should not present a significant obstacle to the proposed trust land acquisition.

F. 25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status:

The addition of this parcel of land to the jurisdiction of the Great Lakes Agency and Minneapolis Area Office will not result in a significant increase in workload because the Tribes will be managing the property as its own enterprise. Both the Agency and Area Office are currently sufficiently staffed so that any additional workload may be handled without the need for extra manpower or equipment.

III. NATIONAL ENVIRONMENTAL POLICY ACT

The transaction package has met compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C § 4321 *et seq*. The documentation in support of the acquisition includes a Finding of No Significant Impact (FONSI) signed by the Superintendent, Great Lakes Agency, on September 14, 1994. The FONSI is based upon an Environmental Assessment (EA) prepared by Mid-States Association, Inc. in 1988 for the St. Croix Meadows Greyhound Racing Facility and an Environmental Assessment Addendum to the EA prepared by Bischof & Vasseur in 1994. The addendum evaluates the potential impacts resulting from the proposed transfer of the site to be held in trust by the United States on behalf of the three Tribes and the remodeling of the existing Kennel Club Area to accommodate the addition of casino type gaming. The EA and addendum were reviewed by the Environmental Services Staff of the Minneapolis Area Office which found it to be adequate in scope and that its content supports the conclusions drawn.

A Notice of Availability for the addendum, Environmental Assessment and draft FONSI was published once in the *Hudson Star - Observer*, a weekly newspaper printed in Hudson, Wisconsin, on June 23, 1994.

IV. HAZARDOUS SUBSTANCES DETERMINATION

The hazardous survey form, *Level I Survey: Contaminant Survey Checklist of Proposed Real Estate Acquisitions*, was completed and certified by the Area Office Hazardous Waste Coordinator on November 18, 1994. The completion of the form indicates compliance with the required survey for hazardous substance on property to be acquired in trust and concludes that no contaminants are present on the property. The survey was also approved by the Minneapolis Area Director on November 18, 1994.

V. OTHER CONSULTATION/REQUIREMENTS

In addition to compliance with NEPA, the documentation provided as a result of the proposed construction of the dog track facility in 1988, supports a finding of compliance with other related requirements as indicated by the following correspondence:

archaeological sites: The Mississippi Valley Archaeology Center, Inc. stated that after archival review of available information at the University of Wisconsin - La Crosse and the State Historical Society of Wisconsin, there are no known archaeological sites in the proposed project area.

historic preservation: The State Historical Society of Wisconsin stated that there are no buildings in the study area that are listed in the National Register of Historic places.

endangered species: The Fish and Wildlife Service, Green Bay Field Office, Green Bay Wisconsin, provided a response dated January 9, 1989, concluding that no threatened or endangered species would be affected by the construction of the dog track facility.

other: The Addendum to the EA states that there are no anticipated impacts from the planned action on wetlands or surface water in the area. According to the National Wetlands Inventory map for the site, there are no designated wetland areas located on the site.

By letter dated January 3, 1989, the State of Wisconsin Department of Agriculture, Trade & Consumer Protection stated that there was no need for an agriculture Impact Statement as a result of the initial construction of the dogtrack. Additionally, since the planned action will utilize the existing racetrack facilities, it will not have a significant impact on prime or unique farmlands as described in the Farmland Protection Policy Act.

VI. RECOMMENDATION

It is our recommendation that after the requirements of the Indian Gaming Regulatory Act have been met, authorization should be provided to place the land into trust status for the benefit of the Tribes.

Area Director

cc: Superintendent, Great Lakes Agency
Chairman, Lac Courte Oreilles Band
Chairman, Sokaogon Community
Chairperson, Red Cliff Band
Bill Cadotte, Executive Mgmt. Services

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Indian Gaming-Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles BAnd, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

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[1] References are to the application documents submitted by the Minneapolis Area Office.

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Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

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The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

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Hudson Dog Track Application

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

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County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, -"Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

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Hudson Dog Track Application

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1¼% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

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The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin
In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes
On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

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Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million) Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

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Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers
The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime
Hudson Police Dept. Crime & Arrests. (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

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3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level
The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns
One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values
An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase
Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

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2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities
St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning
According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water
The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage
The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads
The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

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The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

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Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

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St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

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Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 -- a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any fax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

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are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

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Hudson Dog Track Application

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SOKAOGON CHIPPEWA COMMUNITY (MOLE LAKE BAND OF LAKE SUPERIOR CHIPPEWA), LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF WISCONSIN, and RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF WISCONSIN,

Plaintiffs,

v. Case No. 95C 0659

BRUCE C. BABBITT, Secretary, UNITED STATES DEPARTMENT OF INTERIOR, MICHAEL J. ANDERSON, Deputy Assistant Secretary, UNITED STATES DEPARTMENT OF INTERIOR, JOHN J. DUFFY, Counselor to the Secretary, UNITED STATES DEPARTMENT OF INTERIOR, and GEORGE SKIBINE, Director, Indian Gaming Management Staff, UNITED STATES DEPARTMENT OF INTERIOR,

Defendants.

AFFIDAVIT OF PAUL F. ECKSTEIN

STATE OF ARIZONA)
) SS.
MARICOPA COUNTY)

EOP 064219

Paul F. Eckstein, being first duly sworn on oath, deposes and states as follows:

1. I am a member of the Phoenix, Arizona law firm of Brown & Bain, P.A., and I am making this affidavit to evidence statements made to me or that were made in

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my presence by officers of the United States Department of Interior relating to the plaintiff Tribes' (the "Tribes") application to have property located in Hudson, Wisconsin approved for off-reservation gaming pursuant to § 2719(b)(1)(A) of the Indian Gaming Regulatory Act ("IGRA") and acquired in trust by the Secretary of the United States Department of Interior under § 465 of the Indian Reorganization Act ("IRA").

2. On or about May 1, 1995, I was retained by Galaxy Gaming and Racing Limited Partnership ("Galaxy") to assist Galaxy and the Tribes in their efforts to obtain Department of Interior approval for off-reservation gaming at Galaxy's greyhound racing facility in Hudson and for the trust acquisition described above. On May 8, 1995, Mark Goff, a consultant to Galaxy, faxed me a copy of a letter dated May 8, 1995 from Patrick O'Connor to Harold Ickes. Harold Ickes is the Deputy Chief of Staff to the President of the United States. The letter states, in part:

> I appreciate your calling me concerning the above subject [The Tribes' Hudson proposal] on Tuesday, April 25, and again on Wednesday, April 26. I assume these calls were prompted by my discussions with the President and Bruce Lindsey on April 24 when they were in Minneapolis. I returned your calls and talked to your assistant, Mr. Sultan, who advised that you were not in the office when I called. Since I had an appointment with Don Fowler on Friday, April 28, to discuss this matter, I decided not to try to contact you until after the Fowler meeting with the chairman of five of the many Minnesota and Wisconsin tribes that would oppose the creation of the trust lands for gambling purposes and the bail out of the current dog track owners.
>
> I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. Since the Fowler memo was sent to you, the City Council of Hudson, Wisconsin, passed a resolution opposing the construction and operation of a casino at the dog track.

The letter goes on to state:

> I am concerned that those at Interior who are involved are leaning toward creating trust lands. We requested a copy of the Arthur Andersen report which the petitioners commissioned which found no adverse financial impact. The copy submitted to us "blocked out" all the vital information relating to the size of the operation, how many machines, tables, etc., which we need to know, as well as the statistics and reasoning used in determining that the surrounding casinos would not suffer a serious economic impact. We need this data in order to put our best case forward to Interior. We have no objection to Interior's submitting the Coopers & Lybrand report or the Peat Marwick report to the petitioners.
>
> I would also like to relate the politics involved in this situation:
>
> 1. Governor Thompson of Wisconsin supports this project.
>
> 2. Senator Al D'Amato supports this project because it bails out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Delaware North is located in Buffalo, New York.
>
> 3. The Chairman of the Indian tribe in the forefront of this project is active in Republican Party politics; this year he was an unsuccessful Republican candidate for the Wisconsin State Senate.
>
> 4. All the representatives of the tribes that have met with Chairman Fowler are Democrats and have been for years. I can testify to their previous financial support to the DNC in the 1992 Clinton/Gore Campaign Committee.
>
> 5. The entire Minnesota (Democrats and Republicans) Congressional delegation oppose this project. The Wisconsin Democratic Congressional delegation (including Congressman Gunderson in whose district the dog track is located) oppose the project.

EOP 064221

> I certainly will appreciate it if you will meet with me and two representatives of the tribes as soon as we can work it into your schedule, since the decision by Interior is imminent. We are available on 24-hour notice.

A copy of this letter is attached to this affidavit. Donald Fowler is Chairman of the Democratic National Committee. I understand that a copy of Mr. O'Connor's letter has been placed in the administrative record at pages 02880-81.

3. On May 16, 1995, I travelled to Washington to attend a meeting with defendant John Duffy. I attended the meeting with Mr. Duffy on May 17, 1995. Also in attendance were the chairpersons of the Tribes and Mr. Havenick. During the meeting, George Newago of the Red Cliff Tribe made an impassioned plea to Mr. Duffy relating his personal experience growing up in a poor family as a member of a poor tribe. Mr. Duffy listened to Mr. Newago but said very little during the meeting. In response to a comment by Mr. Havenick, however, Mr. Duffy did say that approval of the Tribes' application was not a "slam dunk" but did not elaborate further.

4. Following the May 17, 1995 meeting with Mr. Duffy, I was advised that Department of Interior officials would meet with me but that they would not meet again with the Tribes. I believe that the person who told me this was Barbara Atkinson, an administrative assistant in the Office of the Secretary.

5. On June 16, 1995, I telephoned Tom Hartman, a member of the Indian Gaming Management staff who was working on the staff [illegible]

application. I asked Mr. Hartman if there were any problems with the application and he said "nothing that isn't curable."

6. On June 26, 1995, I telephoned defendant George Skibine, Director of the Indian Gaming Management Staff, to ask about the status of the staff's report on the Tribes' application. Mr. Skibine said that he wanted to keep his job and therefore could not discuss what was in the staff's report.

7. At a result of Mr. Skibine's comments to me on June 26, 1995 and Galaxy's and the Tribes' growing alarm at the political pressure being asserted against the application and the failure of the Department to communicate with either the Tribes or their representatives about what was happening with the application, I telephoned Secretary Babbitt on July 11, 1995 and requested a meeting with the Secretary. At that time, the Secretary told me that he would have John Duffy call me. Mr. Duffy called me later that day from an airplane and said that the Department was ready to make a decision. I requested a meeting with Mr. Duffy for later that week. Mr. Duffy wanted to meet the next day in Washington but I could not make arrangements to travel that quickly. After some discussion, we agreed to meet the morning of July 14, 1995.

8. Former Congressman Jim Moody and I met with Mr. Duffy the morning of July 14, 1995. The meeting lasted slightly less than an hour. During the first 40 minutes of the meeting, Mr. Duffy listened to our arguments in support of the application and appeared to be receptive. Near the end of the meeting, however, Mr. Duffy said that the application was being denied and that a decision would be issued later that day.

Mr. Duffy said that there were two reasons for the denial: (1) the proposed gaming establishment would be harmful to the St. Croix Chippewas, and (2) the City Council of Hudson, the United States Congressman for the district, and other political officials were now on record against the project.

9. Later that day, on July 14, 1995, I met with Secretary Babbitt. I asked the Secretary if he would delay the release of the decision on the Tribes' application until the following Monday to allow time for the Tribes to attempt to respond to the political pressure being exerted against the application. Secretary Babbitt said that the decision could not be delayed because Presidential Deputy Chief of Staff Harold Ickes had called the Secretary and told him that the decision had to be issued that day.

10. I had never heard of Michael Anderson, the person who signed the July 14, 1995 letter denying the Tribes' application. Neither Secretary Babbitt, nor Messrs. Duffy, Skibine or Hartman nor anyone else I spoke to ever mentioned his name. My understanding was that Ms. Ada Deer, the Assistant Secretary - Indian Affairs, was the person who would make the decision on the Tribes' application for approval under IGRA. No one ever explained to me why Mr. Anderson rather than Ms. Deer signed the July 14, 1995 letter.

11. I was deeply disappointed by the decision denying the plaintiffs' application. In my over 30 years of practice of law, I had not been involved in a matter in which the merits were so strongly on the side of the parties I was representing.

Paul F. Eckstein

Subscribed and Sworn to before me
this 8th day of January, 1996.

Robin Nelson Burris

Notary Public, State of Arizona
My Commission: _____

OFFICIAL SEAL
ROBIN NELSON BURRIS
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires JUNE 4, 1996

EOP 064225

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Gt Hudson Dog Track

[49] From: SCOTT KEEP 4/8/97 12:48PM (3205 bytes: 1 ln)
To: JOHN LESHY, EDWARD COHEN
Subject: Re: SOKAEGON LAWSUIT
---------- Forwarded ----------
: Tom Hartman at ~IOSIAE 3/27/97 7:34AM (2996 bytes: 1 ln)
To: Michael Anderson at ~IBIA, Heather Sibbison at ~IOS, Robert Anderson at ~IOS, scott keep at ~DOI/SOL_HQ, DOJ/ENRD-PASSAREL at ~JENRD, Edward Slagle, George Skibine
Receipt Requested
cc: Hilda Manuel at ~IBIA
Subject: Re: SOKAEGON LAWSUIT
---------- Message Contents ----------

Text item 1: Text_1

I concur. I had (and have) a long list of deficiencies for the "best interests" determination, and have no doubt that the NIGC would have had substantial objections to the management contract.

As one staff member reviewing the application for a "not detrimental" determination, I focused on the objective "financial" issues. The policy issues of a definition of "not detrimental" as opposed to "not devastating", and the weight to be given objections by local government were not issues given to me for determination, so my conclusions certainly were not applicable to those issues.

Tom

Reply Separator

Subject: SOKAEGON LAWSUIT
Author: George Skibine at ~IOSIAE
Date: 3/26/97 6:13 PM

Having now read Judge Crabb's March 19th Order, I must register my concern over the statement on p. 19 that IGMS recommended approval of plaintiff's application in a June 8, 1995, report. This statement is totally untrue, and I hope our attorneys can find a way to advise the court of this error. This same mistake can also be found in the court's previous order, as I recall. The June 8 draft report, to the best of my recollection, did not even discuss the "best interest of the Tribe" portion of the two-part determination. I do not think we should let the court indulge in its delusion with respect to IGMS' position on the overall application. For various reasons, neither the IGMS Director, nor, I believe, any of the IGMS staff, would have recommended approval of that application as a whole. Also, we should clarify that the views expressed in the report reflect the views of one staffer within IGMS, and do not reflect the views of the Director or other IGMS staff on this issue at the time. We have taken internal steps to prevent this type of confusion in the future. SCOTT: Do you have any suggestions on this issue? ALso, I understand that

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[The deposition of Ann Louise Jablonski follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: ANN LOUISE JABLONSKI

TUESDAY, JANUARY 20, 1998

The deposition in the above matter was held in Room 2157, Rayburn House Office Building, commencing at 2:10 p.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: Robert Dold, Jr., Chief Investigative Counsel; William Moschella, Deputy Counsel and Parliamentarian; Kristin Amerling, Minority Counsel; and Michael Yang, Minority Counsel.

For MS. JABLONSKI:

BRUCE ROSEN, ESQ.
Pellino, Rosen, Mowris & Kirkhuff, P.C., S.C.
131 West Wilson Street
Madison, Wisconsin 53703

Mr. DOLD. Good morning, Ms. Jablonski.

The WITNESS. Good morning.

Mr. DOLD. On behalf of the members of the Committee on Government Reform and Oversight, I appreciate and thank you for appearing here today.

This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter and notary public.

I will now request that the reporter place you under oath.

THEREUPON, ANN LOUISE JABLONSKI, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. DOLD:

Question. I would like to note for the record those who are present at the beginning of this deposition. My name is Bob Dold. I'm designated Majority counsel. Mike Yang is the designated Minority counsel. He's accompanied today by Kristin Amerling. Ms. Jablonski is accompanied today by Mr. Bruce Rosen.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a court of law.

If I ask you about conversations you have had in the past and you are unable to recall the exact words used in the conversation, you may state that you are unable to recall those exact words and then you may give me the gist or substance of any such conversation to the best of your recollection. If you only recall part of a conversation or only part of an event, please give me your best recollection of those events or parts of conversation that you recall.

Majority and Minority committee counsel will be asking you questions regarding the subject matter of this investigation. Minority counsel will ask questions after Majority counsel is finished. If, however, there is a question that Mike has got that's pertinent to the subject matter, normally what will happen is, he will interject questions; and that's perfectly proper.

Members of Congress who wish to ask questions will be afforded an immediate opportunity to ask their questions. When they are finished, committee counsel may resume questioning. I don't anticipate Members of Congress attending today's deposition, but if they do, they will be afforded an immediate opportunity to ask their questions.

Pursuant to the committee's rules, you are allowed to have an attorney present to advise you of your rights. Any objection raised during the course of the deposition shall be stated for the record. If the witness is instructed not to answer a question or otherwise refuses to answer a question, Majority and Minority counsel will confer to determine whether the objection is proper. If Minority and Majority counsels agree that the question is proper, the witness will be asked to answer the question.

If an objection is not withdrawn, the chairman or member designated by the chair may decide whether the objection is proper.

This deposition is considered as taken in executive session of the committee, which means it may not be made public without the consent of the committee, pursuant to clause 2(k)(7) of House Rule XI. You are asked to abide by the rules of the House and not discuss with anyone other than your attorney this deposition and the issues and questions raised during this proceeding.

Finally, no later than 5 days after your testimony is transcribed and you have been notified that your transcript is available, you may submit suggested changes to the chairman. Normally what's been happening is, we've been able to get the transcripts back in 1 or 2 days. And considering that you are coming from Wisconsin, we will mail them out to you and send along a confidentiality letter that we'll ask you to sign.

Committee staff may make any typographical and technical changes requested by you. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by you must be accompanied by a letter requesting the changes and a statement of your reasons for each proposed change. A letter requesting any substantive changes must be signed by you. Any substantive changes shall be included as an appendix to the transcript conditioned upon your signing of the transcript.

Do you understand everything we've gone over so far?

Answer. I think so.

Question. Do you have any questions about anything we've gone over so far?

Answer. No.

Question. Ms. Jablonski, if you don't understand a question, please say so and I'll repeat or rephrase it so that you do understand the question.

Do you understand you should tell me if you don't understand my question?

Answer. Yes.

Question. The reporter will be taking down everything we say and will make a written record of the deposition. You must give verbal, audible answers, because the reporter cannot record a nod of the head or what a gesture means. If you can't hear me, please say so and I will repeat the question or have the court reporter read the question to you.

Please wait until I finish each question before answering, and I will do the same. This will help the court reporter make a clear record, because he cannot take down what we are both saying at the same time.

Your testimony is being taken under oath as if you were in a court, and if you answer a question, it will be assumed that you understood the question and the answer was intended to be responsive to it.

Do you understand that?

Answer. Uh-huh. Yes.

Question. I understand that you are here voluntarily, and I do thank you very much for that.

Do you have any questions before we begin the substantive portion of this proceeding?

Answer. No.

Mr. DOLD. Mr. Rosen, this would be an appropriate time if you do have a statement and you wish to put one on the record.

Mr. ROSEN. We have no statement.

Mr. YANG. Just, as we near the end of the deposition process here on the Hudson investigation, Minority would like to note one last time its continuing objection to this committee's investigation of the Hudson matter insofar as it has already been covered by the Senate Committee on Governmental Affairs and is the subject of ongoing litigation in Wisconsin, as Ms. Jablonski is well aware.

I want to raise one issue with Majority counsel with regards to the transcript of this deposition. We have hearings, as you know, pending tomorrow and stretching further in the week or so. It is possible that those transcripts will be made public during that hearing. Will Ms. Jablonski have a chance to review her transcript before it is made public?

Mr. DOLD. My understanding is that she will have to have looked over the transcript before it will be made public.

The WITNESS. In executive session of the committee?

Mr. DOLD. If it's in executive session of the committee, any of the committee members may come down and review your deposition. Because it's executive session, they are bound by executive session, just as all of us are. In fact, we are able to take this deposition as if we were in executive session as if the Congressmen were here. So we are bound by those rules, they are bound by those rules. So they cannot go out and publicly say unless they vote to do so.

But I believe that, according to the rules—and I'd have to consult with my parliamentarian on this, but according to the rules, my understanding is that your deposition may not be made public without your at least reviewing the transcript and coming back with the changes. That's my understanding.

Mr. YANG. That's fine. Nothing further.

EXAMINATION BY MR. DOLD:

Question. Ms. Jablonski, will you please state your name and spell it for the record.

Answer. You want my middle name, too?

Question. Please.

Answer. Ann Louise Jablonski.

Question. How do you spell "Jablonski"?

Answer. J-A-B-L-O-N-S-K-I.

Question. Did you attend college?

Answer. Yes, at the University of Wisconsin.

Question. Did you attain any other graduate degrees?

Answer. No, I didn't finish that.

Question. Can you please give us a brief employment history from college forward?

Answer. Oh, my. Well, I lived in Geneva, Switzerland, for 5 years, from 1972 to 1977—you'll have to excuse me, I'm picking up a cold—where I was a freelance translator of French and Spanish. Upon returning to the United States, I was assistant curator for a Civil War museum in Madison, Wisconsin. And after that, I was employed in the Wisconsin legislature for 6 years. I worked for a variety of legislators. Do you want me to name them, or does it matter?

Question. The main ones, if you could, that you worked for specific legislators.

Answer. Yes, specific ones. The first one's name was Ron Lingren, L-I-N-G-R-E-N. The second one's was Bill Broydrick, B-R-O-Y-D-R-I-C-K. The third one was Dave Travis, T-R-A-V-I-S. The fourth one was Jeff Neubauer, N-E-U-B-A-U-E-R. I then worked for the county executive as his executive assistant. His name was Jonathan Barry, B-A-R-R-Y. Then again I worked for Jeff Neubauer. And then I worked for a lobbying firm in Madison, Goyke & Associates, G-O-Y-K-E. And then I founded my own firm and have been in my own practice since 1989.

Question. Have you discussed this deposition with anyone other than your counsel?

Answer. That it is going to happen?

Question. Substantive portions is what I'm after.

Answer. No; just that it is going to happen.

Question. Have you given documents regarding the Hudson Dog Track—and for lack of a better term, I'll use the Hudson Dog Track for the fee-to-trust application in Hudson, Wisconsin. Have you given documents regarding the Hudson Dog Track to the Department of Justice?

Answer. I don't recall that I have.

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. I have discussed it briefly with—I don't—with Peg Lautenschlager, U.S. Attorney.

Mr. ROSEN. She is the United States attorney for the Western District of Wisconsin.

EXAMINATION BY MR. DOLD:

Question. She is involved in litigation that's presently ongoing out there?

Answer. Yes.

Question. And did you speak with anyone else from the Department of Justice besides her?

Answer. I believe I have spoken with David Jones, who is one of the attorneys there who is handling this case.

Question. But nobody from the Campaign Task Force from the Department of Justice?

Mr. ROSEN. No.

The WITNESS. No.

EXAMINATION BY MR. DOLD:

Question. Apart from the deposition and arranging for its logistics, have you spoken with any congressional personnel—and by that I will include Congressmen, their staffs—about the Hudson Dog Track matter?

Answer. Starting when?

Question. I will——

Answer. Ever?

Question. Yes, ever.

Answer. Yes, I have.

Question. And who have you spoken with on the Hudson Dog Track matter in Congress?

Answer. Congressman Obey—actually, his staff; I don't think I talked directly to Obey. I'm sure I've talked to Congressman Barrett. I've talked to Senator Feingold. I spoke with Congressman Gunderson—former Congressman Gunderson's staff. I've spoken with Congressman Ron Kind. I spoke with Senator Herb Cole's staff. That's all I recollect right now. I don't think there are any others.

Question. And would you characterize the list of Congressmen, including Senator Feingold, as people you discussed the Hudson Dog Track matter with before the decision on July 14th, 1995?

Answer. Yes. But Congressman Kind wasn't elected at that point. And I've talked with him in 1996, and, you know, when I see him, he sometimes asks me how it is all going. I talked to Tom Barrett recently. But I see him in Wisconsin from time to time. He might casually ask me about it.

Question. And what was your conversation with Congressman Barrett recently?

Answer. I wanted to know the lay of the land.

Question. What did he convey to you about the lay of the land regarding the Hudson Dog Track?

Answer. He said that the hearings were—I mean, this is before I knew anything at all—geared at embarrassing Secretary Babbitt.

Question. Do you normally keep notes in your capacity as a lobbyist?

Answer. I don't know how to characterize my job as normal. But I sometimes do.

Question. Do you maintain and keep those notes?

Answer. I sometimes do.

Question. How about calendars?

Answer. I sometimes keep my calendar.

Question. Do you have notes and calendars relating to the Hudson Dog Track matter in your personal possession?

Answer. Yes, I believe so.

Question. Do you have any phone messages relating to the Hudson Dog Track——

Answer. On my calendar?

Question [continuing]. Matter or records that you've ever kept of phone messages?

Answer. You mean conversations that I might have had with someone or just the fact that there was a conversation that day? How would you characterize these phone messages?

Question. I would say message slips, somebody calls your office.

Answer. Oh, I never keep those.

Mr. ROSEN. So that we're clear, if you'd permit me to interrupt for a moment, as you're aware, we've been through four prior depositions relating to this matter. We have turned over in excess of 190-some exhibits to counsel for the Four Feathers. And I'm assuming what Ann is referring to is, she has copies of what she has already surrendered pursuant to the ongoing litigation. Those have already been turned over pursuant to court order.

Mr. DOLD. But not to us.

EXAMINATION BY MR. DOLD:

Question. You haven't turned anything over to us?

Answer. No.

Question. I'm just trying to figure out what information is actually out there.

Answer. But these phone messages are just referring to the little post-its saying so-and-so called?

Question. Exactly.

Answer. No, I don't keep those.

Question. Do you have E-mail? Do you use it?

Answer. Yes, I do. But I don't use it a lot.

Question. Do you keep E-mail messages?

Answer. No, not usually, unless I print them out.

Question. Do you have any E-mail messages?

Answer. No, because I wasn't using it at the time.

Question. Counsel has mentioned you have turned over 196 exhibits——

Mr. ROSEN. That's an estimate.

EXAMINATION BY MR. DOLD:

Question [continuing]. An estimate, give or take 196 exhibits, on the State matter. Do you have other material that relates to Hudson that has not been turned over?

Answer. I don't have it, no.

Question. Is there material out there, your material, that you just don't have in your possession?

Answer. Correct.

Question. Who has that material?

Answer. I don't know. I mean, my attorney had it at one point, but I don't know where it is now.

Question. And when you say your attorney, you're talking about Mr. Rosen?

Answer. I'm talking about Mr. Rosen.

Question. So you don't have any more documents in your personal possession?

Answer. No; just the exhibits from the *Four Feathers* v. *The City of Hudson.*

Question. Are there documents that you've turned over to Mr. Rosen which you claimed some type of privilege over?

Answer. Yes.

Question. And did you bring any of those documents here today?

Answer. No. They are not in my possession.

Question. Ms. Jablonski, when were you first aware that there was a possibility that the Hudson Dog Track might be used for a casino?

Answer. This goes back a long way, because there was Hudson 1 before; this is Hudson 2. Hudson 1 occurred around 1992. And that was about the time I was retained by the St. Croix Chippewa Indians of Wisconsin to represent them. So I would say 1992.

Question. And was that the time when you first became aware that there were Native American interests in the Hudson Dog Track?

Answer. Yes.

Question. And just so the record is clear, you became aware of it because you were retained by the St. Croix Chippewa?

Answer. I was retained by the St. Croix Chippewa Indians of Wisconsin, which is what they called themselves on my lobby report, which is how they register as principals in the State of Wisconsin to represent them on State issues, not really to represent them on Hudson.

And I didn't work—during Hudson 1, it went on for '92, '93—I really didn't do much of anything on Hudson. But such things as constitutional amendments to end gambling in Wisconsin I would work on, or other kinds of gaming regulatory things, or environmental issues, or health and social service issues.

Question. So how did you actually become aware? I mean, who actually told you about the Hudson and the possibility of a casino going in, if you recall?

Answer. I don't. It was in the public domain, you know, in the newspapers. There was nothing terribly secret about it. I might have heard it from the tribe. I don't really recollect.

Question. What was your first professional involvement with the Hudson Dog Track matter?

Answer. Oh, I became involved around January of '95.

Question. And what did you do? You say you became involved.

Answer. Well, I—it was—it started out just not too much work and then sort of built into a crescendo. But I attempted to interest other tribes in Wisconsin in the St. Croix's position. So I contacted the Ho-Chunk lobbyist; I contacted the Oneida lobbyists.

Question. Who are they?

Answer. At the time, although this is not the case now, the Ho-Chunk lobbyist was Tom Krajewski, K-R-A-J-E-W-S-K-I, and Cynthia Broydrick, B-R-O-Y-D-R-I-C-K. And Scott Dacy was the lobbyist out here. But Cindy was the lobbyist in Madison. So those two people.

I made contacts, as I've discussed already, with various Congresspersons in Wisconsin. I also contacted State legislators about the issue and asked them to write letters to Secretary Babbitt, as I did with the Congressmen. I did research for the groups. I attempted to generate positive public relations for the tribe and its allies.

What else did I do? Well, we had, of course, meetings during all of this time to discuss what had been done and what needed to be done and that kind of thing. I did not have very much contact with the Washington lobbyists, however.

Question. When you say you had meetings, who would attend the meetings?

Answer. Well, frequently it would be Cindy and Tom Krajewski and I. But there were other meetings, tribal meetings. And I believe there was a meeting that occurred at a conference in Green Bay, Wisconsin, when people were there to familiar-

ize themselves with some Federal legislation that was pending on various gaming and other issues of interest to Native Americans.

Question. Do you know who, if anybody, came from the Department of the Interior to that meeting in Green Bay?

Answer. In my former deposition, I couldn't remember whether it was John Duffy or Tom Collier. But upon reflection, I believe it was Tom Collier.

Question. Anybody else?

Answer. George Skibine was there, too. Those are the two I remember.

Question. When you say you didn't have much contact with the Washington lobbyist, who was lobbying with you in Washington on the Washington side of things?

Answer. Larry Kitto. Patrick O'Connor. This is what I understand. I never talked to Patrick O'Connor. Tom Corcoran. Those are the three I remember for the St. Croix.

Question. What other lobbyists did you have meetings with? You say you met with the Oneida and the Ho-Chunk lobbyists, and you say Scott Dacy was connected with Cindy Broydrick.

Answer. Their firm is located in Madison, but they have a Washington office, too.

Question. Did you deal with any other lobbyists in Washington that were hired by other firms or by other tribes besides the St. Croix?

Answer. Well, we had one meeting at this conference in Green Bay April 19th, 1995, and 20th. And I met Jerry Sikorski there. I think that was the first time I met Larry Kitto.

Question. Who is Jerry Sikorski?

Answer. I believe he represents Mel Lochs. I have met Frank Ducheneaux in the past but not in connection with Hudson. I believe Marcia Kelly and John Anderson from the Minnesota Indian & Gaming Association were there. I don't know whether they are registered lobbyists or not. And Myron Ellis, who I believe is the executive director of MIGA. I don't remember any other lobbyists. Oh, Tom Krajewski.

Question. What was discussed when you said you had this meeting in Green Bay? Did you get together with the other lobbyists and determine a kind of strategy or game plan?

Answer. Well, it was the first time we ever met. So we met to discuss the issue and where things were at and what needed to be done. But it wasn't a meeting that had been planned in advance. It is just that we all happened to be there and realized it and we had some spontaneous interaction.

Question. What happened with the spontaneous interaction? I'm trying to get to what the substance of the meeting was.

Answer. Well, as I said, we had never met each other before, so we wanted to——

Question. Aside from the introduction.

Answer. Well, it is not just a question of, you know, "Hi, how are you? My name is . . ." But we simply discussed what were the issues at the time and the contacts, that some contacts that needed to be made. I don't remember that any were assigned. It wasn't such a formal meeting.

Question. And where were things at the time?

Answer. I believe the fee-to-trust proposal was in—if you don't mind an informal term—George Skibine's shop. And the period for comment had been extended until the end of April; whether it was the 20th or 30th, I don't recollect. And that's where it was.

Question. Having discussed the fact that the application was open for comment period and been extended to the 20th or 30th, did you set out a game plan from there? Were there assignments handed down?

Answer. No. As a lobbyist, you sort of know what needs to be done, which is to generate support for your position. And after we had the meeting, I went about doing that by contacting various Congressmen, by contacting various legislators, some of which I had already done, to see if they would write letters of support for our position to Secretary Babbitt.

Question. Did you draft any letters for them?

Answer. I drafted model letters for them. They didn't use—I mean, they might have used it just for the information, because frequently people want to know what the history is and they want to know arguing points even though they might not use the letter verbatim.

Question. Which tribes were opposed to the Hudson Dog Track application, if you can remember?

Answer. The Ho-Chunk, the St. Croix, the Oneida in Wisconsin. The remaining tribes in Wisconsin, apart from the three in the Four Feathers group, were neutral. Then in Minnesota, all of the Minnesota tribes except one—and I don't know the identity of the one; I can't remember now—were opposed to it.

Question. Do you know if that one tribe opposed was a member of MIGA?

Answer. Not opposed.

Question. The one that was not opposed?

Answer. I do not.

Question. Can you tell us what MIGA is?

Answer. It is the Minnesota Indian Gaming Association. Beyond that, I have no familiarity with their internal workings.

Question. Do you know what their purpose is?

Answer. I assume, like any association, they are interested in promoting Indian gaming in Minnesota or on a Federal level.

Question. Do you know if they made any political contributions in the 1996 election cycle?

Answer. Well, I read things in the paper. But beyond that, no.

Question. So at the time the application was going through, you had no idea that the Minnesota Indian Gaming Association made political contributions?

Answer. No.

Question. Did you know of any tribes in Minnesota that were big political contributors?

Mr. YANG. What time frame on that question?

Mr. DOLD. Fair enough. In the 1995 time frame in the application.

EXAMINATION BY MR. DOLD:

Question. So for the 1996 election cycle is what I would frame it as.

Answer. No, I'm not familiar with their contributions. I mean, really, I have no idea what they do.

Question. Are they active politically as far as contribution money? Do you know that?

Answer. I think I became aware a long time ago that they're active Democrats, but that was from the newspaper.

Question. Did you ever transmit any contributions from any Indian tribe in 1996?

Mr. YANG. You mean campaign contributions?

Mr. DOLD. Yes.

The WITNESS. To whom? I mean, how broad is this question?

EXAMINATION BY MR. DOLD:

Question. I'll say for the State of Wisconsin and for national politics.

Answer. Yes.

Question. And who did you take money to or for? What campaigns were they for?

Answer. State Senator Roger Breske, Senator Alice Clausing. I'm having trouble remembering the transportation part of it. I conveyed a contribution to the DNC, I believe, and gave it to the minority leader in the State assembly.

Question. And who was that person?

Answer. Walter Kunicki.

I actually have never talked to him.

Mr. YANG. Schneider or Snyder?

The WITNESS. Not any three of them.

EXAMINATION BY MR. DOLD:

Question. Do you know who Tom Schneider is, the partner at O'Connor & Hannan?

Answer. I don't know who he is. I know he exists upon presentation of this.

Question. Do you know how he fit into the picture of the Hudson Dog Track application?

Answer. I just—it had been represented to me that he was a friend of the Clintons.

Question. And who represented that to you?

Answer. I don't remember.

Question. Were you aware that Mr. Schneider had spoken with the President on the Hudson Dog Track matter?

Mr. YANG. Are you representing that he did speak with the President on the Hudson Dog Track matter, or are you asking whether she——

Mr. DOLD. I'm asking whether she recalls anybody telling her that the President talked to Schneider on the Hudson Dog Track matter.

The WITNESS. It had been represented to me that Mr. Schneider had spoken with the President on this matter.

EXAMINATION BY MR. DOLD:

Question. Do you know where you heard this?
Answer. No, that's what I don't remember.
Question. Do you know when you heard this?
Answer. It was about the third week in May.
Question. And do you remember who might have informed you about that?
Answer. Well, it wasn't Tom Schneider, because I never talked to him.
Question. Right.
Answer. And I do not remember.
[Jablonski Deposition Exhibit No. AJ–2 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

EXAMINATION BY MR. DOLD:

Question. I place before Ms. Jablonski what has been marked as AJ–2. It is a memorandum to Brady Williamson dated May 23rd, 1995 regarding the Hudson fee-to-trust trust proposal. At the top the letterhead is Ann Jablonski, Government Affairs, Public Relations Research.

Who is Brady Williamson?

Answer. He is an attorney, a partner at La Follette & Sinykin law firm in Madison, Wisconsin. He is a Democrat, and very well-connected Democrat.

Question. Do you recall this memo?

Answer. I haven't seen it since May 23rd, 1995.

Question. Let me give you——

Mr. ROSEN. Didn't tell you, but I thought we might see it today.

The WITNESS. Yeah.

EXAMINATION BY MR. DOLD:

Question. Let me give you an opportunity then to read it, if you choose.
Answer. All right.
[Witness examines document.]
The WITNESS. Okay.
Mr. ROSEN. Read the whole thing.
The WITNESS. Well, it's this letter, and that is all.
Mr. ROSEN. Okay.

EXAMINATION BY MR. DOLD:

Question. Do you remember the attached letter as well?
Answer. Yes.
Question. And do you remember sending this to Mr. Williamson?

Answer. I remember giving him a memo. I didn't remember exactly what was in it anymore. And I thought I had given him this and also a couple of other documents. But maybe I didn't. My memory is not that accurate about that.

Question. Were you consulted about contacting Harold Ickes in the White House?

Answer. No.

Question. Do you recall talking about a Clinton strategy at any of your meetings with other lobbyists?

Mr. YANG. A Clinton strategy?

Mr. DOLD. Yes.

Mr. YANG. Could you clarify that a little in terms of is it the White House or—I am not clear what a Clinton strategy means.

Mr. DOLD. To tell you the truth, I have it in some documentation and we will get to that later on. But there is a Clinton strategy.

The WITNESS. I remember it in the memo, but I don't remember talking to anybody about it.

EXAMINATION BY MR. DOLD:

Question. You mentioned here in the second paragraph—first, let me say at the top it says: Please—enclosed please find a letter to Ickes which is all the written material that may be floating around the White House that we know about.

As for the second paragraph it reads: As for the meeting in the Twin Cities, where O'Connor is alleged to have huddled with Clinton on Hudson, Corcoran tells us that O'Connor began to launch into the matter and Clinton called Lindsey over to script

the story and operationalize a response for resolution. He apparently was the one who decided it was a problem Ickes would/could/should take care of.

Do you recall hearing about Mr. O'Connor's meeting with the President in the Twin Cities?

Answer. I believe Mr. Corcoran mentioned it to me, yes.

Question. Did he also mention that Ickes would be the one who would, should, and could take care of the matter?

Answer. Well, I think that was my characterization. I think he—and I don't remember exactly what he said.

Question. Sure.

Answer. But I think the gist of what he said was that the issue had been handed to Ickes.

Question. The paragraph goes on: Another partner in the O'Connor & Hannan firm, Tom Schneider, allegedly an FOB who socializes with Bill and Hillary, has confirmed in a casual conversation with Clinton that Clinton is aware of the Hudson Dog Track issue.

Do you recall if that also came from Mr. Corcoran?

Answer. No, I don't remember that part.

Question. Would this have refreshed any recollection?

Answer. No, I simply can't remember who—I remember asking someone about it, too, because I don't know this person, so I'm trying accurately to reflect what's happening here. I don't remember who I asked.

Question. Why contact Brady Williamson?

Answer. Because he's an active Democrat in Wisconsin with ties to the Clinton administration. I believe he's an appointee of President Clinton's.

Question. What appointment does he hold?

Answer. Do you remember his official? Bankruptcy Commission——

Mr. ROSEN. Bankruptcy Review Commission.

EXAMINATION BY MR. DOLD:

Question. What was your hope in contacting Mr. Williamson on the Hudson matter?

Answer. Well, I was interested in finding out the status of, you know, what was going on. I was hoping he could give us some advice about how we should proceed. And, I mean, this was not done in concert with Patrick O'Connor. Tom Krajewski and I were simply doing this on our own.

Question. Did you talk to Mr. Williamson either before or after sending this memo?

Answer. I remember calling him back in early June.

Question. Did you ask him at any time to send this memo to the White House?

Answer. No, I did not. I was hoping he was not going to send this to the White House. I was somewhat upset that that had been sent. But anyway.

Question. Directing your attention to the O'Connor letter to Mr. Ickes dated May 8, 1995, which is the attachment to your memo, and really turning your attention to the second page of this letter, it reads: I would also like to relate the politics involved in the situation. Number one, Governor Thompson of Wisconsin supports the project. Number 2, Senator Al D'Amato supports the project because it bails out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Number 3, the chairman of the Indian tribe in the forefront of this project is an active Republican—I'm sorry—the chairman of the Indian tribe in the forefront of this project is an active Republican—is active in Republican Party politics. This year he was an unsuccessful Republican candidate for the Wisconsin state Senate. Number 4, all the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore campaign committee.

Just to finish it off, number 5, the entire Minnesota, Democrats and Republicans, congressional delegation oppose this project. The Wisconsin Democratic congressional delegation, including Congressman Gunderson in whose district the dog track is located, oppose the project.

Having gone through all of that, do you remember discussing any of these points with any of the lobbyists that you dealt with?

Answer. What—in what capacity?

Question. Do you recall discussing——

Answer. I discussed this letter with Tom Krajewski.

Question. Do you agree with the points set out 1 through 5?

Answer. No.

Question. And which point would you take issue with?

Mr. ROSEN. Or points.

EXAMINATION BY MR. DOLD:

Question. By all means. They could be multiple.

Answer. Well, Governor Thompson was on record opposing the Hudson Casino. At least that's what he said in the newspaper several times.

Question. Was he—I'm sorry; was Governor Thompson on record saying that he opposed the Hudson Casino or gaming in general?

Answer. The Hudson Casino. And I brought the clipping for you if you would like to see it.

Question. I would really love to see it. I would like to see it.

Answer. Oh, okay. Should I continue now?

Question. Please. Please.

Answer. I don't know. I have no direct knowledge of what Senator D'Amato's position was. It had been represented to me that he was—he made a contact with the Oneida chairwoman.

Question. Who was at that time?

Answer. Debbie Doxtator.

And so I don't think I can characterize his motives here with any accuracy. Delaware North, so far as I know, does not own the Hudson Dog Track. Delaware North owns a defunct dog track in Kaukauna, Wisconsin, and held a secondary mortgage on the Wisconsin Dells track, both of which—well, one had already closed, the Kaukauna one, and the one in the Dells now has closed.

The partner in Dells was named Tom Diehl and—who is a very active fellow in the state tourism industry and also a close friend of the Governor's. He owns—I don't know whether he continues to own but at one point I believe he bought into the Hudson track about 2 percent. He was in debt $11 million—in debt to Delaware North because the track was failing at the Wisconsin Dells.

Question. Okay. Did you make any efforts to correct the record? You said you weren't aware of any involvement of Delaware North with Hudson?

Answer. Well, I—no. I wrote what I wrote to Brady Williamson. That was my understanding of the facts. Patrick O'Connor does his own thing. I mean, I didn't call him up.

Let's see, the chairman of the Indian tribe in the forefront of this project—I assume he is referring to Gaiashkibos, who was at the time, and I believe now is again, the tribal chairman of the Lac Courte Oreilles, and he had run in a Republican primary in a State Senate district in 1994, I want to say. So that's accurate.

I can't testify to the accuracy of point 4, because I'm not familiar with everyone's political persuasion. I would say that it did appear that the entire Minnesota congressional delegation opposed the project. The Wisconsin delegation was split, but there was no one who supported the project. Several congressmen wrote letters to Secretary Babbitt, including Republican congressmen, Roth and Gunderson, opposing the project. So did Barrett and Obey—who am I forgetting? Feingold. I believe the others were neutral. Yeah.

Question. Did Mr. Williamson ever tell you that he sent this memo off to Linda Moore at the White House?

Answer. Yes.

Question. Who is Linda Moore?

Answer. I don't know.

Question. What was your conversation with Mr. Williamson when he told you that he had sent this memo off to Linda Moore at the White House?

Answer. I don't remember. I wasn't terribly pleased that he had done that.

Question. Aside from Mr. Williamson being a presidential appointee, did he have any other connections with the White House that you were aware of?

Answer. I believe he's been an advance person for a number of foreign trips that the President has taken.

Mr. DOLD. If I can return back to Exhibit Number 1 and go to May 24th.

[Jablonski Deposition Exhibit No. AJ–1 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. If I could direct your attention to May 24th, the Patrick O'Connor calendar reads: St. Croix Tribe trip to the Committee to Reelect, parens, Terry McAuliffe. Conference with chairman of the National Finance Committee getting them to agree to call Harold Ickes and anyone. Appointment for Indians. And then it says: Dinner, Al Gore discussion with Peter Knight and David Strauss regarding Indian problem regarding the Hudson Dog Track.

Do you recall any discussion amongst the lobbyists that you dealt with to involve Vice President Gore or his staff in the lobbying effort?

Answer. I don't remember.

Question. How about with Terry McAuliffe and the Committee to Re-elect or Clinton/Gore '96?

Answer. No.

Question. If I can turn your attention to July 14th, 1995, in the calendar, under the St. Croix Tribe, heading down towards the lower portion, it says: Discussion regarding meeting to follow up with Harold Ickes at the White House—down about halfway.

Answer. Oh, Minneapolis discussion——

[Witness reading to herself.]

The WITNESS. Okay? What is your question?

EXAMINATION BY MR. DOLD:

Question. Okay. The notation in the calendar reads: St. Croix Tribe. Meeting with Larry Kitto. Discussion regarding need to go to Hudson, Wisconsin—Wisconsin is not fully written out——

Answer. Right.

Question [continuing]. And visit with city council member, I believe that's plural, members and city attorney. And discussion regarding meeting to follow up with Harold Ickes at the White House, Fowler at DNC and Terry Mac—I assume he's referring to McAuliffe—at the Committee to Re-elect outlining fund-raising strategies.

First of all, discussion—did you ever discuss the need to go to Hudson, Wisconsin, to visit with the city council? And I will represent also the July 14th, '95, date was the day the decision was handed down from the Department of the Interior declining to take the land into trust.

Do you know why Mr. O'Connor—or did Mr. O'Connor or any other lobbyists talk with you about a need to go to Hudson, Wisconsin to visit with the city council?

Answer. No.

Question. Were you aware of any fund-raising strategies orchestrated by any of the lobbyists with the DNC, Committee to Reelect, or the White House?

Answer. No.

Mr. YANG. Would this be an opportune time to take a break? Are you between exhibits or between pages of an exhibit?

Mr. DOLD. Sure. Of course. Let's go off the record.

[Recess.]

EXAMINATION BY MR. DOLD:

Question. Ms. Jablonski, still on Exhibit Number 1, last question on this exhibit, turning your attention to July 20th, 1995, towards the end.

Answer. Well, I'm in August here, so—here we are.

Question. It says at the bottom, discussion regarding thank you letters to White House and Members of Congress and then discussion regarding fund-raisers or fund-raising.

Answer. Uh-huh.

Question. Were you involved in any drafting of any thank you letters to go to the White House or any members of Congress on the Hudson Dog Track?

Answer. I remember——

[Witness conferring with counsel.]

The WITNESS. I don't remember. Is that okay?

Mr. ROSEN. Sure.

EXAMINATION BY MR. DOLD:

Question. I believe you have previously stated in your testimony that you were not aware of a fund-raising strategy going on with the lobbyists with regard to the Hudson Dog Track?

Answer. No, I was not aware.

Question. Would it be fair to say that you were not aware that the lobbyists were raising money on behalf of the Democratic National Committee or Clinton/Gore '96?

Answer. If they were raising money, they did not include me in their plan.

[Jablonski Deposition Exhibit No. AJ–3 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Ms. Jablonski what has been marked as AJ–3. It is a Minnesota legislative update dated April 17th through 20th. You've got page 2, and then the second page is a legislative update from April 24th to 28th,, also page 2.

Have you ever seen this legislative update, Ms. Jablonski?

Answer. No.

Mr. YANG. Counsel, page 2 of the exhibit, which is also labeled page 2 of the update for April 24th to 28th, appears cut off at the bottom in mid-sentence.

Mr. DOLD. And I have no response that I can give you besides that this is what was provided to us. I will represent to you that we did not redact anything from this exhibit.

Mr. YANG. And there is no portion of the exhibit that is not available for Ms. Jablonski's review; is that correct? There is no portion of the exhibit following this cutoff sentence that is not available for Ms. Jablonski's review?

Mr. DOLD. Correct.

EXAMINATION BY MR. DOLD:

Question. Directing your attention, if I may, Ms. Jablonski, to the second page where it says the Hudson Dog Track update, it reads, on Friday, April 18th, the delegation of tribe from Minnesota and Wisconsin met with Don Fowler, chairman of the Democratic National Committee (DNC). The purpose of the meeting was to request the DNC and the Committee to Re-elect the President to help communicate with the White House and the President about why the Department of the Interior should not approve the fee-to-trust trust land transfer for the Hudson Dog Track. The message was quite simple, all the people who are against this project, both Indian and non-Indian, are Democrats who have substantially large bloc—who have a substantially large bloc of votes and who contribute heavily to the Democratic Party. The next sentence is incomplete. It says: In contrast, all of—and then it goes off, as counsel has noted.

My question to you is were you aware of the purpose of the meeting with Chairman Fowler?

Answer. No. I mean, nobody sent me a memo and said this is why we are doing this.

Question. Was it discussed orally at the meeting, the purpose?

Answer. No, and I think they must be mistaken here. It couldn't have been April 18th.

Question. I believe it is incorrect. I think it should be April 28th, at least from my records. But it does say April 18th in this.

Did you ever discuss trying to get the President to communicate with the Department of the Interior?

Answer. I didn't, no.

Question. Was that discussed amongst the lobbyists that you met with?

Answer. I don't remember.

Mr. YANG. You mean in her presence, if other lobbyists had conversations regarding that? I'm not saying that they did. But you are not asking her to represent what the other lobbyists may have said to each other.

Mr. DOLD. No, only personal knowledge. That if she overheard a conversation or had memos on it that indicated that they wanted the White House and the President to contact the Department of the Interior.

The WITNESS. I only met with these people once.

EXAMINATION BY MR. DOLD:

Question. When you say "these people," who are you referring to?

Answer. Larry Kitto, Jerry Sikorski. Who else was at that April 19th meeting? Washington lobbyists. I happened to meet them then. I did not personally meet them again. I was in communication with Larry Kitto only two or three times during this whole six-month period.

[Jablonski Deposition Exhibit No. AJ–4 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Ms. Jablonski what has been marked as AJ–4. It is a memo to Scott Dacy from Carl Artman. The date is May 1st, 1995, regarding Friday meeting at Democrat National Committee regarding Hudson Bay Track. The bottom is a Post-it fax note to Ann Jablonski from Cindi. Do you recall receiving this memo?

Answer. Yes.

Question. Cindi in the "from" column there, is that Cindi Broderick?

Answer. Correct.

Question. Directing your attention to the third paragraph it says: It is believed that the approval of the compact rests with Secretary Babbitt's chief of staff, Tom Collier. He has indicated that he will approve the compact. Therefore, tribal members at the meeting appealed to Mr. Fowler for help in convincing Secretary Babbitt of the——

Answer. Deleterious ramifications.

Question [continuing]. Deleterious ramifications. The problem was framed as a situation in which tribes with pronounced Republican leanings are about to receive approval of their proposal, which will hurt tribes which have traditionally supported Democrats. Mr. Fowler stated that he would speak with the President's assistant, Harold Ickes. He would urge Mr. Ickes to urge Secretary Babbitt to make a closer examination of impact of the proposed operation.

Did you have any discussions about tribes with the, quote-unquote, "Republican leanings" in any of your conversations with officials that you would have spoken with locally in Wisconsin?

Answer. No. I mean, I did lobby the senator that Gaiashkibos was going to run against if he won the primary. But, no, I didn't discuss that.

Question. It wouldn't have come up in any conversation you would have had with Sheila Harsdorf?

Answer. She's a Republican.

Question. Obviously not, then?

Answer. No.

Question. So you never mentioned this at all about the fact that Republicans were applicant tribes?

Answer. Well, I don't know whether I'd characterize them as Republicans. I don't know what their political persuasion is. I just, you know, everyone knew that Gaiashkibos had run in the Republican primary for State Senate.

[Jablonski Deposition Exhibit No. AJ–5 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. Showing Ms. Jablonski what has been marked as AJ–5, it is a memo to tribal clients from Larry Kitto and the reason is the Hudson Dog Track issue. I will give you an opportunity to read over the memo and then I have some very specific questions.

[Witness reading.]

The WITNESS. Why don't you ask them.

EXAMINATION BY MR. DOLD:

Question. Okay. Do you recall ever receiving or seeing this memo?

Answer. Yes.

Question. And when did you first see this memo?

Answer. I think probably close to the date that it is marked here.

Question. Did you—were you ever assigned tasks, as tasks apparently have been assigned to the different numbered paragraphs here to individuals?

Answer. This memo was sent to me merely to keep me abreast of what was going on.

Question. I believe you have already testified with regard to paragraph 7, which reads: Increase pressure in communications with the White House through Vice President Gore's office, the Democratic National Committee and the Committee to Re-elect the President. And you said before you were unaware of a strategy?

Answer. Well, I guess if I committed this to memory I would have remembered this, but I didn't, you know.

Question. Right.

Answer. So other than what's here, I'm not aware of what specifically was going on.

Question. Directing your attention to number 13, it says publicly expose the conflict of interest that Ada Deer, Assistant Secretary of Interior, and Gaiashkibos, President of NCAI, have in relation to their ability to use their positions to work the process and influence the decision.

Do you know what the memo is referring to with regard to Ada Deer and Gaiashkibos?

Answer. I believe that Ada—it has been represented to me that Ada and Gaiashkibos are friends and that she had contributed—made a contribution to his State Senate campaign.

Question. And as of June 5th, 1995, do you know—obviously—I won't say obviously—as of June 5th, 1995, were you aware if Ms. Deer had recused herself?

Answer. No, I guess I became aware of that much later, perhaps from a newspaper report. I wasn't aware of it then.

Question. Having read this memo and paragraph 7 regarding increasing pressure with the White House through Vice President Gore's office, do you recall that as being a strategy or a point of contact for the lobbyists?

Answer. Well, it wasn't for me, so no.

Question. Do you recall overhearing any conversation about any of the lobbyists, whether it be Cindi Broderick or Krajewski or any of the people talking about using the Vice President's office as a mechanism to put pressure on the Department of Interior?

Answer. No. The Madison lobbyists are primarily focused on what's going on in Madison.

[Jablonski Deposition Exhibit No. AJ–6 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. I have placed before Ms. Jablonski what has been marked as AJ–6, which is a memorandum to tribal clients from Larry Kitto and Tom Corcoran. Date is 12th of November, 1995, and the reason is Hudson Dog Track update.

Ms. Jablonski, are you familiar with this memo?

Answer. I've seen it.

Question. And when did you first see it?

Answer. Probably close to the date of the memo.

Question. On page 2, if I may direct your attention to number 5, it reads: For the Minnesota and Wisconsin tribes who were against turning the Hudson Dog Track into a casino, it is in their best interest to see that—and then it's got some bullet points following the colon: Number 1—not number 1, but the first bullet reads: The case is defended vigorously by lawyers from the Department of Justice in Washington, D.C., who are experienced and learned in Indian law. Second bullet point is, that this case not be sent back to the Department of the Interior for review and consideration.

I'm mainly concerned, or interested really, in the interest in keeping it with the Department of Justice attorneys. Do you have any knowledge as to why you would want to keep it with the Department of Justice lawyers?

Answer. No.

Question. Number 7, the second sentence of number 7 reads, additionally, we suggest that tribal attorneys, on behalf of their clients, contact the Department of Justice and the Department of the Interior to—and the second bullet is—ask that the case be handled by Department of Justice lawyers. was that ever discussed? Do you know of any reason why they suggested that that be done?

Answer. No, no one told me that.

Question. Was there any discussion about this memo?

Mr. ROSEN. Can you be a little more specific?

Mr. DOLD. Sure.

EXAMINATION BY MR. DOLD:

Question. Around the time that you this saw this memo, was there any discussion about the substance of this memo that addressed some of the bullet points, specifically what they wanted you to do with regard to the Department of Justice?

Mr. ROSEN. With whom?

Mr. DOLD. Well, with anybody.

[Witness conferring with counsel.]

Mr. ROSEN. We would assert—if I understand Ann's answer, she has not discussed this memo with anyone other than a member of the tribe, or representative of the tribe, in the capacity as a lobbyist and we would assert the privilege. She has never acted upon or discussed anything in the memo or discussed it with third parties.

Mr. DOLD. So the privilege that you're asserting now, if I could get it clearly stated for the record, is that third party entities, lobbyists, not necessarily attorneys, are going to be covered under a sovereign privilege; is that right?

Mr. ROSEN. Her privilege or the privilege—I don't understand your question. If she discussed, it is our position—and has been sustained by the courts thus far—that there is a sovereign immunity or privilege as it relates to tribal self-government in order to—and I can go through the cases or provide you the briefs that were previously filed and accepted. I don't know if we need to do it at this point. The only person with whom any conversation may have taken place concerning this is

within the scope of an intratribal context solely within the confines of the St. Croix tribal self-government; never discussed in the presence of a third party; never disclosed to a third party, and never acted upon in the presence of a third party.

Mr. DOLD. Well, I certainly would like the case law with which you are resting your privilege on. I think that would be interesting. I know that things work a little bit differently for Congress on some matters and I, of course, will not represent what the committee stance is because I just don't know. I need to consult with our parliamentarian.

Mr. ROSEN. If it would be a further complication, that may involve attorney-client privilege as it relates to this conversation.

Mr. DOLD. Was Ms. Jablonski retained as an attorney for the tribe?

Mr. ROSEN. No.

Mr. DOLD. Are you asserting it as attorney-client privilege?

Mr. ROSEN. As a second basis, yes.

Mr. DOLD. Just so that I'm clear, Counsel, attorney-client privilege is the second basis. You're saying that a conversation with Ms. Jablonski would be covered under an attorney-client privilege?

Mr. ROSEN. Correct.

Mr. DOLD. And Ms. Jablonski's role in that attorney-client privilege would be what?

Mr. ROSEN. The client. An agent of the client in that capacity.

Mr. DOLD. Are you instructing the witness not to answer the question?

Mr. ROSEN. It's not her privilege—yes.

[Discussion off the record.]

Mr. DOLD. I think what we're going to do, we'll continue on and then address this back, and we'll hopefully get through most of the material, and then if need be we'll come back to this issue with the privilege asserted.

EXAMINATION BY MR. DOLD:

Question. Ms. Jablonski, did you ever contact anyone at the Department of Interior on this issue?

Answer. I called once at the end of March of '95, around there, to a friend who worked there who I believe was Ada Deer's personal assistant.

Question. And who was that?

Answer. Her name was Lydia Bickford. And I simply wanted to know the status of the proposal at the time, but she didn't know, and that was the end of it. She referred me to somebody in Denver, and I thought that wasn't very helpful.

Question. Do you remember about when this was?

Answer. Right at the end of March, you know, the last week of March or something.

Question. I'm sorry, you might have mentioned that. I just didn't catch it.

Answer. Yeah. And I did meet Secretary Babbitt in the reception line once and made a comment to him about Hudson.

Question. And what did you say about the Hudson matter?

Answer. What did I say?

Question. What did you say to Secretary Babbitt?

Answer. I believe I said that off-reservation gaming in Wisconsin is not good for the State. You know, it was a short—it was a short meeting.

Mr. DOLD. I place before Ms. Jablonski what has been marked as AJ–7. It is a letter to Secretary Babbitt from Sheila E. Harsdorf, H-A-R-S-D-O-R-F.

[Jablonski Deposition Exhibit No. AJ–7 was marked for identification.]

Mr. YANG. The record should reflect that it is on the letterhead of State Representative Sheila Harsdorf, but that it is signed by a pretty lengthy list of State legislators.

Mr. DOLD. Well, let the record reflect that it is actually signed by 29 to be exact, unless, Ms. Jablonski, your count is different than mine.

The WITNESS. No, that's what I recollect. I've tallied them before.

EXAMINATION BY MR. DOLD:

Question. How many representatives are there in the State of Wisconsin?

Answer. Ninety-nine.

Question. How many State senators?

Answer. Thirty-three.

Question. I believe you already testified that you have met with Representative Harsdorf before?

Answer. Yes.

Question. Was it on the Hudson matter?

Answer. It was on a number of different issues. But yes, we did talk about the Hudson matter during this meeting.

Question. And what did you discuss regarding the Hudson matter with Miss Harsdorf?

Answer. This was in the beginning of March of '95, and we were conveying our opposition to her, and we explained why, and we asked her if—we didn't know what her position was at that point. I had never lobbied her or discussed this issue with her. So part of the purpose of the meeting was to determine what her position was, and if she agreed to oppose it, would she, which we were asking her, write a letter to Secretary Babbitt indicating that opposition.

Question. So did you ask her to write this letter?

Answer. I asked her—we asked her—I believe we asked her to write a letter to Secretary Babbitt if she opposed the Hudson casino. And I remember that she was not very excited about the casino, meaning that she indicated that she really didn't like the idea very much.

Question. When you say "we lobbied" or "we asked," who is "we"; who are you referring to?

Answer. I was in the meeting. The tribal attorney and the tribal chairmen were also present and some other tribal members who I don't recollect right now.

Question. Who was the tribal attorney at the time?

Answer. Howard Bichler.

Question. Howard Bichler. And the chairman was Louis Taylor at the time; is that correct?

Answer. Yes.

Question. Who was Ada Deer's assistant? I'm sorry to ask you to recall that.

Answer. Lydia Bickford.

Question. What did you tell Representative Harsdorf about the Hudson application?

Answer. I don't know that. I don't know that I knew very much about it at the time, simply that—I mean, I don't recollect exactly, but I probably told her that it had been approved by the BIA in Minneapolis. It was pending at Interior. I really don't remember beyond that what facts I might have shared with her. She does live there, and she reads the papers, too, so she would be aware of generally speaking what the status was.

Question. Did you tell her that the people of Hudson opposed the application?

Answer. Well, I believe that she knew that many people in Hudson opposed the casino, and I'm sure that she was aware that the citizens had opposed the original dog track, and they had opposed the first casino proposal. So, I mean, what I'm trying to say is that this had been going on for a very long time. It would be hard for her not to know about public opposition to the casino.

Question. Can you show me in this letter where it points to the Hudson Dog Track specifically?

Answer. I don't know that she does talk about the Hudson Dog Track in this. I mean, with respect to the casino proposal?

Question. Uh-huh. Yes.

Answer. What are you getting at? I mean, could you—what do you want to know? It is a little unclear to me.

Question. I am aware that there was a referendum done statewide on the expansion of off-reservation gaming that was——

Answer. Well, there was a 1993 referendum. Part of it was binding. That defined the term "lottery" and defined many forms of gambling out of existence basically.

There were also advisory referendum questions that were put to the voters at the same time, and one of those questions was, do you approve of restrictions on casinos? It wasn't quite that, but it was about as vague. And yes, it was certainly, I think, a fairly strong majority of voters said that they did approve of restrictions.

Question. Statewide?

Answer. It was a statewide referendum, yes.

Question. And I guess I'm just asking, in this specific letter here, is there any specific mention of the Hudson casino application?

Answer. Well, I would——

Mr. YANG. At this point I'll have to ask if you can represent how this is relevant to our investigation whether Representative Harsdorf's letter references the Hudson casino or not. I fail to see how it relates to any possible campaign financing impropriety. Perhaps you can explain that to the Minority.

Mr. DOLD. Of course. Part of the Department of Interior hung their hat, if you will, on local opposition and certainly this was written up in one of the documents that we have or a few of the documents that we have in the record from the Bureau of Indian Affairs. And I was just wondering if she would point to anything that spe-

cifically references, because we know that we do have a statewide referendum on gaming, and this appears to me expansion——

The WITNESS. Well, that was 2 years prior to this.

Mr. DOLD [continuing]. The expansion of off-reservation casino-style gaming in the State of Wisconsin. And there is no question in my mind that she is writing opposed to the expansion of off-reservation casino-style gaming in the State. But I'd like to know if she specifically mentions the Hudson casino application in this letter.

Mr. YANG. And the Majority's interest in this document would be—I mean, asking the witness that question would be to implicate that by leaving out the Hudson application, that Ms. Harsdorf was not opposed to it.

Mr. DOLD. I'm not asking the witness to read anything into it. I'm simply asking the witness if there is anything here specifically she can point to that refers to the Hudson casino specifically. It is not meant to be a trick question.

The WITNESS. Well, I mean, it is implicit in the letter. There were no other applications before the Department of Interior at the time, and she refers to it would seem premature to allow any further expansion of gambling in Wisconsin. That is the only place that it was likely to be.

EXAMINATION BY MR. DOLD:

Question. Are you representing that there were no other applications in the process?

Answer. So far as I know, there were not, not with respect to Wisconsin. There may have been, you know, elsewhere, which is not to say that some don't want it.

Question. But my question is, is there anything specifically in here that mentions the Hudson casino?

Answer. I don't see anything.

Question. Did you or any tribal representatives of the tribe donate any money to Miss Harsdorf's campaign?

Answer. No.

Question. Did you help draft this specific letter?

Answer. I did not. I asked her to write the letter, and she wrote it in a very timely fashion.

Question. Did you ever write any letters for the local town people in Hudson, Wisconsin?

Answer. I drafted a response to press articles in July of 1996, when the other side sort of began their press campaign. And it started in the Wall Street Journal, which the local papers, meaning the State papers, picked up and ran. And I drafted a response and suggested to one of the local people that it might be a good idea if they wrote letters to the editor. So far as I know, they declined to do that. And that is my only experience with local lettering.

Question. Do you know who you wrote that letter for?

Answer. I sent it to Nancy Bieraugel.

Mr. DOLD. I have placed before Ms. Jablonski what has been marked as AJ–8. It is an open letter to U.S. Secretary of the Interior Bruce Babbitt, Wisconsin Governor Tommy G. Thompson and Hudson Mayor Jack Breault.

[Jablonski Deposition Exhibit No. AJ–8 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. Do you recall seeing this letter?

Answer. Yes.

Question. Did you help draft any portion of this letter?

Answer. No.

Question. Did you ever attend any meetings with the businesspeople of Hudson?

Answer. No.

Question. If I can go back to something we discussed a little earlier regarding the meeting in Wisconsin with Tom Collier, George Skibine?

Answer. It wasn't an organized meeting. It was a conference.

Question. It was a conference, they were there?

Answer. Yes.

Question. And I believe you already testified that that was the first opportunity had you to meet with some of the lobbyists in Washington?

Answer. Yes.

Question. At that meeting—and I believe we've gone over a little bit of this. I just want to make sure we're clear for the record that you did agree to write letters for other people's signature at that meeting?

Answer. I agreed to try to get various legislators or Congresspersons to write the letters. And my normal way I usually go about lobbying is if I'm requested, they

may say, well, what is the history of this, or what are some of the points, you know, from your perspective, and I might give them something like that. But it very rarely happens that somebody takes a letter of a lobbyist verbatim.

Question. Would you give them kind of a bullet point outline, or would you draft a letter, kind of a mock letter?

Answer. I drafted a mock letter is what happened, and sometimes it is bullet points. That particular time it was not.

Question. Do you recall who you would have sent letters to on this issue or who you did send letters to?

Mr. YANG. You mean by that draft letters?

Mr. DOLD. What she just explained, yes.

The WITNESS. Well, not Representative Harsdorf, because she had already done her letter. Senator—these are State people. Senator Jouch, J-O-U-C-H; Representative Dueholm, D-U-E-H-O-L-M. I believe I contacted Representative Hubler, H-U-B-L-E-R; Representative Baldus, B-A-L-D-U-S; Senator Clausing, C-L-A-U-S-I-N-G; then Congressman Obey. I don't believe I provided any letter. I think I wrote a memo, and I think that is true for the other congressional contacts as well. Most of the Congresspersons I contacted were aware of the issue because Obey and Gunderson, I mean, it is in their area. So Gunderson, I believe I identified these contacts prior, before this, in this deposition.

Question. Did you raise money for Congressman Obey?

Answer. Yes.

Question. Did you ask Congressman Obey to oppose the Hudson Dog Track?

Answer. Yes. Well, I asked if he agreed with our position to oppose it.

Question. Did you ask him to write a letter?

Answer. Yes. Well, I talked not directly to him.

Mr. YANG. Did you express to him either directly or indirectly any link between your continued fund-raising for him and his position on this matter?

The WITNESS. No. Let me characterize this for you. I contacted Jerry Madison, his home secretary, in the beginning of March of '95. And subsequent to that, Dave authored a letter to Secretary Babbitt in opposition to the casino. Later on, in May, Dave had a fund-raiser in Madison in which he asked many of his friends in Madison to raise money for his fund-raiser.

EXAMINATION BY MR. DOLD:

Question. Did the tribes contribute to that fund-raiser?

Answer. The St. Croix tribe contributed. I can't speak about the others.

Question. When did you first receive word that the application was going to be denied?

Answer. I first heard a rumor from—a reporter named Dennis Casano from the Milwaukee Star Tribune called me up on the afternoon of July 12th, which I believe was a Wednesday, so I think I have the date correct, and said that he had heard rumors that a decision had been handed down by the Department of Interior and what was it. And I said, well, I didn't know. Subsequently——

Mr. ROSEN. Can we have one moment?

[Discussion off the record.]

Mr. ROSEN. There would be on July 13th, late in the day, an intratribal communication between the tribe and its agent, Ann Jablonski, concerning the subject matter of which you inquire; and to that question, as it relates to that confidential conversation, I'm advising her not to answer the question, asserting, as we have before, the privilege under the concept of sovereign immunity.

Mr. DOLD. Are you instructing the witness not to answer the question?

Mr. ROSEN. Yes. But I think there is more of an answer beyond that. I wanted to make sure that her answer was complete.

EXAMINATION BY MR. DOLD:

Question. Did you receive confirmation at any time before July 14th, 1995, that the application was going to be rejected?

Answer. Yes.

Question. Who did you receive that information from?

Mr. ROSEN. As it relates to my previous advice, it would relate to an intratribal communication between the tribe and its agent. In order to try and get to the bottom line, it would have occurred late, very late, July 13th, and then again confirmation from another source, nonprivileged, I believe, early in the morning or the beginning of the day the 14th?

The WITNESS. I don't remember what time it was, but yes.

EXAMINATION BY MR. DOLD:

Question. Confirmation on the 14th, who was that with?

Answer. From Congressman Obey's office.

Mr. DOLD. Again, in the interest of time, I am going to move on and come back to address this at the end of the deposition.

I have placed before Miss Jablonski what has been marked as AJ–9. It is a memorandum to "all interested parties" from John McCarthy, MIGA consultant, dated Wednesday, December 28, 1994, regarding a Wisconsin dog track issue.

[Jablonski Deposition Exhibit No. AJ–9 was marked for identification.]

EXAMINATION BY MR. DOLD:

Question. Have you ever seen this memo before?

Answer. Yes, I have. But I don't remember too much about it.

Question. Number one, under "specific strategy," just before that I should say, this heading that says "specific strategy," and the paragraph reads, "At this point it appears that the Assistant Secretary's office and the Minneapolis Area Office have succeeded in securing an affirmative recommendation from the BIA for the three tribes requesting the fee-to-trust transfer. In order for the Secretary to overrule the recommendations of the Bureau, we need to point out the following:"

Number 1 is, "We feel that the consultation was flawed and that we were not given a fair opportunity to present our case."

Did you feel that the consultation was flawed?

Answer. I don't know. I wasn't involved in it. I was surprised, frankly, that this proposal moved so quickly through the BIA in Minneapolis.

Question. Number 3—well, let me just say, number 2, it says: We challenge the validity of the Finding Of No Significant Impact as it relates to the socioeconomic impact that this action will have on the neighboring tribes.

Did you feel that the impact on the neighboring tribes was going to be significant?

Answer. Oh, yes.

Question. And what are you basing that on?

Answer. Well, I'm familiar with the Twin Cities, and I'm familiar with Hudson, and I'm familiar with Turtle Lake and the Turtle Lake casino, which is a casino operated by the St. Croix tribe. And simply the logistics of the situation would suggest to you that a casino at Hudson would be very, very successful because the interstate goes right through. And to go to the Turtle Lake casino, you would have to go off on some less traveled highways. So I don't think there is any doubt of that. I know that the tribe did a study, but I never read it, so I can't comment on that.

Question. So you're emphatic that it was going to have an impact upon the tribe was based upon just personal belief?

Answer. Well, it is based on personal belief, but it seemed obvious to me. But I did not read their economic study. I know that one was done.

Question. Number 3 says, "We feel that the whole issue of market share has been glossed over and has been unfairly slanted by the BIA."

Is it your understanding that the Bureau of Indian Affairs takes side with regard to Indians, Indian tribes?

Answer. I don't know. I really don't lobby the Bureau of Indian Affairs. I have extremely limited contact with them. And I was not involved in this process and, in fact, did not receive this memo until April.

Question. April of this year?

Answer. No, April of '95.

Question. You are familiar with the Bureau of Indian Affairs, though; are you not?

Answer. Oh, sure.

Question. In your dealings with the Bureau of Indian Affairs, generally——

Answer. Very few. I mean, the tribe handles their own dealings with the Bureau of Indian Affairs in Minneapolis, because I'm not in Minneapolis, I'm in Madison. I assume their Washington lobbyists deal with the Bureau of Indian Affairs out here. So I have very little contact with the Department of Interior.

Question. Okay. Then we will pass over that question and move on.

Under "Political Perspective" on page 2, it reads, "We have a few key political issues to keep in mind and to point out to the Secretary:

"A) One of the key players in this issue is Chairman Gaiashkibos from Lac Courte Oreilles. Without in any way degrading him, we do need to point out to the Secretary that he is in fact a Republican, that he worked for Republicans in the last election, and that he will no doubt work hard against Bill Clinton in the next 2 years. We also need to point out to the Secretary it would not be in his best interest to in any way help the Republicans erode any additional Indian votes or Indian po-

litical contributions." was there any discussion about that with you and any of the other lobbyists?

Answer. Well, as I said, I didn't receive this memo until months after it was written, so——

Question. Well, when you received it or before it, did you overhear anybody talking about it?

Answer. No.

Question. Was it a topic of discussion with you and any of the officials that you lobbied?

Answer. I suppose—I think we discussed the fact that Gosh was, at least, running as a Republican.

Question. Did you talk about Indian political contributions at all?

Answer. No.

Question. How about Indian voter turnout or Indian votes?

Answer. This is from the MIGA, not the WIGA, and I think the Minnesota tribes are a lot more politically organized. They have more voter registration and voter drives. And that's beginning in Wisconsin. So I guess we haven't discussed it very much.

Question. Did you ever have any contact with any of the officials in Minnesota?

Answer. "Officials" meaning?

Question. Congressmen, representatives, State senators.

Answer. Not that I recollect.

Mr. YANG. Regarding the Hudson issue? Is that the scope of the question?

Mr. DOLD. Yes. Thank you.

The WITNESS. I never talked to them about this issue.

EXAMINATION BY MR. DOLD:

Question. Do you know why it was felt—was there any discussion—let me say that. Was there any discussion as to why they felt the consultation was flawed?

Answer. Not that I recollect. I just didn't have any discussion about it.

Mr. YANG. Counsel, would this be an opportune time to take another 3-minute break?

Mr. DOLD. Of course. Off the record.

[Brief recess.]

Mr. DOLD. For the record, Mr. Will Moschella has joined this deposition.

I place before Miss Jablonski what has been marked as AJ–10. It is a few pages of handwritten notes. I ask that the witness take an opportunity to review those.

[Jablonski Deposition Exhibit No. AJ–10 was marked for identification.]

The WITNESS. Okay.

EXAMINATION BY MR. DOLD:

Question. Are you familiar with these notes?

Answer. I have seen them before.

Question. Whose handwriting are these notes?

Answer. It is mine. Making sense out of them might be difficult.

Question. On the first page it has got a list of points 1 through 7. The first says "letters from northwest legislators opposing Hudson to Governor Babbitt, Gunderson, Feingold, Kohl, Obey," and then in brackets "press release."

I believe we discussed this a little bit earlier, but is this discussing a letter campaign regarding the Hudson casino?

Answer. Yes.

Question. Under number 5 it reads "Clinton strategy - Dixon." Can you explain what you meant by that?

Answer. Well, I didn't come up with this. This was part of a meeting and I was, unfortunately, described.

Question. What meeting was this?

Answer. It was an April 4th meeting between the Ho-Chunk and St. Croix Nations.

Question. And to the best of your recollection, what was the Clinton strategy?

Answer. I don't really remember, but Bill Dixon apparently had something to do with it. He was contacted and he was conflicted, and that was the end of that.

Question. Who was Bill Dixon?

Answer. He is——

Mr. ROSEN. He is an attorney at Madison, former head of state banking, former counsel for the World Bank.

The WITNESS. He headed up Gary Hart's campaign.

EXAMINATION BY MR. DOLD:

Question. And you don't recall anything else besides Bill Dixon with regard to Clinton strategy?

Answer. I don't.

Question. Number 6 says, "Working on Congress and Senators to intercede" with Secretary Babbitt. It reads just "with Babbitt" but I assume that's Secretary Babbitt.

Answer. Yes.

Question. And what did you want or what was the hope with regard to having them intercede with Secretary Babbitt?

Answer. I suppose we were hoping that they would help us get our message across to Secretary Babbitt.

Question. Number 7 says "Letter from Joanne & Lewis to Babbitt. Letter from Joanne & Lewis to Congos." I assume that's Congress. Is that Congress?

Answer. I call them Congos, shorthand.

Question. Do you know if letters from Joanne & Lewis went out to Secretary Babbitt?

Answer. I think there was one.

Question. And by Joanne, who——

Answer. Joanne Jones. She was the tribal chairwoman of the Ho-Chunk Nation at the time.

Question. And Lewis is Taylor?

Answer. Lewis is Taylor.

Question. Who was the——

Answer. Tribal chairman of the St. Croix Nation. I would point out that this was a wish list. You know, you have a meeting, you put down a list, and then you hope people do something.

Question. On page 2, the circled portion—or not circled, kind of box portion—it says "Christine, Morris, Gunderson" and then "Bill Dixon" and "Stepanopolous."

Do you recall if there was a plan to talk to or influence George Stepanopolous?

Answer. I guess that was our bright idea that day. Okay?

Question. Did Bill Dixon ever report back to you on actions that he had taken?

Answer. Bill Dixon was conflicted and he had a conflict.

Question. Did anybody take up where he left off?

Answer. No. He didn't leave off. He didn't ever get on. He was representing some Nevada interest. He couldn't do any work for us.

Question. Could you read for us starting with "letters of support"?

Answer. Where are we now?

Question. I'm sorry, page 3, "letters of support." I'm having problems reading that.

Answer. Well, this was, you know, so mucked up that I listed them here. But the idea was to generate—ask local legislators from the northwestern part of the State to write letters supporting our position to the governor suggesting that the governor write a letter supporting our position, writing to Secretary Babbitt. I guess at this point we were interested in Congressman Gunderson's approval of our position. This is April 4th, by the way, 1995. That's what it means.

Question. Under "editorial board," whatever it says——

Answer. We didn't do that.

Question. What is the next line?

Answer. "Poll to show voter disapproval." And then "next week" I think probably refers to we need to do that next week.

Question. The left-hand column, down at the bottom of the page, says—actually, it says John Suncloud; is that correct?

Answer. Sunchild.

Question. Sunchild?

Answer. Yeah. I have no idea what that is, because I don't know John Sunchild. And I suppose that I was supposed to know him that day. But I mean, he wasn't at this meeting and I don't know who he was. Others know who he was.

Question. It says John Sunchild in connection to Avent?

Answer. Yes.

Question. Do you know who Loretta Avent is?

Answer. I do. I met her once.

Question. Where did you meet her?

Answer. At the April 19th conference in Green Bay that I discussed before.

Question. Did you discuss the Hudson casino matter with her at that time?

Answer. Yes.

Question. What did you tell her?

Answer. What did I tell her? I told her that we opposed it and I told her the reasons why.

Question. What were the reasons you articulated to her?

Answer. Primarily the economic impact on the St. Croix Tribe and other tribal enterprises, and also the precedent it set in Wisconsin and that if you would allow one group of tribes to do this, how could you say no to the others? And we were concerned about the over-development of gambling in Wisconsin, the relocation of casinos or opening of new ones in different areas of the State. It wasn't a coordinated policy. It was just three tribes kind of poking a hole in the map.

Question. Are you familiar with the tribal compacts in Wisconsin?

Answer. Well, I've read ours. And the others are very similar.

Question. Is there a limit on the number of casinos?

Answer. Yes, two. But I think the Ho-Chunk's compact is slightly different.

Question. So there is a limit to the number of casinos that Indians can——

Answer. Yes.

Question. Okay.

Answer. Under that compact. But the compact can be amended.

Question. Down on the last page, if I could direct your attention there, it reads "Also, talked w/LCO/RC/MC to partner at Hudson, but agreement fell through."

Can you explain that?

Answer. That's what it says, yes, if you're trying to decipher my handwriting.

Question. Can you explain what the notation is?

Answer. Well, I think it relates to the notation I make directly above it where I say, "Howard: Barlow," meaning I believe Earl Barlow, who had been the head of the Minneapolis BIA, and I'm not—I have forgotten exactly when he resigned, retired. And so I don't know whether he was still the head of the BIA in Minneapolis at the time, so that could be simply referring back to when he was. And I don't really remember what it was about. Barlow told them he spoke to Tommy, meaning the governor, on the Pottawattami. There were other things happening in Wisconsin at the time.

Question. Of course, right.

Answer. And one of the things that was happening was a discussion about building a new baseball stadium in Milwaukee and where, oh where could we get the money for that. And so, a couple of the tribes were interested in developing a casino in Milwaukee, perchance to help out with that funding. And the Pottawattami have a casino in Milwaukee but they are limited in the number of machines they have. They can only have 200 slots, and this is always been a sore point with them.

Question. So the notation down here——

Answer. But I mean, that's just generally the subject area. What this specifically refers to I don't remember anymore. The second notation which you first asked about, he talked, I assume this refers to Barlow, with the Lac Courte, the Red Cliff and the Mole Lake-Sokaogan. And I don't know what it means anymore. I have no recollection.

Question. And because St. Croix were originally asked to be partners in this deal, is that correct, with the Hudson casino?

Answer. The St. Croix had a proposal with their then managing partners, the Buffalo Brothers, and St. Croix met, as well as HAH, or whatever Fred Havenick is calling himself these days or then.

Question. Did you ever ask Ms. Avent or anyone at the White House to do anything regarding the application?

Answer. I had a difficult conversation with Miss Avent. She was resistant to talking to lobbyists, and so asking her to do anything would be a waste of time.

Question. How about anybody else at the White House?

Answer. She was also very close to one of the applicant tribes.

Question. Miss Avent was?

Answer. Yes.

Question. And which tribe was that?

Answer. The Sokaogan. Well, I should not say she was close to the tribe. She was very close friends with the tribal chairman. So perhaps her resistance to anything I would say relates to that.

Question. Did you ever have any contact with anyone at the White House besides Ms. Avent?

Answer. Not that I can recollect.

Mr. YANG. That would be regarding the Hudson issue; is that correct?

Mr. DOLD. Of course. I apologize.

EXAMINATION BY MR. DOLD:

Question. Regarding the Hudson is what I'm referring to. And for the next series of questions, they are all with regard to the Hudson issue.

Did you have any contacts with anyone at the Democratic National Committee regarding Hudson?

Answer. No.

Question. Not Don Fowler or David Mercer or anybody else?

Answer. No.

Question. With regard to the Department of the Interior, did you have contact with anyone that we have not already previously discussed?

Answer. No.

Question. The Clinton-Gore '96, were you in contact with anyone with Clinton-Gore '96 regarding Hudson?

Answer. Oh, no. I received invitations to their fund-raisers as contact, but they didn't call me and say anything about Hudson or anything about contributing because of Hudson.

Mr. DOLD. We do have some further questions in some of the areas we addressed earlier. Do you want me to end this round and let you ask questions and then come back?

Mr. YANG. I assume that the questions that you have remaining deal with the privilege issue that we have yet to address. Why don't we go ahead and address that issue now and I'll ask my questions afterwards.

Mr. DOLD. Off the record for a moment.

[Brief recess.]

Mr. DOLD. Mr. Rosen, with regard to a couple of different points we had addressed earlier in the deposition, you had advised your client not to answer the question based on a privilege that you had asserted or that the tribe, I assume, has asserted on this matter; is that correct?

Mr. ROSEN. Correct. Well, there were two bases. One was a question related to Exhibit Number 6. I indicated that not only based on a tribal privilege under sovereign immunity but I asserted attorney-client privilege. It was a confidential communication between an attorney and a client not intended for disclosure to any third parties, it was relied upon to be confidential, and no third parties were present in order to breach that privilege. It was on that basis that we declined to comment further on Exhibit No. 6.

As it relates to the other conversation, as to whether or not she heard from anybody on July 13, 1995 as to the results of the BIA, that a decision had been rendered, I advised her based on the tribe's position on sovereign immunity. I heard some reference a moment ago to some aberrant case in the 9th Circuit.

We have litigated this issue twice so far and are obviously desirous of seeking some sort of resolution on the issue. Because I don't think, without arguing the law and going back to the history of James and Simms, nor in the State of Wisconsin in the Federal courts, to try to see if there is a generic way to get you the information without confrontation over the privileges we are talking about, it is not ours to waive.

Mr. DOLD. And I understand that. From our standpoint, Congress has primary power to legislate in this area regarding Indians. And the Supreme Court, as you know, has held time and again that Congress has oversight power as extensive as its legislative power. And unless the tribes can assert privilege which trumps the constitutional power that the Congress has, we are kind of at odds—we are at odds.

Mr. YANG. As a starting point, can you represent to Mr. Rosen the information you might be interested in getting to? And maybe he can suggest ways in which, since he's more familiar with the privilege being asserted than we are, ways in which we might be able to get at that information which wouldn't impact his privilege. Would that be a helpful starting point?

Mr. ROSEN. Let's go back to Exhibit Number 6, the question you had referenced, whether she had conversations with any third parties. If in fact there was an attorney-client conversation, are you assuming that your power trumps attorney-client privilege, or are you talking common law privilege?

Mr. DOLD. Well, Congress has powers, as far as the attorney-client privilege, which Congress doesn't necessarily have to—even taking attorney-client privilege into account, they are not necessarily subject to attorney-client privileges, as I'm sure you know. However, that is not usually the position that we often take. We usually honor the attorney-client privilege. But I have been advised that Congress is a little bit different than most entities with regard to the attorney-client privilege.

As far as the tribal sovereignty issue, I have not dealt with tribal sovereignty before and can only tell you what I've told you before about Congress's ability to have oversight power as far as its legislative power.

Mr. ROSEN. Any suggested solutions?

Primarily I assume we're focused on the July 13th, and I think we're not going to resolve the attorney-client issue. Is there a way of potentially phrasing the question that would get you the information, that wouldn't get to the issue of sovereign immunity or tribal privilege?

Mr. DOLD. I don't know. I guess that's my problem.

Mr. ROSEN. Well, let me figure out if there is a way to ask the question.

Mr. ROSEN. Can we go off the record?

[Discussion off the record.]

EXAMINATION BY MR. DOLD:

Question. With regard to July 13th, 1995, did you become aware on the evening of the 13th that the application had been denied?

Mr. ROSEN. I would advise my client to decline to answer that question on the grounds of either sovereign immunity or tribal privilege as relates to a confidential conversation in her capacity as an agent of the tribe, hypothetically with members of the tribe, that was not intended for disclosure to third parties and third parties were not present. On that basis, I advise her to decline to answer it.

The WITNESS. I so decline.

Mr. DOLD. As to whether she received knowledge? You're asserting that privilege as to whether she received knowledge? I didn't ask her where she received it from.

Mr. ROSEN. That's correct.

Mr. DOLD. Okay. Well, it looks like we're going to have to shut down at this point in time.

Mr. YANG. I still have my questions.

Mr. DOLD. That's why I wanted to do it beforehand.

I will yield at this point in time because I cannot ask further questions, so I will yield to Mr. Yang for any questions at this time.

EXAMINATION BY MR. YANG:

Question. Ms. Jablonski, on behalf of the Minority of the committee, thank you for coming voluntarily today to be deposed. I just have two quick questions for you, which are:

The focus of this committee's investigation is allegedly campaign financial improprieties, other possible violations of law. Do you have any knowledge that the Department of Interior based their decision on anything other than the merits of the application submitted to them?

Answer. No.

Question. That's fair enough. I think that reaches the heart of the matter.

There had been some questions earlier concerning your activities on behalf of the St. Croix Tribe, whether you drafted letters for citizens of Hudson or for State legislators. I just wanted to clear something up for the record.

Just generally speaking, when you're engaged in your lobbying activities, if you draft a letter for a State legislator and they incorporate or adopt the position that you have helped draft that letter, that doesn't necessarily indicate that the State legislator doesn't believe that position just because it came from you, does it?

Answer. No.

Question. And presumably, if they sent the letter out themselves, it would be reflective of their own position?

Answer. Absolutely.

Question. And that would be true for citizens of Hudson, as well?

Answer. Yes.

Question. And is it your understanding that there is substantial local opposition to the Hudson casino?

Answer. There has been opposition, first of all, to the track in 1990; secondly, to the first casino proposal. And now, after about 8 years, there is considerable opposition and, you know, it is by this time fairly well organized, I would guess.

Question. Another point: Did you fly out from Madison, Wisconsin, to be here today?

Answer. Yes.

Question. And presumably you took a day off from work to be here?

Answer. Yes.

Question. Did the Majority at any point in time make any suggestion to you that perhaps maybe an affidavit or an interview might be sufficient, or did they insist on a deposition?

Answer. I thought perhaps you had more interaction here than I. No, I was simply invited to come and I came. I would have preferred an affidavit, as exciting as it is to be in Washington, and I am glad to have met you all.

Question. The reason why I asked that is because, while the Minority doesn't contest the committee's power to look into the Hudson matter, we have been very concerned that the committee exercise its powers in a very responsible way that's sensitive to the witnesses who are going to come before the committee. And several of the depositions that have been taken with regard to this matter have, in the Minority's view, been—I don't—have been not particularly fruitful as far as this committee's investigation has been concerned. And we would urge the Majority, in its future hearings on investigations, to perhaps be more sensitive to the needs of the witnesses who come before the committee, particularly those with very little knowledge concerning the committee's investigation.

With that, I don't have any further questions. And I thank you for coming.

Answer. Thank you.

EXAMINATION BY MR. DOLD:

Question. Ms. Jablonski, one follow-up. Would you consider yourself not to be very knowledgeable on the Hudson casino application?

Answer. I think I'm knowledgeable on the Wisconsin policy particulars of the application. I don't believe I'm knowledgeable about the interworkings of the Department of the Interior or the law relating to—I mean the administrative law relating to these applications.

Question. Did you find the deposition focused on the interworkings of the Department of Interior?

Answer. No, but there were questions about political contacts with the Department of Interior, and so on and so forth.

Mr. DOLD. Ms. Jablonski, on behalf of the Majority, I want to thank you very much for coming today voluntarily. And I hope you have a very safe flight back to Madison, Wisconsin.

Mr. Rosen, thank you, as well.

The WITNESS. Thanks.

[Whereupon, at 5:20 p.m., the deposition was concluded.]

[The exhibits referred to follow:]

994

03/15/95

REDACTED MATERIAL

Meeting at Interior with Tom Corcoran, Larry Kitto and Tom Collier. Meeting at DNC with Truman Arnold and Chairman Don Fowler.

03/16/95

REDACTED MATERIAL

Discussion with Tom Corcoran regarding meetings at Interior and DNC.

EXHIBIT

AJ - 1

ATTORNEY'S EYES ONLY

0. 0093

27 THURSDAY APRIL 27, 1995

APPOINTMENTS & SCHEDULED EVENTS

2. Call White House

REDACTED MATERIAL

THURSDAY APRIL 27, 1995 27

Wk 17 • Day 117, 248 Left

DIARY AND WORK RECORD

Hrs	NAME OR PROJECT	DESCRIPTION	Time
8	TIME		
	St Croix tribe		
9	Calls to the White House and the D.N.C re the tribes meeting with Chairman Fowler; call to tom Cranor re same; call to Larry Kitts in Wash A.C.		
10			
11			
12			
1			
2			
3			
4			
5			

REDACTED MATERIAL

OC 000070

ATTORNEY'S EYES ONLY

5 FRIDAY 1995

MENTS & SCHEDULED EVENTS

NRS.	PLACE	SUBJECT

REDACTED MATERIAL

2 Hudson Soz-trash

TO BE DONE TODAY (ACTION LIST)

Loretta Advent
the Pres. Bruce Lindsey
Harold Ickes - Don Fowler
Interior
Indiana - 50 DNC - Larry Kitto
Committee to Reelect

3 Committee to Reelect
Briefing - May 9th
Hilary May 18th $5000
$50 - Committee Expo primarily
no events - $1000
June 19th

4 D.N.C. - Minn Events

EXPENSE & REIMBURSEMENT RECORD:

Item What	Whom Owned	Purpose Who What Invested	To Whom Paid	Reimbursement By Whom	Amount

Wk 18 • Day 125, 240 Left

FRIDAY MAY 5, 1995 5

DIARY AND WORK RECORD

NRS.	NAME OR PROJECT	DESCRIPTION	TIME

REDACTED MATERIAL

OC 000049

997

7 SUNDAY MAY 7, 1995 417-235-0854

APPOINTMENTS & SCHEDULED EVENTS

NAME PLACE SUBJECT

Prepare Fax to Ickes

REDACTED MATERIAL

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

SUNDAY MAY 7, 1995 7

DIARY AND WORK RECORD

NAME OR PROJECT DESCRIPTION TIME

8: St. Croix tribe
Drafting letter to Harold Ickes
[illegible] at White House
setting forth reasons to
appeal creating trust
lands for Casino at
the Hudson Wis Dog
trust; Disc. Tony Kitto
checking on facts set forth
in Ickes letter.

9:

10:

11:

12:

1:

2:

3:

4:

5:

OC 000071

ATTORNEY'S EYES ONLY

9 TUESDAY
MAY 9, 1995

APPOINTMENTS & SCHEDULED EVENTS

HOUR	NAME	PLACE

TO BE DONE TODAY (ACTION LIST)

4 Call David [illegible]
[redacted]
a) Harold [illegible]
b) [illegible] Kelley

EXPENSE & REIMBURSEMENT RECORD:

Date Sheet	Sheet Subject	Purpose/Who Was Involved	To whom Paid	Reimbursed By whom	Amount

Wk 19 • Day 129, 236 Left

TUESDAY
MAY 9, 1995 9

DIARY AND WORK RECORD

HOUR	NAME OR PROJECT	DESCRIPTION
8		
9		
10		
11		
12	St. Croix tribe Dis tom Corcoran; LD to tom Synder	
1		Call to DNA
2		
3		
4		
5		

OC 000024

10 WEDNESDAY— MAY 10, 1995

APPOINTMENTS & SCHEDULED EVENTS

(1) Call Mercer

[redacted]

REDACTED MATERIAL

VEDNESDAY MAY 10, 1995 10

REDACTED MATERIAL

[redacted]

10:

11:

12:

1: St Croix Tribe.
L.D. Discs David Mercer
re follow up with Harold
Ickes; Dis Tom Corcoran
re follow up Congressional
delegations

2:

3:

4:

5:

OC 000074

ATTORNEY'S EYES ONLY

1000

16 TUESDAY MAY 16, 1995

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

TUESDAY MAY 16, 1995 16

DIARY AND WORK RECORD

REDACTED MATERIAL

OC 000077

ATTORNEY'S EYES ONLY

1001

24 WEDNESDAY
MAY 24, 1995
APPOINTMENTS & SCHEDULED EVENTS

TO BE DONE TODAY (ACTION LIST)

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

WEDNESDAY 24
MAY 24, 1995
DIARY AND WORK RECORD

8: St Croix Tribe
trip to the Committee to
Reelect; (terry Mac Auliffe)
Confrence with chairman
of National Finance Committee
getting him to agree to call
Harold Ickes and arrange
appt. for Indians; Dinner
Al Gore, disc with Peter
Knight and David
Strauss re Indian
problem re Hudson
Dog track

REDACTED MATERIAL

OC 000080

ATTORNEY'S EYES ONLY

[redacted]

25 THURSDAY
MAY 25, 1995

APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

TO BE DONE TODAY (ACTION LIST)

EXPENSE & REIMBURSEMENT RECORD:

THURSDAY
MAY 25, 1995 25

DIARY AND WORK RECORD

8

9 St Croix tube
Reporting to Corcoran on
discussions with Peter
Knight, David Strauss at
al Gore Dinner; reporting
on meeting w/ Terry McAuly

10

11

12

REDACTED MATERIAL

1

2

3

4

5

OC 000081

[redacted]

ATTORNEY'S
EYES ONLY

[redacted] [redacted]

6 TUESDAY
JUNE 6, 1995
APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

Call ~~Sarah~~ Mercer re meeting with ~~[illegible]~~ ackers Howard

EXPENSE & REIMBURSEMENT RECORD:

TUESDAY
JUNE 6, 1995
6
DIARY AND WORK RECORD

REDACTED MATERIAL

So crazy tube
L.D. call to Corcoran re Terry Mac Auliffe arranging appt. with Harold ~~[illegible]~~ Ickes ~~[illegible]~~
Dia. re getting City Council at Hudson to take legal action opposing casino

OC 000083

[redacted]

ATTORNEY'S EYES ONLY

1004

14 FRIDAY
JULY 14, 1995
APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

2 P.M Larry Ketto

FRIDAY 14
JULY 14, 1995
DIARY AND WORK RECORD

St Croix Tribe
Meeting with Larry Ketto
in Tribe; Secretary
re need to go to Hudson
Wise and Vint with City
Council members and City
attorney; Dive. re necessity
to follow up with Harold
Ickes, Ickes at the
White House; Fowler at O.N.C
and Terry Mac at the
Committee to Reelect —
~~[illegible]~~ outlining fund
raising ~~strategies~~ strategies

REDACTED MATERIAL

OC 000086

ATTORNEY'S EYES ONLY

1005

[redacted]

19 WEDNESDAY
JULY 19, 1995
APPOINTMENTS & SCHEDULED EVENTS

1. Call Walters
2 Dog Tracks

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

Wk 29 • Day 200, 165 Left

WEDNESDAY 19
JULY 19, 1995
DIARY AND WORK RECORD

REDACTED MATERIAL

St. Croix Tube.
1. D. Discussion with Chairman Fowler re Supt. of Interior Decision to reject an application for a casino at the Hudson Wisc. Dog track; sending faxes to Chairman Fowler; reporting to Corcoran and Kitto. Re Criticism voiced by Opposition 1½ hr

OC 000087

[redacted]

ATTORNEY'S EYES ONLY

1006

[redacted]

20 THURSDAY
JULY 20, 1995
APPOINTMENTS & SCHEDULED EVENTS

TO BE DONE TODAY (ACTION LIST)

REDACTED MATERIAL

EXPENSE & REIMBURSEMENT RECORD:

[redacted]

THURSDAY 20
JULY 20, 1995
DIARY AND WORK RECORD

St. Croix tribe
Briefing Kitto on
my Conversations with
with Chairman Fowler
of the DNC; Dis re
"thank you" letters to White
House and members of
Congress; Dis re
fund raising

REDACTED MATERIAL

OC-000088

[redacted]

ATTORNEY'S
EYES ONLY

17 THURSDAY AUGUST 17, 1995 APPOINTMENTS & SCHEDULED EVENTS

REDACTED MATERIAL

THURSDAY AUGUST 17, 1995 17

DIARY AND WORK RECORD

REDACTED MATERIAL

St Croix tribe
Call from David Mercer
of the D.N.C. re possible
law suit by Wisconsin
tribes that failed to get
the Race track trust lands
from Interior against
Don Fowler and our clients;
Dis w/ Larry Kitto and
Tom Corcoran re. same

OC 000089

ATTORNEY'S EYES ONLY

1008

[redacted]

11 MONDAY
SEPTEMBER 11, 1995
APPOINTMENTS & SCHEDULED EVENTS

NAME SUBJECT

REDACTED MATERIAL

MONDAY 11
Wk 37 • Dev 254, 111 Left SEPTEMBER 11, 1995
DIARY AND WORK RECORD

8
9
10
11
12
1
2
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5

St Croix Tube
Getting Report from Dunn
re Rock Plott and Litigation
Calls to Corcoran, Hitto re
suit to be filed in Fed. Ct.
in Minnesota; Discussions
Walters re Litigation

REDACTED MATERIAL

OC 000092

[redacted]

ATTORNEY'S EYES ONLY

Ann Jablonski • Government Affairs • Public Relations • Research

To: Brady Williamson

Date: May 23, 1995

Re: Hudson fee to trust proposal

Enclosed please find a letter to Ickes, which is all the written material that may be floating around the White House that we know about. The meeting mentioned at the end of the letter has not yet occurred, but we are told by Tom Corcoran, O'Connor and Hannan, that a letter from several of the Minnesota congressmen will be sent to Ickes tomorrow requesting a meeting.

As for the meeting in the Twin Cities where O'Connor is alleged to have huddled with Clinton on Hudson, Corcoran tells us that O'Connor began to launch into the matter and Clinton called Lindsay over to script the story and operationalize a response or resolution. He apparently was the one who decided it was a problem Ickes would/could/should take care of. Another partner in the O'Connor and Hannan firm, Tom Schneider, allegedly an FOB who socializes with Bill and Hillary, has confirmed in a casual conversation with Clinton that Clinton is aware of the Hudson dog track issue.

By the way, representation of the facts is inaccurate in this letter. I guess I would not say Thompson supports this project because he has not publicly made that statement (far from it). Delaware North does not own St. Croix Meadows. It owns the Kaukauna track and holds a second mortgage on Wisconsin Dells Racing. The connector to St. Croix Meadows is Tom Diehl, who will have a 1.99% share in the Four Feathers project (that's the casino at Hudson) and who owns the Dells track. We also know that Obey, Gunderson, Roth and Barrett are opposed to the Hudson-Four Feathers project. Kohl, Klezcka, and Klug have recently affirmed their neutrality.

EXHIBIT
AJ - 2

Manchester Place • 2 East Mifflin Street • Suite 701 • Madison, Wisconsin 53703
Phone[redacted] FAX[redacted]

O'CONNOR & HANNAN, L.L.P.
ATTORNEYS AT LAW

SUITE 800
1919 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006-3483
(202) 887-1400
FAX (202) 466-2198

May 8, 1995

Mr. Harold Ickes
Deputy Chief of Staff for Policy
and Political Affairs
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Proposal pending at Interior to create trust lands at the Hudson Dog Track in Hudson, Wisconsin for an Indian Gaming Casino

Dear Mr. Ickes:

I appreciate your calling me concerning the above subject on Tuesday, April 25, and again on Wednesday, April 26. I assume these calls were prompted by my discussions with the President and Bruce Lindsey on April 24 when they were in Minneapolis. I returned your calls and talked to your assistant, Mr. Suttan, who advised that you were not in the office when I called. Since I had an appointment with Don Fowler on Friday, April 28, to discuss this matter, I decided not to try to contact you until after the Fowler meeting with the chairman of five of the many Minnesota and Wisconsin tribes that oppose the creation of the trust lands for gambling purposes and the bailout of the current dog track owners.

I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. Since the Fowler memo was sent to you, the City Council of Hudson, Wisconsin, passed a resolution opposing the construction and operation of a casino at the dog track.

The Secretary of Interior has the discretion to create such trust lands if he finds:

1. it creates an economic benefit for the applicants, and
2. it does not create economic hardship for others.

The Minnesota and Wisconsin tribes who met with Interior officials explained the economic losses they would suffer if another casino were established in this area, due to the close

proximity of their casinos. In addition, Coopers & Lybrand as well as Peat Marwick recently submitted to Interior a detailed analysis outlining the adverse economic repercussions that would result from this happening.

I am concerned that those at Interior who are involved are leaning toward creating trust lands. We requested a copy of the Arthur Anderson report which the petitioners commissioned which found no adverse financial impact. The copy submitted to us "blocked out" all of the vital information relating to the size of the operation, how many machines, tables, etc., which we need to know, as well as the statistics and reasoning used in determining that the surrounding casinos would not suffer a serious economic impact. We need this data in order to put our best case forward to Interior. We have no objection to Interior's submitting the Coopers & Lybrand or the Peat Marwick reports to the petitioners.

I would also like to relate the politics involved in this situation:

1. Governor Thompson of Wisconsin supports this project.

2. Senator Al D'Amato supports this project because it bails out Delaware North, the company that owns this defunct dog track and also operates another dog track in Wisconsin. Delaware North is located in Buffalo, New York.

3. The chairman of the Indian tribe in the forefront of this project is active in Republican party politics; this year he was an unsuccessful Republican candidate for the Wisconsin State Senate.

4. All of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee.

5. The entire Minnesota (Democrats and Republicans) Congressional delegation oppose this project. The Wisconsin Democratic Congressional delegation (including Congressman Gunderson in whose district the dog track is located) oppose the project.

I certainly will appreciate it if you will meet with me and two representatives of the tribes as soon as you can work it into your schedule, since a decision by Interior is imminent. We are available on a 24-hour notice.

Yours very truly,

Patrick J. O'Connor

PJO:shy
Doc:26213

blind copies:

1. Chairman Don Fowler - David Mercer
2. Larry Kitto
3. Persons attending Friday meeting with Fowler

LA FOLLETTE & SINYKIN
One East Main Street
Post Office Box 2719
Madison, Wisconsin 53701-2719
Telephone: [redacted]
Fax: [redacted]

TELEFAX TRANSMITTAL COVER PAGE

DATE: May 25, 1995 *TIME:* 9:40 A.M.

TO: Linda Moore
The White House
[redacted]

FROM: Brady Williamson

NUMBER OF PAGES TRANSMITTED (INCLUDING THIS COVER SHEET): 4

MESSAGE:

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REDACTED MATERIAL

IV. HUDSON DOG TRACK UPDATE

At last week's NIGA conference in Green Bay, WI, the following Tribal Officials met jointly to plan a strategy to defeat the Hudson Dog Track proposal.

Minnesota Tribes attending	Wisconsin Tribes Attending
Shakopee	St. Croix
Prairie Island	Oneida
Mille Lacs Lake	Ho-chunk

We are arranging meetings for Tribal Officials to meet with the Chairman of Democratic National Committee, and representatives from the White House on Thursday, April 28th. Please note: We will forward a schedule as soon as it is available.

REDACTED MATERIAL

EXHIBIT

A... 3

REDACTED MATERIAL

III. HUDSON DOG TRACK UPDATE

On Friday April 18, a delegation of tribes from Minnesota and Wisconsin met with DON FOWLER, CHAIRMAN OF THE DEMOCRATIC NATIONAL COMMITTEE (DNC). The purpose of the meeting was to request the DNC and the Committee to re-elect the President, to help communicate with the White House and the President about why the Department of the Interior should not approve the fee-to-trust land transfer for the Hudson Dog Track. The message was quite simple: all of the people against this project, both Indian and non-Indian are Democrats who have a substantially large block of votes and who contribute heavily to the Democratic Party. In contrast, all of

To: Scott Dacey
From: Carl Artman
Date: May 1, 1995
Re: Friday meeting at Democrat National Committee regarding the Hudson Bay Track.

A meeting was held with the chairman of the Democrat National Committee, Don Fowler, on April 28, 1995. MIGA and four tribes were represented at the meeting: Oneida, St. Croix, Ho Chunk, and Mille Lacs. Other individuals in attendance were Larry Kitto, Frank Ducheneaux, and Jerry Sikorski. The purpose of the meeting was to discuss the Hudson Dog track fee to trust proposal put forth by three Wisconsin tribes.

It was noted that the three tribes purchasing the track have not released sufficient information to conduct an accurate impact study on the surrounding communities and operations. However, a Peat Marwick study suggests that if this were to occur, it could reduce the income of nearby tribal gaming operations between 30 percent and 60 percent.

It is believed that the approval of the compact rests with Secretary Babbit's chief of staff, Tom Collier. He has indicated that he will approve the compact. Therefore, tribal members at the meeting appealed to Mr. Fowler for help in convincing Secretary Babbit of the deleterious ramifications. The problem was framed as a situation in which tribes with pronounced Republican leanings are about to receive approval of their proposal, which will hurt tribes which have traditionally supported Democrats.

Mr. Fowler stated that he would speak with the President's assistant, Harold Ickes. He would urge Mr. Ickes to urge Secretary Babbit to make a closer examination of impact of the proposed operation.

Post-it® Fax Note 7671	Date 5-2	# of pages ▶ 1
To Jerry Sikorski	From Cindi	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # [redacted]	Fax #	

EXHIBIT
AJ - 4

M P A

MANAGEMENT & PUBLIC AFFAIRS CONSULTANTS
1227 MARION STREET
ST. PAUL, MN 55117

LARRY KITTO
Phone [redacted]
Pager [redacted]
Fax [redacted]

DATE : June 5, 1995
MEMO TO : Tribal Clients
MEMO FROM : Larry Kitto

REASON : HUDSON DOG TRACK ISSUE

Recent communications with the BIA lead us to believe that a decision about the fee-to-trust transfer of the Hudson Dog Track will be before the Secretary of Interior for a decision before the end of June. We are recommending the following strategies:

1. Have the Minnesota Congressional Delegation send a letter to Herold Ickes, President Clinton's Deputy Chief of Staff for Policy and Political Affairs requesting that the White House meet with elected tribal officials who are opposed to the transaction. THE LETTER HAS BEEN DRAFTED AND IS BEING CIRCULATED FOR SIGNATURES.

2. Have each of the Tribes who are opposed send a letter to Secretary Babbitt requesting a meeting before he makes a decision. THE LETTER HAS BEEN DRAFTED AND SENT TO THE TRIBES FOR SIGNATURE

3. Ask Congressman George Miller, democrat from California and the ranking member of the House Natural Resources Committee to take an opposing position and meet with Secretary Babbitt. JERRY SIKORSKI WILL PURSUE THIS.

4. Ask Congressman Don Young, republican from Alaska to take an opposing position and express reasons for such opposition to Secretary Babbitt. TOM CORCORAN AND FRANK DUCHNEAUX WILL PURSUE THIS.

5. Arrange for Marge Anderson, Chairwoman of the Mille Lacs Lake reservation, Debbie Boxleitner, Chairwoman of the Oneida reservation, and Joanne Jones, Chairwoman of the Ho-Chunk reservation to meet with Senator Daniel Inouye, democrat of Hawaii and ranking member of the Senate Committee on Indians. JERRY SIKORSKI AND SCOTT DACY WILL PURSUE THIS.

EXHIBIT
AJ - 5

6. Have Frank Ducheneaux, Tom Corcoran, and Pat O'Donall meet with Senator John McCain, republican from Arizona and Chairman of the Senate Committee on Indians. THIS MEETING IS ALREADY ARRANGED.

7. Increase pressure and communications with the White House through Vice-President Gore's office, the National Democratic Committee and The Committee to re-elect the President. LARRY KITTO AND PAT O'CONNOR WILL PURSUE THIS.

8. Ask Congressmen Sabo, Vento, Oberstar, and Senator Wellstone of Minnesota to have a Meeting with Secretary Babbitt. LARRY KITTO WILL PURSUE THIS.

9. Send a joint letter from the St. Croix, Oneida, and Ho-Chunk tribes to the Wisconsin delegations asking, once again, for support in opposing the transaction. LARRY KITTO AND TOM CORCORAN WILL PURSUE THIS.

10. Get Congressman Obey and Senator Feingold of Wisconsin and Congressman Vento of Minnesota to keep pressure on the Department of Interior and Secretary Babbitt. SCOTT DACY WILL PURSUE THIS.

11. Have Congressman Martin Sabo of Minnesota keep the pressure on the White House through Chief of Staff Leon Panetta. LARRY KITTO AND JERRY SIKORSKI WILL PURSUE THIS.

12. Get a story in the Washington Post about Delaware North and their relationship with the tracks in Wisconsin. TOM CORCORAN, LARRY KITTO, SCOTT DACY, AND JERRY SIKORSKI WILL PURSUE THIS.

13. Publicly expose the conflict of interest that Ada Deer, Assistant Secretary of the BIA and gaiashkibos, President of NCAI have in relation to their ability to use their positions to work the process and influence the decision.

MEMO TO : TRIBAL CLIENTS
MEMO FROM : LARRY KITTO & TOM CORCORAN
DATE : 12 NOVEMBER 1995
REASON : HUDSON DOG TRACK UPDATE

1. Federal officials have until the end of November 1995 to respond to the lawsuit filed by the Lac Courte Oreilles, Red Cliff and Sokaogon bands of Chippewa. It appears that the options they are considering include:

- Vigorous defense of the Secretary of Interior's right to make such decisions
- Giving the issue limited attention and put up a luke-warm defense
- Suggest that the issue be sent back to the Interior Department for review

2. We have been informed that the U.S. Attorney's office in Madison, WI, is considering a request that they be allowed to argue the case there, rather than it being argued by attorneys from the Justice Department in Washington, D.C. She may also suggest that the Department of Interior review the issue again.

3. The case is further complicated by the fact that the three Tribes filing the lawsuit have hired large, well-connected law firms to represent them. One of these firms has contributed heavily to the U.S. Attorney in Madison when she ran for public office.

4. The Indian Rights office within the Justice Department, indicated that

- This is not an issue that the Secretary of Interior will agree to reviews

However, there may be some reluctance in the Indian Rights Office to become involved because this is a case of one group of Tribes vs. another group of Tribes.

5. For the Minnesota and Wisconsin Tribes who were against turning the Hudson Dog Track into a casino, it is in their best interest to see that:

- The case is defended vigorously by lawyers from the Department of Justice in Washington, D.C. who are experienced and learned in Indian law.
- That this case not be sent back to the Department of Interior for review and reconsideration.

6. As we know, this issue became very political and neither the White House or those in Congress who supported us, will want this issue to come up again during the 1996 election year.

7. We have begun to make contacts with the Congress, the Administration and the White House to alert them about our concerns. Additionally, we suggest that Tribal attorneys, on behalf of their clients, contact the Department of Justice and the Department of Interior to:

- Find out the status of the situation
- Ask that the case be handled by Department of Justice lawyers
- Convey that you do not want the case returned to the Secretary of the Interior for a second review.

8. Finally, if and when this case goes to court, Tribes need to decide how they will support the Government and the defense of the prior ruling.

SHEILA E. HARSDORF
State Representative
Wisconsin's 30th Assembly District

March 28, 1995

Mr. Bruce Babbitt
Secretary of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Secretary Babbitt,

We are writing to express our strong opposition to the expansion of off-reservation casino-style gambling in the State of Wisconsin.

Since its inception in 1988, the Indian Gaming Regulatory Act (IGRA) has fostered a nation-wide phenomenon resulting in the expansion of Class III gaming in roughly half the states in America. While this expansion appears to have improved the economic condition of the various Wisconsin tribes, it has, unfortunately, created an atmosphere of uncertainty and distrust among the tribes, state and local governments.

When lands are converted to tribal trust lands, they are removed from the local property tax rolls. This has caused much concern in Wisconsin because although tribes make agreements with local governments to make payments in lieu of taxes, there are no guarantees that municipalities will receive the payments or that the payments are large enough to offset the lost tax revenues. Erosion of the tax base in our state is a very contentious issue.

Expansion of gambling is contrary to public will in Wisconsin. In the spring elections of 1993, Wisconsin voters overwhelmingly supported a state-wide referendum to limit the expansion of gambling and define "lottery" in our constitution. This advisory referendum showed strong support for limiting gambling to non-profit bingo parlors and raffles, dog tracks, state lottery games and existing tribal casinos. The message to halt the expansion of gambling in Wisconsin could not have been made more clear.

The expansion of off-reservation gambling may, consequentially, conflict with the intent of the IGRA to foster economic development and self-sufficiency within the tribal nations. This concern is not new. Much has been written about the effect of expanding gambling operations near urban areas. If operations are developed near population centers, people will be unwilling to travel long distances to casinos and bingo halls located in less-populous regions. This type of consumer migration could greatly damage the economic viability of some tribes.

MEMBER: JOINT COMMOTTEE ON FINANCE
15 North, State Capitol, P.O. Box 8952, Madison, Wisconsin 53708-8952 [redacted]
N6627 County Road E, River Falls, Wisconsin 54022[redacted]
Recycled Paper and Soy Base Ink

EXHIBIT
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The principal goals of the IGRA are to promote tribal economic development, self-sufficiency and strong tribal governments. Although the provisions of the Act appear to have helped the tribes accomplish these goals, there are many questions left unanswered with regard to the long-term economic and social effects of gambling expansion in the U.S. On any given day, the media reports on disputes involving employee complaints, unemployment and worker's compensation. Many municipalities feel that the expansions have created tense racial atmospheres and that crime rates have increased. It is also unclear whether all tribes have benefitted from the IGRA. Until work can be done to more fully understand the implications of these "gray" areas, it would seem premature to allow any further expansion of gambling in Wisconsin.

Secretary Babbitt, thank you for your time and consideration. We look forward to working with you and the various tribal nations to foster strong, mutually agreeable relationships. Most people agree that gambling has grown faster than anticipated; let us ensure that problems associated with this growth do not also continue to flourish.

Sincerely,

Rep. Sheila Harsdorf

Rep. John Ainsworth

Rep. Sheryl Albers

Rep. Al Baldus

Rep. David Brandemuehl

Senator Carol Buettner

Rep. Marc Duff

Senator Gary Drzewiecki

Rep. Robert Goetsch

Rep. Glenn Grothman

Continued next page

March 28, 1995
Page three of three

Rep. Joe Handrick

Rep. Bonnie Ladwig

Rep. Frank Lasee

Rep. Mary Lazich

Rep. Steve Nass

Rep. Luther Olsen

Rep. Al Ott

Rep. Cliff Otte

Rep. Tom Ourada

Rep. Carol Owens

Senator Mary Panzer

Rep. Marty Reynolds

Rep. Lolita Schneiders

Rep. Rick Skindrud

Rep. Frank Urban

Senator Tim Weeden

Rep. Robert Ziegelbauer

Rep. Robert Zukowski

Rep. Tim Hoven

An Open Letter To:

U.S. SECRETARY OF THE INTERIOR BRUCE BABBITT
WISCONSIN GOVERNOR TOMMY G. THOMPSON
HUDSON MAYOR JACK BREAULT

IT'S TIME TO FOLD THE HAND ON THE HUDSON CASINO PLAN.

Over 3100 Hudson area residents have signed a petition opposing establishment of a gambling casino at the Hudson Dog Track. The undersigned retailers, manufacturers and business people add their voices to the citizens for the following reasons:

A CASINO WOULD BE DETRIMENTAL TO THE COMMUNITY

- A casino would adversely affect the quality of life in Hudson. Statistics support the belief that casinos significantly increase the frequency of crime and social problems, and contribute negatively to the healthy development of children within the affected communities.
- A casino would not positively impact most existing businesses within the community. Dollars spent gambling are dollars taken from other businesses. Job growth in gambling replaces job growth outside gambling. Gambling is, at best, a zero sum game.
- Due to the compulsive and addictive behaviors casinos encourage, their presence within Hudson could magnify employee fidelity problems. By adversely affecting the quality of life these businesses which depend upon recruiting highly skilled professional employees from a wide market are placed at a disadvantage. Many businesses choose not to locate or expand in communities where casino gambling is present.
- Should a casino in Hudson become a reality, Hudson's character would be changed forever . . . Hudson would become known as a gambling mecca. Is this the home we want passed on to our children?

A CASINO WOULD NOT PAY ITS WAY

- A casino would bring with it an estimated million-plus dollars in additional expense to government bodies from crime prevention and other problems. The monies promised to government from the casino would only go to paying for these additional expenses. Any other business would be a better long-term deal for taxpayers. Commercial properties in the area bring in an average of $10,400 in taxes per acre per year. The dog track brings in $3,505 per acre per year.
- The 126-acre dog track would be prime industrial or commercial property. If the dog track closes, it would be fully developed, with uses beneficial to the community and ever increasing tax dollars based on value, not added expense.
- Should the casino become a reality here, Hudson would forever lose control of the St. Croix Meadows site. Should competition or other unforseen problems impact the ability to make the casino a financial success, or the ability to pay the negotiated service fees to local governments, there could be no recourse. Local governments would have little control over alternative uses of the site, and no power to place liens on the property to secure the payment of fees. This is certainly not prudent given the nonexistent benefits the city would gain from this sale.

APPROVAL OF THE HUDSON CASINO WOULD OPEN THE FLOODGATES

- If a casino were approved at the Hudson Dog Track it would be impossible to deny such approval to the other dog tracks. This in turn would lead to calls for expansion of gambling to restaurants, hotels and taverns across the state.
- The people of Wisconsin (led by the voters of the Hudson area) voted clearly and unequivocally against more gambling in the 1993 statewide referenda.

We the undersigned, for all the reasons listed above, do believe that approval and establishment of a Casino would not be in the best short- or long-term interest of the citizens of Hudson or the State of Wisconsin. We ask you to listen and respond to us, people and companies with proven records of community commitment, involvement, and investment. The millions of dollars, hundreds of jobs, and decades of effort spent to better our community, as well as the signatures of over 3100 area residents and a majority of voters in the 1993 referenda, must be recognized and supported by our elected officials. Please do not put our community at risk.

FOLD THE HAND ON THE HUDSON CASINO PLAN.

MENARD INC.
FLEET FARM
Erickson's Diversified Corporation
NORLAKE
Phillips
ERICKSON OIL PRODUCTS INC.
MARINE ASSOCIATES
HARDING'S at HUDSON
J.K. LARSON ELECTRIC
PLAY IT AGAIN SPORTS
COMMUNICATION

EXHIBIT
AJ - 8

To: All Interested Parties
From: John McCarthy, M.I.G.A. Consultant
Date: Wed, Dec 28, 1994
RE: Wisconsin Dog Track Issue

CONFIDENTIAL

Enclosed please find documentation of our response to the request by the three Wisconsin Indian Bands to place off-reservation lands in trust for the purpose of gaming. I have developed a chronology of events that will provide a brief synopsis for your convenience.

I have talked with staff members from the offices of Congressman Oberstar, Congressman Minge, and Senator Wellstone, about assisting us in our effort to meet with the Secretary of the Interior on the dog track issue. It is our intention to try to schedule this meeting in Washington D.C. on either Tuesday afternoon, Jan. 17, or anytime on Jan. 18, as we will be in Washington on those dates.

Our goal is to secure a meeting with Secretary Babbit or his designee (probably John Duffy) to discuss this issue. We need to determine how best to request this meeting, through Senator Wellstone, Congressman Minge, Congressman Oberstar, or by delegation request. We also need to determine where the meeting will be held.

SPECIFIC STRATEGY

At this point it appears that the Assistant Secretary's office and the Minneapolis Area Office have succeeded in securing an affirmative recommendation from the B.I.A. for the three tribes requesting the fee to trust transfer. In order for the Secretary to overrule the recommendations of the Bureau, we need to point out the following:

1) We feel that the consultation was flawed and that we were not given a fair opportunity to present our case.

2) We challenge the validity of the Finding Of No Significant Impact (FONSI) as it relates to the socio-economic impact that this action will have on the neighboring tribes. (St. Croix Chippewa, Prairie Island, Shakopee, Mille Lacs, Fond Du Lac, Lower Sioux)

3) We feel that the whole issue of market share has been glossed over and has been unfairly slanted by the B.I.A. (It appears that they took most of the facts that they used to make the finding from the Bischof & Vasseur firm hired by the Lac Courte Oreilles tribe.

4) We suggest that the National Environmental Protection Act (NEPA) format is not an adequate evaluation tool to properly deal with the far-reaching implications of the socio-economic impacts of gaming on neighboring tribes, or in this case, border state issues. We need to show that while the B.I.A. tried to do its job by considering the positive social enhancements that would be experienced by the three Wisconsin tribes, via jobs, reduction in dependency on social services, etc., it failed to take into account the political impact this action would have on the Minnesota tribes.

Rt. 2, Box 95 Cass Lake, MN 56633
Phone 218-335-7921 FAX 218-335-7920

CONFIDENTIAL

This failure to consider the political impact gives us cause to challenge the use of NEPA. guidelines to determine true impact. The tribes in Minnesota have a solid working-relationship with the State Government, partly because we have not tried to build casinos in off-reservation sites. The pressure has always been on the State to allow one or two gambling operations in either downtown Minneapolis or St. Paul.

The Tribes have resisted the move even when it meant a potential loss of revenue to them. Now we have a situation that would allow a major gambling facility located less than twenty minutes from the Twin Cities, just off an interstate highway. If this facility is approved we will most assuredly have the local businessmen crying for the legislature to give them a "level playing field." They will cite the huge loss in revenue to Wisconsin and will now have the ammunition they need to expand gaming in Minnesota.

Finally, we have to emphasize that a meeting is needed to fairly address this issue. This meeting will help us to overcome the lack of understanding shown by the B.I.A.and better examine the inadequacy of NEPA in evaluating fee to trust decisions.

This lack of understanding on the part of the Bureau is most clearly evidenced by statements made by Superintendent Jaeger in his Sept. 14, 1994, letter to Stanley Crooks, "It is not the intent of the NEPA process to limit competition for business profits." A similar lack of understanding is found in the 'Response to Comments' section of the same correspondence, in which a commenter is listed as stating, "This action gives movement and impetus to the drive for more non-Indian gaming." and the Superintendent's response was "The movement for more non-Indian gaming is beyond the scope of this action and is more appropriately addressed in the IGRA process." The Superintendent seems to think that the sole concern of the Minnesota tribes is a profit-driven motive, when in fact our concern has much deeper roots in current political impacts and future impact on the Minnesota Indian Gaming Venue.

5) We might want to identify the potential for a conflict of interest on the part of the B.I.A. This should be discussed further as it is a drastic step that should not be considered lightly.

POLITICAL PERSPECTIVE

We have a few key political issues to keep in mind and to point out to the Secretary:

A) One of the key players in this issue is Chairman Gaiashkibos from Lac Courte Oreilles. Without in any way degrading him we do need to point out to the Secretary that he in fact is a Republican, that he worked for Republicans in the last election, and that he will no doubt work hard against Bill Clinton in the next two years. We also need to point out to the Secretary that it would not be in his best interest to in any way help the Republicans erode any additional Indian votes or Indian political contributions.

B) The Governor of Wisconsin, Tommy Thompson, is also a Republican. While he has publicly stated his opposition to this proposal we are still hearing rumors that he may consider it. He has ties to the dog racing industry from past years. It might be an opportunity for the Secretary to use the public denial of the Governor to concur and also turn it down, using the Governor's decision as part of his basis for denial.

C) Minnesota Tribes have been very active politically and are strong Democrats. We contributed heavily in the november elections and played a key role with our support for President Clinton in 1992. Every tribe in Minnesota had excellent voter drives this past November.

CONFIDENTIAL

OTHER ISSUES

1) Remoteness as a Criteria

We also need to very clearly point out to the Secretary that the primary basis for the petition for fee to trust is that all three of the tribes petitioning are located in rural settings which are not conducive to drawing large crowds for gaming purposes. The rational of the B.I.A. and of these tribes is very directly tied to this fact. If the Secretary makes a determination based on this fact, most of Indian Country would then qualify under the same rationale. Unfortunately, when reservations were created the people laying them out intentionally put Indians where most folks did not want to go. That is a fact of life, and while it's not fair it is still a fact. We only have to look at Leech Lake, Red Lake, Grand Portage, Boise Forte, and Lower Sioux, to see that issue very clearly. If we want to start using remoteness as a criteria for approval of fee to trust requests, our guess is that the Secretary's office will be swamped with requests.

2) Precedent - Future Race Track Bailouts

The last concern we have also relates to a possible precedent that this action could establish. What we see here is another case of an ill-conceived race track that has gone under, not as a result of Indian Gaming, but because of poor planning, poor management, unfavorable economic conditions, and a variety of other reasons.. The IGRA is what is being used to bail them out. We should point out to the Secretary that there are a lot of tracks throughout the country that are in trouble. Will this action become the solution for every troubled race track?

(RECEIVED 02/17 14:01 1997 AT 6082529243 PAGE 4 (PRINTED PAGE 4))
02/17/97 13:46 [redacted] PELLINO ROSEN 004/006

(1) Letters from N.W. legislators opposing Hudson to: Gov., Babbitt, Gunderson, Fungold, Kohl, Obey [Press release]

(2) Tm: Pall - Chamberlain → which p 4/10

(3) Editorial Bd packets/visits → tie MIGA

(4) MIGA → meeting MIGA, Ho-Chunk | MIGA integ in press release St Paul on April 17, 18th - HC, SC go - then go to Hudson - have a press conference.

(5) Clinton strategy - Dixon

(6) Working on Congress + Senators to intercede w/ Babbitt.

(7) Letter from Joanne - Lewis to Babbitt
Letter from Joanne - Lewis to congos

EXHIBIT
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[RECEIVED 02/17 14:01 1997 A[redacted] PAGE 3 (PRINTED PAGE 3)]
02/17/97 13:48 [redacted] PELLINO ROSEN 003/008

Letter from Lewis & Joanne Sepracan to Babbitt
Letter to all Congos.

in pension Tarsitification

— Of course, this will adversely affect our facilities, and that is of concern to the tribal government, our members and our employees at our tribal enterprise

not "locals" making decision but the East Wing →

— But, what is far more disturbing, is the precedent being set here

Christine
Morris → Gunderson
Bill Dixon →
gay friend Stepanopolous

Arlyn
Ashley

FAX → Debby Doxtator
[redacted]

A

[RECEIVED 02/17 14:02 1997 AT [redacted] PAGE 5 (PRINTED PAGE 5)]
02/17/97 13:46 PELLINO ROSEN 005/006

Lewis: Mentions how Gah + Dave Anderson sold out other tribes in compacting process on 7 yr issue

Joanne: Aldon Op. Cruised them

Lewis asked if BIA would hold a Public Hearing in Hudson

Letter to Ang. delegation + urge their intervention

Why only 2 tribes — one's most effective

NIGA week of 17th — IGRA expansion

NCAI — Letters of support from local legislators — Gov — Babbitt — Gunderson

Editorial bd visits

Poll to show voter disapproval next week

April 28 — MIGA mtg. — Jay

Clinton strategy — Bill Dixon

Working Congressman/Senators letter to Babbitt →

John Sunchild connection to Loretta Avent — Press release based St Croix — H Church to Babbitt — Oneida join in

JT letter to elected officials

St. Croix/Cuny/Cuny something w/ tribal officials ?? Atty.

[RECEIVED 02/17 14:00 1997 AT [redacted] PAGE 2 (PRINTED PAGE 2)]
02/17/97 13:45 [redacted] PELLINO ROSEN 002/006

April 4 mtg St. Croix - Ho Chunk. [illegible] 12 [illegible]
Lewis. April 30 last day for official comment @ BIA/Int.

Howard: Cooper - Lyb Hand's - no need for EIS - referenced to Arthur Anderson study — AA - Dr. James Murray also did study:

Still in Geo Skibine's [illegible] asst'd by Tom Bartmann

① Market is not saturated - can accept

② No impact on local tribes

So, Cooper did study + found could impact up to 80%.

If Hudson goes, Minnesota tribes will want to expand as well as Wisconsin tribes.

Domino Effect - MNW / LaCrosse.

Oneida Babbitt meeting

Lewis: Scope of gaming amendment in the compact — what can be done in this area

Howard: Barlow told them he spoke to Tommy on the Potowatomi

Also, talked w/ LCO/RC/ML to partner @ Hudson, but agreement fell through

Joanne: State Ho Church policy on Desk for Non mentions La Crosse salvo. Points out LCO was 1ST to rec' approval of their compact

[RECEIVED 02/17 14:02 1997 AT[redacted] PAGE 6 (PRINTED PAGE 6)]
02/17/97 13:47 [redacted] PELLINO ROSEN 008/006

Fred Hurwich - backgd.

Diehl Transportation - Gaming Commission

[The deposition of Robert (Robin) Jaeger follows:]

EXECUTIVE SESSION

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

DEPOSITION OF: ROBERT (ROBIN) JAEGER

THURSDAY, DECEMBER 11, 1997

The deposition in the above matter was held in Room 2247, Rayburn House Office Building, commencing at 9 a.m.

Appearances:

Staff Present for the Government Reform and Oversight Committee: James C. Wilson, Senior Investigative Counsel; Robert J. Dold, Jr., Investigative Counsel; and Michael J. Yeager, Minority Counsel.

For MR. JAEGER:

TIMOTHY S. ELLIOTT, ESQ.
Deputy Associate Solicitor - General Law
Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
Washington, D.C. 20240

Mr. WILSON. Let's go on the record.

Good morning, Mr. Jaeger.

The WITNESS. Good morning.

Mr. WILSON. On behalf of the members of the Committee on Government Reform and Oversight, thank you very much for appearing here today. This proceeding is known as a deposition. The person transcribing this proceeding is a House reporter.

I will now request that Robin Butler, who is a notary public, place you under oath.

THEREUPON, ROBERT (ROBIN) JAEGER, a witness, was called for examination by Counsel, and after having been first duly sworn, was examined and testified as follows:

Mr. WILSON. For the record, I would like to note those who are present at the beginning of this deposition.

My name is James Wilson. I am the designated Majority counsel. Accompanying me today is Robert Dold. Mr. Michael Yeager is the designated counsel for the Minority. Mr. Jaeger is represented by Mr. Timothy Elliott.

Although this proceeding is being held in a somewhat informal atmosphere, because you have been placed under oath, your testimony here today has the same force and effect as if you were testifying before the committee or in a courtroom. If I ask you about conversations you have had in the past and you are unable to recall the exact words used in that conversation or those conversations, you may state that you are unable to recall the exact words and then you may give me the gist or substance of any such conversations to the best of your recollection. If you recall only part of a conversation or only part of an event, please give me your best recollection of that part of the conversation or that part of the event that you do recall. If I ask you whether you have any information about a particular subject and you have overheard other persons conversing with each other regarding that subject or have seen correspondence or documentation about that subject, please tell me that you do have such information and indicate the source from which you have derived that information.

Majority and Minority committee counsel will ask you questions regarding the subject matter under our investigation. Minority counsel will ask questions after Majority counsel has finished. After Minority counsel has completed questioning you, a new round of questioning may begin.

Members of Congress who wish to ask questions will be afforded an immediate opportunity to ask their questions. When they are finished, committee counsel will resume questioning. I am not aware of anybody's interest in coming today, but occasionally people do come in. As I say, when they do, we suspend and allow them to ask whatever questions they have.

Pursuant to committee's rules, you are allowed to have an attorney present to advise you of your rights. Any objection raised during the course of the deposition shall be stated for the record. If Mr. Jaeger is instructed not to answer a question or refuses to answer a question, Majority and Minority counsel will confer to determine whether the refusal is proper. If Majority and Minority counsel agree that a question is proper, the witness will be asked to answer the question. If an objection is not withdrawn, the Chairman or a member designated by the Chairman may decide whether the objection is proper.

This deposition is considered as taken in executive session of the committee, which means that it may not be made public without the consent of the committee pursuant to clause 2(k)(7) of House Rule XI.

Finally, no later than 5 days after your testimony is transcribed and you have been notified that your transcript is available, you may submit suggested changes to the Chairman. Typically, the transcript is available for your review at the committee offices. That obviously, in your case, will work a hardship and we will work out the best way to get around the hardship. Generally, the transcript of the deposition is available within a couple of days of the deposition being taken. In this case, I will call Mr. Elliott immediately and discuss with him what is most convenient for you. I anticipate what we can do is simply send you a copy; you can forward the copy to Mr. Jaeger.

Mr. ELLIOTT. That is fine.

Mr. WILSON. And confer with him as appropriate.

Committee staff may make any typographical and technical changes requested by you. Substantive changes or modifications to the deposition transcript submitted by you must be accompanied by a letter requesting the changes and a statement of your reason for each change. Such a letter must be signed by you and would be included as an appendices to the transcript of the deposition.

Do you understand everything we have gone over so far yes?

Mr. WILSON. If you don't understand a question, please say so and I will repeat it or rephrase it so that you do understand the question. Do you understand that you should tell me that you don't understand my question, if that is the case?

The WITNESS. Yes, I do.

Mr. WILSON. The reporter will be taking down everything we say and will make a written record of the deposition. Consequently, please give verbal, audible answers in order to assist the House reporter. If you can't hear me, please say so, and I'll repeat the question or have the reporter read the question to you.

Do you understand that?

The WITNESS. Yes, I do.

Mr. WILSON. Your testimony is being taken under oath as if we were in court and if you answer a question it will be assumed that you understood the question and that the answer was intended to be responsive to it.

Do you understand that?

The WITNESS. Yes, I do.

Mr. WILSON. It is my understanding that you are here voluntarily. I thank you for appearing here voluntarily.

Do you have any questions about either the technical aspects of this deposition or the substance before we begin the proceeding?

The WITNESS. No, I do not.

Mr. WILSON. Mr. Elliott?

Mr. ELLIOTT. We have no formal opening statement, but I would only ask, as I have done before in others, that we refrain from delving into the litigation that is ongoing at this time, in view of the fact that we don't want to compromise the government's position in that litigation.

Mr. YEAGER. This deposition relates to the Interior Department's denial of application by three Indian tribes to place off-reservation land into trust for development of a casino in Hudson, Wisconsin. After the Interior Department rejected the request, the applicant tribes alleged that opponents of the casino project, other Indian tribes, improperly influenced the decision through contacts with Democratic Party and administration officials. These allegations are the subject of a well-publicized lawsuit pending in the U.S. District Court for the Western District of Wisconsin.

The Majority is aware that the Senate Governmental Affairs Committee has already investigated this matter. It has already interviewed and deposed dozens of witnesses and taken public testimony from those people central to any allegations of impropriety.

For example, the Senate took public testimony from Secretary of the Interior Bruce Babbitt, former DNC Chairman Donald Fowler, lobbyist Paul Eckstein and former Deputy Chief of Staff Harold Ickes. The Attorney General is looking into this

issue. And I also understand that the House Resources Committee has commenced its own investigation.

I want to take this opportunity to lodge a continuing objection to this deposition and every deposition relating to the Hudson casino matter. It is not that the committee lacks the power to pursue this inquiry; it is, however, an imprudent and oppressive use of that power to investigate and reinvestigate matters that have already seen the light of day.

On behalf of the Minority, I would like to thank Mr. Jaeger for appearing today voluntarily. He wasn't called by the Senate, as far as I understand, to give deposition or hearing testimony. I suspect there was a good reason for that and that he has little to add to the public record.

Mr. WILSON. Thank you

EXAMINATION BY MR. WILSON:

Question. Mr. Jaeger, will you please state and spell your name for the record?

Answer. My name is Robert R. Jaeger, J-A-E-G-E-R.

Question. Did you attend college?

Answer. Yes, I did.

Question. Where did you attend college?

Answer. I received my undergraduate degree at Eastern Montana College in Billings and a graduate degree from the University of South Dakota in Vermillion, South Dakota.

Question. If you would, please provide a brief—and I will emphasize brief in this case—employment history from your graduate school until the present.

Answer. After undergraduate school, I began teaching elementary school on the Turtle Mountain Reservation in Belcourt, North Dakota, for the local school district for about 2 years; and then I joined the Bureau of Indian Affairs teaching school down in the Salt River, Arizona, day school, which is outside of Scottsdale, Arizona. I was there for approximately 2 years, and then I transferred to the education office with the Bureau of Indian Affairs in Aberdeen, South Dakota, as an education specialist. I was there for about 4 years, and transferred from that position to the office—field representative position within the Bureau of Indian Affairs in the Minneapolis area office for the Minnesota Sioux tribes.

Following that, I transferred to the Anadarko area office in Oklahoma as the area tribal government services officer for approximately 2 years. From there, I obtained the position of the agency superintendent, which I hold currently.

Question. How long have you been in your current position?

Answer. It was 10 years this past August.

Question. Have you been located in the same physical location for that entire 10-year period?

Answer. Yes, I have.

Question. Where is your office located?

Answer. The office is located in Ashland, Wisconsin.

Question. Have you discussed the substance of this deposition with anyone other than your attorney?

Answer. No.

Question. Have you been asked to provide documents—and a parenthetical here, for want of a better shorthand term, I will refer to the "Hudson Dog Track matter" as shorthand for the fee-to-trust application and the events surrounding the fee-to-trust application.

Have you been asked to provide any documents regarding the Hudson Dog Track matter to the Department of Justice?

Answer. To the Department of Justice, no.

Question. Has anyone from the Department of Justice spoken with you about the Hudson Dog Track matter?

Answer. No.

Question. Do you have any documents pertaining to the Hudson Dog Track matter in your personal possession?

Answer. Yes, I do, at the agency office.

Question. Do you have any documents in your possession outside of your agency office location?

Answer. No.

Question. Have you been asked by the Department of Interior to provide any documents pursuant the Hudson Dog Track matter?

Answer. Yes.

Question. And have you done so?

Answer. I am in the process of doing that.

Question. Have you sent any documents to the Department of Interior prior to today?

Answer. No. Not that I'm aware of.

Question. When did you receive communication that you are requested to produce documents about the Hudson Dog Track matter?

Answer. Yesterday.

Question. In what format did that communication come?

Answer. In a meeting with two members of the Department Solicitor's office yesterday.

Question. If you could, please give an overview of your professional responsibilities in 1994 and 1995.

Answer. At that time, of course, as the agency Superintendent, my responsibilities are to—under delegated authority, to represent the Secretary and the Area Director in dealing with tribes within the State of Wisconsin, 10 of the 11 tribes which are located within the State of Wisconsin in all matters relating to programs and services provided by the Bureau of Indian Affairs.

Question. You made a distinction there that I didn't understand when you said "10 of the 11 tribes" in Wisconsin.

Answer. The Menominee Tribe in Wisconsin is not under the agency's administrative jurisdiction. They report directly to the area office in Minneapolis, but the remaining 10 tribes, we deal directly with from the agency.

Question. And why is that?

Answer. My understanding is that when Menominee, at one time they were a terminated tribe and in about the mid-70s they were restored to Federal recognition. At that time—I'm not sure of the reason, but at that time it was determined that they would report directly to the area office rather than the agency.

Question. When did you first learn that a fee-to-trust application had been filed by Wisconsin tribes seeking to add additional gaming facilities to the existing greyhound dog track at Hudson, Wisconsin?

Answer. I believe that was probably in the 1992 time frame period, as I can recall.

Question. Were you involved in this application process from the very beginning?

Answer. To the best of my recollection, I believe that the application was initially received at the agency. In that process I recall talking with the Area Director at the time to determine how that individual wanted to handle the application itself, whether it should be—and I recall that the application basically, one of the first things that the Bureau would have to do is make a two-part determination under the Indian Gaming Regulatory Act before the acquisition of the land itself would actually commence.

The question I had at the time was whether or not the agency should actually do the staff work involved with that two-part determination or whether we should just forward it on to the area office, who would do the staff work. I recall that the Area Director at the time wanted to have the package come forward to his office, to have the work done there.

Question. Who was that individual?

Answer. I am trying to recall. We had a change in area directors about that time period, and I can't exactly recall the time frame, but I believe the application might have been received when Mr. Earl Barlow was the Area Director at the time. I believe that's who I may have had the initial discussion with.

Question. Because of my unfamiliarity with the interplay of the offices, could you just provide a brief understanding of where the different offices were that were involved in this application at the beginning?

Answer. Sure. The Minneapolis area office is one of 12 area offices within the Bureau of Indian Affairs across the country. It covers a four-State area of Michigan, Minnesota, Wisconsin and Iowa. There are about 32-some tribes within those four State areas, and there are three agencies located in the Minneapolis area—Minnesota Agency, Michigan Agency, and the Great Lakes Agency. As the Superintendent, I report directly to the Area Director.

Question. Just going back to your description of the interplay at the beginning of the application, who—in terms of the names of individuals, who was involved at the very beginning with this application process?

Answer. It seems to me that a gentleman by the name of Bill Cadotte made initial contacts with me, I guess doing some of the groundwork prior to the actual submission of the application. As I recall, Mr. Cadotte would visit with me either in the office or by phone and just inform me of what the plan of action was and trying find out what the process would be once the application was sent to the Bureau, and just some general information about what the process was and what they were trying to do.

Question. Does Mr. Cadotte work with or is he associated with the applicant tribes?

Answer. At the time he was. I believe he was hired as a consultant by the three tribes to work with the management, the proposed management of the casino site. As far as I was concerned, he was probably—I would consider him our contact as far as us dealing with the tribes on the application.

Question. Just to take it back a step, you mentioned that there were initial communications between the regional office director, I think Mr. Barlow, and yourself and certain suggestions were made. How did that ultimately play out? What was the decision that was made as to how the application would be handled?

Answer. As I recall, the Area Director made the decision that we would forward any and all of the information that we had received up to that point in time to his office and that his office would conclude the two-part determination and prepare the ultimate recommendation that would be sent to Washington.

Question. At what stage of the application process did that occur? I'm just trying to figure out, had a lot been done by that point, or not much?

Answer. It's hard for me to remember without looking back at the records exactly the time frame or how much information. It seems to me that the application was at the area office for some period of time, which meant to me that they were still gathering information and were not prepared yet to make their recommendation.

Question. What I'm trying to determine here, is it fair to say that initially Mr. Cadotte was communicating with you and there was some interplay between yourself and Mr. Cadotte, and then at some point further down the time line, you were asked to provide the information, sort of turn over the file to the Area Director's office. Is that correct?

Answer. That's fair to say, yes.

Question. You indicated that you weren't quite sure how the timing was on that. In a very general sense, was it a matter of months or weeks or perhaps a year?

Answer. From the time it left my office to his?

Question. From the time you first knew about it and were working on it to the time it went to the Area Director's office.

Answer. I really couldn't say as far as a time line with any certainty.

Question. Now, when you were working on the application, who else was involved in terms of government staff?

Answer. While it was at the agency level, it would have been primarily my realty officer and his staff and possibly my tribal operations officer at the time.

Mr. YEAGER. If I might interject at this point, you referred several times to the agency level. You may have explained this and I may not have caught it, but could you just explain what that means? What is the agency short for?

The WITNESS. "The agency" means Great Lakes Agency.

Mr. YEAGER. How does the Great Lakes Agency relate to the area office?

The WITNESS. I guess you would consider us a field office of the area office, the Minneapolis area office in terms of we're actually at the point where we implement the programs and the services that are provided by the Bureau and provide in some cases either direct or contracted services from the agency office to the tribes in Wisconsin.

Mr. YEAGER. Thank you.

EXAMINATION BY MR. WILSON:

Question. When you first began reviewing the application—and, again, I am still a little bit sketchy on this, but is it correct to say that you and your office, you were the person and your office was the office that actually received the initial application?

Answer. That's what I recall, yes.

Question. It was addressed to you?

Answer. Yes.

Question. When you received the application, what did you consider had to be done to move it on to the next phase?

Answer. I think we were concerned that we had enough information so that the area office could at least begin the process of reviewing. This could have involved such things as maybe environmental compliance if there was a—there were regulations in that regard that had to be complied with, what the positions of the parties were. Obviously, that would be impacted by this potential application: Were they in favor of it, were they opposed to it? Other than those kinds of things, I can't recall in any greater detail what we were looking at.

Question. Were there any paper requirements for you to fulfill—for example, was there a requirement that you had to write a report or do anything that would be in print before the application moved to the next phase?

Answer. I'm sure in this case that I probably signed off on a transmittal cover memorandum that would have forwarded the package to the Area Director.

Question. I've got some documents I'm going to show you, so I'm not trying to play fast and loose with who did what and when, but I'm asking these questions mainly because the application is a new procedure for me and it is not something I fully understand.

It is probably best, we will just get into the documents in a little bit.

How would you characterize the role of your office in this application process?

Mr. ELLIOTT. You mean this particular?

Mr. WILSON. This particular application, yes.

The WITNESS. Well, based on what I recall, the conversation is that we could have, if the Area Director had requested us, we could have processed the application and prepared it, and as I said, done the staff work at our level, which would have involved receiving comments and making sure that the necessary paperwork was completed. Having been told that that wasn't necessary, we basically just forwarded the application on and the information that was contained with it to the Area Director.

Question. Given that, how would you characterize the area office's role in this particular application?

Answer. I saw their role as one of preparing—being in a position to make a recommendation to the Washington office here on whether or not they felt the application was, first of all, in the best interests of the tribes that were involved with the application, and secondly, to determine whether there was any detrimental impact on the approval of the application to the surrounding communities or the surrounding tribes.

Question. At that particular phase of the application, did either the Lakeland office or any employees of Interior here in Washington have any part in the process.

Mr. ELLIOTT. There is—I don't know what Lakeland means, Mr. Wilson, but I don't think there is one. I think you're talking about Lakewood.

Mr. WILSON. Lakewood. I apologize.

The WITNESS. I'm not familiar with Lakewood.

EXAMINATION BY MR. WILSON:

Question. Then just focusing on the Department of Interior in Washington, did any employees of the Department of Interior who were located in Washington have any part in the application process while you were involved with it?

Answer. Not to my knowledge. I think that was a process that was intended to be conducted at the area level.

Question. Do you recall whether any employees, Department of Interior employees based in Washington, D.C., ever came out to Wisconsin or to the Minneapolis office to discuss or consult about this particular application?

Answer. No, I don't recall.

Question. I would ask the same question about the Lakewood office, but I think you have probably answered it substantially already.

I would just like to turn for a minute to the part of the application that dealt with consulting with individuals in the City of Hudson in Wisconsin.

Did you and your office participate in seeking the opinion of City of Hudson individuals on the Hudson Dog Track matter?

Answer. I seem to recall receiving written comments from individuals while the application may still have been at the agency. If that was the case, we would have simply forwarded that information on with the package.

Question. Who publicized the need for comments? Who made it clear to people in Hudson that they could provide comments?

Answer. I don't recall if that's something we might have initiated or if that's something that the area office initiated. And it could have been that comments—people were aware of what the process was, and word might have gotten around that comments would be accepted, so comments might have started even before an official announcement came out.

Question. It is my understanding, and I believe—I haven't seen this; I'm not sure whether I have it or not, to be perfectly honest—that there was a February 17, 1994, letter from the Minneapolis area office to the City of Hudson to St. Croix County and to the Hudson school board asking for their opinion on what the impact of the casino might be.

Do you recall having any part in drafting or sending a letter to Hudson or St. Croix?

Mr. ELLIOTT. Do you have that letter?

Mr. WILSON. I do not. If I did, I would——

Mr. ELLIOTT. So you're just representing that there is such?

Mr. WILSON. That is my understanding.

The WITNESS. I don't recall the letter, no.

EXAMINATION BY MR. WILSON:

Question. Do you recall any communication that sought the opinion of St. Croix County on the impact or the potential impact of the casino at Hudson?

Answer. No.

Question. Do you recall any letter or communication seeking the opinion of the Hudson school board on the impact—potential impact of the casino in Hudson?

Answer. No, I don't.

Question. Would it be a normal or usual step to send out a letter to the parties in the most affected locations to solicit their comments?

Answer. I would think so, yes.

Question. I will ask at this point when you review your records, if you could check and see if you have any communications along the lines of the one I just described.

Answer. Okay. Sure.

Question. And if they could be forwarded to us by Mr. Elliott. I am sure that will be part of the request that we will make in the not-too-distant future for records from area and local offices in Wisconsin. It was my assumption that we had made those requests already.

[The information referred to follows:]

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ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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BERNARD SANDERS, VERMONT
INDEPENDENT

December 12, 1997

The Honorable Bruce Babbitt
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

RE: Subpoena for Documents

Dear Secretary Babbitt:

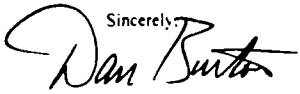
Nearly four months ago, on August 20, 1997, the Committee on Government Reform and Oversight sent you a request for documents. In pertinent part, it stated: "Please provide the Committee with the following: All records relating to the St. Croix Meadows Greyhound Racing Park." Until recently, we believed that the Department of the Interior had taken this request seriously and had negotiated with this Committee in good faith to locate and provide responsive documents.

It has recently come to our attention, however, that the Department of the Interior has not provided this Committee with documents responsive to our earlier request. In light of that fact, I am very concerned about the lack of effort to comply with our earlier request for documents. Consequently, we have been forced to issue a subpoena for the same materials that were covered in our August 20, 1997, document request. We do not want the Department of the Interior to duplicate its earlier efforts. However, this time we do expect -- and will require -- that you and your employees will make a diligent effort to locate all relevant records.

Our discovery that you have not provided all relevant documents underscores our concern that the Department of Justice has an irreconcilable conflict when it comes to acting as defense counsel and investigator in the same case. Our recent discovery that parties involved in this litigation were making a concerted effort to ensure that lawyers from the Department of Justice

handled this case leads us to wonder whether those lawyers have acted diligently in requesting that the Department of the Interior locate and turn over all relevant information.

Sincerely,



Dan Burton
Chairman

cc: The Honorable Janet Reno
The Honorable Henry Waxman

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To The Department of Interior SERVE: Timothy S. Elliott

You are hereby commanded to produce the things identified on the attached schedule before the full Committee on Government Reform and Oversight of the House of Representatives of the United States, of which the Hon. Dan Burton is chairman, by producing such things in Room 2157 of the Rayburn House Office Building, in the city of Washington, on Friday, January 2, 1998, at the hour of 12:00 noon

To Judy McCoy or U.S. Marshals Service

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 12 day of December, 1997.

Dan Burton
Chairman.

Attest:

Robin H. Carle
Clerk.

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SCHEDULE A

Subpoena Duces Tecum
Committee on Government Reform and Oversight
United States House of Representatives

The Department of Interior
Serve: Timothy S. Elliott
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

The Committee hereby subpoenas certain records. Please provide logs which indicate each record's Bates number, author, description, and source file. This subpoena does not require you to produce documents already provided to this Committee. If you have any questions, please contact the Committee's Senior Investigative Counsel James C. Wilson at (202) 225-5074.

Definitions and Instructions

(1) For the purposes of this subpoena, the word "record" or "records" shall include, but shall not be limited to, any and all originals and identical copies of any item whether written, typed, printed, recorded, redacted or unredacted, transcribed, punched, taped, filmed, graphically portrayed, video or audio taped, however produced or reproduced, and includes, but is not limited to, any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all activity reports, agendas, analyses, announcements, appointment books, briefing materials, bulletins, cables, calendars, card files, computer disks, cover sheets or routing cover sheets, computer entries, computer printouts, computer tapes, contracts, external and internal correspondence, diagrams, diaries, documents, drawings, electronic mail (e-mail), facsimiles, journal entries, letters, manuals, memoranda, messages, minutes, notes, notices, opinions, statements or charts of organization, plans, press releases, recordings, reports, Rolodexes, statements of procedure and policy, studies, summaries, talking points, tapes, telephone bills, telephone logs, telephone message slips, records or evidence of incoming and outgoing telephone calls, telegrams, telexes, transcripts, or any other machine readable material of any sort whether prepared by current or former employees, agents,

machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation. "Record" or "records" shall also include all other records, documents, data and information of a like and similar nature not listed above.

(2) For purposes of this subpoena, the terms "refer" or "relate" and "concerning" as to any given subject means anything that constitutes, contains, embodies, identifies, mentions, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

(3) This subpoena calls for the production of records, documents and compilations of data and information that are currently in your possession, care, custody or control, including, but not limited to, all records which you have in your physical possession as well as any records to which you have access, any records which were formerly in your possession, or which you have put in storage or anyone has put in storage on your behalf. Unless a time period is specifically identified, the subpoena includes all documents to the present.

(4) The conjunctions "or" and "and" are to be read interchangeably in the manner that gives this subpoena the broadest reading.

(5) No records, documents, data or information called for by this subpoena shall be destroyed, modified, redacted, removed or otherwise made inaccessible to the Committee.

(6) If you have knowledge that any subpoenaed record, document, data or information has been destroyed, discarded or lost, identify the subpoenaed records, documents data or information and provide an explanation of the destruction, discarding, loss, deposit or disposal.

(7) When invoking a privilege as to any responsive record, document, data or information as a ground for withholding such record, document, data or information, list each record, document, compilation of data or information by date, type, addressee, author (and if different, the preparer and signatory), general subject matter, and indicated or known circulation. Also, indicate the privilege asserted with respect to each record, document, compilation of data or information in sufficient detail to ascertain the validity of the claim of privilege.

(8) This subpoena is continuing in nature. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date shall be provided immediately upon location or discovery subsequent thereto.

(9) Please provide a printed and, where possible, an electronic version of records. Electronic information may be stored on 3 ½ inch diskettes in ASCII format.

(10) For the purposes of this subpoena "St. Croix Meadows Greyhound Racing Park" refers to any and all employees, representatives, officers, contractors, volunteers, interns, agents and/or consultants, whether paid or unpaid, of the St. Croix Meadows Greyhound Racing Park, and any representatives, officers, contractors, volunteers, interns, agents and/or consultants, whether paid or unpaid, working on any proposal involving St. Croix Meadows Greyhound

Racing Park, located at 2200 Carmichael Road, Hudson, Wisconsin, also known as the Hudson Dog Track.

Subpoenaed Items

Please provide the Committee with the following:

1. All records relating to the St. Croix Meadows Greyhound Racing Park.

Productions Received:

1.	12/17/97	One file containing records relating to the St. Croix Meadows Greyhound Park
2.	1/2/98	Six boxes of records containing correspondence within the Department of Interior related to the Hudson Casino application and subsequent litigation
3.	1/13/98	One file containing records relating to ongoing litigation in casino gambling case, travel authorizations for Thomas Collier, additional records from George Skibine, and schedules for Assistant Secretary Ada Deer [Deer's deposition was taken on 1/13/98, the same day the production was received.]
4.	1/16/98	One file containing records relating to the St. Croix Meadows Greyhound Park
5.	1/17/98	One file containing records relating to the St. Croix Meadows Greyhound Park
6.	1/20/98	One file containing records relating to the St. Croix Meadows Greyhound Park
7.	2/2/98	One file containing records relating to the St. Croix Meadows Greyhound Park

Mr. ELLIOTT. I think one of our letters to the Chairman, Mr. Wilson, indicated that you all could have access to the entire administrative record; and I would think those records are all included in that. I don't know as anyone from the staff has come to review that record, but it is available. It is approximately 18 volumes.

Mr. WILSON. I am giving Mr. Jaeger a document which has been marked RJ-1. If you could take just a moment to familiarize yourself with this, please.

I was going to direct your attention to certain sections of the letter. If you would like an opportunity to go through the whole thing now, that would be appropriate.

[Jaeger Deposition Exhibit No. RJ–1 was marked for identification.]

[Note.—All exhibits referred to may be found at the end of the deposition.]

The WITNESS. No, that is fine.

EXAMINATION BY MR. WILSON:

Question. What you have in front of you is a letter dated March 17, 1994. It is a letter to Mr. Jaeger from Thomas R. Redner, Mayor of the City of Hudson. It indicates on the cover, it is a letter with an attached statement or memorandum. It indicates on the cover that the City of Hudson has a strong vision and planning effort for the future and that this proposed casino can apparently be accommodated with minimal overall impact just as any other development of this size.

It is my understanding, and I will characterize what my understanding is, but you can correct me if I am wrong, that this is a response to the BIA regional office request for comments sent out on February 17, 1994.

Do you know whether that is correct or incorrect?

Answer. I would assume that's correct.

Question. I do know—I'm representing that a letter came out on February 17, and you have already said that you are not certain of the date on that.

Answer. Right.

Question. Given that this is a letter to you, do you remember receiving this letter?

Answer. No, I don't. It very well could have been at the time—I believe in March of 1994 was the period of time I was on a detail to the area office and it was about that same time period when I had the personal misfortune in terms of my garage burning down and losing several vehicles in the garage. I knew that following that, I obviously took some time back at my residence in Wisconsin to take care of that matter.

So it is very possible that this letter could have came in and I was out of the office, irrespective of the fact that it was addressed to me.

Question. I wanted to get into some of the content of the letter. You may or may not be familiar with these things and we will determine that as we go along.

On the second page of the document you have in front of you, which is the first page of the attached memorandum, it is headed at the top Proposed Casino Development Impact on the City of Hudson, the second from the bottom section is marked Traffic. It talks about traffic and air quality. It states in the last sentence of that section, the traffic flow to and from the casino and track facility should be dispersed sufficiently to maintain air quality standards well within acceptable limits.

My question relates to the work done by your office on this matter and some of the other matters contained here. Did you have individuals within your office who were reviewing these types of comments to determine whether they were correct or incorrect or reasonable or unreasonable?

Answer. Yes, we did.

Question. Who within your office was responsible for looking at these types of concerns?

Answer. Probably David Farrar. His name is F-A-R-R-A-R. He is my agency realty officer, and was at the time and still is; he would have been the primary person that these documents would have been funneled to after my initial review as the Superintendent.

Question. My questions here will relate more to process, and again I am trying to get the fullest understanding of who did what in respect to this application. was Mr. Farrar the person who actually spoke with people and visited the site and made determinations about the validity or invalidity of these types of comments?

Answer. He certainly would have received and probably most of the comments either verbal or in writing. Of course, all of the ones in writing that came in would have come under my review and then, sent to him. But as I recall, we both took phone calls and reviewed comments when they were received.

Question. Do you know—and we will just stay, for example's sake, on the issue of traffic and air quality—do you know of any other individuals who at any time participated in reviewing this type of information?

Answer. Probably—as far as the environmental impacts, it would have been probably another staff member of mine in natural resources, I think that would have been Chuck McCuddy.

Question. Is Mr. McCuddy a staff member from the Ashland office?

Answer. Yes, he is. He is a natural resource specialist, excuse me.

Question. Is it fair to say, then, that the Ashland office was primarily responsible for reviewing these types of concerns?

Answer. As I am seeing some of the documents now and considering some of the staff members that we had available, I would say that we were involved to some extent in this.

Question. I was actually going to follow up by saying, was the Ashland office exclusively involved in reviewing these types of concerns?

And just to help you out, I know that is not particularly precise, but do you know of any other individuals from outside the Ashland office that, for example, came in and did an analysis of traffic patterns or air quality control relating to traffic patterns?

Answer. I'm sure that it was reviewed at the area office level probably; and I can't put my finger on a name at this time, but I'm sure that environmental people, staff at the area office also reviewed this information.

Mr. ELLIOTT. Could we take a break a minute so I can talk with him?

Mr. WILSON. Absolutely.

Mr. ELLIOTT. Come on outside.

[Discussion off the record.]

Mr. WILSON. If we can go back on the record, having just had a break, I'll be as difficult as humanly possible and ask the reporter to read back the last question so we can know where we left off.

[The reporter read back as requested.]

The WITNESS. Mr. Elliott has reminded me that I probably should clarify the situation here. As I'm reviewing some of these documents, it's impacting my recollection in terms of the level of the agency's involvement, and I am recalling to a certain extent that we were involved with the review of this, and I unintentionally might have implied earlier that we got the package in and we automatically sent it to the area office. I'm recalling now that that is not particularly the case.

But whether we reviewed these kinds of statements or impacts, it's my belief that the same information was reviewed at the area office level for the same kinds of issues and concerns we might have been looking for.

Question. Would you characterize the subsequent review as a duplication, a literal duplication of effort or the subsequent review as an analysis of the work product that you had sent on to the area office?

Answer. Probably more of an analysis of what our findings were and the comments that had been received.

Mr. YEAGER. If I might, to your knowledge did the area office develop additional facts?

The WITNESS. I believe they did. They certainly gathered more information than when we gathered it on—than what we had at the time.

EXAMINATION BY MR. WILSON:

Question. Would it be possible for us to determine what additional information was developed?

Answer. I couldn't without again looking at the records that would be at the agency, that would be available.

Question. No, I understand. That is not something I would ask of you, and it is obviously complex, but my assumption would be that the way to do that would be to compare what you sent to the office and what they ultimately sent to Washington, and the difference would be that which they developed beyond what you had developed.

Do you know whether area office people actually spent time on the site at Hudson, Wisconsin?

Answer. No, I don't know about on-site visits.

Question. At the very bottom of the page that we were looking at, there is a section that discusses lights and it states, "light spillage at the property lines"—actually let me go back up.

It states, "During the review of the greyhound racing facility plans, it was required for the track to develop a lighting system in the parking lot which reduced

the light spillage at the property lines to an amount equivalent to residential streets." And it continues to speak about the level of lighting at the park.

Again, was that something that was reviewed at the level of your office?

Answer. This office, you mean?

Question. Yes.

Answer. I would probably think that's a fair statement, although I don't know since it's based on—it's dated March of 1994. It probably—by the time this information came in, I think it's fair to say that the application would have already left our office and be pending at the area level. Again, I don't know if the agency had ever—the staff had ever seen this.

Question. There is a river within a couple of miles of the current Hudson Dog Track. Do you know whether any of your staff performed any reviews or analyses of the impact that the additional gaming facilities at the dog track would have on the river located near the Hudson Dog Track?

Mr. YEAGER. Counsel, are you referring to the St. Croix scenic riverway?

Mr. WILSON. I believe it's the St. Croix River, yes.

The WITNESS. No, I don't recall if they ever made any on-site visits or analyses of that impact.

EXAMINATION BY MR. WILSON:

Question. Did the regional office issue a draft finding of "no significant impact" in this matter?

Answer. I don't recall if they did.

Mr. ELLIOTT. When you say "regional office," Mr. Wilson, you are referring to the area office, right?

Mr. WILSON. Again, I am lost in the nomenclature here.

Mr. ELLIOTT. I'm sorry.

Mr. WILSON. It is hard to get the offices straight.

EXAMINATION BY MR. WILSON:

Question. But I believe your answer was, you're not aware of whether there was a draft finding of "no significant impact"?

Answer. That's correct. I don't recall if there was.

Question. Ultimately—and I will show you this document in a moment—ultimately there was a finding of no significant impact in the Hudson Dog Track matter.

Did either yourself or your office have any part in the drafting of the finding of no significant impact?

Answer. Without seeing it, I'm not sure.

Question. I have given Mr. Jaeger a document that has been marked RJ–2. It is dated September 14, 1994. The cover letter here is to an individual named Stanley Crooks. It is signed by Mr. Jaeger. If you could, take a moment just to look through this extensive packet of information.

[Jaeger Deposition Exhibit No. RJ–2 was marked for identification.]

Question. This is obviously a lengthy document, and I don't think I'll be asking you any specific information about the contents of the document. But if I ask a question that deems further review, then obviously I'll take the time necessary for that.

My sort of global question with this document is, it's on the letterhead of Ashland, Wisconsin, which I assume is your office?

Answer. Yes.

Question. Did your office prepare this finding of no significant impact?

Answer. It appears we did.

And just for the record, I guess I would note in here that the individual that I mentioned earlier, Chuck McCuddy, probably was not the lead natural resource person, it was Mark Kuester. And the reason I mentioned Chuck at the time was, I wasn't sure when Mark had come on board, on staff, so until I saw this, I concluded that he was obviously on board at the time. So he would have been the main staff member involved with putting the FONSI together.

Question. Once this document was prepared, do you recall what you did with it? I'm trying to determine who it went to from that point on.

Answer. I believe this is a document that probably would have been sent out to individuals or organizations who had sent in comments or asked to be provided copies of our findings, and I would assume that this obviously was part of the package that went forward then with the application.

Question. And by saying it went forward, you're referring to the area office from that point?

Answer. Yes.

Question. Now, on the first page of the document I've given you, it appears to be a cover letter to a Mr. Stanley Crooks signed by you, and it states in the second to the last paragraph, "Based upon these documents, it has been determined that the proposed action will not have significant environmental impacts and the preparation of an environmental impact statement will not be necessary." And it states, "Enclosed is a copy of the Final FONSI for your review."

Do you recall whether it was the position of your office that the preparation of an environmental impact statement would not be necessary for this application?

Answer. Based on this letter, I would say yes.

Question. And in your subsequent reviews of this documents or conversations, did you ever come to the determination that there were any things that you omitted from putting in this report or—well, did you omit anything from this report?

Answer. Not that I recall.

Question. Have you learned anything since submission of this report that would cast doubt on the validity of this FONSI?

Answer. No, I'm not aware of any.

Mr. YEAGER. Counsel, I have questions on this point. I can ask them now or I can wait until you're done with your questions.

Mr. WILSON. Actually, if you'd like to come in in a minute, I just want to ask a couple more questions about the substance, and then I'm finished with this document, and perhaps it would be an appropriate time to do that.

EXAMINATION BY MR. WILSON:

Question. Do you recall whether anybody from either the area office or the—any Department of the Interior or Washington staff ever made any observations about this particular document?

Answer. No, I don't recall that happening.

Question. And I'm not trying to be so mysterious. Just, it is a matter of, did anybody ever come back and say, we have a question about this particular point, let's go back and revisit the subject?

Answer. No, not that I remember.

Mr. WILSON. Mr. Yeager, if you'd like to ask questions now, it is appropriate.

Mr. YEAGER. Thank you, Mr. Wilson.

EXAMINATION BY MR. YEAGER:

Question. Just to follow up on a few questions you've just been asked, are you aware that the Indian Gaming Management staff—and I refer specifically to an environmental protection specialist named Edward Slagle—criticized the finding of no significant impact on grounds that it failed to take into consideration the St. Croix Scenic Riverway and its special designation as a scenic riverway?

Answer. No, I can't recall that.

Question. Do you recall that the Indian Gaming Management staff criticized the finding of no significant impact on grounds that it failed to accurately analyze plans for a reduction in mitigation of environmental impacts?

Answer. No, I don't recall that.

Mr. YEAGER. That's all.

EXAMINATION BY MR. WILSON:

Question. Given Mr. Yeager's representation that there was a criticism of this particular finding of no significant impact, first of all, have you ever heard of Mr. Slagle?

Answer. Mr. Slagle? No, that name is not familiar.

Question. Does it strike you as odd that someone might criticize a particular finding made by people on site and not to your knowledge communicate with those individuals?

Answer. Well, I don't know if he communicated with them or not.

Question. Okay.

Mr. WILSON. Off the record for just a second, please.

[Discussion off the record.]

Mr. WILSON. I have provided Mr. Jaeger with another lengthy document, which I've marked RJ–3.

[Jaeger Deposition Exhibit No. RJ–3 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. I do have some specific questions about some very specific things in this document. But if you'd like to take just a moment to familiarize yourself, please do.

Answer. Okay.

[Pause in proceedings.]

Did you want me to go through it?

Question. I'm just giving you a level of comfort to look at this. I do have some specific questions about some specific passages, and I'll direct you to them. I believe they stand alone and don't require you to go through the whole thing, but I'll rely on your counsel to make that determination.

Have you seen this letter before?

Answer. I believe I have.

Question. My understanding is—and I know that the copy of the document we received is very poor, but it is November 15, 1994. It is a memorandum to Assistant Secretary of Indian Affairs from the Office of the Area Director.

First, could you characterize what this document is?

Answer. This is a memorandum which has been signed off by the Area Director making the recommendation that, based on the analysis and the information that had been provided to the Bureau of Indian Affairs, that it was the Area Director's opinion that the secretary accept the proposed trust property to be used as a gaming facility for the three tribes involved.

Question. And just for the clarity of the record, are you able to tell us who the individuals are identified by title here? It is from the Office of the Area Director. Who was the Area Director at that time?

Answer. Denise Homer.

Question. And it is sent to Assistant Secretary of Indian Affairs. Who was that individual?

Answer. November of 1994. I guess I'm drawing a blank right now on who that might have been by name.

Question. That's fine. If it comes to you, that's fine. If not, we can easily pass on that.

On the second page of the letter at the very bottom there is a representation, and it reads as follows: "These tribes continue to have high rates of unemployment and poverty in spite of having developed gaming facilities on their reservations."

In 1995, did you agree with that statement?

Answer. In 1994 you mean?

Question. 1994. I apologize.

Answer. Yes, I did. And I do.

Question. And you believe that's currently the case?

Answer. Yes.

Question. On page 4 there's a quotation, and it refers to the two-part test under 25 U.S.C. Section 2719(b)(1)(A) of the Indian Gaming Regulatory Act. It refers to the best interest of the tribe and the detriment of the surrounding community as being the standard for whether this type of application should be approved or disapproved.

In the case of this application, given the two alternatives, either the Hudson Dog Track arrangement as it was proposed at the time, as opposed to there being no Hudson Dog Track arrangement, did you at the time think it was in the best interest of the tribes to be allowed to enter into the Hudson Dog Track arrangement?

Answer. Yes.

Question. I wish my questions could be as brief and concise as your answers sometimes.

Just focusing on the best-interest prong of the relevant test in this matter, did you ever have any discussions about the best interests of the tribes in this specific case with anybody from the Department of the Interior in Washington?

Answer. I don't believe I did. I don't recall having had that conversation.

Question. I mean, just to recap so you understand my question fully, did anybody ever call you up and say, we're concerned about whether this is or is not in best interest of the tribes making this application? What do you think?

Answer. From Washington?

Question. From Washington.

Answer. If they did, I don't recall that happening.

Question. Do you recall anybody having any or do you know of anyone from Washington having any discussions along the lines of the best interest of the tribes with anybody in your staff from Washington?

Answer. Again, if they did, I don't recall.

Question. Turning to the detriment to the surrounding community prong of this two-part test, were you ever consulted by anybody from the Department of the Interior in Washington about the detriment to the surrounding community prong of this test?

Answer. Not that I remember.

Question. Do you know whether anybody else in your office was ever consulted about the detriment to the community prong of this test?

Answer. Not that I remember.

Question. Do you recall whether you had any discussions about the best interest prong of this test with anyone from the area office?

Answer. I recall having that kind of conversation with Denise Homer.

Question. And do you recall the circumstances of that conversation?

Answer. Well, it seems to me that what I recall is that it was probably—we probably had several discussions throughout the time period here when this was pending either at the agency or area. But the one I seem to recall is when, prior to her sending in this letter that you've given me here, and basically it was to let me know that she was in agreement and this is what the content of the letter would say and this is what her recommendation would be.

Mr. WILSON. I've now provided Mr. Jaeger with a document that's been marked Exhibit RJ–4.

[Jaeger Deposition Exhibit No. RJ–4 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. Again, you can take just a moment to have a look through that.

[Pause in proceedings.]

Have you seen this letter before?

Answer. I probably have. It is cc'd to the superintendent at Great Lakes. So I probably did.

Question. The date on this letter is April 20, 1995. And in the second paragraph it refers to the previous document we reviewed. It states in this paragraph, "We transmitted our Section 20 Recommended Findings of Fact and Conclusions for this project to you on November 15, 1994. Since that time, the Tribes have specifically requested that the Bureau of Indiana Affairs begin the process of placing the land into trust status."

Between the November 15, 1994, communication with the Department of the Interior and this communication on April 20 of 1995, do you recall any communications or requests that came to your office about the Hudson Dog Track application from the Department of the Interior?

Answer. No, I don't.

Question. Do you recall whether there was any work being done on the application between November 15, 1994, and April 20, 1995?

Answer. I'm not sure if I understand.

Question. Well, my understanding is that on November 15 of 1994, the recommendation from the area office is transmitted to the Department of the Interior in Washington. And I'm just trying to determine whether anything else came up during the time period between November 15, 1994, and the time that this letter was sent to Interior that required you to go back and do any more work or revisit any of the subjects that had been covered in the recommendation.

Mr. YEAGER. In the November recommendation?

Mr. WILSON. From the November recommendation.

The WITNESS. No, I don't. Basically, I would view these as two separate. The November letter memorandum is transferring or transmitting the recommendation on the two-part, and the April '95 memo is recommending that authority be granted to actually take the land into trust.

EXAMINATION BY MR. WILSON:

Question. And understanding that these are two very separate documents, you might be able to help us out by explaining why they are two separate documents; why, say, the November 15, 1994, letter did not cover the subject matter of the November 20, 1995, letter.

Answer. It was my understanding that it was essentially two different and separate processes. The approval on the two-part determination, both at the Secretary's level and the Governor's level of the State, is required to be given before we can begin the second process of actually taking the land into trust under the Bureau's regulations.

Question. So the second request, the request here made on April 20, 1995, was in anticipation of the approval being granted?

Answer. I would say that's a fair statement.

Question. And just revisiting, I know the question was less than precise, but during this time period, do you recall any contacts with either yourself or your office asking for additional information about the subject matter of the Hudson Dog Track application?

Answer. No, I don't recall any.

Question. And for want of a better time period, I'll choose what might be arbitrary, but the April 20, 1995, date. Did you have any knowledge of what was happening in respect to this application in Washington during the—well, let's make it very general—during either 1994 or 1995, prior to the rejection of the application?

Mr. YEAGER. Could I ask counsel to clarify what he means by "what was happening"?

Mr. WILSON. Sure, assuming of course that I can clarify some of my questions.

EXAMINATION BY MR. WILSON:

Question. Were you aware at all of any of the decision-making process in Washington, D.C., in either the 1994 or 1995—let me ask you a specific question. It is my assumption that you knew the application was rejected in July of 1995.

Answer. Yes.

Question. Prior to July 15 of 1995, were you aware of any positions being taken during the decision-making process in Washington, D.C.?

Answer. I would say not on an official basis. If I was aware of anything, it was more through perhaps newspaper articles or media coverage or just rumor, hearsay.

Question. Staying away from media coverage, newspaper coverage, what types of rumors were you hearing in 1994, 1995 about the decision-making process in Washington?

Mr. YEAGER. I'm not sure why we want to inquire into rumors he heard. Is there a reason for the question?

Mr. WILSON. I think because I want to know the answer. I'm interested in knowing what was going on amongst the people and the staff and what they thought people were doing in Washington. And if it is a rumor, it is a rumor. But it is not represented as fact. But I'd just like to know what rumors you were getting.

Mr. ELLIOTT. Well, Mr. Wilson, I've got a problem with that question. There are rumors all over every government agency, including the legislative branch, many of which and probably most of which have no basis in fact.

And to get into that, you're way less than half your way through, because if you're going to question Mr. Jaeger on all the rumors that he heard about anything, that could be a long conversation, and it really doesn't lead anywhere except to establish that there were rumors. It establishes, as you say, no fact other than the fact that there were rumors that were floating around.

Mr. YEAGER. My concern, Counsel, is it is just going to cloud the record and confuse the facts.

Mr. WILSON. I will not use the word "rumor" again.

EXAMINATION BY MR. WILSON:

Question. Did anybody in your office communicate to you what they thought was happening with the application in Washington, D.C.? And that's your office?

Answer. My office, meaning the agency?

Question. Your office at Ashland.

Answer. No. I recall that we were discussing statuses of the application at different times. But, again, information that I might have shared or that my staff might have shared with me again were based on stories, if you will, that were coming from the office here in Washington. And, again, they would have been rumors. I wouldn't have based any correctness on those stories I was hearing; they were just simply rumors.

Question. Did you ever hear from anybody prior to July 15 of 1995 that the application might be rejected in Washington?

Answer. I believe I was aware that that was a possibility, but I couldn't tell you who I had heard it from or if it was any official capacity. I don't believe it was any official capacity that I heard that.

Question. And are you able to recall at all the circumstances of your becoming aware of that?

Answer. Again, I think it was probably the media more than anything. It seems like we were getting most of our information from articles that were coming out, say, in the Post here, the local papers here in the D.C. area that were picked up by the Associated Press or something like that. So it was just rehashing the stories that were going around D.C.

Question. Just turning your attention again to the April 20, 1995, letter, do you know if there was an immediate response to this letter?

Answer. No, I don't.

Question. Do you know whether there was any response to this letter?

Answer. No, I don't.

Question. And that obviously the July 15 rejection is the response in part to this letter.

Answer. I would say so. I don't recall there being any other official response.

Mr. WILSON. I've provided Mr. Jaeger with a document that's been marked RJ–5.

[Jaeger Deposition Exhibit No. RJ–5 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. And, again, take a moment to review it. But I do have some general questions about the memo. And apart from one area I'd like to discuss specifically, I don't want to go into any of the specifics of the memo.

[Pause in the proceedings.]

Mr. Jaeger, have you ever seen this document before?

Answer. I don't believe that I have.

Question. Prior to today, did you know of the existence of this document?

Answer. I just simply can't recall if I've seen this document before.

Question. Focusing on the basic subject matter of what is obviously a fairly lengthy document, 17 pages—you have that in front of you—the last sentence of the first paragraph of the document states, "Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests."

Were you aware that any memorandum or any memoranda had been prepared at the Department of the Interior in Washington that came to the conclusion or stated a staff recommendation that the proposed acquisition would not be detrimental to the surrounding community? And that's prior to July 15 of 1995.

Answer. I'm not sure if I understand your question.

Question. Just, I mean, not focusing so much on this particular document but focusing on the subject matter of the document, that there was a staff recommendation in Washington that the proposed acquisition would not be detrimental to the surrounding community. Were you aware that there had been such a staff recommendation in Washington independent of newspaper accounts you may have seen recently?

Answer. Not in an official capacity.

Mr. YEAGER. Counsel is free to make whatever representations he would like to make. I just want to note for the record that this document says "draft" on each page, though it is purportedly from the Indian Gaming Management staff and it is signed by Mr. Hartman and not by Mr. Skibine, who is the director of the Gaming Management staff. We have received testimony on that point, which I won't get into now.

EXAMINATION BY MR. WILSON:

Question. You mentioned that you were not aware of this in an official capacity but you were aware on an informal basis that such a statement or recommendation had been made?

Answer. I think I was more aware that on an informal basis that there was discussions of this nature going on at the Washington level and the pros and cons of whether it was beneficial or not.

Question. And during the time frame of April through July of 1995—and I believe we've covered this already, but during that time frame, April through July of 1995, did you have any consultations or contacts with people from Washington about the determination of whether or whether this was not detrimental to the surrounding community?

Answer. Not that I remember.

Mr. WILSON. This is the last document I have for you.

I've provided Mr. Jaeger with a document that's been marked Exhibit RJ–6. It is dated July 14, 1995, and it is a letter to Ms. Rose Gurnoe, Mr. Alfred Trepania, and Mr. Arlyn Ackley, and it is signed by Michael J. Anderson, Deputy Assistant Secretary, Indiana Affairs.

[Jaeger Deposition Exhibit No. RJ–6 was marked for identification.]

EXAMINATION BY MR. WILSON:

Question. If you could take just a moment to review this, please.

[Pause in the proceedings.]

Do you have an understanding as to why Mr. Anderson signed this letter?

Answer. No.

Question. Were you aware at the time—and when I say "at the time," I'm referring to on or about July 14 of 1995, when Ada Deer, who was the assistant secretary, had a purported conflict of interest in this matter?

Answer. No, I don't remember.

Question. At the time of the rejection of the application, do you recall any additional consultations with your office on any subject related to the Hudson Dog Track matter?

Answer. This particular time period?

Question. Yes.

Answer. No, not that I recall.

Question. Subsequent to the rejection of the application, were there any discussions relating to whether the application could be reopened and any of the defects that caused the application to be rejected could be cured?

Answer. Very vague, but I think there was something to that effect. I seem to recall that perhaps I became aware of that perhaps either through my discussions with the Area Director and/or the travel chairpersons involved here, basically that it was a possibility it could be resubmitted for consideration, reconsideration.

Mr. YEAGER. Was it your understanding that all of the defects were curable?

The WITNESS. Well, I'm not sure what all the defects might have been.

EXAMINATION BY MR. WILSON:

Question. Well, actually maybe I can follow up on Mr. Yeager's question.

Given the submissions of your office and given the recommendations of the area office, were you aware that there were any defects in the application?

Answer. I would say not at the time it went forward from the area office.

Question. At the time, were you surprised by the conclusions reached in the July 14, 1995, letter?

Answer. Maybe not so much surprised as disappointed.

Mr. WILSON. I have no further questions.

Mr. YEAGER. If it is all right with counsel, I'd like to take 3 or 4 minutes.

Mr. WILSON. Sure. If we could go off the record for a short break, please.

Mr. YEAGER. Counsel, do you have anything further?

Mr. WILSON. No.

EXAMINATION BY MR. YEAGER:

Mr. YEAGER. Mr. Jaeger, on behalf of the Democratic members of the committee, I would like to thank you for coming in today voluntarily. I am not going to ask very many questions. I just wanted to raise one point, if I could.

You were Superintendent of the Great Lakes Agency; is that right?

Answer. That's correct.

Question. Is there any guarantee that when you or the area office forwards a recommendation on any particular application that your recommendation will be adopted by the Bureau of Indian Affairs, the Washington office, or the Secretary of Interior, ultimately?

Answer. No guarantee.

Question. They are the final decision-makers?

Answer. That's correct.

Question. The Secretary is the final decision-maker?

Answer. That's my understanding, yes.

Mr. YEAGER. I have nothing further.

EXAMINATION BY MR. WILSON:

Question. To follow up on that one last question, is it your understanding that the Secretary of the Interior was the final decision-maker in this case?

Answer. Yes.

Mr. WILSON. I have no further questions.

I would like to thank you very much. I do know you have come from a long distance and have come here voluntarily. We greatly appreciate that. Thank you for your cooperation.

The WITNESS. You are welcome.

EXAMINATION BY MR. YEAGER:

Question. If I might just follow up once again, you said it was your understanding

that the Secretary of Interior made the decision. Would it surprise you if the Secretary delegated that authority to an authorized representative of the agency?

Answer. No, it would not surprise me.

Mr. WILSON. Again, thank you very much.

[Whereupon, at 11:10 a.m., the deposition was concluded.]

[The exhibits referred to follow:]

City of Hudson
505 Third Street
Hudson, Wisconsin 54016-1694
FAX [redacted]

Office of the Mayor

March 17, 1994

United States Department of the Interior
Bureau of Indian Affairs
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, MN 55401-2241

ATTN: Robert R. Jaeger, Acting Area Director

Dear Mr. Jaeger:

This letter is in response to your request for input on whether the gaming establishment on newly acquired land is detrimental to the surrounding community. This is in relation to the application from the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians and the Sokaogon Chippewa Community.

I think you will find, as you review the attached material, that the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size.

The attached material has been gathered and submitted by members of our City staff and reviewed by me. I trust that this material satisfies your needs in this matter. In the event you have any further questions or desire further clarification on anything presented here, please contact me at your convenience.

Sincerely,

Thomas R. Redner
Mayor

THR/lm
Enclosures

EXHIBIT
RJ - 1

EOP 064470

EXHIBIT
C

PROPOSED CASINO DEVELOPMENT
IMPACT ON THE CITY OF HUDSON

The Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Red Cliff Band of Lake Superior Chippewa Indians and Sokaogon Chippewa Community propose to purchase and place in Trust, 55 acres consisting of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building. The general user parking lot located west of the principal structure will be owned and operated by a business coalition of the tribal organizations and Croixland Properties Limited Partnership and will not be placed in Trust land status.

The Trust property and associated parking lot facilities are entirely located in the City of Hudson, St. Croix County, Wisconsin. Properties in the Town of Hudson and Town of Troy are adjacent to or close proximity of the proposed Trust lands. Refer to Map 1.

This response is presented in the same order as the questions are presented in the Minneapolis Area BIA letter dated February 17, 1994. These comments are limited to the various direct impacting factors due to a Casino operation. It is recognized that there may be additional impacting factors due to ancillary developments in the area. These additional factors have been partially taken into account through the City's long range comprehensive plan.

1. Evidence of environmental impacts and plans for reducing any adverse impacts.

Environmental Impacts. There are two potential environmental concerns: 1) increase in traffic due to additional attendance and 2) additional hours of parking lot lighting due to extended hours of the casino operation.

Traffic. As a condition of having a parking lot which could accommodate 1,000 autos or more and construction of the Carmichael Interchange, air monitoring stations were constructed at the track exit and southeast corner of the interchange. Air quality has not been a concern, and there are no known instances of air quality being monitored at levels not acceptable to EPA standards. The traffic flow to and from the casino and track facility should be dispersed sufficiently to maintain air quality standards well within acceptable limits.

Lights. During the review of the greyhound racing facility plans, it was required for the track to develop a lighting system in the parking lot which reduced the light spillage at the property lines to an amount equivalent to residential streets. The lights may be on for extended periods of time because the casino operation is

EOP 064471

PROPOSED CASINO DEVELOPMENT
IMPACT ON THE CITY OF HUDSON

likely to be open until 2:00 a.m. or possibly 24 hours per day with employees staying later than that hour to complete end of day functions. There are no known plans to expand the parking lot facility modifying the existing lighting system.

2. Impacts on the social structure in the community.

Just as with any new venture, there will probably be some impact on the social structure in the community caused by the introduction of a casino. However, this potential impact would appear to be readily handled and accepted by the community as a whole. The City of Hudson and St. Croix County are not significantly different than other communities in Western Wisconsin and in the Twin Cities area of Minnesota. There are both proponents and opponents of gambling in the community just as there are both proponents and opponents of the Greyhound Racing Facility. St. Croix Meadows first opened in 1990 after a long and involved approval process. Since it opened, none of the earlier negative predictions concerning increased crime, etc., have come true; and the residents of the community have come to accept its existence.

In late 1992, the St. Croix Band of Chippewa commenced negotiations with the owners of St. Croix Meadows to install a casino at the site (essentially equivalent to the current proposal). A citizens' petition was circulated calling for a special referendum in the City which was held on December 3, 1992. The question put to the voters in this referendum was, "Do you support the transfer of St. Croix Meadows to an Indian tribe and the conduct of casino gaming at St. Croix Meadows if the tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" The results of that Referendum were 1351 'yes' (51.2%) and 1288 'no' (48.8%). The total of 2643 votes cast represented 53.9% of the 4907 registered voters in the City.

As evidenced by these results, there does not appear to be an overwhelming majority of citizens either in favor of or opposed to: gambling, parimutuel wagering, or an Indian Casino on this site and in this community. For this reason, it would appear that this potential impact of an Indian Casino would appear to be readily handled and accepted by the community as a whole.

3. Impacts on the infrastructure.

Public service and facility needs to adequately serve a casino/greyhound racing facility and related land uses in the area can be summarized as follows:

Sanitary Sewer. Sanitary trunk sewer mains are adequately sized to

PROPOSED CASINO DEVELOPMENT
IMPACT ON THE CITY OF HUDSON

accommodate existing and future development south of I-94.

Wastewater Treatment Plant. The average daily attendance projected by the Tribal Organizations for the casino/track operation is unknown at this time. The greyhound race track was projected to have patronage of 6,800 persons/day and wastewater flows of 40-60,000 gallons/day according to Report on Municipal Services Croixland/Carmichael Properties, November 1988. The Director of Public Works indicates that when attendance at the greyhound race facility has exceeded 5,000, the flows have been approximately 29,000 gallons/day.

Thus, it would appear that there would be sufficient Wastewater Treatment Plant capacity for the proposed Casino.

The City does have a concern that if significant additions to the casino/track facility are made to greatly increase the average daily attendance and thus increase the potential discharge to the wastewater treatment plant, then additional sewer hook-up fees should be collected to account for increased use of the treatment plant.

Water Service. Water trunk mains and storage facilities are adequate to provide water service to the proposed casino/track operation and ancillary development south of I-94.

Storm Sewer. The trunk storm sewer system currently in place will accommodate development of the casino/track facility. Ancillary development can be accommodated with additional improvements made in conformance with the 1992 City of Hudson Comprehensive Surface Water Drainage Plan in areas that are currently undeveloped.

EMS (Emergency Medical Services). Services are provided for emergency medical calls by the St. Croix EMS. If additional service calls result due to increased patronage of the casino/track facility over levels acknowledged in 1994, the Emergency Medical Services may have to place additional responders on duty reflective of service demands. It is anticipated that most calls relative to the track are non-residents and user fees will cover operating costs.

Fire Service. No major changes are foreseen in the fire protection services if the existing Greyhound Racing Facility was modified to incorporate a casino.

Dependent on the rate of the ancillary development and potential expansion of the casino/track operations, the Hudson Fire Department may have to supplement the existing equipment and provide additional personnel. Projected under this expanded

scenario is the addition of a pumper truck - $250,000; additional fire inspector at approximately $37,500 per year (1997) including salary and benefits; and additional fire fighters (costs not determined because specific need not determined).

Police Department. In the next five years the Police Department foresees a need to expand the police force by five officers and one clerical employee. If the casino operation is opened in 1994, the Police Chief projects that one investigator crime prevention officer be added to the staff. Currently, the City of Hudson is above the statewide crime index rate principally due to bad checks and other business related activities which require investigative services.

Transportation. The street system between the casino/track location and Exit 2/Carmichael Road Interchange - I-94 is in place and will accommodate the projected traffic needs based on 40,000 average daily trips. Ancillary development north of the site on each direction of Carmichael Road may eventually require the City of Hudson to add traffic regulatory signals at the interchange of Carmichael Road and Hanley Road.

4. Impact on land use patterns in the surrounding community.

The site is zoned general commercial district (B-2) for the principal structure and ancillary track, kennel and parking facilities and R-1 one-family residential districts on the east, south and westerly perimeters to serve as a buffer area between the track operation and surrounding land uses. Included partially in the south buffer area is a stormwater retention ponding area and stormwater lift station. Of the 55 acres identified for the Trust, approximately 25 acres are currently developed, 6 acres are zoned single family residence and have limited development potential and 24 acres can potentially be developed; however, except for approximately 5.5 acres, this land is located in the area of the bluff east of the track and generally not suited for development. Refer to Map 2. There are no known plans to expand the present facilities. Plans discussed with City/County officials have indicated improvements will be limited to the interior only in the grandstand facility.

There is sufficient land in the City of Hudson and zoned appropriately or identified for future commercial land use to address potential ancillary development such as hotels, motels or restaurants. This land is located north of the proposed casino/track site along the Carmichael Road corridor between I-94 Exit 2 Interchange and the existing track facility. Development of these properties would be subject to zoning and subdivision standards of the City of Hudson. Refer to Maps 2 & 3.

PROPOSED CASINO DEVELOPMENT
IMPACT ON THE CITY OF HUDSON

5. Impact on the income and employment of the community.

Income & Employment. It is projected by Tribal representatives that the casino/greyhound racing facility will provide approximately 1500 jobs and including the retention of existing jobs at the greyhound racing facility. Tribal representatives indicate that 95% of the casino jobs will be full time. The current employment level at the track facility is 153 full time positions and 144 part time positions (approximately 100 additional jobs will be created during the summer months).

The 1989 median household income for the City of Hudson was $38,037 for all households and $22,604 for non-family households. Because wage rates have not been provided by the Tribal representatives, it is difficult to determine what percentage of employment would be above these figures at this time.

6. Additional and existing services required or impacts, costs of additional services to be supplied by the community and source of revenue for doing so.

Projected Costs Due to Proposed Casino & Potential Ancillary Development. The capital and operating costs projected from the development of a casino and ancillary development are summarized on an annual basis in Table A based on projections submitted by department administrators of the City of Hudson.

It must be noted that most of the identified need for staff and capital expenditures is due to the ancillary development that may occur due to existence of a casino operation in conjunction with the greyhound racing facility. These costs should be offset by the taxes generated by the ancillary development; the City's pro-rata share of service fees paid by the Tribal Coalition; and other contractual sources of revenue.

Representatives of the local governmental entities; the City of Hudson, the Hudson School District and St. Croix County, are currently negotiating with representatives of the Red Cliff and Lac Courts Oreilles Bands and the Sokaogon Chippewa Community for payment of governmental services in the event that an Indian Casino is installed on this property, in order to ensure sufficient revenue to cover the costs of additional services to be supplied by the community. To date, there have been three meetings; and a great deal of progress has been made on the agreement. It is anticipated that an agreement will be agreed to and approved by the Tribal Councils and Governmental bodies within the next three to four weeks.

PROPOSED CASINO DEVELOPMENT
IMPACT ON THE CITY OF HUDSON

TABLE A

	Qty	Item/Position	Dept	Est Costs	
4+	c - 1	Investigator	Police	$51,000 (salary & benefits)	
	c - 1	Pistol	"	1,400	
	c/a - 1	Patrol car	"	18,000	
					$ 70,400
5+	a - 1	Captain	Police	$55,000	
	a - 1	Patrol officer	"	40,500	
	a - 2	Pistols	"	2,800	
					$ 98,700
6+	a - 1	Patrol officer	Police	$43,763	
	a - 1	Pistol	"	1,400	
	a - 1	Fire inspector	Fire	35,000	
					$ 80,163
97+	a - 1	Office staff	Police	$28,900	
	a - 1	Pumper truck	Fire	25,000	
		(annual payments $25,000-$250,000/10)			
					$ 53,900
98+	a - 1	Patrol car	Police	$19,700	
					$ 19,700

+ casino generated
= ancillary development generated

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7. Proposed programs, if any, for compulsive gamblers and the source of funding.

The City of Hudson does not have any current programs or proposed programs for compulsive gamblers. We rely upon this service which is provided by the St. Croix County Human Services Department.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
Ashland, Wisconsin 54806-0273

IN REPLY REFER TO:
Natural Resources

FINDING OF NO SIGNIFICANT IMPACT

An addendum (referred to as the Addendum) to the "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" (referred to as the EA), has been prepared for the proposed trust acquisition of, and addition of class III gaming to, the St. Croix Meadows Greyhound Racing Park by the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians, and the Sokaogon Chippewa Community. These documents have been prepared pursuant to requirements of the National Environmental Policy Act (NEPA) in 40 CFR Parts 1500-1508. The addendum was prepared by Bischof & Vasseur from Oak Park, Illinois, and the EA was prepared by Mid-States Associates, Inc.

Project Description

The Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa Indians and the Sokaogon Chippewa Community propose to purchase, and place into federal trust, 55.82 acres consisting of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building, for the purpose of operating a class III gaming facility in addition to the existing pari-mutuel dog track operation. The main parking lot west of the grandstand building is not intended for trust acquisition.

The existing grandstand would be remodeled to accommodate gaming activities, however, most support facilities (kitchen, washrooms, office space, etc.) would be maintained.

Need for Project

The Three Tribes anticipate the generation of revenues from the proposed project that are needed for community development for each Tribe.

Project Alternatives and Possible Impacts

Three alternatives have been proposed. "Alternative One" is the proposed project. Several possible impacts have been addressed in the Addendum regarding this alternative. Possible negative socioeconomic impacts on the City of Hudson and St. Croix County, have been addressed and minimized through the "Agreement for Government Services" developed between the City, the County and the three Tribes. Possible negative impacts to Tribes with gaming facilities in the general area of the proposed facility are also addressed in the EA addendum and are expected to be minimal. It is not the intent of the NEPA process to limit competition for business profits. Possible social impacts are addressed in both the addendum and the original EA. The proposed project is projected to have similar attendance as the original dog track facility was designed to manage, and the impacts to the social environment would, similarly, not be considered significant. The addition of one form of gaming to a facility, already established for the purpose of gaming, would also not be considered significant.

"Alternative Two", proposes that the three Tribes would construct a new Tribal gaming facility at an alternate location. This alternative would have similar impacts as the proposed action and would include the environmental impacts associated with constructing an entire new facility.

"Alternative Three" is the "No Action" alternative. The environmental impacts associated with this alternative would be minimal, however, the proposed need to gain revenues to enhance Tribal community development would not be met.

Findings and Conclusion

Based upon the findings of the EA and the Addendum regarding this proposed action and the alternatives considered, it has been determined that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary.

Robert R. Jaeger
Superintendent, Great Lakes Agency

9/14/94
Date

RESPONSES TO COMMENTS REGARDING THE PROPOSED DOG TRACK/CASINO FACILITY IN HUDSON, WI

St. Croix Tribe

COMMENT: "Clearly this assessment is inadequate in view of the complete lack of analysis of the respective tribal markets..."

RESPONSE: A market analysis was performed regarding this proposed action and was submitted during the process required by the Indian Gaming Regulatory Act (IGRA). An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Racetrack Near the City of Hudson, Wisconsin, by Dr. James M. Murray, PhD., indicates that the proposed Hudson casino/dog track facility could have a 20% share of the blackjack market and a possible 24% of the slot and video market in the primary market zone (predominately St. Croix County in WI, and Washington and Ramsey Counties in MN). Based upon this analysis, the socioeconomic impacts to surrounding tribal casinos do not appear to be "devastating". Although the socioeconomic impacts regarding this proposed action are real, and are considered in the environmental assessment process, they do not normally require the preparation of an environmental impact statement. These comments are more appropriately addressed in the IGRA process.

COMMENT: "The artificial placement of competitor Tribes in geographic areas superior to that of the St. Croix Tribe gives official sanction to an unfair competitive advantage, something not envisioned by the NEPA process."

RESPONSE: The three Tribes, as well as the St. Croix Tribe, have the right to request land be placed in trust for the benefit of the tribe(s), by the US Government. It is not the intent of the NEPA process to limit this right. The tribes involved in this venture have clearly expressed their intent to diversify their respective economies and generate needed government revenues. Tribal casinos in the general vicinity of this proposed action are able to take various steps to make their facilities more attractive to gaming patrons. These comments are more appropriately addressed in the IGRA process.

COMMENT: "The current owners of the dog track, however, own considerable land surrounding the dog track and have extensive plans for the development of a destination resort."

RESPONSE: A "destination resort" is not part of the proposed plans, nor do the Tribes have economic control over non-tribal lands. This comment is beyond the scope of the decision related to this project, therefore, cannot be addressed in the scope of environmental impacts associated with the fee to trust conversion of the subject property.

COMMENT: "Allowing the three tribes and the present owners the opportunity to conduct those games at a location outside of their usual territory would cause a great injustice to the St. Croix people."

RESPONSE: This venture is geographically located within the treaty territory of the Lake Superior Chippewa Tribe, of which all three tribes are Bands. There is no limitation placed upon the St. Croix tribe, or any other tribe, to engage economic development ventures in other parts of the State or Country.

COMMENT: "Based upon previous discussion and information contained in Attachment A. the proposed findings and conclusion are not supportable. Additional studies in the form of an Environmental Impact Statement need to be undertaken in order to comply with the requirements of the National Environmental Policy Act."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc., (project specific, independent studies), indicate that the market is of sufficient size to support an additional casino operation and will not saturate the market. Again, these documents were submitted during the IGRA process and are more appropriately addressed in this venue. The requirements of the National Environmental Policy Act (NEPA) state in 40 CFR Part 1508.14, "that economic or social effects are not intended by themselves to require preparation of an environmental impact statement."

COMMENT: "The impact on jobs will be felt on the St. Croix Reservation where reductions in force will be necessary due to a declining business volume."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc. indicate that the market size is of sufficient size to support an additional casino operation and will not saturate the market. Profits and revenues generated by the venture will provide diversification opportunities for the member tribes at their respective reservations. Again, these types of comments are more appropriately addressed in the IGRA process.

COMMENT: "No mitigation efforts have been undertaken with regard to the potentially devastating impacts on the St. Croix Tribe and its ability to furnish essential governmental services."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc. indicate that the market size is of sufficient size to support an additional casino operation and will not saturate the market. Mitigation efforts, market analyses, business competition and revenues are more appropriately addressed in the IGRA process.

COMMENT: "That the dog track is a failing business is not a legitimate reason to take action to the detriment of a neighboring Tribe and its business. Adding the artificial stimulus of Class III gaming to prop up a failing non-Indian owned industry with the resulting devastating impacts on a neighboring industry does not qualify as a justifiable result under NEPA."

RESPONSE: The loss of jobs related to this financially troubled business is mentioned as a possible negative economic impact to the surrounding community. It is not given as a legitimate reason for the proposed action. The reasons for this action are, as stated in the environmental documents, to generate revenues, by the three Tribes, that are needed for community development on their respective Reservations.

COMMENT: "... This fee to trust conversion will stop in its tracks' any effort to expand the land base of the St. Croix Tribe due to greatly diminished revenues from its current gaming industry."

RESPONSE: The findings of Dr. Murray and Arthur Anderson, Inc. indicate that the market size is of sufficient size to support an additional casino operation and will not saturate the market. Little evidence of "devastating effects" as a result of this proposed action are provided in these comments. The findings of the professional and independent studies, referenced herein, indicate, with supporting documentation and analysis, that the St. Croix Tribe will not be significantly harmed by the proposed partnership venture. Again, these comments are more appropriately addressed in the IGRA process.

COMMENT: "The statements made in this paragraph (paragraph 3, page 2) are made without any supporting documentation. No effort was made to determine the true customer market of the St. Croix Tribe ... it is almost a certainty that the Hudson Dog Track area will encompass destination resort facilities, a far larger casino facility, . . there is no assurance made that the Hudson facility will maintain it's modest scope of 1500 machines and operational hours ..."

RESPONSE: The principle author of the Socioeconomic Addendum utilizes Dr. Murray's study and other proprietary market studies to support statements contained therein. (Proprietary sources include market studies for tribal and non-tribal, gaming and non-gaming business ventures, as well as Wisconsin Department of Tourism data and analysis.) The independent studies and analysis prepared by Dr. Murray and Arthur Anderson, Inc. utilized the best information available to the public, including information on the market of the St. Croix Tribe.

The three Tribes in this partnership do not have economic development control on non-tribal lands, nor have they indicated involvement in planning for on-site or off-site expansion.

Minnesota Indian Gaming Association

COMMENT: "... it is our contention that this action will have severe sociion/economic impacts on surrounding tribes."

RESPONSE: Attachment I of the Addendum cites, An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Racetrack Near the City of Hudson, Wisconsin, and An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, both by Dr. James M. Murray, PhD. These documents were submitted during the process required by the Indian Gaming Regulatory Act (IGRA) and were utilized, in part, to assess the gaming market, market shares and other related economic impacts. It was found in these and other studies performed in the primary market areas (predominately St. Croix County in WI and Washington and Ramsey Counties in MN) that the market is of sufficient size to support an additional casino operation and will not saturate the market.

Comments regarding economic or social effects are considered in the environmental assessment process, however, they are not intended by themselves to require preparation of an environmental impact statement. These comments are more appropriately addressed in the IGRA process.

Kenneth Tilsen

COMMENT 1: "The report fails to detail the relationship between the land to be placed in trust and the parking lot property, entrance gate, etc. which is part of the facility and will not be put in trust. It fails to identify the adjacent land that will remain exclusively in the control of the Florida gaming operator. It fails to identify the long history of community opposition to the track and it fails to identify the property as across the road from land protected by the "Wild River Act". It inaccurately indicates the track is open all year and fails to indicated that it operates about six days a week for between 32 to 40 hours a week - NOT 24 hours a day, seven days a week."

RESPONSE: The relationship between land taken into federal trust status for the Tribes is stated in several places in the Addendum and Attachments, the Notice of Availability, and the DRAFT Finding of No Significant Impact, where they indicate that the principal structure, track facilities, paddock and kennel facilities, and parking lot to the north of the principal structure are intended for trust acquisition while the main parking lot west of the grandstand building is not intended for trust acquisition. A legal description of the area of intended trust acquisition is provided in Attachment A of the Agreement for Government Services. The use of the "1988 Report" is to provide background information and data regarding work that had already been done regarding the dog track facility at this location.

Whether the adjacent lands to the track facility are controlled by a Florida gaming operator, or not, does not apply to this proposed action. There are no known plans for future development of these areas.

The Dec. 3, 1992, Indian Gaming Referendum, included in Attachment II of the Addendum, indicates that the Hudson Community is neither for, nor against, a Tribal Casino at the dog track facility. Some opposition to actions of this nature can be expected, however, based upon this referendum, it does not appear that there is overwhelming opposition to this concept.

Discussions with National Park Service personnel in St. Croix Falls, WI, indicate that the dog track facility is outside the management area of the St. Croix Wild and Scenic River System. Concerns regarding possible impacts to the St. Croix River from increased traffic and associated air pollution would be monitored and addressed through the existing air pollution control permit. According to the Wisconsin Department of Natural Resources, Bureau of Air Management, neither a new indirect source permit, nor modifications to the existing permit are required, however, the air monitoring stations constructed for the dog track facility would continue to be monitored and the terms of the permit would continue in compliance.

The statement that the track is open all year is accurate. The number of hours and/or days of facility operation per week does not render the statement inaccurate.

COMMENT 2: "There is no basis supplied for the conclusion that the project will have a positive impact on the economic growth and well being of the surrounding communities. Recent studies by the Ford Foundation, the Illinois Department of Safety and others suggest that the jobs lost will equal or exceed the jobs gained. No report by a biased observer was any value..."

RESPONSE: The new jobs created by this proposed facility would be available to unemployed residents of the Hudson area as well as to residents of St. Croix County and other counties nearby. These new jobs would provide workers at lower-paying jobs opportunities to increase individual earnings. Many of these jobs would be available to workers without special training, skills, undergraduate and/or post graduate degrees. It is reasonable to expect that increased earnings for area residents are likely to result in increases in the purchase of goods and services in these areas. Assertions to the effect that the proposed gaming facility would result in a loss of jobs in the Hudson area are not realistic.

Minnesota Gambling 1993 by Minnesota Planning describes many of the influences of tribal gaming in Minnesota and may be more applicable to gaming influences in the subject area of Hudson, WI, than documents from other localities. This document compares casino counties to noncasino counties in Minnesota and states, "There is no evidence that tribal gaming caused an increase in reported serious crimes such as murder, rape, robbery or theft. The crime rate for casino counties between 1989 and 1991 increased only slightly more than for noncasino counties... (14.8 percent compared to 12.1 percent)." Other positive influences documented include increases in gross business sales, increases in economic activity, increases in revenues of bars and restaurants, increases in visitors from other states and a decrease in county expenditures for Aid to Families with Dependent Children for counties with casinos compared to those without. Various negative social consequences are also discussed in this document including increases in calls for help to Gamblers Anonymous and as well as increases in visits to gambling treatment centers. It is expected, however, that the allocable amount determined by the "Agreement for Government Services" will compensate the local governments for the possible need for these services.

Attachment I of the Addendum cites two of the various documents, An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, and An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Racetrack Near the City of Hudson, Wisconsin, both by Dr. James M. Murray, PhD., that were

used to assess the economic impacts of the proposed dog track/casino facility to the Hudson Community and existing tribal casino markets. Information from these documents, along with others included in the application package pursuant to the Indian Gaming Regulatory Act (IGRA), was used to generate many of the estimates regarding socioeconomic impacts.

Competition between tribal casino facilities and possible impacts to each tribal community are discussed in these studies (by Dr. Murray), which show that the proposed Hudson casino/dog track facility could have a 20% share of the blackjack market and up to 24% share of the slot and video market in the primary market zone (predominately St. Croix County in WI, and Washington and Ramsey Counties in MN). This study indicates that the gaming market is of sufficient size to support an additional casino operation and will not saturate the market. Socioeconomic and business related matters are considered in the environmental assessment process, however, they are more appropriately addressed in the Indian Gaming Regulatory Act (IGRA) process.

The Indian Gaming Referendum of 12/3/92 specifically asked, "Do you support the transfer of St. Croix Meadows to an Indian tribe and the conduct of casino gaming at St. Croix Meadows if the tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" This referendum appears to ask the question that more appropriately addresses this proposed action than referendums regarding continuation of the dog track facility or State-wide surveys to limit casino gambling. This Indian Gaming Referendum of 12/3/92 indicates that there is not an overwhelming majority of citizens in the Hudson area for, or against, the operation of an Indian casino at the dog track facility. No comments from the Town of Troy, officially or unofficially, were received regarding the environmental impacts of this proposed action.

COMMENT: "The political social and practical effect of the Hudson dog track-to-casino proposal is as follows:"

1. <u>It denigrates and erodes the concept of Indian Sovereignty</u>

RESPONSE: The concept of Indian Sovereignty is one that has been argued for centuries and is beyond the scope of this action.

2. <u>It leads to the erosion of public support for Indian Gaming rights</u>.

RESPONSE: The erosion of public support for Indian gaming rights is beyond the scope of this action.

3. <u>It breaks the solidarity of Indian Tribes in supporting each other</u>.

RESPONSE: The solidarity of Indian Tribes in supporting each other is more appropriately addressed in the IGRA process and is beyond the scope of this action.

4. It gives movement and impetus to the drive for more non-Indian gaming.

RESPONSE: The movement for more non-Indian gaming is beyond the scope of this action and is more appropriately addressed in the IGRA process.

5. It does not promote or strengthen tribal government.

RESPONSE: The promotion and/or strengthening of tribal government is beyond the scope of this action.

6. It leads to the corruption of local and state officials and governments.

RESPONSE: Corruption regarding Indian gaming is an issue more appropriately addressed in the IGRA process.

William H.H. Cranmer

COMMENT (1): The FONSI and Addendum refer to this as a proposal by three Chippewa tribes to gain trust status for the land, in order to establish a casino. This is not an accurate statement of the facts.

RESPONSE: The statement is accurate. The association with Croixland Properties and other business arrangements regarding this matter does not render the statement inaccurate.

COMMENT (2): The FONSI and Addendum suggest that a casino would produce significant revenues for the tribes. The June 9, 1994 Bischof & Vasseur memo concerning "Impacts on Socioeconomic Conditions: in the Addendum points out, however, that each tribe will receive only 25% of the profits after debt service.

RESPONSE: The revenues for the Tribes, the profit shares, and after debt profits are issues more appropriately addressed by the Indian Gaming Regulatory Act (IGRA) process. No significant environmental impacts are expected as a result of these matters.

COMMENT (3): "The FONSI and Addendum suggest that an "Agreement for Government Services" (Agreement) between Croixland Properties, the three tribes, St. Croix County and the City of Hudson would "address and minimize""possible negative socioeconomic impacts on the City of Hudson and St. Croix County" (language in the draft FONSI)...this Agreement seems to violate 25 U.S.C. Section 2710 (d)(4) of the Indian Gaming Regulatory Act (IGRA), and Department of Interior policy... This agreement also incorporates a substantial annual payment to the Hudson School District not mentioned by the FONSI and Addendum. This payment is probably illegal under the IGRA, and probably violates Department of Interior policy..."

RESPONSE: The "Agreement for Government Services" is based upon the mutual consent of all signatory authorities, and the parties they represent, to provide government services to the proposed facility in exchange for an "allocable amount." It is not the imposition of a "tax" by a regulatory authority. There is currently no agreement between the gaming partners (the Partners) and the Hudson School District. Monies from the Agreement, to be provided to the Hudson School District by the City of Hudson (the City) or St. Croix County (the County) are not controlled by the Partners.

COMMENT (4): At no point did the County and City present a formal estimate of the cost of services to remedy the "possible negative socioeconomic impacts on the City of Hudson and St. Croix County," and provide services direct to the proposed casino. Bischof & Vasseur's Addendum also does not prepare such an estimate. Consequently, no one knows if the Agreement would adequately

"address and minimize" negative socioeconomic impacts, as the draft FONSI suggests.

RESPONSE: Monies that would be provided to the City and the County through the Agreement for Government Services are an "allocable amount" based upon information provided to the Tribes from the City and County governments. The signatory authorities for these governments, and the Council and Board they represent, are in ideal positions to assess the services necessary to address possible negative socioeconomic impacts, and estimate the costs to provide the services necessary to minimize these possible impacts.

COMMENT (5): "... the FONSI seems to confuse maximum capacity of the dog track with casino projections of average attendance ... Second, there is a good reason to think that a Hudson casino would attract more than an average of 7,000 patrons..."

RESPONSE: The Dog Track building and grandstand, after renovation, would, by State law, be able to hold 9,600 patrons based upon the number of square feet. This maximum peak capacity would restrict the number of people and vehicles able to patronize this facility.

COMMENT (6): The FONSI engages in sophistry when it says, "The addition of one form of gaming to a facility, already established for the purpose of gaming, would also not be considered significant." If that is true, why is Croixland Properties, the current owner of the Hudson dog track trying to move heaven and earth to get a casino license, even if it must be shared with Indian tribes?"

RESPONSE: Environmental impacts related to the addition of Class III gaming to the dog track facility would be almost entirely indirect as no expansion of, or exterior modifications to, the existing dog track facility are proposed.

COMMENT (7): One of the great weaknesses of the Bischof & Vasseur Addendum is that it ignores the empirical data and literature that has developed about costs of casinos. Robert Goodman in his 1994 nationwide LEGALIZED GAMBLING AS A STRATEGY FOR ECONOMIC DEVELOPMENT (funded by the Ford Foundation and Aspen Institute) comments that most gambling industry studies exaggerate benefits and understate costs..."

RESPONSE: A recent study by Minnesota Planning called Minnesota Gambling 1993 discusses many of the influences of Tribal casinos, and may be more applicable to the Hudson, WI, and Twin Cities area than documents from other localities. This document discusses the positive and negative influences of tribal casinos and provides comparisons of some of these influences between counties with and without casinos.

COMMENT (8): "It is interesting to see that the Bischof & Vasseur Addendum even gives slanted facts about the current track. It displays either ignorance or bias in its description of the track's placement in Hudson area geography, ... But the Addendum ignores all the homes to the west and northwest of the track,... further, most of the other residents of the Town of Troy are ignored in this description of local geography, even though these residents would have to use the same roads as casino patrons to drive to and from Hudson commercial areas and the freeway. The Addendum does not even mention that the Town of Troy surrounds the potential casino site on three sides..."

RESPONSE: Mention is made in the addendum and the original EA of residential areas surrounding the dog track facility. There seems to be no intent to slant or hide that fact in these documents. Traffic studies performed on the original dog track facility were based upon the total parking lot capacity for 4,400 vehicles. There are currently no plans to expand these parking facilities at this time. Recent projections regarding increased attendance of the proposed dog track/casino facility were submitted to the Wisconsin Department of Transportation (WDOT), who indicated that the Interstate 94/Carmichael Road Interchange is sufficient to adequately manage the additional traffic. Although no transportation system is likely to be developed that would assure that there will be no slow-down or delays during peak traffic periods, various methods would be utilized to manage delays should they occur. Some of these methods include varying dog track racing times so as to not coincide with peak casino attendance times, elimination of parking fees and gates for easy parking lot entry, use of shuttle buses and remote parking areas, possible adjustment of time delays on traffic lights during peak attendance times, and installation of traffic lights (see page 4, Attachment II of the Addendum).

No official, nor unofficial, comments were received from representatives of the Town of Troy regarding these documents. It is expected that alleged objections from the Town of Troy may be overstated, or that the Town's concerns have been resolved.

COMMENT (9): "Bischof & Vasseur also slants its facts about current track employment. There is a considerable gap between the May 23, 1994, Addendum, and Addendum Attachment I, a Bischof & Vasseur June 9, 1994 memo, "Proposed Tribal Gaming Facility Impacts on Socioeconomic Conditions." In the "Site Description" discussion in the Addendum, where track employment is not of material interest, Bischof & Vasseur states 282 employees currently work at the dog track. In the June 9 Attachment I, however, Bischof & Vasseur claims, "If the current dogtrack were to close down, it would generate a significant negative impact on the socioeconomic conditions of the study area through the loss of over 500 direct jobs, and 300 indirect jobs... Clearly, one or the other of these Bischof & Vasseur claims made less than three weeks apart is

incorrect. If the June 9 claim is incorrect, then a track closure would have far less impact on the Hudson economy than Bischof & Vasseur predicts... Moreover, in November, 1992, I checked Wisconsin Gaming Commission records for St. Croix Meadows contracts in the Hudson area. I found only five Hudson contracts for all of 1991 and 1992... These five contracts would have generated less than 10 jobs in the Hudson area, not the hundreds of jobs Bischof & Vasseur claims..."

RESPONSE: The 282 employees mentioned in the Addendum is referring to full-time employees while the 500 direct jobs discussed in Attachment I included approximately 200 seasonal and part-time positions. In any event, the loss of the 282 jobs is significant to many small communities. Direct contracts with service vendors is one of many forms of commerce that generate jobs. Many goods and services are purchased by the dog track facility without direct contracts. Race track employees living in and around Hudson, WI, St. Croix County and neighboring counties need food, shelter, clothing, community services, transportation and other goods and services. It is reasonable to expect that trucking companies, hardware stores, realty companies, barbers, department stores, clothing stores, auto sales companies, grocery stores, banks, schools, local/State/Federal governments and many others have gained customers and/or benefactors and have increased business sales as a result of these employees. Increased business sales can, in many cases, generate ancillary jobs.

COMMENT (10): "The Addendum claims that placing the track site in trust and creating a casino, "...will have a positive impact on the economic growth and well being of surrounding communities." No evidence is cited for this assertion..."

RESPONSE: The new jobs created by this proposed facility would be available to unemployed residents of the Hudson area as well as to residents of St. Croix County and other counties nearby. These new jobs would provide workers at lower-paying jobs opportunities to increase individual earnings. Many of these jobs would be available to workers without special training, skills, undergraduate and/or post graduate degrees. It is reasonable to expect that increased earnings for residents of the Hudson Community, St. Croix County and nearby counties are likely to result in increases in the purchase of goods and services in these areas.

Minnesota Gambling 1993, by Minnesota Planning, states, "Casino counties in Minnesota experienced $182 million more in economic activity in 1990 and 1991 than they would have if they had grown at the same rate as the rest of the state. Revenues of bars and restaurants in casino counties grew by 10.7 percent between 1989 and 1991, compared to 5.4 percent for non-casino counties. These figures do not include bars and restaurants in casinos." Other positive economic benefits described in this document include

increases in overall business sales and economic activity, increases in visitors from other states and decreases in county expenditures for Aid to Families with Dependent Children. Negative social consequences described in this document include increases in calls to gamblers anonymous and increased visits to problem gambling treatment centers. It is expected, however, that the allocable amount determined by the "Agreement for Government Services" will compensate the local governments for the possible need for these services.

COMMENT (11): The Addendum comments that "no new significant effects" of noise levels or facility lighting "are expected" because of the operation of a Hudson casino... Clearly a dog track that sends 500 to 1,000 customers home at 11 p. m. four nights per week will differ in impact on residents' lives and property values from a 24-hour per day, 7,000-15,000 customers per day casino...

RESPONSE: Increased activity at the Hudson dog track facility would involve the movement of additional vehicles in and out of the proposed facility. This increased traffic is not expected to significantly increase noise levels in the area as toll gates to the parking facility would be removed reducing delays in entering and exiting the facility. The original lighting system for the dog track facility was required to reduce the light spillage at the property lines to an amount equivalent to residential streets. There are no plans to modify the existing lighting system.

COMMENT (12): "The Addendum comments that "no significant short-term, long-term, or cumulative impacts are expected on urban services" because of a new Hudson casino. The Addendum specifically mentions public safety expenditures as one of these services... however, all the surrounding casino towns have found the need for more police expenditures because of increased crime and traffic problems..."

RESPONSE: Minnesota Gambling 1993, states, "From 1989 through 1991, there was no evidence that tribal gaming caused an increase in reported serious crimes such as murder, rape, robbery or theft. The crime rate for casino counties between 1989 and 1991 increased only slightly more than for noncasino counties other than Hennepin, Ramsey, Washington, Anoka and Dakota counties (14.8 percent compared to 12.1 percent)." This document discusses casino impacts in and around Minnesota communities and may be more applicable to the subject area. Increased crime does not seem to be a major problem for these counties. Attachment II of the Addendum states, "St. Croix Meadows first opened in 1990 after a long and involved approval process. Since it opened, none of the earlier negative predictions concerning increased crime, etc., have come true...".

Due to the increased demand for housing to accommodate new employees and their families. Many of these employees would be in higher-salaried, managerial positions who would be able to purchase

homes in the Hudson area. Many other families would have both heads of household working at the new facility with two incomes to increase buying power for area homes. It is reasonable to expect that property values around the proposed Hudson track/casino facility would increase. Comments referring to people "fleeing from crime and congestion" regarding the advent of this proposed casino/dog track appear to be overstated.

COMMENT (13): "The Addendum comments, "No new significant short-term, long-term, or cumulative impact is expected on area traffic and ambient air quality of the proposed action." ... A dramatic increase in traffic, and some air degradation is bound to result along Carmichael Road south of the freeway interchange... At the moment, since there has been no new traffic study at that interchange, nobody knows whether or not 1989 traffic estimates are correct..."

RESPONSE: The "indirect source permit" regarding air pollution for the Hudson dog track facility was based upon the size of the parking lot. The Wisconsin Department of Natural Resources, Bureau of Air Management Planning Section has reviewed the proposed modifications and stated in a recent letter, "As there will be no physical modifications to the parking lot, there are no requirements for any modifications to the existing permit or for the issuance of a new permit." The regulatory aspects of this State of WI permit would still apply as the parking lot would continue to remain in taxable status. Attachment II states, "... air monitoring stations were constructed at the track ... there are no known instances of air quality being monitored at levels not acceptable to EPA standards. The traffic flow to and from the casino and track facility should be dispersed sufficiently to maintain air quality standards well within acceptable limits."

The traffic study in the original EA was based upon traffic projections in the year 2011. Peak traffic estimates were provided to the WDOT regarding the new casino/dog track facility. WDOT Planning Section Personnel have reviewed these estimates and have not identified any significant problems regarding the proposed traffic increase on the Interstate 94/Carmichael Road interchange.

WISCONSIN
DEPT. OF NATURAL RESOURCES

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE [redacted]
TELEFAX [redacted]
TDD [redacted]
AIR MGMT FAX [redacted]

George E. Meyer
Secretary

August 16, 1994

File Code: 4509

Mr. Louis Vasseur
838 South Taylor
Oak Park, IL 60302

SUBJECT: Requested Information on St. Croix Meadows - Hudson, Wisconsin (Permit Number 91-CPB-062)

Dear Mr. Vasseur:

This letter is written as a follow up to our conversion regarding the necessity of an indirect source permit for the St. Croix Meadows facility in Hudson, Wisconsin.

From my understanding, the use of the facility may change somewhat as a result of some ownership changes, but there will be no physical modifications to the parking lot. As there will be no physical modifications to the parking lot, there are no requirements for any modification to the existing permit or for the issuance of a new permit. However, I do request that you send me a letter giving the name and business address of the new owners (partners). This information will be placed in the facility files.

Additionally, I have attached a copy of the latest indirect source permit issued to Croixland Properties. Should you have any questions or concerns, feel free to call me at [redacted]

Sincerely,

John F. Meier

John Meier, Air Management Specialist
Planning Section
Bureau of Air Management

Attachment

cc: Ralph Patterson - AM/7

WISCONSIN
DEPT. OF NATURAL RESOURCES

Carroll D. Beasley
Secretary

101 South Webster Street
P.O. Box 7921
Madison, Wisconsin 53707-7921
TELEPHONE [redacted]
TELEFAX [redacted]
TDD [redacted]

July 8, 1991
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN REPLY REFER TO: 4509

Mr. Burton L. Nordstrand
Croixland Properties Limited Partnership
512 Second Street
Hudson, WI 54016

Dear Mr. Nordstrand:

Your application for an air pollution control permit for modification of the St. Croix Meadows greyhound racing facility in Hudson, Wisconsin, has been processed in accordance with sec. 144.392, Wis. Stats.

The enclosed permit is issued to provide authorization for your source to be modified and operated in accordance with the requirements and conditions set forth within Parts I and II of the permit. Please read it carefully. A release for permanent operation (construction release) will be issued after verification that the source was modified and initially operated according to the plans and specifications as approved by the Department.

This permit supersedes the air pollution control permit for your source issued on July 6, 1989 (permit number 89-CPB-003).

Enclosed with the permit there is a bill for the cost of reviewing and acting upon your air pollution control permit. This bill is due and payable in 30 days of the date of the issuance of the permit. This fee should be made payable to Wisconsin Department of Natural Resources and returned to the address on the bill.

The fee has been calculated under the provisions of sec. NR 410.03, Wis. Adm. Code, as follows:

Basic fee for permit to modify an indirect major source	$3,000
Basic fee reduction for applicant publishing public notice	-100
Additional fee for holding public hearing at request of applicant	500
TOTAL FEE	$3,400
Portion of fee submitted with application	-500
REMAINING FEE	$2,900

This permit may be revised as a result of rulemaking by the Department or the adoption of standardized permit forms and procedures which may differ from this document. At the time of such revision, permits reflecting these changes will automatically be issued.

A copy of this permit should be available at the source for inspection by any authorized representative of the Department. Questions about this permit should be directed to the Bureau of Air Management, P.O. Box 7921, Madison, Wisconsin 53707, [redacted]

NOTICE OF APPEAL RIGHTS

This decision is effective immediately unless the permit holder appeals the permit as set forth herein.

Any person aggrieved by this decision may appeal this decision by serving a petition for a contested case hearing for administrative review of this decision on the Secretary of the Department of Natural Resources under section 144.403, Stats., within 30 days after the date of mailing of this decision. Any petition for a contested case hearing under section 144.403, Stats., shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted and the relief desired. This notice is provided pursuant to section 227.48(2), Stats.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

Christopher P. Bovee

Christopher P. Bovee, Environmental Specialist
Planning Section
Bureau of Air Management

Enclosure

cc: Air Enforcement Branch - EPA, Region V
Western District Air Program

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
BUREAU OF AIR MANAGEMENT
FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION

Findings of Fact

The Department of Natural Resources (DNR) finds that:

1) Croixland Properties Limited Partnership, 512 Second Street, Hudson, Wisconsin 54016, has applied for an air pollution control permit. The authorized representative of the facility is Burton L. Nordstrand, Chairman, Management Committee.

2) Croixland Properties Limited Partnership submitted an air pollution control permit application and plans and specifications and any additional information describing the air pollution source on June 5, 1990, September 7, 1990, October 26, 1990, November 29, 1990, January 25, 1991, February 7, 1991, February 12, 1991, February 26, 1991, and March 1, 1991.

3) DNR has reviewed Croixland Properties Limited Partnership's air permit application and the plans and specifications submitted to DNR.

4) This permit is for a major, modified, attainment area air pollution source.

5) DNR has complied with the procedures set forth in s. 144.392, Stats.

6) The proposed air pollution source meets all of the applicable criteria in s. 144.393, Stats.

7) DNR has complied with the requirements of s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code.

8) DNR has considered the Environmental Assessment for this project and the comments received on it.

9) Consistent with social, economic and other essential considerations, DNR has adopted all practical means to avoid or minimize environmental harm.

Conclusions of Law

DNR concludes that:

1) DNR has authority under s. 144.31(1)(a), Stats., to promulgate rules contained in chs. NR 400-499, Wis. Adm. Code.

2) DNR has the authority under ss. 144.31(1)(a), (e), and (f), 144.375 (4) and (5) and 144.394, Stats., and chs. NR 400-499, Wis. Adm. Code, to establish emission limits for sources of air pollution.

3) DNR has the authority to issue air pollution control permits and to include conditions in such permits under ss. 144.391, 144.392, 144.393 and 144.394, Stats.

4) The emission limits included in this permit are authorized by ss. 144.394, Stats., and NR 415.04, Wis. Adm. Code.

5) DNR is required to comply with s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code, in conjunction with issuing an air pollution control permit.

Decision

Croixland Properties Limited Partnership is authorized to modify and operate a greyhound racing facility located at County Trunk Highway "F" and Tower Road, 1.5 miles south of Interstate Highway 94, in the City of Hudson, St. Croix County, Wisconsin, as described in plans and specifications dated June 5, 1990, September 7, 1990, October 26, 1990, November 29, 1990, January 25, 1991, February 7, 1991, February 12, 1991, February 26, 1991, and March 1, 1991, in conformity with the emission limits, monitoring, recordkeeping and reporting requirements and specific and general conditions set forth elsewhere in this permit.

AIR POLLUTION CONTROL PERMIT

ATTAINMENT AREA MAJOR SOURCE

EI FACILITY NO. N/A PERMIT NO. 91-CPB-062

STACK NO.(S). N/A TYPE: Permit to Modify and Operate

SOURCE NO.(S). N/A

PERMISSION TO COMMENCE MODIFICATION ENDS EIGHTEEN (18) MONTHS FROM THE DAY THIS PERMIT IS ISSUED. ONCE A RELEASE FOR PERMANENT OPERATION HAS BEEN ISSUED, THIS OPERATING PERMIT IS PERMANENT UNLESS ALTERED, REVOKED OR SUSPENDED.

In compliance with the provisions of Chapter 144, Wis. Stats., and Chapters NR 400 to NR 499, Wis. Adm. Code,

Name of Source: Croixland Properties Limited Partnership

Street Address: 512 Second Street
Hudson, Wisconsin 54016

Principal Officer or Authorized Representative, & Title:
Burton L. Nordstrand, Chairman, Management Committee

is authorized to modify and operate a greyhound racing facility located at County Trunk Highway "F" and Tower Road, 1.5 miles south of Interstate Highway 94, in the City of Hudson, St. Croix County, Wisconsin, as described in the plans and specifications dated June 5, 1990, September 7, 1990, October 26, 1990, November 29, 1990, January 25, 1991, February 7, 1991, February 12, 1991, February 26, 1991, and March 1, 1991, in conformity with the conditions herein.

This authorization requires compliance by the permit holder with the emission limitations, monitoring requirements and other terms and conditions set forth in Parts I and II hereof.

Dated at Madison, Wisconsin this 8th day of July, 1991.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By _____
Donald F. Theiler, Director
Bureau of Air Management

PART I
SPECIFIC PERMIT CONDITIONS
FOR INDIRECT SOURCES

A. Particulate Matter Emission Limitations

1. Fugitive dust emissions from the construction and operation of the source shall be prevented by taking precautionary measures which shall include, but not be limited to:

a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, or construction operations.

b) Application of asphalt, oil, water, suitable chemicals, or plastic covering on dirt roads, material stockpiles, and other surfaces which can create airborne dust, provided such application does not create a hydrocarbon, odor, or water pollution problem.

c) Covering or securing of materials likely to become airborne while being moved on public roads, railroads, or navigable waters.

d) The paving or maintenance of roadways or parking lots so as not to create air pollution.

B. Carbon Monoxide Mitigation Measures

1. Before the source places more than 999 parking spaces into use, the following roadway conditions shall exist:

a) A divided highway having at least two lanes in each direction travels from the source's exit ramp to the interchange of Interstate Highway 94 with Carmichael Road.

b) The interchange of Interstate Highway 94 (I-94) with Carmichael Road has: (1) an exit ramp from eastbound I-94 having at least two lanes, (2) an exit ramp from westbound I-94, (3) an entrance ramp to eastbound I-94, and (4) an entrance ramp to westbound I-94 having at least two lanes.

c) If accessing westbound Interstate Highway 94 from northbound Carmichael Road requires a left-turn, then northbound Carmichael Road has at least two exclusive left-turn lanes at its intersection with the entrance ramp to westbound Interstate Highway 94.

2. The permittee shall install and operate a carbon monoxide ambient air monitoring site in conformance with the Wisconsin Department of

Natural Resources (DNR) Air Monitoring Comparability Program guidelines, which are attached to this permit. Department approval is required for the specific location and design of the monitoring site prior to installation and start-up of the monitor. The monitor shall be located at a site approved by the DNR at a location near the exit of the St. Croix Meadows Greyhound Racetrack. Operation of the monitoring site shall commence no later than the opening date of the initial racing season at the St. Croix Meadows Greyhound Racetrack.

If any exceedance of the one-hour carbon monoxide standard of 40 milligrams per cubic meter (35 parts per million) or the eight-hour carbon monoxide standard of 10 milligrams per cubic meter (9 parts per million) is detected by the monitor, the permittee shall immediately notify the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, WI 54702 (telephone number: 715-839-3756) and the City of Hudson-Department of Public Works (telephone number: 715-386-9021); and submit a written report to the Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison, Wisconsin, 53707, within fifteen (15) calendar days after the exceedance. The report shall include: the time of the exceedance; the hourly average carbon monoxide concentrations during the time of the exceedance; the time of and attendance at any racing event held during the time of the exceedance, within 24 hours prior to the start of the exceedance, or within 12 hours after the end of the exceedance; and information on any unusual event or malfunction that may have caused the exceedance.

Regular data submittals consisting of hourly average carbon monoxide concentrations shall be submitted to the Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison, Wisconsin 53707, within thirty (30) days of the end of each calendar month.

3. For purposes of this condition the phrases "applicable intersections" and "applicable traffic movements" are defined.

"Applicable intersections" means all signalized intersections on Carmichael Road between the St. Croix Meadows Greyhound Racetrack and Coulee Road (I-94 North Frontage Road).

"Applicable traffic movements" means:

-All straight-ahead movements north and south on Carmichael Road between the St. Croix Meadows Greyhound Racetrack and Coulee Road (I-94 North Frontage Road).

-The eastbound Crestview Drive left-turn onto Carmichael Road.

-The eastbound I-94 exit ramp right-turn onto Carmichael Road.

-The northbound Carmichael Road left-turn onto the westbound I-94 entrance ramp.

If the carbon monoxide monitor required in condition number 2. measures an exceedance of a carbon monoxide ambient air quality standard, then the permittee shall make arrangements with the Wisconsin Department of Transportation (DOT) or the City of Hudson to procure and provide DNR with traffic volume data and traffic response signal plan information along with an analysis of this information for all applicable intersections and traffic movements between the St. Croix Meadows Greyhound Racetrack and Coulee Road for the time period beginning three hours before the start of the exceedance and ending three hours after the end of the exceedance. This information shall be submitted to the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, WI 54702. This information shall be provided in a summary form to DNR in a format approved by DNR and shall be supplied to DNR no later than 30 calendar days after the exceedance.

4. The definitions of "applicable intersections" and "applicable traffic movements" in condition number 3. also apply to this condition.

If an exceedance of a carbon monoxide ambient air quality standard has been measured within two miles of the St. Croix Meadows Greyhound Racetrack, or if DNR has reason to believe that such an exceedance has occurred, DNR may request and the permittee shall make arrangements with DOT or the City of Hudson to procure and provide DNR with traffic volume and traffic response data along with an analysis of this information for all applicable intersections and traffic movements between the St. Croix Meadows Greyhound Racetrack and Coulee Road. DNR shall specify in its request the time period for which such information is requested.

If no exceedance has been measured, DNR may make this request only if DNR has reason to believe that the following information indicates an exceedance has occurred:

a) carbon monoxide monitoring data, if available, including historical data,

b) meteorological data,

c) the times and attendance of events at the St. Croix Meadows Greyhound Racetrack,

d) carbon monoxide modeling results,

e) public comments or complaints to DNR regarding instances of poor air quality, if any, and

f) information pertaining to traffic congestion at any of the applicable intersections, if available.

Also, if no exceedance has been measured, DNR shall include in its request written justification as to why DNR has reason to believe that an exceedance has occurred.

When requested, the information shall be submitted to the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, WI 54702. This information shall be provided in a summary form to DNR in a format approved by DNR and supplied to DNR no later than 30 calendar days after the date of the request. The permittee shall make arrangements with DOT or the City of Hudson to retain the data necessary to compile this information for at least one year, irregardless of whether DNR requests the data.

5. The elapsed time between the start of any two consecutive events at the St. Croix Meadows Greyhound Racetrack shall be at least six hours.

C. Other Specific Conditions

1. Construction Progress Notification

The permittee shall send the DNR's Western District Air Program, 1300 Clairemont Avenue, Call Box 4001, Eau Claire, Wisconsin 54702, construction progress reports every 30 days until a release for permanent operation is granted.

2. Initial Operation Notification

The permittee shall notify the DNR's Western District Air Program thirty (30) days prior to initial operation of the source covered by this permit.

3. Release for Permanent Operation

This permit does authorize an initial operation period of sixty (60) days for testing (if necessary) and Department evaluation of operation to assure conformity with the permit conditions. Permanent operation of the source(s) covered by this permit after the initial operation period is prohibited until a release has been issued by the Department.

4. This permit supersedes permit number 89-CPB-003, issued to Croixland Properties Limited Partnership on July 6, 1989.

Wisconsin Department of Natural Resources
Bureau of Air Management
Air Monitoring Section

Air Monitoring Comparability Program

The Department of Natural Resources' (DNR) Air Monitoring Section has established a program to audit air monitoring sites within the state covered under Section NR 404.06, Wisconsin Administrative Code. Data that is found to be accurate, precise, and comparable to DNR data will be determined to be comparable under terms of Section NR 404.06, Wisconsin Administrative Code. Comparability is a measure of the quality of the data and informs data users of the degree of confidence that can be placed in such data.

The Audit Program consists of the following:

1. Prior to beginning monitoring, the industry or other entity (or it's consultant):

   A. Prepares and submits to DNR a monitoring and quality assurance plan describing what procedures will be used to insure that data of good quality will be generated. The plan should include the operating procedures, preventive maintenance schedules, quality control checks on all phases of the operation (with acceptance limits), data reduction and validation procedures, and calibration schedules and procedures.

   OR

   B. Completes a copy of DNR's monitoring survey questionnaire which covers the items in "A" above.

   The information received is reviewed to determine the adequacy of the entity's monitoring program. Adequacy is based on a comparison with EPA's Quality Assurance Guidelines[1,2] for monitoring; where guidelines do not exist, good scientific practice is used. DNR then reports the results of this review to the entity. DNR's Air Monitoring Handbook is available for inspection at the Bureau of Air management as a guide for specific monitoring and quality assurance procedures.

2. Periodic, formal on-site inspections of all monitoring site(s) and equipment by DNR auditors. This inspection is conducted in the presence of the site operator. The initial site visit is best scheduled before monitoring begins so that the location of the site and the placement of the instrument probe may be reviewed to determine if they meet EPA siting criteria[3]. A review is also made of site operating procedures and record keeping to see if they adequately insure the production of good quality data. The results of this review are reported to the entity, with recommendations for improvements, if needed. Follow-up site inspections are scheduled only if deficiencies are observed.

3. Performance audits of the instruments are conducted and consist of either introducing a known quantity of the pollutant of interest into the monitor

and measuring its response or measuring flow with an audit device. Usually five different concentrations are used. Flow rate checks on the instruments may also be performed. For high volume air samplers, five different resistance plates (or other flow audit device) are placed on the sampler and the flow rate measured.

The DNR attempts to conduct performance audits at all monitoring site(s) once each year. Evaluations of the audit results are sent to the entity; follow-up audits will be scheduled if problems are observed.

Criteria for Comparability

1. Operating and quality control procedures must be adequate to insure good control of the accuracy and precision of the data. The following procedures are generally considered part of an adequate quality control program:

   a. Use of EPA reference or equivalent methods as described in the Code of Federal Regulations.[4]

   b. Use of EPA Quality Assurance Guidelines[1,2] where they exist.

   c. For continuous analyzers:

      1. Frequent zero/span checks of the analyzers - daily is preferred. Results of zero/span checks should be used to determine instrument drift and possible need for instrument recalibration as well as to validate hourly concentrations.

      2. Multipoint calibrations of the analyzers whenever: a) zero/span checks exceed limits, or quarterly (90 day), whichever occurs first, b) instrument maintenance or adjustment affects response.

      3. Periodic checks and recertification of standards and flow dilution equipment used to calibrate continuous analyzers. The frequency of the checks or recertification will depend on the calibration system used and the quality of the pollutant standards.

      4. Audits of manual strip chart reduction or periodic checks of analyzer output versus automated data acquisition equipment readings.

      5. Data validation procedures to detect abnormal data patterns and determine if such hourly concentrations are accurate measurements.

   d. For Prevention of Significant Deterioration (PSD) monitoring, the requirements in the Code of Federal Regulations 40 CFR 58, Appendix B must be followed along with the guideline provided in U.S. EPA's "Guideline" document[5].

2. Performance audits of the analyzers must be satisfactory.

   a. High volume samplers - flow measurements must be within ±9% of the DNR flow values.

b. Continuous analyzers - reported concentrations must be within ±10% of the known DNR concentrations.

Comparable industrial/entity data is reported in DNR's Annual Air Quality Data Reports, and is annotated as such.

To Maintain Certification

1. The industry/entity must continue to meet the criteria for certification listed above.

2. The industry/entity must submit copies of their multipoint calibration data for their monitoring instruments to DNR on a quarterly basis. These data are reviewed for consistency between calibrations. If a calibration is significantly different than previous calibrations for the instrument, the industry will be asked to review this calibration and determine if it is indeed accurate and explain the difference.

3. All hourly pollutant concentrations, meteorological parameters, and 24-hour concentrations for total suspended particulate are to be submitted in "AIRS"[6] format to DNR on floppy diskette. The data submittal should be on a monthly basis and should be received by DNR no later than 30 days after the end of the month.

Any industry or other entity interested in participating in the Air Monitoring Comparability program should contact:

Julian Chazin, Chief
Air Monitoring Section
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, WI 53707
Telephone #: 608/266-1902

References

1. Quality Assurance Handbook for Air Pollution Measurement Systems Vol. I - Principles EPA-600/9-76-005 March 1976

2. Vol. II - Ambient Air Specific Methods EPA-600/4-77-027a May 1977

3. Code of Federal Regulations - 40 CFR Part 58, Appendix D and Appendix E.

4. Code of Federal Regulations - 40 CFR Part 50 Appendices A through G.

5. Ambient Monitoring Guidelines for PSD (sources), EPA 450/4-87-007, May 1987

6. "AIRS" - U.S. EPA's Aerometric Information Retrieval System. Details available from the Air Monitoring Section.

GENERAL PERMIT CONDITIONS
FOR INDIRECT SOURCES
PART II

A. Scope

This permit is valid only for the structure, building, facility, equipment or operations specifically identified herein. All emissions authorized hereby shall be consistent with the terms and conditions of Parts I and II of this permit.

B. Prevention of Air Pollution

No person may cause, allow or permit the emissions of any air contaminant into the ambient air from a source subject to this permit which substantially contribute to the exceeding of an air standard or which cause air pollution.

C. Notification Requirements

Pursuant to sec. 144.394(3), Wis. Stats., and section NR 445.05 and 439.025(6), Wis. Adm. Code, the Department shall be notified of the following events:

Event	Timing
Hazardous substance air spill	Immediate-call: (608)266-3232
Malfunction or event not reported in advance which causes or may cause any violation of an emission limitation.	Within 8 hours of onset
Noncompliance with any other condition specified in this permit	Written notification within 5 days identifying noncompliance, cause, duration, and steps taken to prevent reoccurrence.

D. Right of Entry

Pursuant to sec. 144.34, Wis. Stats., the permittee shall allow authorized representatives of the Department of Natural Resources to enter upon the permittee's premises; to have access to and copy any records required to be kept under the terms and conditions of this permit; and to make any inspection necessary to ascertain compliance.

E. Permit Alteration, Revocation, Suspension

After notice and opportunity for a hearing, as provided in sec. 144.395, Wis. Stats., this permit may be altered, suspended, or revoked in whole or in part for cause, including but not limited to, the following:

1. A significant or recurring violation of any term or condition of this permit;

2. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

3. A change in any applicable rule; or

4. Failure to pay any required permit fees.

F. Civil Liability

Nothing in this permit shall be construed to relieve the permit holder from civil penalties under secs. 144.426, 144.96 or 144.99, Wis. Stats., for violation of the terms or conditions of this permit, or for violation of secs. 144.30 to 144.426, 144.76 and 144.96, Wis. Stats., or of any rule or any special order issued under those sections.

G. Other Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permit holder from any responsibilities, liabilities, or penalties established pursuant to any other applicable Federal, State, or local law or regulation. The issuance of this permit does not convey any property rights in either real or personal property, nor does it authorize any injury to private property or any invasion of personal rights.

H. Records Retention

All records and information resulting from any monitoring activities required by this permit shall be retained by the permittee for a minimum of three years (or longer if requested by the Department) pursuant to section NR 439.03, Wis. Adm. Code.

I. Reporting

Reports required by Part I of this permit, if any, shall be signed by an authorized representative of the permittee.

J. Confidential Information

Except for information determined to be confidential under sec. 144.33, Wis. Stats., any information or reports received by the Department in the permit application process, or subsequently obtained, will be available for public inspection at the offices of the Department of Natural Resources.

K. Notification of Transfer

In the event of a transfer of control of operation or ownership of the source, the permittee, prior to such transfer, shall notify its successor by letter of the need for a permit. A copy of this letter shall be forwarded to the Department.

G. Nonexempt Modifications

"Modification" means any change in the physical size or method of operation of a stationary source which:

(1) increases the potential amount of emissions of an air contaminant;

(2) results in the emission of an air contaminant not previously emitted; or

(3) results in the violation of an ambient air increment.

Any modification of the source(s) subject to this permit is prohibited unless the modification is an exempt modification or the modification is authorized by a permit. The following changes in method of operation are exempt modifications if the specified change does not cause or exacerbate the violation of an ambient air quality standard or increment and if the change in method of operation does not result in the violation of any other term or condition of this permit:

1. An increase in production rate if that increase does not exceed the operating design capacity of the source.

2. An increase in the hours of operation of the source.

3. Use of an alternate fuel or raw material if the source is designed to burn or use the alternate fuel or raw material and if that information is included in the plans, specifications and other information submitted under sec. 144.392(2), Wis. Stats. or under sec. 144.39(1), Wis. Stats. (1977).

4. Resumption of operation of a source after a period of closure if the existing equipment was continuously included in the source inventory as an existing source covered by plans under sec. 144.31(1)(f), Wis. Stats.

5. A change in ownership of the source.

H. Replacement

Unless authorized by a permit, replacement of the source(s) covered by this permit is prohibited.

N. Circumvention

Pursuant to section NR 439.08, Wis. Adm. Code, the installation or use of and article, machine, equipment, process, or method, which conceals an emission which would otherwise constitute a violation of an applicable rule is prohibited unless written approval has been obtained from the Department. Such concealment includes, but is not limited to, the use of

gaseous diluents to achieve compliance and the unnecessary separation of an operation into parts to avoid coverage by a rule that applies only to operations larger than a specified size.

O. Forfeitures

In addition to other penalties or remedies, sec. 144.426, Wis. Stats., provides that any person who violates this permit shall forfeit not less than $10 nor more than $25,000 for each violation. Each day of continued violation is a separate offense.

P. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Q. Notice of Appeal Information

Under section 144.403, Wisconsin Statutes, any permit, part of a permit, decision or determination by the Department under sections 144.391 to 144.402, Wisconsin Statutes, becomes effective unless the permittee or applicant seeks a hearing by filing a petition with the Department within 30 days after the date of the action sought to be reviewed. The petition must name the Wisconsin Department of Natural Resources as respondent. It must also set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted, and the relief desired.

4154C

Peak Traffic Impacts

Assumptions:

Maximum Patron Occupancy: 9,600

REFERENCE:

Peak occurs at exit from the dogtrack from 4:30 - 5:30 PM, weekdays (Benshoof Assoc., Inc. - Traffic Study For City of Hudson South of I-94, November 15, 1988).

Dogtrack Peak: 2,655 outbound trips; 6,800 attendance (calculated).

Assumptions For Peak, Dogtrack/Casino Operations

Patron retention time:	Casino Player	1.5 hours
	Dog Track Player	3.0 hours
	Casino/Dog Player	2.5 hours
	Average Player	2.3 hours

Dogtrack/Casino Peak Duration = 2.3 hours

Occupancy at Peak = 9,600 Patrons

Caculations:

9600 patrons / 2.3 hours = 4,174 patrons/hour entering and exiting the facility during the peak period.

((0.85)(4,174 patrons/hr) / (vehicle / 2.2 patrons)) = 1,613 passenger vehicles/hour entering and exiting the facility during the peak period.

((0.15)(4,174 patrons/hr) / (bus / 40 patrons)) = 16 buses/hour entering and exiting the facility during the peak period.

[Note: 2.2 Patrons/Vehicle and 40 Patrons/Bus, per CH2M Hill, Air Pollution Control Permit for St. Croix Meadows Hudson Greyhound Racing Facility, Jan. 1989.]

Peak Traffic Volume Estimate:

1,613 vehicles/hr + 16 buses/hr = 1629 vehicles/hour entering and exiting the facility during the peak period (27 vehicles/minute).

Roadway Vehicle Storage Volume (I94 interchange south to casino/dogtrack facility):

((5280 feet) / (15 feet/vehicle))(2 lanes) = 704 vehicles

[Note: Distance from Charmichael Road to Dogtrack/Casino Complex = 1mile. Minimum, average vehicle length = 13 ft + 2 ft buffer space = 15 ft.]

Assumption: Traffic nearly stopped. Average speed = 5 mph.

(1,629 vehicles/hour) / (5 mph) = 326 vehicles in the roadway

Volume of Dogtrack/Casino traffic ingressing and egressing the facility :

Volume of the roadway: 326:704 (46%)

Wisconsin Department of Transportation

TRANSPORTATION DISTRICT 6
718 West Clairemont Avenue
Eau Claire, WI 54701-5108

94 SEP -6 AM 7:54
BUREAU OF INDIAN AFFAIRS
GREAT LAKES AGENCY

September 2, 1994

Mr. Mark Kuester
Bureau of Indian Affairs
Great Lakes Agency
615 Main St W
PO Box 273
Ashland WI 54806-0273

Dear Mr. Kuester:

SUBJECT: IH94/Carmichael Road Interchange
St. Croix County

Thank you for the opportunity to review the anticipated traffic impacts from the planned Hudson Dog Track/Casino facility.

We have made a quick comparison of these traffic impacts with the traffic forecast used for the design of the IH94/Carmichael Road Interchange in 1989. From this quick look, it appears your anticipated traffic numbers can be handled by the existing interchange.

Due to the short time given to review, we have not studied the issue thoroughly; however, we are fairly confident the interchange will function fine with the planned dog track/casino.

We are assuming the proposal is also being reviewed by the City of Hudson. They operate and maintain the signals at the ramp terminals, and should be given an opportunity to comment.

If you have any questions or need clarification, please call [redacted]

Sincerely,

Jeffrey P Kern

for M. L. Beckman, P.E.
Chief, Transp. Assistance &
Planning Section

MLB:cjh

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RECEIVED
SEP 06 1994
NATURAL RESOURCES

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Lakes Agency
Ashland, Wisconsin 54806-0373

IN REPLY REFER TO

Natural Resources

September 14, 1994

Stanley Crooks, Vice Chairman
Minnesota Indian Gaming Association
Rt. 2, Box 95
Cass Lake, MN 56633

Dear Mr. Crooks:

Enclosed with this transmittal are our responses to comments we received regarding the environmental assessment, addendum and DRAFT Finding of No Significant Impact (FONSI) action for the proposed trust acquisition of, and addition of Class III gaming to, the St. Croix Meadows Greyhound Racing Park in Hudson, WI. This action is proposed by the Red Cliff and Lac Courte Oreilles Bands of Lake Superior Chippewa and the Sokaogon Chippewa Community. Also included is additional information requested by our Agency, regarding possible impacts to air quality and traffic flow.

Based upon these documents, it has been determined that the proposed action will not have significant environmental impacts and the preparation of an environmental impact statement will not be necessary. Enclosed is a copy of the Final FONSI for your review.

Thank you for your comments and participation regarding this matter. Contact Mark Kuester, Natural Resources Specialist at [redacted] for further information.

Sincerely,

Robert R. Jaeger

Superintendent

Enclosure

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EXHIBIT
17
8/29/97 KKM

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

MINNEAPOLIS AREA OFFICE
331 SOUTH 2ND AVENUE
MINNEAPOLIS, MINNESOTA 55401-2241

IN REPLY REFER TO:

Tribal Operations

1994

MEMORANDUM

TO: Assistant Secretary - Indian Affairs

FROM: Office of the Area Director

SUBJECT: Request for Off-Reservation Gaming for Land in Hudson, Wisconsin

On March 4, 1994, the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes"), together, pursuant to Section 2719(b) of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988), filed an application with the Minneapolis Area Director requesting that the United States take a certain parcel of real property located in Hudson, Wisconsin, into trust for the benefit of the Tribes for gaming purposes. The Tribes do not currently own the property, but they have an agreement to purchase the land if and when the Secretary of the Interior makes the findings necessary under Section 2719, the Governor concurs in the Secretary's findings, the steps necessary to place the land into trust have been completed, the National Indian Gaming Commission approves the management contract and collateral agreements and the Tribes have amended their gaming compacts of 1991 to permit the operation of pari-mutuel greyhound racing.

This memorandum outlines the Minneapolis Area Office's review and analysis of the Tribe's application and transmits; (1) the Area Director's Findings and Recommendations, (2) the comments of the Field Solicitor, Twin Cities, and (3) the Documentary Support required for the Secretary's Determination concerning the request for off-reservation gaming on proposed Trust Acquisition of the Tribes.

I. APPLICATION INFORMATION

A. Sokaogon Tribe: The Sokaogon Chippewa Community of Wisconsin occupy a small reservation in Forest County, Wisconsin with the central community in Mole Lake. There

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are 1,528 persons enrolled in the Tribe. 512 members live on or near the reservation. According to figures provided by the Tribe, 42% are unemployed and actively seeking employment.

The Sokaogon Chippewa Community Tribal Council is authorized by Article VII, Section (e), to manage all economic affairs and enterprises of the Community. The Sokaogon Chippewa Community Tribal Council included two resolutions as part of the Tribes application package. Resolution No. 9-11A-93 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 2-4A-94 approved the St. Croix Meadows-Joint Operating Agreement and authorized the Tribal Chairman to sign the agreement.

B. Lac Courte Oreilles Tribe: The Lac Courte Oreilles Band of Lake Superior Chippewa had a reported enrollment of 5,431 people in 1991. In 1991, 1,923 of these people lived on the reservation and another 1,126 lived within 150 miles of the reservation.

The Lac Courte Oreilles Tribal Governing Board is empowered by Article V, Section 1(f) of the Lac Courte Oreilles Constitution to purchase lands within or without the boundary of the Tribe's reservation. The Tribal Governing Board is empowered by Article V, section 1(h) to engage in any business that will further the social or economic well-being of members of the Band. The Lac Courte Oreilles Governing Board submitted three resolutions as part of the Tribes application package. Resolution No. 93-82 requested the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust status. Resolution No. 94-08 approved the Joint Operating Agreement and directed the Tribal Chairman to execute the agreement on behalf of the Lac Courte Oreilles Band of Lake Superior Chippewa. Resolution 94-09 created the Lac Courte Oreilles Economic Development Commission to act on behalf of Lac Courte Oreilles.

C. Red Cliff Tribe: The Red Cliff Band of Lake Superior Chippewa occupy a small reservation in Bayfield County, Wisconsin, on the shores of Lake Superior. There are 3,180 persons enrolled in the band. 1,651 members live on or near the reservation.

The Red Cliff Tribal Council is authorized by the Red Cliff Constitution Article VI, Section 1(e) to manage all economic affairs and enterprises of the Tribe. The Red Cliff Tribal Council included two resolutions as part of the Tribes application package. Resolution 9/23/93C requests the assistance of the Bureau of Indian Affairs to place the St. Croix Meadows property into undivided trust. Resolution 2/7/94A authorized the Tribal Chairperson to sign the Joint Operating Agreement on behalf of the Red Cliff Band of Lake Superior Chippewa and also authorized the Chairperson to take such other actions necessary to effectuate the agreement.

These Tribes continue to have high rates of unemployment and poverty in spite of having developed gaming facilities on their reservations. We agree with the Tribes determination that this is true largely because they are located at great distances away from urban markets.

Each of these Tribes also have relatively small populations and land holdings. The Hudson location will provide the tribes with access to an urban market for the gaming facility. However, since it is unlikely that many of the residents of these three communities will chose to relocate to be employed at this location, the benefits which will accrue to each of these communities will come not from direct employment in the gaming facility, but, rather, from employment and the goods and services which would be generated by the spending of each community's share of the net income.

The average amount estimated to be received by each of the three Tribes over the next five years from the operation of the Hudson Gaming Facility is approximately $10 million per year. This money would be used by the Tribes to improve health care facilities on their reservations, purchase land, improve housing facilities, improve community and elderly programs, improve educational facilities and as educational grants, and to invest in economic development in the communities.

1. Description of Land:

The Tribes have requested that land located in the City of Hudson, County of St. Croix and State of Wisconsin, be taken into trust pursuant to 25 C.F.R. Parts 151 and 25 U.S.C. § 465 and § 2719. The land is currently owned by Croixland Properties Limited Partnership.

This request is for a parcel of land located in the fractional NE¼ of the NE¼, and SE¼ of the NE¼, Section 6, T28N, R19W, City of Hudson, Saint Croix County, Wisconsin, described as follows:

The fractional NE¼ of the NE¼ of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional NE¼ of the NE¼ of said Section 6.

ALSO, that part of the SE¼ of the NE¼ of said Section 6 described as follows: Commencing at the NE corner of said Section 6: thence S02°49'01"W 1,891.74 feet along the East line of the fractional NE¼ of said Section 6 to the NE corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the SE¼ of the NE¼ of said Section 6; thence N02°48'30"E along the west line of said SE¼ of the NE¼ to the NW corner thereof; thence Easterly along the North line of said SE¼ of the NE¼ to the NE corner thereof; thence S02°49'01"W, along the East line of said SE¼ of the NE¼ to the point of beginning.

The properties listed above encompass an area of approximately 55.82 acres currently consisting of the St. Croix Meadows Greyhound Racing Facility. The site is served by all necessary utilities and a highway system which includes Interstate Highway 94.

2. Third Parties:

The Tribes have entered into a Joint Operating Agreement with Galaxy Gaming and Racing Limited Partnership, an affiliate of Croixland, in order to provide management of the proposed gaming facility. We have informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Association. The National Indian Gaming Commission concurred in our determination and the Tribes have requested their approval.

II. GOVERNMENTAL ACTIONS REQUIRED

The process of taking Off-Reservation land into trust requires a tribal applicant to meet the requirements of 25 C.F.R. Part 151 - Land Acquisition, and Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988). Section 2719(b)(1)(A)requires the following two part determination:

> "The Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's Determination;"

This report does not contain information written specifically to meet the requirements of 25 C.F.R. Part 151, Land Acquisition. This report only outlines the Minneapolis Area Office's review and analysis of the Tribe's proposal to meet the two part determination required by the Indian Gaming Regulatory Act. 25 C.F.R. Part 151 requires specific actions within real estate services that exceeds Section 2719 action under the Indian Gaming Regulatory Act. If and when it becomes necessary, the requirements of 25 C.F.R. Part 151 will be addressed by the Area Office in a separate document.

The Indian Gaming Regulatory Act has several requirements that have been met by the Tribes; first, all three Tribes have successfully negotiated Class III Gaming Compacts with the State of Wisconsin as required by Section 2710(d)(1)(C) of the Indian Gaming Regulatory Act and the Secretary of Interior published the Approval Notice of the Gaming Compacts in the Federal Register; second, in accordance with 2710(d)(1)(A), each Tribe has adopted tribal gaming ordinances that have been approved by the Chairman of the National Indian Gaming Commission.

II. CONSULTATION PROCESS

The Bureau of Indian Affairs consultations with the City of Hudson, Local Officials, and Tribal Officials are described in detail in the Recommended Findings of Fact and

Conclusions. As the Recommended Findings of Fact and Conclusions indicate, the Tribes' application has received mixed support from the Community and nearby Tribes.

IV DOCUMENTARY RECORD

The Minneapolis Area Office has prepared four volumes of documentary support required for the Secretary's determination. The documentary support consists of documents the Tribes have submitted in support of their application and documents the Area Office has compiled during the course of the review and analysis of this application. The documentary record contains a complete index of documents.

Volume I contains proprietary information that is privileged commercial and financial information, which is confidential and exempt from disclosure pursuant to 5 U.S.C. 552 (b)4.

V. RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the documentary support that was prepared during the course of the review and analysis of the Tribes' Application, the Area Office has prepared the attached Recommended Findings of Fact and Conclusions.

Based upon the Tribes' application, the documentary support and the consultations between the Great Lakes Agency Superintendent, the City of Hudson, St. Croix County, and other federally acknowledged Indian Tribes located in Wisconsin and Minnesota, the Recommended Findings of Fact and Conclusions conclude that allowing gaming on the proposed trust property is in the best interests of the Tribe and its members and would not be detrimental to the surrounding community.

VI. RECOMMENDATION

Because the establishment of a gaming facility on the proposed trust land is in the best interest of the Tribe and its members and would not be detrimental to the surrounding community, I recommend that the Secretary determine that the proposed trust property be acquired by the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes for Gaming purposes.

Area Director

Attachments

MINNEAPOLIS AREA OFFICE'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS

November 15, 1994

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INTRODUCTION:

The Sokaogon Chippewa Community of Wisconsin, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (Collectively referred to as the "Tribes") have entered into an agreement with the current owners (Croixland Properties Limited Partnership or "Croixland") of the St. Croix Meadow Greyhound Park located in the City of Hudson, Wisconsin, to purchase the assets of the pari-mutual dog track. The Tribes have requested that the land currently comprising St. Croix Meadows, as well as land immediately surrounding the dog track (totaling approximately 55 acres), be placed into trust. The stated purpose of the acquisition is to begin Class III gaming at the facility with the introduction of 1,500 - 2,000 slot machines and 30 - 40 blackjack tables.

Section 2719 of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (1988) states, in part, that lands can be acquired for gaming only if "the Secretary, after consultation with the Indian Tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a Gaming Establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community..." 25 U.S.C. § 2719 (b)(1)(A). The following is the Minneapolis Area Office's analysis and recommendations of the Tribes application under this section.

I. BEST INTEREST OF THE TRIBES

A. GROSS AND NET INCOME TO THE TRIBES:

Two separate market studies were prepared regarding this proposal. One by Arthur Andersen & Co. (AA)(Tab 3)[1] which used the "comparative market analysis approach" to estimate the Hudson market potential, and one by James M. Murray, PhD. (Tab 4) which used the gravity model and Reilly's Law of Retail Gravitation to establish the sphere of influence of the Hudson facility both currently and as projected. Although the specific findings of the two reports do differ significantly in some respects, we will incorporate both reports into our analysis.

The AA Study estimates the total market gaming revenues in the primary market of Minneapolis/St. Paul to be between $550 - $630

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[1] Unless otherwise stated, the tabs are located in Volume I.

million, with the proposed Hudson Casino share projected to be $80 million (excluding the dog track) (Tab 3, pages 21 & 22). AA projects Total Revenues for the first year to be $88,367,000. The Net Income is projected to be $30,910,000 in the first year of operation. Pursuant to the Joint Operating Agreement (Tab 7D, page 8) each tribe would receive 25% of the net revenue. Thus, under this study, each tribe is projected to receive $7,727,000 in the first year of operation and $11,506,000 by the fifth year (V-I, Tab 3, page 30).

Dr. Murphy estimates the total gaming revenues in the primary market to be currently at $406,906,108 a year (Tab 4, page 15). He estimates the proposed Hudson Casino take (including income from the dog track) would be $104.1 million in the first year of operation and $131.4 million by the fifth year (Tab 4, page 18). He projects Net Revenues to be $31.1 million in the first year and 48.8 million by the fifth year (Tab 5, page 1). Dr. Murphy did not provide an estimate of the total market gaming revenues. However, we note that his estimate of total revenues of $511,124,739 (Tab 4, page 15) is consistent with the estimate made by the Arthur Andersen study.

The two reports differ notably in amount of gross income projected and the total amount of expenses expected to be incurred by the Hudson Venture in the first year (See Table 1 of this report). As a result, we combined the two reports to calculate a best case scenario and a worst case scenario.

Dr. Murphy does not give a breakdown of the expected expenses since his report focuses more on the overall impact to the Tribes and surrounding community from the spending of the net proceeds. Nevertheless, we feel it is important to include this information since it substantiates the Tribes position.

If you combine Dr. Murphy's total expenses ($73 million) with AA's estimated Total Revenues ($88,367,000), the Tribes would net approximately $3.84 million each (15,367,00 multiplied by 25%). This number represents the worst case scenario under a combination of the two studies.

The best case scenario under a combination of the two studies is a Net Revenue of approximately $46.6 million ($104.10 million in Gross Revenue under Dr. Murphy's study minus $57.45 million in total expenses in AA's study) to be divided equally among the three Tribes and current owner. Under this scenario each Tribe would receive $11.65 million in the first year of operation.

We find that due to the sheer size of the market of the urban area, the Tribes would enjoy a financial benefit well beyond any financial benefits generated from reservation located casinos. Also, an urban location would be more likely to produce a relatively stable annual cash flow for the Tribes. It would also

Table 1

COMPARISON OF THE MARKET STUDIES FOR THE FIRST YEAR OF OPERATION

Revenues:	Arthur Andersen:	Dr. James Murray:
Casino	$70,000,000	
Dog Track	11,367,000	
Food & Beverage	7,000,000	
Total Gross Revenues:	88,367,000	104,100,000
Expenses:		
Casino	20,300,000	
Dog Track	7,131,000	
Food & Beverage	5,600,000	
G&A, Marketing, Sec, Property	17,673,000	
Operating Expenses		60,000,000
Depreciation	3,111,000	
Interest	3,641,000	
Debt Service per Year		13,000,000
Total Expenses:	57,456,000	73,000,000
PROJECTED NET INCOME:	*$30,911,000*	*$31,100,000*

provide each Tribe a source of income which it can use to further Self-Determination and economic independence.

B. PROJECTIONS OF MANAGEMENT AND TRIBAL EXPENSES:

For the first five to seven years the Hudson Venture will be operated by the three Tribal Economic Development Commissions and Galaxy Gaming pursuant to the terms of the Joint Operating Agreement (Tab 7D, page 11, § 3.1). We informed the Tribes that we view this agreement as a management agreement subject to approval by the National Indian Gaming Commission. The National Indian Gaming Commission concurred verbally in our determination. The Tribes have submitted the Joint Operating Agreement and the collateral agreements to NIGC for approval.

Under the Joint Operating Agreement, the "Business Board" will have general oversight and authority over the operation. It will be composed of eight persons: two Galaxy Gaming representatives and two representatives from each of the three Tribes (Tab 7D, page 4, § 2.7). The primary management officials include any person with the authority to hire and fire employees and any person with the authority to set working policy (Tab 7D, page 10, § 2.31). The Business Board will unanimously select four of the primary management officials. They include the Chief Executive Officer, General Manager, Chief Financial Officer and the Human Resource Director Id.

The Chief Executive Officer will be a member of the Business Board. This position will be unanimously selected by the Business Board and will be granted the power and authority to oversee the daily business affairs and operations of the Enterprise (Tab 7D, page 5, § 2.9). The CEO is required to report to the Business Board and under the Joint Operating Agreement, will not be able to undermine the Boards authority. Thus, even though the CEO must be a Galaxy Gaming Representative as long as the Financing Debt remains outstanding, the three Tribes will have substantial control of the operation (Tab 7D, page 16, § 5.1).

Each Tribe will also select their own Tribal Inspector. The three Tribal Inspectors will have full access to all aspects of the Enterprise (Tab 7D, page 20, § 5.6.3).

Under the Joint Operating Agreement, each Tribe is guaranteed a minimum monthly payment of $66,667.67 from the net revenues. Galaxy Gaming will then receive the next $66,667.67 for that month. Anything over $266,667.67 for any particular month will be distributed equally between the three Tribes and Galaxy Gaming (Tab 7D, § 2.26 and § 7.1). Galaxy will be entitled to a 25% share in the net revenues for the first seven years of operation with the Tribes maintaining the authority to "buy-out" all of Galaxy's rights in the agreement after the completion of the

fifth full year of the operation (Tab 7D, page 41, § 24).

The Joint Operating Agreement requires Galaxy to loan[3] the Enterprise the amount necessary to fully pay the Tribe for any yearly shortfall of the guaranteed payments (Tab 7D, page 8, § 2.26). However, the market studies indicate that loans will not be necessary to fulfill this minimum monthly obligation.

1. **Assumed Liabilities and Nonrecourse Liability:**

The Economic Development Commissions (EDCs) of the Tribes have agreed to purchase the St. Croix Meadows real property for $10.00. The assets necessary to run the operation (the building and improvements constructed on the land) will also be transferred to the EDCs subject to certain obligations of the seller. Under the Asset Purchase Agreement, the obligations will be paid as operating expenses and are referred to as the "Nonrecourse Liability" (Tab 7, pages 6 & 7). They include the debt owed to First Union National Bank of Florida (principal of $37,900,000 plus certain accrued interest arrearage which has been or will be capitalized) and the debt owed to the First National Bank of Hudson (Principal in the amount of $1,230,000). Although the agreement provides no limitation on the amount of interest that the Tribes will eventually pay, it does state that "in no event shall the aggregate principal amount of the Nonrecourse Liability exceed $39,200,000" (Tab 7, page 7).

The EDCs have also agreed to take the assets subject to certain "Assumed Liabilities" (Tab 7, pages 7 & 8). They include the following:

(a) Real property lease obligations;
(b) Personal property lease obligations;
(c) Obligations under contracts and licenses;
(d) Deposits held by seller under the real property and personal property leases.

The Tribes have not provided the dollar amount of the obligations these assumed liabilities will total. However, we do note the Tribes have estimated a yearly total expenditure in both market studies which includes these expenses.

Croixland will continue to own and pay taxes only on 6.96 acres of land next to the Hudson proposal (Tab 7B). The remaining land will be transferred to the Land Venture and leased to the Tribe's EDCs (Tab 7E). The EDCs will pay all taxes, assessments, water and sewer rents, rates and charges, charges for public utilities,

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[3] The interest rate on this loan is equal to the prime commercial lending rate of First Union plus 1% (Tab 7D, page 9, § 2.27).

and maintenance of the Parking Lot Land (Tab 7E, page 7, Article 4).

2. **Joint Venture Agreement of Meadows Parking Lot Joint Venture:**

Croixland and the Tribes have also agreed to form a joint venture partnership (Tab 7F). It will be called the Meadows Parking Lot Joint Venture and is not scheduled to terminate until December 31, 2045 (Tab 7F, page 6, Article 3). The purpose of this agreement is to transfer ownership of the parking lot to the partnership. To accomplish this, Croixland has agreed to sell the parking lot land to the Joint Venture at closing (Tab 7, page 27, § 9.03(g)). The property shall be deemed to be owned by the Venture as an entity and no Venturer will own the parking lot individually (Tab 7F, page 6, Article 2).

Under the Asset Purchase Agreement, Croixland will transfer the parking lot land to the venture for $10.00 and the portion of the First Union Debt equal to the fair market value of the parking lot land (Tab 7, page 11, Article III). The venture will then lease the parking lot to the Tribe's EDCs. Thus, the Meadows Parking Lot Joint Venture will be the landlord and the Tribal EDCs will be the tenants under terms of the Parking Lot Lease (Tab 7E). Rent payable by the EDCs under the Net Lease will initially be "a sum equal to 110 percent of the aggregate of the monthly debt service payable over the initial Lease Year with respect to the portion of the... (First Union Debt) allocable to the Demised Premises" (Tab 7E, page 4, Article 3). The annual base rent after the initial lease year will be determined by multiplying the annual base rent for the preceding year by a fraction (adjustment level divided by the base level) Id. The lease is to terminate in the year 2018 (Tab 7E, page 2).

We have advised the Tribes of the troublesome aspects of this arrangement. Specifically, we informed the Tribes that the ownership arrangement does not appear to be beneficial to the Tribes and seems likely to cause friction in the future. However, it is our determination that this arrangement, by itself, is not a basis to reject the application.

3. **Agreement for Government Services:**

The three Tribes, City of Hudson and the County of St. Croix entered into an *Agreement for Government Services* on April 18, 1994 (Tab 9). Under this agreement, the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other services that are under the control of the City or County or are

customarily provided to other commercial properties within the City or County (Tab 9, page 2).

The Tribes have agreed to initially pay the City and County $1,150,000 for the services Id. The payments will be paid on a semi-annual basis beginning on January 31, 1995. The first payment will be pro-rated from the date the land is actually accepted into trust.

Beginning in 1999, the Tribes will begin paying the City and County an amount equal to the allocable amount for the preceding year ($1,150,000 in 1998 with no adjustments) multiplied by 1.05 (Tab 9, page 3). The following table provides a comparison of the amount the Tribes will initially pay the city and county and the future value of $1,150,000:

ALLOCABLE AMOUNT PROJECTIONS ASSUMING NO ADJUSTMENT

Year:	Actual Amount Owed:	Future Value of 1,150,000:[3] A	B
1999	1,207,500	1,240,850	1,195,425
2000	1,267,875	1,338,877	1,242,644
2001	1,331,269	1,444,649	1,291,729
2002	1,397,832	1,558,776	1,342,752
2003	1,467,724	1,681,919	1,395,791
2004	1,541,110	1,814,791	1,450,925
2005	1,618,166	1,958,159	1,508,236
2006	1,699,074	2,112,854	1,567,811
2007	1,784,028	2,279,769	1,629,740
2008	1,873,229	2,459,871	1,694,115
10 YEAR TOTALS	15,187,807	17,890,515	14,319,168
2025	4,293,477	8,959,357	3,273,099

As the above chart indicates, the yearly 1.05 increase in the payment by the Tribes to the City and County for services is reasonable. The Office of the Field Solicitor, Twin Cities, has also indicated the Government Services Agreement is an agreement in which the Tribes may participate (Volume II, Tab 2, page 3). Thus, we find this agreement acceptable.

The Agreement for Government Services states that "any real estate taxes and assessments and personal property taxes paid with respect to the Non-Trust Property with respect to any calendar year shall be treated as a credit against the payment by the Tribes of the Allocable Amount (as adjusted) for such

[3] Formula Used to determine the future value:
For Column A: Annual Interest Rate is 7.9% for 1 period a year.
For Column B: Annual Interest Rate is 7.9% for 2 periods a year.

calendar year" (Tab 9, page 4). However, this does not apply to taxes paid by Croixland for improvements or special assessments Id. The Tribes will also receive a total reimbursement from Galaxy Gaming and Racing Limited Partnership in the amount of $297,500 in years 1995, 1996 and 1997 (Tab 9, page 18). This amount represents the difference in the Tribes proposal and the City's proposal for payment of government services.

The Agreement for Government Services states that the Tribes will cause Croixland to pay the delinquent and overdue real estate taxes and assessments and personal property taxes due through 1993 (Tab 9, page 4). Thus, all encumbrances on the land will be removed prior to placing the land into trust. However, to verify this, we have requested the Tribes submit title evidence prior to beginning the 25 C.F.R. Part 151 process. The Tribes responded by providing a copy of the Title Insurance Commitment (Tab 10). Also see the Tribe's letter to the Minneapolis Area Office dated October 14, 1994 (Volume II, Tab 4).

4. Ground Lease:

This lease agreement is between Croixland Properties Limited Partnership and the Tribe's EDCs. The Asset Purchase Agreement provides that the land will be leased to the Tribe's EDCs at the same time the conveyance of the Assets[4] takes place and immediately prior to the conveyance of the land (Tab 7, page 3 § 1.01(a)). The Asset Purchase Agreement then calls for the land and the Croixland's interest in the Ground Lease to be conveyed to the Tribes Id. Thus, the Tribes will become the landlord and the EDC's the tenants under the terms of the Ground Lease.

Initially, we had concern over the language in Article I, Section 1.03(d) of the Ground Lease and Article II, Section 2.01 of Asset Purchase Agreement since it appeared as if these agreements required the United States to become the landlord and a party to the Ground Lease. We informed the Tribes that this type of arrangement is not acceptable. As a result, the Tribes and Croixland amended the requisite sections to make clear that the United States, as trustee for the Tribes, will not be assigned or conveyed the landlord's interest in the Ground Lease or have any obligations or responsibilities under its terms (Tab 7, Amendments). We are satisfied that the Ground Lease is now only between the Tribes (as the assignee of the Seller), as landlord, and the EDCs, as tenant.

The Ground Lease is for 25 years and may be extended by the EDCs for an additional 25 year term (Tab 7C, page 1). All rent is payable directly to the Tribes. The EDCs will be required to pay

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[4] We note that the land is not defined as an "Asset" in any of the agreements.

rent of $12 a year and all costs expenses and other payments which the EDCs assume or agree to pay. The EDCs will also be required to pay to the Tribes rent from the net revenue pursuant to the terms of the Joint Operating Agreement. The EDCs also agree to pay all real estate taxes, assessments, water and sewer rents, and other governmental charges imposed against the facility, or imposed against any personal property or any Rent or Additional Rent (Tab 7C, page 4, Article 3).

The tenant may construct any building on the land after obtaining approval of the Landlord (Tab 7C, Article 4). The tenant is obligated to provide indemnification for any work on the facility, any use, non-use, possession, occupation, condition, operation, maintenance or management of the facility, any negligence on the part of the Tenant or their agents, contractors, employees, invitee or tenants, and any injury or death to any person or damage to or loss of property occurring in, on or about the facility. Galaxy Gaming is not required to provide any indemnification. The tenant is also required to provide insurance, Galaxy is not required to pay for any of it (Tab 7C, Articles 7 & 8).

5. **Activities Loan:**

The Joint Operating Agreement is between the Tribe's EDCs and Galaxy Gaming and Racing Limited Partnership. This agreement also provides that Galaxy Gaming will assist the Business Board in securing financing to the EDCs for the funds necessary to renovate and remodel the existing dog track facility and to begin operation. Galaxy guarantees the obtainment of this financing (Tab 7D, page 2, § 1.6).

To fund renovation of the third floor of the existing building, an "Activities Loan" (Tab 7D, page 3, § 2.1) will be made by a third-party lender to the EDCs and Galaxy Gaming and Racing Limited Partnership in an amount of up to $10,000,000 (any amount over $5,000,000 must be approved unanimously by the Business Board). This money will be used for costs, expenses and expenditures set forth in the Renovation Budget, for initial working capital as needed and for payments of expenditures necessary to "protect and keep perfected the Activities Loan."

C. **BASIS FOR PROJECTIONS AND COMPARISONS:**

The Proposed facility will be located at 2200 Carmichael Road in Hudson, Wisconsin. The site is approximately one mile south of the Carmichael Road/Interstate 94 interchange in a rural area in the southeast corner of Hudson. The existing grandstand building of the greyhound track has three floors with over 160,000 square feet of space. The property includes parking for approximately 4,000 vehicles.

The Las Vegas office of Arthur Andersen & Co., an international "Big 6" accounting firm performed a market demand and feasibility study. Dr. James M. Murray, PhD. performed an analysis of the market for the addition of casino games to the existing greyhound track and an analysis of the economic impact of the proposed Venture on the Tribal Reservations and the communities where the proposed facility would be located. We relied heavily on both studies to reach our recommendations and findings.

Our review of the market studies indicates that there was a substantial amount of time involved in accumulating the data in the studies. We find the sources of data to be reliable. The Arthur Andersen & Co. study contains pro forma financials which were reviewed and found to be acceptable by the Minneapolis Area Branch of Credit (Volume II, Tab 5).

D. PROJECTED TRIBAL EMPLOYMENT:

The Tribes have stated they plan to "actively recruit Native American candidates for positions at all levels." For employees at the Hudson Venture, a hiring preference will be given in the following manner: first, to members of the three Tribes and their spouses and children, second, to other Tribal members and third, to local residents from communities surrounding Hudson (Tab 7D, page 22).

Each of the three Tribes have stated that due to the location of their reservations, they do not anticipate many Tribal members who are currently living on the reservations to move to Hudson for employment in the casino (Tab 1, page 4). Since the Lac Courte Oreilles Reservation is located approximately 117 road miles from Hudson, the Red Cliff Reservation is located approximately 221 road miles away and the Sokaogon Reservation is located approximately 290 road miles away from Hudson, we have no reason to dispute the Band's assessment. The Tribes do anticipate 10 - 20 percent of the 1,600 positions at the Hudson Venture to be filled by Tribal members already living near the Hudson, Wisconsin area (Tab 1, page 5).

The three Tribes expect to receive an average of $10 million annually over the next five years as their share of the profits (Tab 5, S-1). They have identified areas of "high priority"[5] for which this money will be spent at each reservation. We have advised each Tribe that if they are going to provide a per capita payment from their gaming proceed, a Revenue Allocation Plan must be submitted and approved under the December 21, 1992, Guidelines

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[5] Activities Identified as High Priorities by all three Bands: improved health care facilities, educational facilities and grants, housing, economic and community development, programs for the elderly, land purchases and community programs.

to Govern the Review and Approval of Per Capita Distribution Plans and Section 2710 of the Indian Gaming Regulatory Act. Currently, only the Sokaogon Community has indicated that per capita payments will be made. The Sokaogon Community did submit a Revenue Allocation Plan. We returned the plan to the Community and recommended minor changes. We expect to approve the plan when these changes are made.

Each Band anticipates increased employment on the reservations due directly to the spending of their share of the net income generated by the Hudson Venture. In his analysis of the economic impact of the proposed Hudson Gaming Facility on the three Tribes, Dr. Murray estimates the creation of 150 new jobs on each reservation over the next five years (Tab 5, S-1). Although the Tribes may have to recruit non-Indians to fill many of the new positions due to a lack of training, the Tribes anticipate that the majority of these jobs will eventually be held by Tribal members.

E. BASIS FOR PROJECTING THE INCREASE IN TRIBAL EMPLOYMENT:

When we assume the figures provided by Dr. Murphy are accurate, the impact of a total of 450 new jobs on the reservations will have a substantial beneficial impact on tribal unemployment. The following figures provided by the three Tribes bolster this contention (Tab 5):

TRIBE	TOTAL ENROLLMENT:	NUMBER LIVING ON THE RESERVATION:	LABOR FORCE:	UNEMPLOYMENT RATE:
Red Cliff:	3,180	1,651	821	39% (321)
Lac Courte Oreilles:	5,431	1,923	1,362	58% (800)
Sokaogon:	1,528	512	198	42% (83)

Since each Tribe has a high unemployment rate, the jobs created on the reservation will provide incentive to Tribal members to work on the reservation rather than moving to Hudson for employment. Tribal members living off the reservation would also have incentive to move back.

F. PROJECTED BENEFITS FROM TOURISM:

As with any project of this nature, the success of the Tribe's proposed facility will depend on the volume of people/visitors who come to gamble at the Tribe's proposed facility. Based on the Market Analysis prepared by Dr. Murray, the Tribes estimates that 3,184,330 people will visit the facility annually (Tab 4,

page 15). Of that number, 95% are expected to come from the Twin Cities area and are expected to drop $199,399,166; 5% of the visitors will come from outside the Twin Cities Area and are expected to add $5 million to the net profit of the facility Id.

G. PROJECTED TRAINING BENEFITS:

In their cover letter, the three Tribes stated that the Hudson Venture will "provide both jobs and training at the supervisory and managerial levels for our people" (Tab 1, page 5). They plan to implement a cross training internship program to accomplish this goal. The Tribe's representative has stated that the internship program will last one year and will obligate the trainee to stay on an additional year to help train other employees.

Under the Joint Operating Agreement (Tab 7D, § 5.8.2) as positions in the facility become available, preference in recruiting, training, and employment in all job categories of the Enterprise, including management positions, shall be given first to qualified members of the Tribes and their spouses and children; second to qualified members of other Tribes and their spouses and children; third, to residents of the City of Hudson; fourth, to residents of the Township of Troy; fifth, to residents of the County of St. Croix.

H. PROJECTED BENEFITS TO THE TRIBAL COMMUNITIES FROM THE INCREASE IN TRIBAL INCOME:

The Tribes contend that substantial benefits would accrue to their Tribal members and surrounding communities. Specifically, they show the following benefits will result (Tab 1, page 7):

* The creation of approximately 150 new jobs on each reservation.

* The employment will generate an annual average of about $3 million per Tribe in added earnings for these employees.

* A total of over $11 million in additional earnings and 600 additional jobs will be created as a recirculation of the gaming revenue.

* The proceeds will be applied to health, education, scholarship funds, housing, elderly care, early child care, land purchases and other community support services and as per-capita payments. The Tribes expect that a substantial increase in the quality of life will be directly experienced by all members.

Our data indicates that the three Tribes have high rates of unemployment and poverty in spite of having developed local

tribal gaming facilities. This is true in part because they are located farther away from urban markets than other tribes in Wisconsin and Minnesota. The Hudson proposal will help remedy this problem by providing these Tribes with access to a urban market for gaming.

As we have already indicated, the Tribes have relatively small populations and land holdings. Thus, the proposal is expected to have a significant positive impact. However, the positive impact is not expected to be employment in the proposed facility, but from the spending of the income by the Tribes on their respective reservations.

I. PROJECTED BENEFITS TO THE RELATIONSHIP BETWEEN THE TRIBES AND SURROUNDING COMMUNITY:

The Tribes anticipate that between 80 and 90 percent of the 1600 employees will be from the non-Indian surrounding community (Tab 5, Page S-2). The Tribes are also committed to providing funding for the increased infrastructure costs to the City of Hudson (Tab 1, page 12). This indicates the Tribes willingness to cooperate with the surrounding community as well as the local governments. Once the Casino goes into operation and begins generating income for the community, we anticipate an improvement in the relationship between those persons now opposed to the Hudson Venture, casino management, and the three Tribes.

J. POSSIBLE ADVERSE IMPACTS ON THE TRIBES AND PLANS FOR DEALING WITH THOSE IMPACTS:

The Tribes have stated that they do not anticipate any adverse impacts as a result of this proposal.

The Minneapolis Area Office recognizes possible conflict between some members of the local community and the proposed management of the Hudson Venture. In fact, a member of the local Hudson community has formed her own activist group to oppose the Casino. The group has submitted a petition in opposition to the Venture and claims to have collected over 3,000 signatures. Please note, the petition was submitted after the City of Hudson, County of St. Croix and the School District of Hudson, held public hearings, made findings and submitted their own comments on the proposal. Thus, we have only provided cursory review of the petition. We have not determined whether all the people who signed the petition are registered voters in the State of Wisconsin or Minnesota. Since the group has not provided any additional specific substantive reasons as to why the Hudson Venture should not be approved, other than those already addressed, we have informed the local activist group that the petitions should be directed to the Governor of Wisconsin.

Nevertheless, we do not regard the possibility of friction

between some members of the local community and the three Tribes or the management of the proposed Venture, as grounds to reject the proposal.

II. NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

A. CONSULTATION:

To satisfy the consultation required by Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719 (1988), the Bureau of Indian Affairs, Minneapolis Area Office, consulted with State and local government officials and nearby tribes on the impacts of the gaming operation to the surrounding community (Volume III). The Bureau's consultation process consisted of letters to local government officials, including the applicant Tribe, seeking responses to several suggested areas of discussion for an analysis of the "best interest of the tribe and its members" and "not detrimental to the surrounding community" determination Id.

1. Consultation with the Governor of the State of Wisconsin:

There has been no consultation with the Governor of Wisconsin by the Minneapolis Area Office or the Great Lakes Agency since it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings.

2. Consultation with the City of Hudson:

(a) Mayor: The Mayor of the City of Hudson, Thomas H. Redner, responded to our request for input by providing detailed material addressing possible impacts on the environmental, social structure, infrastructure, land use patterns, income and employment, the possible need for additional services and compulsive gamblers programs. The Mayor stated in his cover letter, that "the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size" (Volume III, Tab 1).

(b) Common Council: The Common Council of the City of Hudson adopted a resolution with a stated purpose of protecting the "city's interest in the event the transfer takes place." The Council only sought to protect the City's financial interest and did not take a position on the proposal (Volume III, Tab 1, page 12).

(c) School District: The School District of Hudson provided considerable correspondence on the proposal (Volume III, Tab 4). Their primary concern was insuring that the tax revenue that would be lost after the land was placed into trust be replaced. To accomplish this, the School District passed a resolution to protect their financial interests (Volume III, Tab 4). However, the resolution did not approve or disapprove the purpose of the proposal. An agreement between the City, County and Tribes was

eventually finalized (Volume I, Tab 9). It provides for a distribution formula for services to be paid by the Tribes. The School District approved the distribution formula in an intergovernmental agreement with the County on April 12, 1994. The particular financial aspects of the agreement are discussed in Part I of this report. The School District then wrote to the Governor of the State of Wisconsin calling for in-depth investigations regarding the impact on education (Volume III, Tab 4, page 7). They expressed their desire for additional funding, earlier growth escalators and the possible need for a reversionary clause in the deed. This indicates weak support for the current proposal.

3. Consultation with the County of St. Croix:

The County Board Office of St. Croix County, Wisconsin also provided correspondence on the proposal (Volume III, Tab 2). On March 13, 1994, prior to the signing of the "Agreement for Government Services", they wrote to the Governor to advise him that significant back real estate taxes are owed on St. Croix Meadows (Volume III, Tab 2, page 8). The Board requested that the Governor not approve any agreement in relation to the proposal until the county has received payment of all real estate taxes, penalties, and interest due and unpaid on the St. Croix Meadows dog track property. They also noted strong public opposition to the proposal. However, after the signing of the agreement, the Board showed their support of the proposal by criticizing the Hudson School District in their call for in-depth investigations by the Governor (Volume III, Tab 2, page 10). No mention was made of the public opposition. This indicates that the Board fully supports the proposal.

The St. Croix County Board Office also prepared an "Impact Assessment" of the proposed gaming establishment (Volume III, Tab 2, page 1). It focused on the impact of the proposal to the County as a whole, including the City specifically. The assessment was prepared by the County Planning Department Staff and reviewed by the Chairman, Richard Peterson. Although each of the seven subject matters were addressed, Mr. Peterson stated in the cover letter that the County could not conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. We note that this assessment was completed prior to the signing of the *Agreement for Government Services*.

4. Consultation with the Town of Troy:

The Town of Troy provided their response to our consultation letter on March 14, 1994 (Volume III, Tab 3). The town had several areas of concern dealing with, increased traffic, lowered standard of living, limited housing, and the possible additional cost services.

The town's concern over increased traffic is addressed in the Finding of No Significant Impact. The concern over a lower standard of living as an argument against the proposal is without merit since the Tribes have indicated that the proposed gaming facility will require many supervisory and managerial positions as well as training programs. Additionally, Dr. James M. Murray estimates that 85 percent of the employment and payroll in the expanded operation will accrue to Wisconsin residents and that 90 percent of the spending at the proposed gaming facility will originate from outside the state of Wisconsin (Volume I, Tab 5, page 12). The concern of limited housing does have merit. However, we find that any growth to the community as a result of gaming facility would not have a detrimental affect on Hudson. The towns concern over additional cost of services has been addressed in the Agreement for Government Services.

5. **General Public Response:**

(a) Public Opposition: Approximately 76 letters[6], written by people in the Hudson community, were sent to the Department of the Interior expressing opposition to the proposal. Their arguments against approval of this proposal are based primarily on social concerns, i.e. concern over increased crime; concern over the impact of gaming on the children in the area; concern over the projected increased traffic; concern over a possible increased cost to the city; possible increased cost to the social programs that problem gamblers would cause; concern over organized crime; and general concern over the diminishment of the aesthetical values to the city. The people against this proposal also cited the referendum of April 1993, to show that a majority of people were against the expansion of gambling in Wisconsin. Many stated that the market is already saturated and that the dog track was a failure so the Casino will be too. As a result, it is only serving as a "bailout" for the current owners of the St. Croix Meadows. Many people stated that Hudson is fine economically without the casino and does not need the low paying jobs that would be created. A few people were morally opposed to the idea of gambling.

Approximately 3,100 people signed a petition expressing opposition to the proposal. We have not verified the legitimacy of the signatures. Nor have we determined how may people who signed the petition are registered voters in Hudson. It is our determination that these petitions should be directed to the Governor of the State of Wisconsin.

A thorough report was sent in by one member of the Hudson community to provide evidence to form a basis to reject the application. However, each of the issues raised in the report

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[6] These letters are attached.

have been addressed by the Tribe's application, in the Finding of No Significant Impact, by the local governments of Hudson, or in other areas of our findings. Many of the arguments advanced by people opposed to the proposal are also political in nature and raise policy issues for the Department of the Interior. It is our determination that none of these issues form a basis to reject the proposal.

(b) Public Support: One letter, written by Wisconsin State Legislature, Doni Burns, was sent expressing support for the proposal. He stated that the majority of people in Hudson were in support of this proposal. To support his position he referred to a referendum passed in 1992 in regard to the possibility of a casino at St. Croix Meadows.

The referendum voted on in 1992 asked the following question:[7]

> *Do you support the Transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?*

Results: 1,351 people voted "yes", (51.2%);
1,288 voted "no" (48.8%)

The survey results were provided by the City of Hudson and referred to in a number of the responses by people in favor as well as people opposed to the casino.

This referendum differs from the April 1993 statewide referendum in that it is site specific. The 1993 statewide referendum (Volume II, Tab 8) which has been cited by people opposed to the proposal, asked:

> *"Do you favor a constitutional amendment that would restrict gambling casinos in this state?"*

St. Croix County results: 6,328 voted "yes" (65.4%)
3,352 voted "no" (34.6%)

While the Hudson Proposal may be an expansion of a type of gaming in Hudson, it will not be an expansion of a gaming facility. Additionally, since the Tribes have agreed to a limited number of Class III facilities with the State of Wisconsin, it will also not be an expansion of gaming in Wisconsin. It may also be argued (indeed, the Tribes have done so) that this is not an expansion of gaming even in Hudson since the building is already

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[7] The question and results where obtained from the City of Hudson (Volume III, Tab 1, page 11).

in place and the dog track is currently in operation. At any rate, it is our determination that the 1993 referendum, standing alone, does not preclude the Secretary of the Interior from making a determination the Hudson proposal would not be detrimental to the surrounding community.

Approximately 800 people signed a petition supporting the Hudson proposal. They did not provide any supporting reasons. No evidence has been provided to show that these signatures are not legitimate. However, we have not verified the residency of these supporters or determined whether or not they are registered voters in the State of Wisconsin or elsewhere.

6. Consultation with Neighboring Tribes:

18 Tribes in the State of Minnesota and Wisconsin were informed of the proposal (Volume III, Tabs 5 - 16). We requested that these Tribes provide input on the impact the proposal would have on their respective reservations by letter, all dated December 30, 1993. Nine of the eleven responses that we received were emphatically against the proposed Hudson project. However, none of the Tribes that responded provided reliable or scientific data to support their views. The following are the Tribes and Tribal Organizations that responded as a result of our inquires and a summation of their comments and our response:

(a) St. Croix Band of Chippewa Indians of Wisconsin: St. Croix is strongly opposed to the project (Volume III, Tab 12). They stated, "the proposed Hudson fee to trust acquisition will have an extreme detrimental and crippling impact on the St. Croix Casino located in Turtle Lake, Wisconsin." They supported this position by providing a detailed response to the seven questions and an *Impact Statement*. This material focused heavily on the probable loss of revenue at the Tribe's Turtle Lake Casino. The St. Croix Tribe stated that the Hudson proposal would cut into the revenue generated at their Turtle Lake Casino because the Hudson proposal is larger, in a better location and has a better highway system. St. Croix also stated that the gaming market is already saturated and as a result, they would have to increase marketing expenditures just to survive and would lose current qualified employees to the Hudson project. The Tribe did not provide any data to support their position.

St. Croix provided a casino density illustration to show that "the market is becoming saturated". However, they did not provide any financial studies to back up this or any other claim dealing with a loss of income.

We question St. Croix's opposition to this project since initially, they were the first Tribe to consider purchasing the St. Croix Meadows Dog Track for gaming purposes. We also find that their economic position is overstated since they have two

casinos currently in operation and may also be working to purchase the Lake Geneva Dog Track to add a casino.

(b) Wisconsin Winnebago Nation: The Wisconsin Winnebago Business Committee responded by stating that they do not want this proposal to even be considered until the State of Wisconsin has fulfilled its commitment under the Tribal/State Compact to agree to a fourth Class III gaming site for the Wisconsin Winnebago Nation (Volume III, Tab 13).

We find that the conflict over the Gaming Compact between the Wisconsin Winnebago Nation and the State of Wisconsin provides no legal basis to reject the Hudson's proposal.

(c) Leech Lake Band of Chippewa Indians: The Leech Lake Tribal Council passed a resolution against the proposal (Volume III, Tab 6). They stated that numerous problems will arise for the State and the gaming Tribes in Minnesota if gaming is expanded to off-reservation locations. According to the Tribe, the problems would not only be a monetary loss to the surrounding Tribes but also political in nature due to the unfair use of the "special trust and tax status" of the Tribes. However, they did not elaborate as to what the political ramifications would be. Nor did the Leech Lake Band provide any justification for limiting the expansion of gaming to "off-reservation" locations.

(d) Shakopee Mdewakanton Sioux Community: The Shakopee Mdewakanton Sioux Community's Business Council passed a resolution stating their opposition to the proposed Hudson Venture (Volume III, Tab 11, page 3). Their objections were based on loss of income for the surrounding gaming Tribes and the political ramifications. Specifically, the Business Council stated the proposed casino would have a "detrimental political impact in Minnesota since Minnesota Tribes have agreed by formal tribal/state compacts to not expand Tribal gaming off-reservation..."

The Community also argued that the proposed area is actually Mdewakanton Sioux territory Id. As a result, they feel that approval of an off-reservation gaming facility in Hudson should be reserved for the Mdewakanton Sioux Tribe. We have found no legal basis for this argument. Our Fee to Trust review under 25 C.F.R. Part 151 will identify any interest this Tribe may hold in the land at Hudson.

The Chairman and CEO of the Little Six, Inc., also responded on behalf of the Mdewakanton Dakota Community (Volume III, Tab ii, pages 8 - 11) . He stated that the Community "vehemently opposes" the proposal for the following reasons:

1) This is only an off-reservation gaming experiment which could have devastating impacts on the negotiation process

among the National Indian Gaming Association, Congress, State Governors, and Attorneys General.

2) This proposal could damage the national efforts to protect gaming and could have severe political ramifications in Minnesota. They did not elaborate or provide any scientific information to support this claim.

3) The proposal could cause the State of Minnesota to open up gaming around the State thereby diminishing the beneficial economic impact of Indian Gaming. The Tribe has not provided any legal justification to show why gaming should not be expanded by Wisconsin Tribes in Wisconsin.

4) The market is at or very near the saturation point and cannot absorb another casino in the Twin Cities area without having a negative impact on jobs. A market study has not been provided by the Shakopee Mdewakanton.

5) The proposal could damage the current cooperative government to government relationship between the State of Minnesota and the Tribes. The Tribe has yet to explain how this will happen.

(e) Prairie Island Dakota Community: The Prairie Island Dakota Community passed a resolution voicing their opposition to the proposal (Volume III, Tab 10). They stated that the Hudson Casino would "saturate the already extremely competitive Minneapolis-St. Paul market area." In addition, the Tribe contends that they would not be able to compete due to the advantages the Hudson site offers. Specifically, the Tribe stated that they would suffer a severe loss of revenue (they estimate a 30%-50% reduction in customers) due to the following reasons: the proximity of Hudson to the metro area, the proximity of the proposed casino to an interstate highway and because the dog track is already an existing "first-class facility".

(f) Lower Sioux Community: The Lower Sioux Community did not pass a resolution opposing the proposal. However, the Chairman did write a letter indicating his opposition (Volume III, Tab 7). He stated that the Lower Sioux Community would be severely and unfairly damaged economically. He also indicated that the Community would be damaged politically since all of the Minnesota Tribes have not sought to locate a gaming establishment away from the reservations and to do so would cause a region-wide and probably a nation-wide race by other Tribes to do the same. No data was provided to validate his arguments.

(g) Minnesota Chippewa Tribe: The Minnesota Chippewa Tribe passed a resolution opposing the Hudson Project (Volume III, Tab 14). They stated this proposal could set a dangerous precedent by creating an open market for expansion by other Tribes.

(h) Mille Lacs Band of Chippewa Indians: Although the Mille Lacs Band did not pass a resolution to declare their opposition to the proposal, the Chief Executive did write a letter stating the Tribe's opposition and referred to letters written by the Minnesota Indian Gaming Association (Volume III, Tab 8). She also asserted that the Indian Gaming Regulatory Act was designed to act as a reservation based economic development tool and that the Hudson proposal is inconsistent with that intent. She said that reservation based gaming has allowed Mille Lacs to take a 45% unemployment rate to "effectively zero". She feels this number would increase should the proposal go through. No studies or data was provided to support these claims.

(i) Minnesota Indian Gaming Association: The Minnesota Indian Gaming Association passed a resolution and wrote a number of letters expressing their opposition to the Hudson Proposal (Volume III, Tab 15). They stated that since Minnesota Tribes oppose off-reservation gaming activity and have promised not to expand tribal gaming off-reservation, the Hudson proposal is an infringement upon their own inherent sovereign rights. In addition, the following reasons were given for their opposition:

1) Other gaming Tribes would suffer economically due to the Hudson proposal's close proximity to the metro area. In particular, the more remote casinos would be hurt.

2) The St. Croix area has historically been considered to be Dakota land. Findings: This issue will be addressed in the actual transferring of the land into trust pursuant to 25 C.F.R. Part 151. The objections identified in the Preliminary Title Opinion, if any, will have to be satisfied before the land may be transferred.

3) An off-reservation expansion of this magnitude would create huge political problems for Minnesota Tribes. The Minnesota Indian Gaming Association stated that State Legislators have been under political pressure from private businesses who want to expand gaming by placing video games in bars among other things. They also stated that they have fought hard to keep this from happening and the this proposal would jeopardize what they have fought to maintain.

MIGA also argues that the National Governors Association and other adversaries have been stating that tribes would expand gaming off-reservation into major cities in direct competition with non-Indian businesses. MIGA does not want them to be proven right.

(j) Lac du Flambeau Band of Lake Superior Chippewa Indians: The Lac du Flambeau Band stated that they do not oppose the Hudson project (Volume III, Tab 1). They also stated that their experience in gaming indicates that there would be a beneficial

impact.

(k) Oneida Tribe of Indians of Wisconsin: The Oneida Tribe stated that since they are located 250 miles away from Hudson, Wisconsin, they are not in a position to offer detailed comments or analysis on the impacts of the proposal (Volume III, Tab 9). They did state that they do not perceive that there would be any serious detrimental impacts on their reservation or gaming operations.

B. IMPACT ON NEARBY TRIBES:

1. Economic:

None of the Tribes who have written to our office to protest this proposal has provided us with any figures to back up their claim that the Hudson Venture would be "devastating economically" to the other casinos in the area. As a result, we must rely heavily on the study prepared by Arthur Andersen and Dr. Murphy to estimate the impact on the other Tribes economically.

Arthur Anderson's study estimates current market revenue for the six existing casinos in the Minneapolis/St. Paul area to be $510 million with a total estimated market revenue between $550 and $630 million[8] (Volume I, Tab 3, page 21).

Since the Hudson Venture's share of the market is estimated to be $80 Million, AA has found that even though the existing casinos would suffer some economic loss, the "proposed Hudson casino should not significantly impact aggregate revenues of the existing casinos" Id. We have particular concern over the economic impact of those casinos located within 55 road miles from Hudson. They include the Mystic Lake Casino, Turtle Lake Casino and Treasure Island Casino. Each of the Tribes operating these casinos have voiced strong opposition to the Hudson Proposal based on economic reasons. However, none of these Tribes have provided our office with any hard figures to back up their claims.

On August 12, 1994, we requested the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes provide an analysis which focuses on the particular economic impact of the proposed casino on the

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[8] The market was estimated by Arthur Andersen & Co. using the following figures:.

Population within 100 miles.... 3,800,000
MULTIPLIED BY: Estimated per capita gaming revenue.... $145 - $165

We also note that the Hole in the Wall Casino in Danbury, Wisconsin, was not included in figuring the total estimated market revenue.

Mystic Lake, Turtle Lake and Treasure Island Casinos. The Tribes did not respond in writing. Their representative, Bill Cadotte, did state that there is no legal basis to reject the proposal based on what the potential political ramifications "might" be. We concur. Specifically, we find that additional market studies cannot be completed by the three Tribes without financial data supplied by the three casinos in question.

2. **Political:**

A number of Tribes and commentators have indicated that expansion of off-reservation gaming erodes their political power and will eventually undermine their ability to limit States from expanding gaming. However, it can be argued that each new gaming operation, whether or not on land placed into trust prior to October 17, 1988, erodes Tribal political power to protect the gaming industry. We find that the Tribal Sovereignty of the Lac Courte Oreilles, Red Cliff, and Sokaogon Tribes is far more important than limiting the expansion of Tribal Gaming. In fact, each Tribe currently operating gaming facilities went into the industry knowing that expansion into major metropolitan areas was a possibility and maybe even likely. We find that it is up to each individual Tribe to operate within the limits of the Indian Gaming Regulatory Act, their Class III Gaming Compacts and their existing governing documents. The Minneapolis Area Office will not restrict Lac Courte Oreilles's, Red Cliff's, Sokaogon's or any other Tribe from operating within these limits and find that any negative political ramifications from this proposal would be minimal.

C. **EVIDENCE OF ENVIRONMENTAL IMPACTS AND PLANS FOR REDUCING ANY ADVERSE IMPACTS:**

The Lac Courte Oreilles and Red Cliff Bands Lake Superior Chippewa Indians and the Sokaogon Chippewa Community propose to purchase, and place into federal trust 55.82 acres of land. The proposed trust site consists of the St. Croix Meadows Greyhound Racing Facility including the principal structure, track facilities, paddock and kennel facilities and parking lot to the north of the principal building, for the purpose of operating a Class III gaming facility in addition to the existing pari-mutuel dog track operation. The main parking lot west of the grandstand building is not intended for trust acquisition.

The existing grandstand would be remodeled to accommodate gaming activities, however, most support facilities (kitchen, washrooms, office space, etc.) would be maintained.

1. **Environmental Considerations:**

An "Environmental Assessment for St. Croix Meadows Greyhound Racing Park, Hudson, Wisconsin, January 1988" was prepared by

Mid-State Associates, Inc., in accordance with the requirements of the Wisconsin Racing Board Application for License (Volume IV, Tab 4). An addendum to the Environmental Assessment was prepared by Bischof & Vasseur for the proposed trust acquisition (Volume IV, Tab 3). Based on the findings of the EA and the Addendum, the Superintendent, Great Lakes Agency, found that the proposed action will not have a significant impact on the quality of the human and/or natural environment, and the preparation of an Environmental Impact Statement will not be necessary. The *Finding of No Significant Impact* was issued on September 14, 1994 (Volume IV, Tab 1).

A Level I Hazardous Waste Survey has not yet been completed. However, we do note that a Phase I Environmental Property Assessment has been prepared by Braun Intertec for the Tribes. It indicates that there are no documented or observable environmental concerns associated with asbestos containing building materials or underground storage tanks. It also states that there is no documented evidence indicating any past or current land-use activities that have had an adverse environmental impact on the site. We also note that prior to the United States taking the land into trust, a Level I Hazardous Waste Survey must be completed and approved at the Area Office. We will satisfy this requirement under the 25 C.F.R. Part 151 process.

2. **Natural and Cultural Resources:**

The addendum to the Environmental Assessment states that the proposed facility will have no new significant short-term, long-term, or cumulative impacts on the regional geology, including bedrock and soils, ground water/water quality, or climate (Volume IV, Tab 3).

The Addendum also states that the facility is not expected to impact any natural areas such as native trees or wildlife habitat. Additionally, there are no anticipated impacts from the planned action on wetlands or other surface waters in the area. According to the National Wetlands Inventory Map for the site, there are no designated wetland areas located on the site. No rare plant or animal species or other significant natural feature will be adversely impacted.

(a) Land Resources: The topography of St. Croix County ranges from gently rolling to hilly and rough (Volume IV, Tab 4, pages 3 & 4). All of the county has been covered by continental glaciation. The St. Croix River has also had a major impact on the topography of the area. The St. Croix River is bounded by 100' - 200' bluffs along its eastern shore. The Hudson Casino Venture would be located on the plateau above these river bluffs.

The site where the proposed facility would be located and the

immediate area surrounding the site is "mostly gently rolling with an average elevation of 840 feet" Id.

The site surrounding the facility is a combination of many soils. Pillot silt loam is the most common Id. The slope of this soil is 0 to 3 percent so runoff is slow and there is slight hazard of erosion. Most of the remaining soil at the site is Burkhardt-Sattre complex of differing slopes. Since most areas of the Burkhardt-Sattre complex are cultivated, there is no identified erosion or soil blowing problem.

Since the planned action will utilize the existing racetrack facilities, there will be no significant impact on prime or unique farmlands in the Farmland Protection Policy Act (Volume IV, Tab 3, page 3).

(b) Water Resources: The Hudson area has an abundance of groundwater. All potable water used in St. Croix County is groundwater. The supply of water is presently determined by the ability to pump it out of the ground. The source of the groundwater is precipitation (Volume IV, Tab 4, page 3).

The Hudson area surface waters occupy two major drainage systems. The St. Croix River drains the western two-thirds of St. Croix County. The balance of the county is mostly drained by the Chippewa River which flows into the Mississippi River Id.

The St. Croix River is located approximately 4800 feet to the west of the proposed facility. There are no other existing surface water bodies in the EA study area Id.

(c) Air Quality: Both the City of Hudson and St. Croix County have stated that the projected traffic increase will not cause the air quality to exceed applicable standards (Volume III, Tab 1, page 1 and Volume III, Tab 2, page 2). Air monitoring stations are currently in place at the track exit and the southeast corner of the Carmichael Interchange to detect any change in the air quality which could be harmful to the area Id.

(d) Threatened and Endangered Species: St. Croix County is listed as a habitat for the following three endangered or threatened species (Volume IV, Tab 4, page 4):

(1) Peregrine Falcon - Potential breeding habitat; Endangered.
(2) Bald Eagle - Breeding and wintering habitat; Threatened.
(3) Higgins' Eye Pearly Mussel - River habitat; Endangered.

According to the EA, site visits in 1988 to the area around the proposed facility did not detect any of these species Id. The development site may serve as a habitat for the Peregrine Falcon and Bald Eagle. However, none have yet been located. Additionally, there is no habitat for the Higgins' Eye Pearly

Mussel at the site. At any rate, the natural area consisting of vegetation or wildlife habitat will not be impacted by the internal construction or additional traffic flow Id.

(e) Cultural Resources: No specific cultural resources or structures are known to exist on the site.

The State Historical Society of Wisconsin has stated that there are no buildings in the study area that are listed in the National Register of Historic places (Volume IV, Tab 2, page 2).

The Mississippi Valley Archaeology Center, Inc., stated that there are no known archeological sites in the proposed project area (Volume IV, Tab 2, page 3).

D. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY:

Concern over an increase in crime has been expressed by most of those people who wrote to oppose the Hudson Venture. However, none of the letters contained any scientific or statistical evidence to back up this claim. The City of Hudson has stated that similar predictions were made in regard to the St. Croix Meadows dog track before it went into operation in 1990. The City stated, to date, "none of the earlier negative predictions concerning increased crime, etc., have come true..." (Volume III, Tab 1, page 2). To prevent any crime escalation in the City of Hudson, and to help offset any fear among the community, the City has stated that they will hire an additional Investigator Crime Prevention Office in the year the Casino is opened (Volume III, Tab 1, page 4). The City also expects the Police Department to expand the police force by five officers and one clerical employee within the next five years Id. Additionally, the Tribes have stated that they are committed to paying for the reasonable costs of these services (Volume I, Tab 1, page 12).

The City stated that the residents of the community have come to accept the dog track's existence and that there is no overwhelming majority of citizens either in favor of or opposed to the casino (Volume III, Tab 1, page 2). Nevertheless, the city is prepared to handle any negative reaction by the community over the casino.

E. IMPACT ON THE INFRASTRUCTURE:

1. Utilities:

The current facility is supplied by existing public water, sanitary sewer, electric, and telephone utilities. No additional infrastructure is scheduled to be constructed as part of the proposed action.

2. **Zoning:**

According to the City of Hudson, most of the proposed trust site is zoned general commercial district (B-2) for the principal structure and ancillary track, kennel and parking facilities (Volume III, Tab 1, page 4). Six acres of the proposed trust site are currently zoned single family residence Id. The east, south and westerly perimeters are classified as on-family residential districts (R-1) and serve as a buffer area between the track operation and other surrounding land uses Id.

3. **Water:**

The City of Hudson stated that the water trunk mains and storage facilities are adequate for providing water service to the proposed casino and "ancillary development south of I-94" (Volume III, Tab 1, page 3).

4. **Sewer and Storm Drainage:**

According to the Impact Assessment of the Proposed Casino on St. Croix County which was prepared by the County, St. Croix County anticipates an increase in waste generation from the proposed casino (Volume III, Tab 2, page 1). Currently, the St. Croix Meadows generates .5 pounds per person Id. This equals approximately 104 tons of waste per year. Based on the anticipated average daily attendance of 7,000 people, the proposed casino would result in a production of 639 tons of waste per year, an increase of 535 tons. The County has stated that the waste-to-energy facility that services St. Croix County has adequate capacity to handle the increase Id. To verify the figures, the County compared their estimates to the St. Croix Bingo and Casino gaming facility in Turtle Lake, Wisconsin. That facility averages .53 pounds per person or 677 tons per years.

An existing storm water collection system collects storm water runoff and directs it towards a retention pond located near the southwest corner of the parking area. From there, collected storm water is allowed to evaporate, percolate into site sils, or slowly flow along a regional storm water control system towards the St. Croix River (Volume IV, Tab 4, pages 7 & 8). According to Hudson officials, the existing storm water control system is adequate to handle storm water runoff from the site (Volume III, Tab 1, page 3).

5. **Lighting:**

The County has stated that although the City of Hudson has jurisdiction to control and monitor the lighting, the County has a responsibility to surrounding neighbors in other jurisdictions (Volume III, Tab 2, page 2). As a result, the County expressed that any changes made to the current lighting system take into

consideration the larger community which may be affected. They did not express any dissatisfaction with the current system.

The City of Hudson stated that this concern was addressed at the time St. Croix Meadows was constructed. Specifically, a lighting system is already in place which reduces the light spillage at the property lines "to an amount equivalent to residential streets" (Volume III, Tab 1, pages 1 & 2). The City also acknowledged that the lights may be on for extended periods of time because the casino operation is likely to be open until 2:00 a.m. or 24 hours per day Id.

6. Roads:

(a) Access: The City of Hudson stated that the current street system is sufficient enough to accommodate projected traffic needs based on 40,000 average daily trips (Volume III, Tab 1, page 4). However, development on Carmichael Road north of the proposed casino may be necessary. Specifically, traffic regulatory signals will likely be needed at the interchange of Carmichael Road and Hanley Road.

St. Croix County expressed particular concern with increases in traffic on USH 12, CTH UU, CTH A, and Carmichael Road (Volume III, Tab 2, pages 2 & 3). The County stated that even minimal traffic increases will have a negative impact on these roadways since they are already at capacity. However, information gathered from the Wisconsin Department of Transportation indicates that any negative impact from additional traffic will be minimal (Volume IV, Tab 3, pages 38 & 39).

(b) Traffic Impact Analysis: A traffic study was completed and is contained in the 1988 Environmental Assessment for the St. Croix Meadows dog track (Volume IV, Tab 2, page 18). It is based on traffic projections in the year 2011. Peak traffic estimates were provided to the Wisconsin Department of Transportation regarding the proposed Hudson Casino Venture. No significant problems were identified regarding the proposed traffic increase on the Interstate 94/Carmichael Road Interchange.

The *Finding of No Significant Impact* (Volume IV, Tab 1) also indicates that although no transportation system is likely to be developed in Hudson that would assure there will be no slow-down or delays during peak traffic periods, various methods would be utilized to manage delays should they occur. These methods include varying dog track racing times so as not to coincide with peak casino attendance times, elimination of parking fees and gates for easy parking lot entry, use of shuttle buses and remote parking areas, possible adjustment of time delays on traffic lights during peak attendance times, and installation of traffic lights.

F. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY:

The City has stated that approximately 25 acres of the site is developed. The six acres that are zoned as single family residence have limited development potential; 18.5 acres are located in an area of the bluff east of the track and are generally not suited for development, although there may be some potential; 5.5 acres are suitable for development (Volume III, Tab 1, page 4).

The City of Hudson has stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses Id.

G. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY:

Total employment at the proposed facility is expected to be between 1,500 and 1,600 positions. Current employment figures at St. Croix meadows is approximately 175 full-time positions and 225 part-time positions (Volume III, Tab 2, page 4). All existing employees would be offered re-employment at their current wage rates. Thus, between 1,100 and 1,200 new positions are expected to be generated Id.

Even though the three Tribes will give hiring preference to their own tribal members, 80-90% of the new positions are expected to be filled by non-Tribal members already living in the Hudson area Id. Wage rates for these jobs are estimated at between $5 and $10 per hour, not including salaried positions Id.

According to statistics provided by the St. Croix County, the service industry accounts for 20 percent of the County's 1993 total labor force of 28,300 people. Since the casino is expected to pull some employment from existing service jobs within the county, County officials estimate that approximately 175 service positions will be filled by currently unemployed County residents either through direct employment at the casino or by other service jobs Id.

The remaining 900-1025 positions are expected to be filled by people from the nearby Wisconsin counties.

According the Economic Impact Report by Dr. James Murray, over 90 percent of the spending at the proposed Hudson Gaming Facility is expected to originate from outside the state (Volume I, Tab 5, page S-2). Dr. Murray estimates the total impact of the gaming facility would be to support 2,691 jobs and generate over $56 million in annual earnings for residents of Wisconsin (Volume I, Tab 5, page 12).

H. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO:

Additional services will be needed in the City of Hudson, County of St. Croix and at the site of the Hudson Project. To assure that all necessary services are provided, the three Tribes, County of St. Croix and the City of Hudson have entered into an *Agreement for Government Services* (Volume I, Tab 9). In the agreement, the Tribes, through their EDC's, will pay the City and County for general government services, including, but not limited to, the following services: police, fire, water, sewer, ambulance, rescue, emergency medical and education. These services will be provided in the same manner and at the same level of the services provided to residents of the City and County and other commercial entities located in the city and county. The agreement will continue for as long as the land is held in trust or until Class III gaming is no longer operated on the land.

I. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING:

Currently, there is not a compulsive gamblers program within St. Croix County. The County has indicated that if the Hudson Project goes into operation, their Human Services Department would initiate staff training and would develop treatment programs, including initial on-site screening of potential problem gamblers, treatment and aftercare services (Volume III, Tab 2, page 5).

There are six State-Funded Compulsive Gambling Treatment Centers in Minnesota (Volume II, Tab 7, page 38). Two are in Minneapolis. The other four are located in St. Cloud, Bemidji, Granite Falls and Duluth. According to the Minnesota Council on Compulsive Gambling, since 1984, limited funds have been appropriated by the Minnesota Legislature for training, research, gamblers' hot-line services, rehabilitation and public awareness programs (Volume II, Tab 6, page 2). Unfortunately, Minnesota Planning has also found that current levels of treatment in Minnesota are inadequate and that some treatment facilities already have waiting lists while others are near capacity (Volume II, Tab 7, page 37).

Since there are no Wisconsin state-funded treatment facilities near Hudson, the three Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. Additionally, the Tribes have stated they will contribute money to local self help programs for compulsive gamblers (Volume I, Tab 1, page 12).

III. RECOMMENDATIONS

Based upon the discussion and conclusions provided above, we recommend that the Secretary of the Interior find that the proposed action will be in the best interest of the Lac Courte Oreilles, Red Cliff and Sokaogon Tribes and that it will not have a detrimental effect on the surrounding community. We also recommend that the decision be made to take this particular parcel into trust for the three Tribes for gaming purpose.

I attest that I have reviewed this transaction and the case file is documented in compliance with all of the above stated regulations and facts. I further state that I will not accept the property in trust until I have received satisfactory title evidence in accordance with 25 C.F.R. Part 151.12.

ATTEST:

Area Director

11-15-94
Date

EOP 064540

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Minneapolis Area Office
331 South 2nd Avenue
Minneapolis, Minnesota 55401-2241

IN REPLY REFER TO:

Tribal Operations

April 20, 1993

Memorandum

To: Assistant Secretary - Indian Affairs

From: Office of the Area Director

Subject: Trust Acquisition Request - St. Croix Meadows Dogtrack Property

Attached is a request by the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the Tribes) to place 55.82 acres of land into trust status for the benefit of all three tribes. The property consists of the St. Croix Meadows Greyhound Racing Facility and is located in Hudson, Wisconsin. In addition to the land, the Tribes have also entered into an agreement to purchase the assets of the track from the current owners. Once the requirements of the Indian Gaming Regulatory Act of 1988 are satisfied, the agreements to purchase the assets of the dogtrack are executed, and the land is placed into trust, the Tribes will add casino type gaming to the facility.

The Tribes are currently awaiting satisfaction of the requirements of the Indian Gaming Regulatory Act of 1988 before executing the land and asset purchase agreements. We transmitted our Section 20 Recommended Findings of Fact and Conclusions for this project to you on November 15, 1994. Since that time, the Tribes have specifically requested that the Bureau of Indian Affairs begin the process of placing the land into trust status. As a result, we obtained the attached Preliminary Title Opinion from the Office of the Field Solicitor, Twin Cities. We have also attached the following material in support of the trust acquisition:

1) Title Insurance Commitment;

2) Level I Hazardous Waste Survey;

3) Finding of No Significant Impact;

[redacted]

ECP 064293 D

4) Maps of the property;

5) Tribal Resolutions requesting the land be placed into trust;

6) Notification letters addressed to the local units of state government.

Please note, the responses of the local units of state government and additional material were included in our November 15, 1994 transmittal.

We have completed our review and analysis of the request and the supporting documentation. The findings and recommendations to place the land into trust after satisfaction of all IGRA requirements are set forth in this memorandum for your approval or disapproval.

I. PROPERTY TO BE ACQUIRED

The property to be acquired is located at 2200 Carmichael Road in Hudson, Wisconsin, approximately one mile south of the Carmichael Road/Interstate "94" interchange. The site consists of approximately 55.82 acres located in the fractional Northeast Quarter of the Northeast Quarter and Southeast Quarter of the Northeast Quarter, Section 6, Township 28 North, Range 19 West, City of Hudson, Saint Croix County, Wisconsin, described as follows:

> The fractional Northeast Quarter of the Northeast Quarter of said Section 6, EXCEPT that part of the right-of-way of Carmichael Road which is located in said fractional Northeast Quarter of the Northeast Quarter of said Section 6.
>
> Also, that part of the Southeast Quarter of the Northeast Quarter of said Section 6 described as follows: Commencing at the Northeast corner of said Section 6; thence S02°49'01"W, 1,891.74 feet along the East line of the fractional Northeast Quarter of said Section 6 to the Northeast corner of a parcel known as the "Quarry Parcel" and the point of beginning of this description; thence N88°40'24"W, 1,327.55 feet along the North line and the extension of the North line of said "Quarry Parcel" to a point on the West line of the Southeast Quarter of the Northeast Quarter of said Section 6; thence N02°48'30"E along the West line of said Southeast Quarter of the Northeast Quarter to the Northwest corner thereof; thence Easterly along the North line of said Southeast Quarter of the Northeast Quarter to the Northeast corner thereof; thence S02°49'01"W, along the East line of said Southeast Quarter of the Northeast Quarter to the point of beginning.

In June, 1991, the St. Croix Meadows Greyhound Racing Park opened on the site. The facility consists of a racing area, enclosed grandstand and clubhouse, kennels,

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and parking areas. The racetrack is open year round and has twenty kennels, each kennel having the capacity of housing up to 72 greyhounds each. The racetrack currently employs approximately 282 employees, including the food service employees. Prior to the construction of the racetrack, the site was used for agricultural purposes.

II. COMPLIANCE WITH LAND ACQUISITION REGULATIONS

25 C.F.R. § 151.10 identifies various factors which must be considered in all fee-to-trust acquisitions. Each factor for the placement of the St. Croix Meadows Property in trust for the three Tribes is discussed below:

A. 25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority:

The Sokaogon Chippewa, Lac Courte Oreilles Chippewa and the Red Cliff Chippewa are all organized under the Indian Reorganization Act of 1934. Each tribe has requested to place the land in Hudson, Wisconsin, in trust for the benefit of all three Tribes under 25 U.S.C. § 465. The Bureau of Indian Affairs is authorized to process this application under 25 C.F.R. 151.3(a)(3) which states that land not held in trust may be acquired for a tribe in trust status when such acquisition is authorized by an act of Congress, and when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

B. 25 C.F.R. § 151.10(b) - The need of the individual Indian or the tribe for additional land:

The trust acreage at the three tribal reservations totals 57,868.76 acres.[1] However, each of the Tribes lack an adequate land base to provide facilities for economic development. This is due to the fact that each of the three reservations is located in areas of Wisconsin which are remote from significant population centers.

The Tribes operate a total of five (5) gaming facilities within the exterior boundaries of the three reservations. To ensure the continuing stream of revenue necessary for tribal economic development, self-sufficiency and a strong tribal government, the Tribes must expand its gaming operations beyond the existing facilities. The

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[1] The trust acreage is broken down as follows:
Sokaogon Chippewa Community - 1,694.10 Acres
Red Cliff Tribe - 7,881.12 Acres
Lac Courte Oreilles Tribe - 48, 293.54 Acres

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purchase and placement into trust of St. Croix Meadows Greyhound Park is viewed by the Tribes as critical to their long-term economic benefit. The project would permit the tribal governments, as well as tribal members, to participate in the operation of a gaming facility in a large metropolitan market.

Only the Sokaogon Tribe distributes gaming revenue to tribal members in the form of per capita payments. As a result, the majority of net revenue generated by the proposed casino would be used to expand tribal social programs, tribal government operations and economic development activities well beyond the limits allowed by existing federal and state assistance.

C. 25 C.F.R. § 151.10(c) - The purpose for which the land will be used:

The Tribes intend to use the property for a Class III gaming facility. The Tribes have entered into an agreement with the current owners of the St. Croix Meadows Greyhound Park in Hudson, Wisconsin, to purchase the assets of the dogtrack. This track is located on the proposed 55.82 acres of trust land. Once the requirements of the Indian Gaming Regulatory Act of 1988 have been satisfied, and the land is placed into trust for the Tribes, casino type gaming will be added to the existing facility. No other use of the land is foreseen.

D. 25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls:

Notices of the proposed fee-to-trust conversion were sent to the Mayor of the City of Hudson, the Chairman of the City of Hudson, the Chairman of the St. Croix County Board of Supervisors, and the Chairman of the Town of Troy. The concerns not related to the removal of the property from the tax rolls that were raised by these local units of state government were fully addressed as part of the process under Section 20(b)(1)(A) of the Indian Gaming Regulatory Act of 1988 in the Recommended Findings of Fact and Conclusions prepared by the Minneapolis Area Director and sent to the Assistant Secretary-Indian Affairs on November 15, 1994.

Over 90 percent of the spending at the proposed Hudson gaming facility is expected to originate from outside the State of Wisconsin. The Hudson gaming facility is also expected to support 2,691 jobs and generate over $56 million in annual earning for residents of Wisconsin. Additionally, the Tribes, City of Hudson, and the County of St. Croix have entered into an *Agreement for Government Services*. Under this agreement the City and County will provide general government services to the proposed gaming facility. The services to be provided include, without limitation, police, fire, ambulance, rescue and emergency medical protection, road maintenance, education and access to water, sanitary sewer and storm sewer facilities, and other

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services that are under the control of the city or county or are customarily provided to other commercial properties within the city or county.

Under the *Agreement for Government Services*, the Tribes will pay the city and county $1,150,000 annually through 1998 to compensate for the services provided. Beginning in 1999, and for each year thereafter, the Tribes will increase the last annual payment by five (5) percent. Thus, the local units of state government should not be detrimentally impacted due to the removal of the land from its tax rolls.

E. 25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise:

1. Potential land use conflicts: According to the City of Hudson, the proposed trust site is zoned general commercial district for the principal structure and ancillary track, kennel and parking facilities. Six acres of the proposed trust site are currently zoned single family residence. The east, south and westerly perimeters are classified as on-family residential districts and serve as a buffer area between the track operation and other surrounding land uses.

The City of Hudson has also stated that there is sufficient land in the city that is zoned appropriately or has already been identified for future commercial land use to accommodate the potential need for the development of hotels, motels, restaurants and other service type oriented businesses. We conclude that there are no land use conflicts that would result from the acquisition of this land into trust status and its development as a gaming facility. In fact, the current plans do not require construction of any buildings for the addition of casino type gaming to the dogtrack facility. The remodeling of the existing building which already contains pari-mutuel dog racing is the only construction that will be necessary. As a result, no zoning conflicts are foreseen.

2. Jurisdictional Issues: As trust land, the property would be considered "Indian Country" for jurisdictional purposes within the meaning of 18 U.S.C. § 1151. As a result, the United States would gain additional law enforcement jurisdiction in connection with the property. However, the local units of state government would have the primary law enforcement roll since the State of Wisconsin is a mandatory Public Law 280 State. The Tribes have agreed to pay for these services even though it is not required. Accordingly, jurisdictional conflicts should not present a significant obstacle to the proposed trust land acquisition.

F. 25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status:

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The addition of this parcel of land to the jurisdiction of the Great Lakes Agency and Minneapolis Area Office will not result in a significant increase in workload because the Tribes will be managing the property as its own enterprise. Both the Agency and Area Office are currently sufficiently staffed so that any additional workload may be handled without the need for extra manpower or equipment.

III. NATIONAL ENVIRONMENTAL POLICY ACT

The transaction package has met compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C § 4321 *et seq.* The documentation in support of the acquisition includes a Finding of No Significant Impact (FONSI) signed by the Superintendent, Great Lakes Agency, on September 14, 1994. The FONSI is based upon an Environmental Assessment (EA) prepared by Mid-States Association, Inc. in 1988 for the St. Croix Meadows Greyhound Racing Facility and an Environmental Assessment Addendum to the EA prepared by Bischof & Vasseur in 1994. The addendum evaluates the potential impacts resulting from the proposed transfer of the site to be held in trust by the United States on behalf of the three Tribes and the remodeling of the existing Kennel Club Area to accommodate the addition of casino type gaming. The EA and addendum were reviewed by the Environmental Services Staff of the Minneapolis Area Office which found it to be adequate in scope and that its content supports the conclusions drawn.

A Notice of Availability for the addendum, Environmental Assessment and draft FONSI was published once in the *Hudson Star - Observer*, a weekly newspaper printed in Hudson, Wisconsin, on June 23, 1994.

IV. HAZARDOUS SUBSTANCES DETERMINATION

The hazardous survey form, *Level I Survey: Contaminant Survey Checklist of Proposed Real Estate Acquisitions*, was completed and certified by the Area Office Hazardous Waste Coordinator on November 18, 1994. The completion of the form indicates compliance with the required survey for hazardous substance on property to be acquired in trust and concludes that no contaminants are present on the property. The survey was also approved by the Minneapolis Area Director on November 18, 1994.

V. OTHER CONSULTATION/REQUIREMENTS

In addition to compliance with NEPA, the documentation provided as a result of the proposed construction of the dog track facility in 1988, supports a finding of compliance with other related requirements as indicated by the following correspondence:

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archaeological sites: The Mississippi Valley Archaeology Center, Inc. stated that after archival review of available information at the University of Wisconsin - La Crosse and the State Historical Society of Wisconsin, there are no known archaeological sites in the proposed project area.

historic preservation: The State Historical Society of Wisconsin stated that there are no buildings in the study area that are listed in the National Register of Historic places.

endangered species: The Fish and Wildlife Service, Green Bay Field Office, Green Bay Wisconsin, provided a response dated January 9, 1989, concluding that no threatened or endangered species would be affected by the construction of the dog track facility.

other: The Addendum to the EA states that there are no anticipated impacts from the planned action on wetlands or surface water in the area. According to the National Wetlands Inventory map for the site, there are no designated wetland areas located on the site.

By letter dated January 3, 1989, the State of Wisconsin Department of Agriculture, Trade & Consumer Protection stated that there was no need for an agriculture Impact Statement as a result of the initial construction of the dogtrack. Additionally, since the planned action will utilize the existing racetrack facilities, it will not have a significant impact on prime or unique farmlands as described in the Farmland Protection Policy Act.

VI. RECOMMENDATION

It is our recommendation that after the requirements of the Indian Gaming Regulatory Act have been met, authorization should be provided to place the land into trust status for the benefit of the Tribes.

Area Director

cc: Superintendent, Great Lakes Agency
Chairman, Lac Courte Oreilles Band
Chairman, Sokaogon Community
Chairperson, Red Cliff Band
✓Bill Cadotte, Executive Mgmt. Services

EOP 064293 H

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Indian Gaming-Management
MS-2070

June 8, 1995

To: Director, Indian Gaming Management Staff

From: Indian Gaming Management Staff

Subject: Application of the Sokaogon Community, the Lac Courte Oreilles BAnd, and the Red Cliff Band to Place Land Located in Hudson, Wisconsin, in Trust for Gaming Purposes

The staff has analyzed whether the proposed acquisition would be in the best interest of the Indian tribes and their members. However, addressing any problems discovered in that analysis would be premature if the Secretary does not determine that gaming on the land would not be detrimental to the surrounding community. Therefore, the staff recommends that the Secretary, based on the following, determine that the proposed acquisition would not be detrimental to the surrounding community prior to making a determination on the best interests.

FINDINGS OF FACT

The Minneapolis Area Office ("MAO") transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin ("Tribes") to the Secretary of the Interior ("Secretary") to place approximately 55 acres of land located in Hudson, Wisconsin, in trust for gaming purposes. The proposed casino project is to add slot machines and blackjack to the existing class III pari-mutuel dog racing currently being conducted by non-Indians at the dog track. (Vol. I, Tab 1, pg. 2)[1]

The Tribes have entered into an agreement with the owners of the St. Croix Meadows Greyhound Park, Croixland Properties Limited Partnership ("Croixland"), to purchase part of the land and all of the assets of the greyhound track, a class III gaming facility. The grandstand building of the track has three floors with 160,000 square feet of space. Adjacent property to be majority-owned in fee by the Tribes includes parking for 4,000 autos. The plan is to remodel 50,000 square feet, which will contain 1,500 slot machines and 30 blackjack tables.

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[1] References are to the application documents submitted by the Minneapolis Area Office.

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Another 20,000 square feet will be used for casino support areas (money room, offices, employee lounges, etc.). Vol. I, Tab 3, pg. 19)

The documents reviewed and analyzed are:

1. Tribes letter February 23, 1994 (Vol. I, Tab 1)
2. Hudson Casino Venture, Arthur Anderson, March 1994 (Vol. I, Tab 3)
3. An Analysis of the Market for the Addition of Casino Games to the Existing Greyhound Race Track near the City of Hudson, Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 4)
4. An Analysis of the Economic Impact of the Proposed Hudson Gaming Facility on the Three Participating Tribes and the Economy of the State of Wisconsin, James M. Murray, Ph.D., February 25, 1994 (Vol. I, Tab 5)
5. Various agreements (Vol. I, Tab 7) and other supporting data submitted by the Minneapolis Area Director.
6. Comments of the St. Croix Chippewa Indians of Wisconsin, April 30, 1995.
7. KPMG Peat Marwick Comments, April 28, 1995.
8. Ho-Chunk Nation Comments, May 1, 1995.

The comment period for Indian tribes in Minnesota and Wisconsin was extended to April 30, 1995 by John Duffy, Counselor to Secretary. These additional comments were received after the Findings of Fact by the MAO, and were not addressed by the Tribes or MAO.

Comments from the public were received after the MAO published a notice of the Findings Of No Significant Impact (FONSI). The St. Croix Tribal Council provided comments on the draft FONSI to the Great Lakes Agency in a letter dated July 21, 1994. However, no appeal of the FONSI was filed as prescribed by law.

NOT DETRIMENTAL TO THE SURROUNDING COMMUNITY

CONSULTATION

To comply with Section 20 of the Indian Gaming Regulatory Act. 25 U.S.C. §2719 (1988), the MAO consulted with the Tribes and appropriate State and local officials, including officials of other nearby Indian tribes, on the impacts of the gaming operation on the surrounding community. Letters from the Area Director, dated December 30, 1993, listing several suggested areas of discussion for the "best interest" and "not detrimental to the surrounding community" determination, were sent to the applicant Tribes, and in letters dated February 17, 1994, to the following officials:

Mayor, City of Hudson, Wisconsin (Vol. III, Tab 1*)
Chairman, St. Croix County Board of Supervisors, Hudson, WI (Vol. III, Tab 2*)
Chairman, Town of Troy, Wisconsin (Vol. III, Tab 3*)

*response is under same Tab.

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The Area Director sent letters dated December 30, 1993, to the following officials of federally recognized tribes in Wisconsin and Minnesota:

1) President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 5**)

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2) Chairman, Leech Lake Reservation Business Committee (Vol. III, Tab 6**)
3) President, Lower Sioux Indian Community of Minnesota (Vol. III, Tab 7**)
4) Chairperson, Mille Lacs Reservation Business Committee (Vol. III, Tab 8**)
5) Chairperson, Oneida Tribe of Indians of Wisconsin (Vol. III, Tab 9**
6) President, Prairie Island Indian Community of Minnesota (Vol. III, Tab 10**)
7) Chairman, Shakopee Mdewakanton Sioux Community of Minnesota (Vol. III, Tab 11**)
8) President, St. Croix Chippewa Indians of Wisconsin (Vol. III, Tab 12**)
9) Chairperson, Wisconsin Winnebago Tribe of Wisconsin (Vol. III, Tab 13**)
10) Chairman, Bad River Band of Lake Superior Chippewa Indians of Wisconsin (Vol. III, Tab 16***)
11) Chairman, Bois Forte (Nett Lake) Reservation Business Committee (Vol. III, Tab 16***)
12) Chairman, Fond du Lac Reservation Business Committee (Vol. III, Tab 16***)
13) Chairman, Forest County Potawatomi Community of Wisconsin (Vol. III, Tab 16***)
14) Chairman, Grand Portage Reservation Business Committee (Vol. III, Tab 16***)
15) Chairman, Red Lake Band of Chippewa Indians of Minnesota (Vol. III, Tab 16***)
16) President, Stockbridge Munsee Community of Wisconsin (Vol. III, Tab 16***)
17) Chairperson, Upper Sioux Community of Minnesota (Vol. III, Tab 16***)
18) Chairman, White Earth Reservation Business Committee (Vol. III, Tab 16***)
19) President, The Minnesota Chippewa Tribe (Vol. III, Tab 14**).

**response is under same Tab
***no response

A. Consultation with State

There has been no consultation with the State of Wisconsin. The Area Director is in error in the statement: "...it is not required by the Indian Gaming Regulatory Act until the Secretary makes favorable findings." (Vol. I, Findings of Fact and Conclusions, pg. 15)

On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner of Indians Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.

B. Consultation with City and Town

The property, currently a class III gaming facility, is located in a commercial area in the southeast corner of the City of Hudson. Thomas H. Redner, Mayor, states "...the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size."

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Hudson Dog Track Application

The City of Hudson passed Resolution 2-95 on February 6, 1995 after the Area Office had submitted its Findings Of Facts, stating "the Common Council of the City of Hudson, Wisconsin does not support casino gambling at the St. Croix Meadows site". However, the City Attorney clarified the meaning of the resolution in a letter dated February 15, 1995 stating that the resolution "does not retract, abrogate or supersede the April 18, 1994 Agreement for Government Services." No evidence of detrimental impact is provided in the resolution.

The Town of Troy states that it borders the dog track on three sides and has residential homes directly to the west and south. Dean Albert, Chairperson, responded to the consultation letter stating that the Town has never received any information on the gaming facility. He set forth several questions the Town needed answered before it could adequately assess the impact. However, responses were provided to the specific questions asked in the consultation.

Letters supporting the application were received from Donald B. Bruns, Hudson City Councilman; Carol Hansen, former member of the Hudson Common Council; Herb Giese, St. Croix County Supervisor; and John E. Schommer, Member of the School Board. They discuss the changing local political climate and the general long-term political support for the acquisition. Roger Breske, State Senator, and Barbara Linton, State Representative also wrote in support of the acquisition. Sandra Berg, a long-time Hudson businessperson, wrote in support and states that the opposition to the acquisition is receiving money from opposing Indian tribes.

C. Consultation with County

The St. Croix County Board of Supervisors submitted an Impact Assessment on the proposed gaming establishment. On March 13, 1994 a single St. Croix County Board Supervisor wrote a letter to Wisconsin Governor Tommy Thompson that stated his opinion that the Board had not approved "any agreement involving Indian tribes concerning gambling operations or ownership in St. Croix County."

On April 15, 1994 the Chairman of the St. Croix County Board of Supervisors indicated that "we cannot conclusively make any findings on whether or not the proposed gaming establishment will be detrimental to the surrounding community. . . Our findings assume that an Agreement for Government Services, satisfactory to all parties involved, can be agreed upon and executed to address the potential impacts of the service needs outlined in the assessment. In the absence of such an agreement it is most certain that the proposed gaming establishment would be a detriment to the community."

On April 26, 1994 a joint letter from the County Board Chairman and Mayor of the City of Hudson was sent to Governor Thompson. It says, "The City Council of Hudson unanimously approved this [Agreement for Government Services] on March 23rd by a 6 to 0 vote, and the

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County Board at a special meeting on March 29th approved the agreement on a 23 to 5 vote."

On December 3, 1992, an election was held in the City of Hudson on an Indian Gaming Referendum, -"Do you support the transfer of St. Croix Meadows to an Indian Tribe and the conduct of casino gaming at St. Croix Meadows if the Tribe is required to meet all financial commitments of Croixland Properties Limited Partnership to the City of Hudson?" With 54% of the registered electorate voting, 51.5% approved the referendum.

St. Croix County in a March 14, 1995 letter states that the "County has no position regarding the City's action" regarding Resolution 2-95 by the City of Hudson (referred to above).

D. Consultation with Neighboring Tribes

Minnesota has 6 federally-recognized tribes (one tribe with six component reservations), and Wisconsin has 8 federally-recognized tribes. The three applicant tribes are not included in the Wisconsin total. The Area Director consulted with all tribes except the Menominee Tribe of Wisconsin. No reason was given for omission of this tribe in the consultation process.

Six of the Minnesota tribes did not respond to the Area Director's request for comments while five tribes responded by objecting to the proposed acquisition for gaming. Four of the Wisconsin tribes did not respond while four responded. Two object and two do not object to the proposed acquisition for gaming.

Five tribes comment that direct competition would cause loss of customers and revenues. Only one of these tribes is within 50 miles, using the most direct roads, of the Hudson facility. Two tribes comment that the approval of an off-reservation facility would have a nationwide political and economic impact on Indian gaming, speculating wide-open gaming would result. Six tribes state that Minnesota tribes have agreed there would be no off-reservation casinos. One tribe states the Hudson track is on Sioux land. One tribe comments on an adverse impact on social structure of community from less money and fewer jobs because of competition, and a potential loss of an annual payment ($150,000) to local town that could be jeopardized by lower revenues. One tribe comments that community services costs would increase because of reduced revenues at their casino. One tribe comments that it should be permitted its fourth casino before the Hudson facility is approved by the state.

St. Croix Tribe Comments

The St. Croix Tribe asserts that the proposed acquisition is a bailout of a failing dog track. The St. Croix Tribe was approached by Galaxy Gaming and Racing with the dog track-to-casino conversion plan. The Tribe rejected the offer, which was then offered to the Tribes. While the St. Croix Tribe may believe that the project is not suitable, the Tribes and the MAO reach an opposite conclusion.

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Hudson Dog Track Application

The Coopers & Lybrand impact study, commissioned by the St. Croix Tribe, projects an increase in the St. Croix Casino attendance in the survey area from 1,064,000 in 1994 to 1,225,000 in 1995, an increase of 161,000. It then projects a customer loss to a Hudson casino, 60 road miles distant, at 181,000. The net change after removing projected growth is 20,000 customers, or approximately 1¼% of the 1994 actual total attendance at the St. Croix casino (1.6 million).

The study projects an attendance loss of 45,000 of the 522,000 1994 total at the St. Croix Hole in the Wall Casino, Danbury, Wisconsin, 120 miles from Hudson, and 111 miles from the Minneapolis/St. Paul market. Danbury is approximately the same distance north of Minneapolis and south of Duluth, Minnesota as the Mille Lac casino in Onamia, Minnesota, and competes directly in a market quite distant from Hudson, Wisconsin, which is 25 miles east of Minneapolis. The projected loss of 9% of Hole in the Wall Casino revenue to a Hudson casino is unlikely. However, even that unrealistically high loss would fall within normal competitive and economic factors that can be expected to affect all businesses, including casinos. The St. Croix completed a buy-out of its Hole in the Wall Manager in 1994, increasing the profit of the casino by as much as 67%. The market in Minnesota and Wisconsin, as projected by Smith Barney in its Global Gaming Almanac 1995, is expected to increase to $1.2 billion, with 24 million gamer visits, an amount sufficient to accommodate a casino at Hudson and profitable operations at all other Indian gaming locations.

Ho-Chunk Nation Comments

The Ho-Chunk Nation ("Ho-Chunk") submitted comments on the detrimental impact of the proposed casino on Ho-Chunk gaming operations in Black River Falls, Wisconsin (BRF), 116 miles from the proposed trust acquisition. The analysis was based on a customer survey that indicated a minimum loss of 12.5% of patron dollars. The survey was of 411 patrons, 21 of whom resided closer to Hudson than BRF (about 5% of the customers). Forty-two patrons lived between the casinos closer to BRF than Hudson.

Market studies from a wide variety of sources indicate that distance (in time) is the dominant factor in determining market share, especially if the facilities and service are equivalent. However, those studies also indicate that even when patrons generally visit one casino, they occasionally visit other casinos. That means that customers closer to a Hudson casino will not exclusively visit Hudson. The specific residence of the 21 customers living closer to Hudson was not provided, but presumably some of them were from the Minneapolis/St. Paul area, and already have elected to visit the much more distant BRF casino rather than an existing Minneapolis area casino.

In addition, "player clubs" create casino loyalty, and tend to draw customers back to a casino regardless of the distance involved. The addition of a Hudson casino is likely to impact the BRF casino revenues by less than 5%. General economic conditions affecting disposable income cause fluctuations larger than that amount. The impact of Hudson on BRF probably cannot be isolated from the "noise" fluctuations in business caused by other casinos, competing entertainment and sports, weather, and other factors.

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The Ho-Chunk gaming operations serve the central and southern population of Wisconsin, including the very popular Wisconsin Dells resort area. The extreme distance of Hudson from the primary market area of the Ho-Chunk casinos eliminates it as a major competitive factor. The customers' desire for variety in gaming will draw BRF patrons to other Ho-Chunk casinos, Minnesota casinos, and even Michigan casinos. Hudson cannot be expected to dominate the Ho-Chunk market, or cause other than normal competitive impact on the profitability of the Ho-Chunk operations. The addition by the Ho-Chunk of two new casinos since September 1993 strongly indicates the Tribe's belief in a growing market potential. While all of the tribes objecting to the facility may consider the competitive concerns of another casino legitimate, they provide no substantial data that would prove their concerns valid. There are eight casinos within a 100-mile radius of the Minneapolis area; three casinos are within 50 miles. (Vol. I, Tab 3, pg. 29)

Comments by the Oneida Tribe of Indians of Wisconsin
In an April 17, 1995 letter, the Oneida Tribe rescinds its neutral position stated on March 1, 1994, "Speaking strictly for the Oneida Tribe, we do not perceive that there would be any serious detrimental impacts on our own gaming operation. . . The Oneida Tribe is simply located to (sic) far from the Hudson project to suffer any serious impact." The Tribe speculates about growing undue pressure from outside non-Indian gambling interests that could set the stage for inter-Tribal rivalry for gaming dollars. No evidence of adverse impact is provided.

KPMG Peat Marwick Comments for the Minnesota Tribes
On behalf of the Minnesota Indian Gaming Association (MIGA), Mille Lacs Band of Chippewa Indians, St. Croix Chippewa Band, and Shakopee Mdewakanton Dakota Tribe, KPMG comments on the impact of a casino at Hudson, Wisconsin.

KPMG asserts that the Minneapolis Area Office has used a "not devastating" test rather than the less rigorous "not detrimental" test in reaching its Findings of Fact approval to take the subject land in trust for the three affiliated Tribes.

In the KPMG study, the four tribes and five casinos within 50 miles of Hudson, Wisconsin had gross revenues of $450 million in 1993, and $495 million in 1994, a 10% annual growth. The Findings of Fact projects a Hudson potential market penetration of 20% for blackjack and 24% for slot machines. If that penetration revenue came only from the five casinos, it would be $114.6 million.

However, the Arthur Anderson financial projections for the Hudson casino were $80 million in gaming revenues, or 16.16% of just the five-casino revenue (not total Indian gaming in Minnesota and Wisconsin). Smith Barney estimates a Minneapolis Gaming Market of $480 million, a Non-Minneapolis Gaming Market of $220 million, and a Wisconsin Market of $500 million. The Wisconsin market is concentrated in the southern and eastern population centers where the Oneida and Ho-Chunk casinos are located. Assuming that the western

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Wisconsin market is 25% of the state total, the total market available to the six Minneapolis market casinos is over $600 million.

The projected Hudson market share of $80 to $115 million is 13% to 19% of the two-state regional total. A ten percent historic growth rate in gaming will increase the market by $50 million, and stimulation of the local market by a casino at Hudson is projected in the application at 5% ($25 million) Therefore, only $5 to $40 million of the Hudson revenues would be obtained at the expense of existing casinos. An average revenue reduction of $1 to $8 million per existing casino would not be a detrimental impact. The Mystic Lake Casino was estimated to have had a $96.8 million net profit in 1993. A reduction of $8 million would be about 8%, assuming that net revenue decreased the full amount of the gross revenue reduction. At $96.8 million, the per enrolled member profit at Mystic Lake is $396,700. Reduced by $8 million, the amount would be $363,900. The detrimental effect would not be expected to materially impact Tribal expenditures on programs under IGRA Section 11.

Summary: Reconciliation of various comments on the impact of a casino at Hudson can be achieved best by reference to the Sphere of Influence concept detailed by Murray on pages 2 through 7 of Vol. I, Tab 4. Figure 1 displays the dynamics of a multi-nodal draw by casinos for both the local and Minneapolis metropolitan markets. The sphere of influence of Hudson depends on its distance from various populations (distance explains 82% of the variation in attendance). Outside of the charted zone, other casinos would exert primary influence.

The Sphere of Influence indicates only the distance factor of influence, and assumes that the service at each casino is equivalent. Facilities are not equivalent, however. Mystic Lake is established as a casino with a hotel, extensive gaming tables, and convention facilities. Turtle Lake is established and has a hotel. Hudson would have a dog track and easy access from Interstate 94. Each casino will need to exploit its competitive advantage in any business scenario, with or without a casino at Hudson. Projections based on highly subjective qualitative factors would be very speculative.

It is important to note that the Sphere of Influence is influence, not dominance or exclusion. The Murray research indicates that casino patrons on average patronize three different casinos each year. Patrons desire variety in their gaming, and achieve it by visiting a several casinos. The opening of a casino at Hudson would not stop customers from visiting a more distant casino, though it might change the frequency of visits.

The St. Croix Tribe projects that its tribal economy will be plunged "back into pre-gaming 60 percent plus unemployment rates and annual incomes far the (sic) below recognized poverty levels." The Chief Financial Officer of the St. Croix Tribe projects a decrease of Tribal earnings from $25 million in 1995 to $12 million after a casino at Hudson is established. Even a reduction of that amount would not plunge the Tribe back into poverty and unemployment, though it could certainly cause the Tribe to re-order its spending plans.

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Market Saturation.
The St. Croix Tribe asserts that the market is saturated even as it has just completed a 31,000 square foot expansion of its casino in Turtle Lake, and proposes to similarly expand the Hole-in-the-Wall Casino. Smith Barney projects a Wisconsin market of $500 million with a continuation of the steady growth of the last 14 years, though at a rate slower than the country in general.

E. NEPA Compliance

B.I.A. authorization for signing a FONSI is delegated to the Area Director. The NEPA process in this application is complete by the expiration of the appeal period following the publication of the Notice of Findings of No Significant Impact.

F. Surrounding Community Impacts

1. IMPACTS ON THE SOCIAL STRUCTURE IN THE COMMUNITY

The Tribes believe that there will not be any impact on the social structure of the community that cannot be mitigated. The MAO did not conduct an independent analysis of impacts on the social structure. This review considers the following:

I. Economic Contribution of Workers
The Town of Troy comments that minimum wage workers are not major contributors to the economic well-being of the community. (Vol. III, Tab 3, pg. 3) Six comments were received from the general public on the undesirability of the low wages associated with a track and casino. (Vol. V)

II. Crime
Hudson Police Dept. Crime & Arrests. (Cranmer 62a and 62b, Vol. IV, Tab 4)

	1990	1991	1992	1993
Violent Crime	14	4	7	7
Property Crime	312	420	406	440

These statistics provided by Dr. Cranmer do not indicate a drastic increase in the rate of crime since the dog track opened on June 1, 1991. However, other studies and references show a correlation between casinos and crime. One public comment attached remarks by William Webster and William Sessions, former Directors of the Federal Bureau of Investigation, on the presence of organized crime in gambling. (Vol. V, George O. Hoel, 5/19/94, Vol. V) Another public comment included an article from the *St. Paul Pioneer Press* with statistics relating to the issue. (Mike Morris, 3/28/94, Vol. V) Additional specific data on crime are provided by LeRae D. Zahorski, 5/18/94, Barbara Smith Lobin, 7/14/94, and Joe and Sylvia Harwell

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3/1/94. (all in Vol. V) Eight additional public comments express concern with the crime impact of a casino. (Vol. V)

III. Harm to Area Businesses

A. Wage Level
The Town of Troy says that workers are unavailable locally at minimum wage. (Vol. III, Tab 3, pg. 3)

B. Spending Patterns
One public comment concerns gambling diverting discretionary spending away from local businesses. (Dean M. Erickson, 6/14/94) Another public comment states that everyone should be able to offer gambling, not just Indians. (Stewart C. Mills, 9/26/94) (Vol. V)

IV. Property Values
An opponent asserts that a Hudson casino will decrease property values. He notes that purchase options were extended to adjacent property owners before the construction of the dog track. He provides no evidence that any properties were tendered in response. (Vol. 6, Tab 4, pg. 33)

A letter from Nancy Bieraugel, 1/19/94, (Vol. V) states that she would never choose to live near a casino. Another letter, Thomas Forseth, 5/23/94, (Vol. V) comments that he and his family live in Hudson because of its small-town atmosphere. Sharon K. Kinkead, 1/24/94, (Vol. V) states that she moved to Hudson to seek a quiet country life style. Sheryl D. Lindholm, 1/20/94, (Vol. V) says that Hudson is a healthy cultural- and family-oriented community. She points out several cultural and scenic facilities that she believes are incompatible with a dog track and casino operations. Seven additional letters of comment from the public show concern for the impact of a casino on the quality of life in a small, family-oriented town. (Vol. V)

V. Housing Costs will increase
Housing vacancy rates in Troy and Hudson are quite low (3.8% in 1990). Competition for moderate income housing can be expected to cause a rise in rental rates. A local housing shortage will require that most workers commute. (Vol. 3, Tab 2, pg. 3 and Tab 3, pg. 4)

Summary: The impacts above, except crime, are associated with economic activity in general, and are not found significant for the proposed casino. The impact of crime has been adequately mitigated in the Agreement for Government Services by the promised addition of police.

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2. IMPACTS ON THE INFRASTRUCTURE

The Tribes project average daily attendance at the proposed casino at 7,000 people, and the casino is expected to attract a daily traffic flow of about 3,200 vehicles. Projected employment is 1,500; and the casino is expected to operate 18 hours per day. (Vol. III, Tab 2, pg. 1) Other commenters estimates are higher. An opponent of this proposed action estimates that, if a casino at Hudson follows the pattern of the Minnesota casinos, an average of 10 to 30 times more people will attend the casino than currently attend the dog track. (Vol. 4, Tab 4, pgs. 33 and 34) Attendance, vehicles, employment, and hours of operation projected for the casino greatly exceed those for the present dog track, and indicate the possibility of a significantly greater impact on the environment.

I. Utilities
St. Croix County states that there is adequate capacity for water, waste water treatment, and transportation. Gas, electric, and telephone services are not addressed. (Vol. 3, Tab 1)

II. Zoning
According to the City of Hudson, most of the proposed trust site is zoned "general commercial district" (B-2) for the principal structure and ancillary track, kennel and parking facilities. Six acres of R-1 zoned land (residential) no longer will be subject to Hudson zoning if the proposed land is taken into trust. (Vol. III, Tab 1, pg. 4)

One public comment expresses concern for the loss of local control over the land after it has been placed in trust. (Vol V, Jeff Zais, 1/19/94)

III. Water
The City of Hudson says that water trunk mains and storage facilities are adequate for the casino development and ancillary developments that are expected to occur south of I-94. (Vol. III, Tab 1, pg. 3)

IV. Sewer and storm drainage
The City of Hudson and St. Croix County state that sanitary trunk sewer mains are adequately sized for the casino. (Vol. III, Tab 1, pg. 2 and Tab 2, pg. 1) The City of Hudson states that trunk storm sewer system will accommodate the development of the casino/track facility. (Vol. III, Tab 1, pg. 3) An existing storm water collection system collects storm water runoff and directs it toward a retention pond located near the southwest corner of the parking area. (Vol. IV, Tab 4, pgs. 7 and 8)

V. Roads
The current access to the dog track is at three intersections of the parking lot perimeter road and Carmichael Road. Carmichael Road intersects Interstate 94.

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The 1988 EA says that the proposed access to the dog track would be from Carmichael Road, a fact which seems to have occurred. (Vol. 4, Tab 4, pgs. 18 and 19)

A. Traffic Impact Analysis

The Wisconsin Department of Transportation states, "We are fairly confident that the interchange (IH94-Carmichael Road) will function fine with the planned dog track/casino." (Vol. IV, Tab 1, pg. 38)

St. Croix County estimates that the average daily traffic for the proposed casino should be around 3,200 vehicles. (Vol. III, Tab 2, pg. 3)

The City of Hudson says that the current street system is sufficient to accommodate projected traffic needs based on 40,000 average daily trips. (Vol. III, Tab 1, pg. 4)

The Town of Troy indicates that the increased traffic will put a strain on all the roads leading to and from the track/casino. However, the Town Troy was unable to estimate the number and specific impacts due to a lack of additional information from the Tribes. (Vol. III, Tab 3, pg. 3)

The Tribes' study projects 8,724 average daily visits. Using 2.2 persons per vehicle (Vol IV, tab 4, pg. 8 of Attachment 4), 3,966 vehicles per day are projected. (Vol. I, Tab 4, pg. 15)

A comment by George E. Nelson (2/25/94, Vol. V) says the accident rate in the area is extremely high according to Hudson Police records. Nelson expects the accident rate to increase proportionately with an increase in traffic to a casino. However, no supporting evidence is provided. Four additional public comments state concerns with increased traffic to the casino. (Vol V)

Summary: The evidence indicates that there will be no significant impacts on the infrastructure.

3. IMPACT ON THE LAND USE PATTERNS IN THE SURROUNDING COMMUNITY

The City of Hudson does not mention any land use pattern impacts. (Vol III, Tab 1, pg. 4)

St. Croix County says, " . . . it is expected that there will be some ancillary development. This is planned for within the City of Hudson in the immediate area of the casino." (Vol. III, Tab 2, pg. 3)

It is likely that the proposed project will create changes in land use patterns, such as the construction of commercial enterprises in the area. Other anticipated impacts are an increase in zoning variance applications and pressure on zoning boards to allow development.

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Summary: The City of Hudson, Town of Troy, and St. Croix County control actual land use pattern changes in the surrounding area. There are no significant impacts that cannot be mitigated by the locally elected governments.

4. IMPACT ON INCOME AND EMPLOYMENT IN THE COMMUNITY

The Tribes' study projects $42.7 million in purchases annually by the casino/track from Wisconsin suppliers. Using the multipliers developed for Wisconsin by the Bureau of Economic Analysis of the U.S. Department of Commerce, these purchases will generate added earnings of $18.1 million and 1,091 jobs in the state. The total direct and indirect number of jobs is projected at 2,691. Of the current employees of the dog track, 42% live in Hudson, 24% in River Falls, 5% in Baldwin, and 4% in New Richmond. (Vol. I, Tab 5, pg. 12) St. Croix County states that direct casino employment is expected to be about 1,500. The proposed casino would be the largest employer in St. Croix County. All existing employees would be offered reemployment at current wage rates. (Vol. III, Tab 2, pg. 4)

Three public comments say that Hudson does not need the economic support of gambling. (Tom Irwin, 1/24/94, Betty and Earl Goodwin, 1/19/94, and Steve and Samantha Swank, 3/1/94, Vol. V)

The Town of Troy states that "an over supply of jobs tends to drive cost paid per hourly wage down, thus attracting a lower level of wage earner into the area, thus affecting the high standard of living this area is now noted for." (Vol. III, Tab 3, pg. 4)

Summary: The impacts on income and employment in the community are not significant, and are generally expected to be positive by the Tribes and local governments.

5. ADDITIONAL AND EXISTING SERVICES REQUIRED OR IMPACTS, COSTS OF ADDITIONAL SERVICES TO BE SUPPLIED BY THE COMMUNITY AND SOURCE OF REVENUE FOR DOING SO

The Tribes entered an Agreement for Government Services with the City of Hudson and St. Croix County for "general government services, public safety such as police, fire, ambulance, emergency medical and rescue services, and public works in the same manner and at the same level of service afforded to residents and other commercial entities situated in the City and County, respectively." The Tribes agreed to pay $1,150,000 in the initial year to be increased in subsequent years by 5% per year. The agreement will continue for as long as the land is held in trust, or until Class III gaming is no longer operated on the lands. (Vol. I, Tab 9)

The City of Hudson says that it anticipates that most emergency service calls relative to the proposed casino will be from nonresidents, and that user fees will cover operating costs. No major changes are foreseen in the fire protection services. The police department foresees a need to expand its force by five officers and one clerical employee. (Vol. I, Tab 9)

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St. Croix County anticipates that the proposed casino will require or generate the need for existing and additional services in many areas. The funding will be from the Agreement For Government Services. The parties have agreed that payments under that agreement will be sufficient to address the expected services costs associated with the proposed casino. (Vol. III, Tab 2)

The Town of Troy states that the additional public service costs required by a casino operation will be substantial to its residents. (Vol-III, Tab 3, pg. 4) Fire services are contracted from the Hudson Fire Department, which will receive funding from the Agreement for Government Services.

Summary: The impacts to services are mitigated by The Agreement for Government Services between the Tribes, the City of Hudson, and St. Croix County.

6. PROPOSED PROGRAMS, IF ANY, FOR COMPULSIVE GAMBLERS AND SOURCE OF FUNDING

There is no compulsive gambler program in St. Croix County. There are six state-funded Compulsive Gambling Treatment Centers in Minnesota. (Vol. II, Tab 7, pg. 38)

The Town of Troy states that it will be required to make up the deficit for these required services, if such costs come from tax dollars. (Vol. III, Tab 3, pg. 5)

St. Croix County says it will develop appropriate treatment programs, if the need is demonstrated. (Vol. III, Tab 2, pg. 5)

The Tribes will address the compulsive and problem gambling concerns by providing information at the casino about the Wisconsin toll-free hot line for compulsive gamblers. The Tribes state that they will contribute money to local self-help programs for compulsive gamblers. (Vol. I, Tab 1, pg. 12)

Thirteen public comments were received concerning gambling addiction and its impact on morals and families. (Vol. V)

Summary: The Tribes' proposed support for the Wisconsin hot line and unspecified self-help programs is inadequate to mitigate the impacts of problem gambling.

Summary Conclusion

Strong opposition to gambling exists on moral grounds. The moral opposition does not go away, even when a State legalizes gambling and operates its own games. Such opposition is not a factor in reaching a determination of detrimental impact.

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Any economic activity has impacts. More employees, customers, traffic, wastes, and money are side effects of commercial activity. The NEPA process and the Agreement for Government Services address the actual expected impacts in this case. Nothing can address general opposition to economic activity except stopping economic activity at the cost of jobs, livelihoods, and opportunity. Promoting economic opportunity is a primary mission of the Bureau of Indian Affairs. Opposition to economic activity is not a factor in reaching a determination of detrimental impact.

Business abhors competition. Direct competition spawns fear. No Indian tribe welcomes additional competition. Since tribal opposition to gaming on others' Indian lands is futile, fear of competition will only be articulated in off-reservation land acquisitions. Even when the fears are groundless, the opposition can be intense. The actual impact of competition is a factor in reaching a determination to the extent that it is unfair, or a burden imposed predominantly on a single Indian tribe.

Opposition to Indian gaming exists based on resentment of the sovereign status of Indian tribes, lack of local control, and inability of the government to tax the proceeds. Ignorance of the legal status of Indian tribes prompts non-Indian general opposition to Indian gaming. It is not always possible to educate away the opposition. However, it can be appropriately weighted in federal government actions. It is not a factor in reaching a determination of detrimental impact.

Detriment is determined from a factual analysis of evidence, not from opinion, political pressure, economic interest, or simple disagreement. In a political setting where real, imagined, economic, and moral impacts are focused in letters of opposition and pressure from elected officials, it is important to focus on an accurate analysis of facts. That is precisely what IGRA addresses in Section 20 – a determination that gaming off-reservation would not be detrimental to the surrounding community. It does not address political pressure except to require consultation with appropriate government officials to discover relevant facts for making a determination on detriment.

Indian economic development is not subject to local control or plebescite. The danger to Indian sovereignty, when Indian economic development is limited by local opinion or government action, is not trivial. IGRA says, "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any fax, fee, charge, or other assessment upon an Indian tribe." The potential for interference in Indian activities by local governments was manifestly apparent to Congress, and addressed directly in IGRA. Allowing local opposition, not grounded in factual evidence of detriment, to obstruct Indian economic development sets a precedent for extensive interference, compromised sovereignty, and circumvention of the intent of IGRA.

If Indians cannot acquire an operating, non-Indian class III gaming facility and turn a money-losing enterprise into a profitable one for the benefit of employees, community, and Indians, a precedent is set that directs the future course of off-reservation land acquisitions. Indians

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are protected by IGRA from the out-stretched hand of State and local governments. If strong local support is garnered only by filling the outstretched hand to make local officials eager supporters, then IGRA fails to protect. Further, it damages Indian sovereignty by *de facto* giving States and their political sub-divisions the power to tax. The price for Indian economic development then becomes a surrender to taxation.

Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Government Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing class III pari-mutuel wagering would not be detrimental to the surrounding community. Staff recommends that the determination of the best interests of the tribe and its members be completed.

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JUL 14 1995

Honorable Rose M. Gurnoe
Tribal Chairperson
Red Cliff Band of Lake Superior Chippewas
P.O. Box 529
Bayfield, Wisconsin 54814

Honorable Alfred Trepania
Tribal Chairperson
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
Route 2, Box 2700
Hayward, Wisconsin 54843

Honorable Arlyn Ackley, Sr.
Tribal Chairman
Sokaogon Chippewa Community
Route 1, Box 625
Crandon, Wisconsin 54520

Dear Ms. Gurnoe and Messrs. Trepania and Ackley:

On November 15, 1994, the Minneapolis Area Office of the Bureau of Indian Affairs (BIA) transmitted the application of the Sokaogon Chippewa Community of Wisconsin, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin (collectively referred to as the "Tribes") to place a 55-acre parcel of land located in Hudson, Wisconsin, in trust for gaming purposes. The Minneapolis Area Director recommended that the decision be made to take this particular parcel into trust for the Tribes for gaming purposes. Following receipt of this recommendation and at the request of nearby Indian tribes, the Secretary extended the period for the submission of comments concerning the impact of this proposed trust acquisition to April 30, 1995.

The property, located in a commercial area in the southeast corner of the City of Hudson, Wisconsin, is approximately 85 miles from the boundaries of the Lac Courte Oreilles Reservation, 165 miles from the boundaries of the Red Cliff Reservation, and 188 miles from the boundaries of the Sokaogon Reservation. The St. Croix Band of Chippewa Indians, one of the eight Wisconsin tribes (not including the three applicant tribes), is located on a reservation within the 50-mile radius used by the Minneapolis Area Director to determine which tribes can be considered "nearby" Indian tribes within the meaning of Section 20 of the Indian Gaming Regulatory Act (IGRA).

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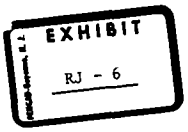

Section 20 of the IGRA, 25 U.S.C. § 2719(b)(1)(A), authorizes gaming on off-reservation trust lands acquired after October 17, 1988, if the Secretary determines, after consultation with appropriate State and local officials, including officials of other nearby tribes, and the Governor of the State concurs, that a gaming establishment on such lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community.

The decision to place land in trust status is committed to the sound discretion of the Secretary of the Interior. Each case is reviewed and decided on the unique or particular circumstances of the applicant tribe.

For the following reasons, we regret we are unable to concur with the Minneapolis Area Director's recommendation and cannot make a finding that the proposed gaming establishment would not be detrimental to the surrounding community.

The record before us indicates that the surrounding communities are strongly opposed to this proposed off-reservation trust acquisition. On February 6, 1995, the Common Council of the City of Hudson adopted a resolution expressing its opposition to casino gambling at the St. Croix Meadows Greyhound Park. On December 12, 1994, the Town of Troy adopted a resolution objecting to this trust acquisition for gaming purposes. In addition, in a March 28, 1995, letter, a number of elected officials, including the State Representative for Wisconsin's 30th Assembly District in whose district the St. Croix Meadows Greyhound Track is located, have expressed strong opposition to the proposed acquisition. The communities' and State officials' objections are based on a variety of factors, including increased expenses due to potential growth in traffic congestion and adverse effect on the communities' future residential, industrial and commercial development plans. Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by this proposed off-reservation gaming acquisition.

In addition, the record also indicates that the proposed acquisition is strongly opposed by neighboring Indian tribes, including the St. Croix Tribe of Wisconsin. Their opposition is based on the potential harmful effect of the acquisition on their gaming establishments. The record indicates that the St. Croix Casino in Turtle Lake, which is located within a 50-mile radius of the proposed trust acquisition, would be impacted. And, while competition alone would generally not be enough to conclude that any acquisition would be detrimental, it is a significant factor in this particular case. The Tribes' reservations are located approximately 85, 165, and 188 miles respectively from the proposed acquisition. Rather than seek acquisition of land closer to their own reservations, the Tribes chose to "migrate" to a location in close proximity to another tribe's market area and casino. Without question, St. Croix will suffer a loss of market share and revenues. Thus, we believe the proposed acquisition would be detrimental to the St. Croix Tribe within the meaning of Section 20(b)(1)(A) of the IGRA.

We have also received numerous complaints from individuals because of the proximity of the proposed Class III gaming establishment to the St. Croix National Scenic Riverway and the potential harmful impact of a casino located one-half mile from the Riverway. We are concerned that the potential impact of the proposed casino on the Riverway was not adequately addressed in environmental documents submitted in connection with the application.

Finally, even if the factors discussed above were insufficient to support our determination under Section 20(b)(1)(A) of the IGRA, the Secretary would still rely on these factors, including the opposition of the local communities, state elected officials and nearby Indian tribes, to decline to exercise his discretionary authority, pursuant to Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465, to acquire title to this property in Hudson, Wisconsin, in trust for the Tribes. This decision is final for the Department.

Sincerely,

Michael J. Anderson

Michael J. Anderson
Deputy Assistant Secretary - Indian Affairs

cc: Minneapolis Area Director
National Indian Gaming Commission