SEMINOLE TRIBE OF FLORIDA

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February 27, 2017

Via Hand Delivery

Honorable Rick Scott
Governor of Florida
400 South Monroe Street
PL-05, The Capitol
Tallahassee, Florida 32399

Honorable Joe Negron
President of the Florida Senate
409 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Honorable Richard Corcoran
Speaker of the Florida House of Representatives
420 The Capitol
402 South Monroe Street
Tallahassee, FL 32399

Re: Pending Compact Legislation

Dear Governor Scott, President Negron and Speaker Corcoran:

On behalf of the Seminole Tribe of Florida, I am writing to express the Tribe's views on the gaming bills that currently are pending in the Senate (SB 8) and the House (PCB TGC 17-01). Both bills propose to authorize a new gaming compact with the Tribe, while making other changes to the State's gaming laws. Now that the bills are under active consideration in both houses, the Tribe believes that it is important to share its concerns. While the Tribe appreciates the efforts that have been devoted to developing these proposals, neither would satisfy the requirements of federal law nor satisfy fundamental tribal concerns.

As you know, the Tribe and Governor Scott signed a new compact on December 7, 2015, but the Legislature failed to take any action on that agreement. That agreement included an unprecedented guaranteed payment to the State of $3 billion over seven years in exchange for substantial gaming exclusivity. The terms of that agreement represented the outer bounds of what the Tribe could agree to under the federal Indian Gaming Regulatory Act (IGRA). While it included new exceptions to the Tribe's exclusivity in some areas, it tightened the Tribe's existing exclusivity in other areas and added exclusivity for craps and roulette, in order to justify the higher payments and guarantee. The 2015 agreement would, of course, need to be updated to reflect subsequent legal and economic developments before it could be finalized. However, the Tribe believes that many elements of that earlier agreement could be included in any new agreement between the parties.

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Unfortunately, both the Senate and House bills would require dramatic increases in the Tribe's payments without providing increases in the Tribe's exclusivity sufficient to justify those higher payments. The Senate bill would require the same higher payments, including a guarantee, that were proposed in the 2015 compact, but would add numerous additional exceptions to the Tribe's exclusivity while broadly expanding gaming in Florida.

The House bill is less objectionable in that it does not propose as many new exceptions to the Tribe's exclusivity and does not broadly expand gaming in the State. However, like the Senate bill, it proposes major increases in the Tribe's payments, including a guarantee, but without providing the necessary additional value from the State.

Last year when the House and Senate proposed similar changes to the proposed 2015 compact, the Tribe sought guidance from the Interior Department, which must review and approve any gaming compact before it can take effect. The Department responded with a letter dated June 27, 2016, a copy of which is attached. In that letter the Department expressed its concerns about the proposals to demand higher payments from the Tribe, while maintaining or reducing the Tribe's exclusivity:

> "We are concerned that the bills may violate IGRA's prohibition against taxing tribal gaming revenue and the Department's long-standing revenue sharing policy. While the bills ratify the Compact, they do so by diluting its central bargain involving exclusivity without reducing or eliminating the Tribe's revenue sharing obligations. We would be hard-pressed to envision a scenario where we could lawfully approve or otherwise allow a compact to go into effect that calls for increased revenue sharing *and* reductions in existing exclusivity."

Unfortunately, the current versions of the both the Senate and House gaming bills present the same concerns. Thus, even if the Tribe were to agree to either of the proposed compacts, it is almost certain that the compacts proposed in these bills would be disapproved by the federal government as violating IGRA. Beyond that, we have concluded that neither the Senate or House proposals make economic sense for the Tribe.

Although the current proposals are not acceptable, the Tribe is willing to meet with representatives of the Governor's office, House and Senate to work out a mutually beneficial agreement that will satisfy the requirements of federal law. The Tribe continues to value its relationship with the State and remains hopeful that a new gaming compact can be reached in the near future.

Sho Na Bish,

Marcellus W. Osceola, Jr.
Chairman, Tribal Council

Encl.

cc: Jim Shore, Esq.
Joe Webster, Esq.
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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 27 2016

Honorable James E. Billie
Chairman, Seminole Tribe of Florida
6300 Stirling Road
Hollywood, Florida 33024

Dear Chairman Billie:

Thank you for your letter addressed to Acting Assistant Secretary Lawrence Roberts dated March 8, 2016, and for meeting with us on March 10, 2016, regarding compact negotiations between the Seminole Tribe of Florida (Tribe) and the State of Florida (State) and the proposed legislation impacting the negotiated compact. The Acting Assistant Secretary has asked me to respond to your letter.

We do not provide, and this letter should not be construed as a preliminary decision or advisory opinion regarding compacts that are not formally submitted to this Office for review and approval.[1] We reiterate our willingness, however, to provide technical assistance to tribes and states that have sought our input on the compact process. We find that insuring tribes and states have accurate information about the Department of the Interior's (Department) past decisions, regulatory requirements, and current policies is critical to helping them find common ground for successful negotiations.

You explained that a new compact was negotiated between the Tribe and the State, dated December 7, 2015 (Compact), which was signed by the Tribe and the Governor and sent to the State Legislature for ratification. This letter does not address the Compact, but instead looks to Florida House Bill 7109, and Florida Senate Bills 7072 and 7074 (together "bills") that would have ratified the Compact, provided that substantial changes were made consistent with the bills. We have reviewed the bills and have the following comments.

In 2010 the State conceded to the Tribe exclusive authority (exclusivity) to operate slot machines outside of Dade and Broward Counties. Within Dade and Broward Counties, the State agreed to location restrictions and limitations on gaming that would be considered "class III" under IGRA. Additionally, the State conceded statewide exclusivity over blackjack and other card games. In exchange for these concessions, the Tribe agreed to guarantee revenue sharing payments among the highest in the history of the Indian Gaming Regulatory Act (IGRA), exceeding $100 million annually. We approved the 2010 Compact because the Tribe provided credible financial and other information demonstrating that the arrangement avoided violating the Indian Gaming Regulatory Act (IGRA).

We review revenue sharing provisions in compacts with great scrutiny. Our revenue sharing test begins with the premise that *any* tribal payments to a state beyond those for actual and reasonable regulatory costs are unlawful under IGRA. We then apply our two-prong test to

[1] *See* 25 C.F.R. Part 293.

determine whether the revenue sharing requirements avoid violating IGRA. First, our analysis looks to whether the state has offered meaningful concessions. We view this concept as one where the state concedes something it was not otherwise required to negotiate such as exclusive rights to operate class III gaming or other benefits sharing a gaming-related nexus. We then examine whether the value of the concessions provides substantial economic benefits to the tribe justifying the revenue sharing required.

The United States Ninth Circuit Court of Appeals' *Rincon*[2] decision also provides useful guidance when evaluating revenue sharing provisions in compacts. Arising under IGRA's remedial provisions, *Rincon* held that the state engaged in bad faith negotiations when it repeatedly demanded increased revenue sharing without offering new meaningful concessions in exchange.[3] As referenced in my February 9, 2015 letter to the Tribe, the Department confirms its position, supported by *Rincon* and our decisions over many years, that an increase in revenue sharing from current levels must be accompanied by additional meaningful concessions that provides substantial economic benefit to the tribe.[4] In fact, the 2010 Compact demonstrates that Tribe and the State understood the inverse – if the State reneged on its concessions involving exclusivity or other matters, then the Tribe's revenue sharing obligations would be reduced or eliminated. In our view, these were critical terms because we have disapproved proposed compacts that required revenue sharing but failed to provide for reductions in the tribe's obligations if the state infringed on the tribe's exclusivity.

We are concerned that the bills may violate IGRA's prohibition against taxing tribal gaming revenue and the Department's long-standing revenue sharing policy. While the bills ratify the Compact, they do so by diluting its central bargain involving exclusivity without reducing or eliminating the Tribe's revenue sharing obligations. We would be hard-pressed to envision a scenario where we could lawfully approve or otherwise allow a compact to go into effect that calls for increased revenue sharing *and* reductions in existing exclusivity.

We hope you find this information useful.

Sincerely,

Paula L. Hart

Paula L. Hart
Director, Office of Indian Gaming

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[2] *See Rincon Band of Luiseno Mission of the Rincon Reservation v. Schwarzenegger*, 602 F. 3rd 1019 (9th Cir. 2010), *cert. denied*, 113 S. Ct. 3055 (2011)

[3] *Rincon* at 602 F.3d 1018 ("More importantly, even if there were some enhanced value in the proposed revised and expanded exclusivity provision, the calculations presented by the State's *own* expert reveal that the financial benefit to Rincon from the amendments proposed would be negligible: Rincon stood to gain only about $ 2 million in additional revenues compared to the State's expected $ 38 million. Thus, in stark contrast to *Coyote Valley II*, the relative value of the demand versus the concession here strongly suggests the State was improperly using its authority over compact negotiations to impose, rather than negotiate for, a fee. *See Coyote Valley II*, 331 F.3d at 1112. Under IGRA and *Coyote Valley II*, that is bad faith.")

[4] *See* Letter from Paula L. Hart, Director, Office of Indian Gaming to Jim Shore, General Counsel, Seminole Tribe of Florida (Feb. 9, 2015).