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TESTIMONY  
BEFORE THE COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE

OVERSIGHT HEARING ON OFF-RESERVATION GAMING:  
THE PROCESS FOR CONSIDERING GAMING APPLICATIONS  
FEBRUARY 1, 2006

On behalf of the California State Association of Counties (CSAC) I would like to thank Chairman McCain, Vice-Chairman Dorgan, and the other distinguished members of the Committee on Indian Affairs, for giving us the opportunity to submit testimony as part of this oversight hearing to consider issues related to the taking of land into trust for gaming purposes and exceptions to the Indian Gaming Regulatory Act (IGRA). I am Duane Kromm, a member of the Solano County Board of Supervisors and a member of the CSAC Indian Gaming Working Group.

CSAC is the single, unified voice speaking on behalf of all 58 California counties, and in testimony submitted to this committee last July, we described the position of California counties as “ground zero” for coping with the impacts of Indian gaming. Because of our key role in providing critical services to California residents and our more than two decades’ worth of direct experience with the issue of Indian gaming – more so than any other level of government – CSAC is especially grateful to address this esteemed committee on issues related to the lands-into-trust process and the provisions of IGRA which determine whether land acquired by tribes is eligible for gaming.

For the past four years, CSAC has devoted considerable staff time and financial resources to understanding the impacts on county services resulting from Indian gaming. We believe that California counties and CSAC have developed an expertise in this area that may be of benefit to this Committee as it considers amendments to IGRA and looks at ways to address problems created by the phenomenon now known as “reservation-shopping,” the practice of some tribes and their business partners to acquire land to which the tribe is not historically tied, but which has considerable economic potential as an Indian casino.

## INTRODUCTION

At the outset, the California State Association of Counties (CSAC) reaffirms its absolute respect for the authority granted to federally recognized tribes. CSAC also reaffirms its support for the right of Indian tribes to self-governance and recognizes the need for tribes to preserve their tribal heritage and to pursue economic self-reliance. CSAC further recognizes the injustices tribes have faced and the unique history of many California tribes in facing termination of their sovereign status as tribes and loss of tribal lands.

However, it is now apparent that the delicate balance between federal, state and tribal rights that was struck to further tribal economic development in IGRA's enactment has now been upset. Tribal gaming has grown from a \$100 million venture when IGRA was enacted to a more than \$19 billion economic powerhouse today, and tribes and their development partners are now looking far from traditional tribal lands to open casinos in the most lucrative markets. In addition, existing laws fail to address the off-reservation impacts of tribal land development, particularly in those instances when local land use and health and safety regulations are not being fully observed by tribes in their commercial endeavors. This is of growing concern to us, as gaming enterprises are attracting millions of non-Indian visitors to these newly sovereign lands.

### A. The Role of County Government

Every Californian, including every tribal member, depends upon county government for a broad range of critical services, from public safety and transportation, to waste management and disaster relief. Counties are the largest political subdivision of the state having corporate authority and are vested by the Legislature with the powers necessary to provide for the health and welfare of all people within their borders. Counties are responsible for a countywide justice system and social welfare, health and other services totaling nearly 700 programs, including the following:

- \* sheriff
- \* public health
- \* fire protection
- \* family support
- \* rehabilitation of substance abuse and other addictive behaviors
- \* elections & voter services
- \* roads & bridges
- \* welfare
- \* criminal justice
- \* jails
- \* flood control
- \* indigent health
- \* child & adult protective services

Most of these services are provided to residents both outside and inside city limits. Unlike the exercise of land use control, such programs as public health, welfare, and jail services are provided (and often mandated) regardless of whether a recipient resides within a city or in the unincorporated area of the county. These vital public services are delivered to California residents through its 58 counties. It is no exaggeration to say that county government is essential to the quality of life for the more than 36 million residents in the state today. No other form of local government so directly impacts the daily lives of all citizens. In addition, because county government has very little authority to independently raise taxes and increase revenues, the ability to adequately mitigate reservation commercial endeavors is critical, or all county services can be put at risk. California counties' ability to provide these mandated critical services has been significantly impacted by the expansion of Indian gaming.

## B. Impacts on County Government

There is not yet a definitive study on the impacts of gaming on local communities. However, in those counties that are faced with large gaming projects, it is clear that the impacts on traffic, water/wastewater, the criminal justice system and social services are significant. For non-Indian casinos in other states it is estimated that for every dollar a community collects from gambling-related taxes, it must spend three dollars to cover new expenses, including police, infrastructure, social welfare, and counseling services.<sup>1</sup> As local communities cannot tax Indian operations, or the related hotel and other services that would ordinarily be a source of local government income, the negative impact of such facilities can even be greater. This is one reason that CSAC sought amendments to California Tribal-State Compacts to ensure that the off-reservation environmental and social impacts of gaming were fully mitigated and that gaming tribes paid their fair share for county services.

In 2003 CSAC took a “snapshot” of local impacts by examining information provided by eight counties (the only counties that had conducted an analysis of local government fiscal impacts) where Indian gaming facilities operated.<sup>2</sup> The total fiscal impact to those eight counties was approximately \$200 million, including roughly \$182 million in one-time costs and \$17 million in annual costs. If these figures were extrapolated to the rest of the state, the local government fiscal costs could well exceed \$600 million in one-time and on-going costs for road improvements, health services, law enforcement, emergency services, infrastructure modifications, and social services.

Even when a gaming facility is within a city’s jurisdictional limits, the impacts on county government and services may be profound. The California experience particularly has made clear that large casino facilities have impacts beyond the immediate jurisdiction in which they operate. Attracting many thousands of car trips per day, larger facilities cause traffic impacts throughout a local or even regional transportation system. Similarly, traffic accidents, crime and other problems sometimes associated with gaming are not isolated to a casino site but may increase in surrounding communities.

As a county is often the key governmental entity and service provider in the area, with a larger geographic perspective and land use responsibility, county involvement is critical to insure that the needs of the community are met and that any legitimate tribal gaming proposal is ultimately successful and accepted. Local approval is necessary to help insure a collaborative approach with tribes in gaming proposals and to support the long-range success of the policies underlying the IGRA.

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<sup>1</sup> Cabazon, *The Indian Gaming Regulatory Act, and the Socioeconomic Consequences of American Indian Governmental Gaming - A Ten Year Review* by Jonathon Taylor and Joseph Kalt of the Harvard Project on American Indian Economic Development (2005) at p. 9 (citing Sen. Frank Padavan, *Rolling the Dice: Why Casino Gambling is a Bad Bet for New York State* at ii (1994).

<sup>2</sup> CSAC Indian Gaming Survey – 2003 Results (11/5/03) (attached as Attachment C.)

### C. The Advent of “Reservation Shopping” in California

As mentioned earlier in this testimony, California is the epicenter of the “reservation shopping” phenomenon. For example, a number of existing compacts negotiated by the then-Governor in 1999 allow tribes to develop two casinos and do not restrict casino development to areas within a tribe’s current trust land or historical ancestral territory. In the fall of 2002 a Lake County band of Indians was encouraged by Eastern developers to pursue taking into a trust land in Yolo County for use as the site of an Indian casino. The chosen site was across the Sacramento River from downtown Sacramento and was conveniently located near a freeway exit. The actual promoters of this effort were not Native Americans and had no intention of involving tribal members in the operation and management of the casino. In fact, one promoter purportedly bragged that no Indian would ever be seen on the premises.

In rural Amador County, starting in 2002 and continuing to the present, a tribe financed by another out-of-State promoter is seeking to have land near the small town of Plymouth taken into trust for a casino. The tribe has no historical ties to the Plymouth community. The effort by this tribe and its non-Native American promoter has created a divisive atmosphere in the local community. That new casino is not the only one being proposed in the county. A second, very controversial new casino is being promoted by a New York developer for a three-member tribe in a farming and ranching valley not served with any water or sewer services, and with access only by narrow county roads. The development of these casinos would have severe environmental and social consequences for this rural county of only 30,000 residents, which already has one major Indian casino. Indeed, the daily influx of visitors to these casinos is projected to exceed the entire population of the county.

In the past two years in Contra Costa County, there have been vigorous efforts by three tribes to engage in Indian gaming in this highly urbanized Bay Area county. The possibility of significant economic rewards from operating urban casinos has eclipsed the fact that these tribes have demonstrated no apparent historical connection to the area in which they seek to establish gaming facilities.

The newest California twist to “reservation shopping” also shows how the current law now serves to pit tribe against tribe. Counties are now experiencing tribes with established casinos trying to “leap-frog” over other tribal gaming operations to get closer to a population center. For example, the Hopland Band of Pomo Indians, a Mendocino County based gaming tribe located north of Sonoma County, is trying to move south along the Highway 101 corridor towards San Francisco, passing a Sonoma County tribe’s operations that apparently are reducing its profits. The location the Mendocino tribe chose for its new casino is within the historic rancheria boundary of another Sonoma County tribe – the Cloverdale Band of Pomo Indians – that opposes the gaming proposal. The Mendocino tribe has applied to the Bureau of Indian Affairs (BIA) and the National Indian Gaming Commission (NIGC) to transfer the land (held in trust by a member of the Cloverdale Tribe) and to have it designated as “restored” so that it is eligible for gaming. The Mendocino’s tribe’s trust transfer application, which is opposed by other Sonoma County tribes, is pending before the BIA and NIGC.

#### D. Future Risks

In California the “reservation shopping” problem has been driven, in large part, by the “restoration” exception contained in Section 20(b)(1)(B)(iii) of IGRA. This exception allows tribes that are restored to federal recognition to avoid the two-part test under IGRA, but that test helps to insure that a gaming establishment would not be detrimental to the local community. The result of this policy has been to encourage developers to shop for or attempt to “create” tribes that may be eligible for recognition to eventually obtain “restored” land or for tribes that were terminated (both landless and not) to seek to have land taken into trust, often far from their traditional geographic base.

In recent testimony before this Committee, George Skibine, Acting Deputy Assistant Secretary for Indian Affairs in the Department of the Interior, testified that the restoration exception is by far the most frequently used exception under IGRA that serves to avoid the two-part test. Since 1988, the Secretary has approved 26 gaming trust acquisitions that were determined to meet one of the five Section 20 gaming exceptions for land acquired after IGRA’s enactment. Of these exceptions 12 were under the Section 20(b)(1)(B)(iii) exception for “restored land to a restored tribe.” Of these 12, one quarter were in California. He further testified that of the 11 pending gaming applications before the BIA claiming an exception under section 20(b)(1)(B); nine were in California – all of which were claiming that they were not subject to the two-part test pursuant to the restored land exception.

The experience in California, driven in part by the restoration of illegally terminated rancherias, is that the restored land exception to prohibiting gaming on lands acquired after 1988 is being misused. This is illustrated in the Hopland tribe’s attempt to have land found eligible for gaming under the restored land provision despite the fact the tribe already has land in trust upon which it operates a casino and the land sought is within another tribe’s historic jurisdiction. Similarly, Alameda and Contra Costa counties have been faced with numerous proposals to have land “restored” from remote tribes for gaming purposes.

These efforts are examples of tribes and their investors attempting to evade the two-part test under IGRA that provides for consultation between local communities (and local tribes) and the Secretary to determine whether gaming on newly acquired trust lands is detrimental to the surrounding community, and the concurrence by the governor in that determination. CSAC therefore supports continuation of the two-part test for the acquisition of new lands and increased local government participation in the decision of whether land should be taken into trust for gaming purposes.

#### E. CSAC Indian Gaming Policy

CSAC’s approach to addressing the off-reservation impacts of Indian gaming is simple: to work on a government-to-government basis with gaming tribes in a respectful, positive and constructive manner to mitigate off-reservation impacts from casinos, while preserving tribal governments’ right to self-governance and to pursue economic self-reliance.

With this approach as a guide, CSAC has developed a policy comprised of seven principles regarding State-Tribe Compact negotiations for Indian gaming, which was adopted by the CSAC Board of Directors on February 6, 2003. The purpose of this Policy is to promote tribal self-reliance while at the same time promoting fairness and equity, and protecting the health, safety, environment, and general welfare of all residents of the State of California and the United States. A copy of this Policy is attached to this written testimony as Attachment A.

The CSAC Policy has become the association's guiding document and has been applied to the rapid expansion of the "reservation shopping" phenomenon, whereby tribes seek to locate a gaming operation on lands far from their documented reservations or rancherias. Many of these types of proposals are backed by out of state, non-Indian gaming conglomerates eager to cash in on the Indian gaming phenomenon in California. These Indian-private conglomerate partnerships are seeking locations near urban centers or major roadways in an effort to lure as many gaming patrons as possible. However, based on our Indian gaming policy, CSAC opposes such "reservation shopping" as counter to the purposes of IGRA. First, "reservation shopping" is an affront to those tribes who have worked responsibly with federal, state and local governments on a government-to-government basis in compliance with the spirit and intent of the IGRA as a means of achieving economic self-reliance and preserving their tribal heritage. These tribes have submitted to the IGRA's so-called two-part determination process, which CSAC believes is an important foundation for the responsible operation of Indian gaming casinos throughout the nation.

Chairman McCain has recently introduced legislation to increase federal oversight of Indian gaming operations and to alter the lands-into-trust process. CSAC sincerely appreciates the efforts of Chairman McCain and the other Members of the Committee for investigating problems with the oversight of and current legal framework for determining the eligibility of Indian lands for gaming. We are today primarily interested in Chairman McCain's recent legislation (S. 2078), which contains language to limit the two-part test administered by the Interior Department to petitions already being considered for fee-to-trust on November 18, 2005. We have a significant concern about this amendment, as explained below. On the other hand, the bill amends the restored lands exception to require the finding that a tribe has a "temporal, cultural and geographic nexus" to the piece of land in question before granting permission for the tribe to take it into trust. While CSAC supports increased oversight of such proposals, we must reaffirm our support for the existing two-part test and furthermore add that any amendments to that process must include the direct participation of both State and local governments before a land-into-trust application is granted.

The topic of today's hearing is "The process for considering gaming applications" and CSAC believes that local government, and specifically counties, must be an integral and early partner in the process. For example, under the current system, states and affected communities are not notified by the NIGC when a tribe files a request for determination of whether tribal lands are "Indian lands," and thus eligible for gaming, as that term is defined in the IGRA. CSAC believes that Congress must specifically require the NIGC and the Department of the Interior to provide for the timely notice, comment, and the submission of evidence from affected parties in all proceedings.

We also question the BIA's practice of beginning the environmental review process under the National Environmental Policy Act (NEPA) before lands are determined to be Indian lands. Counties and other affected parties are required to expend considerable time and money in evaluating the environmental documents when it may be entirely unnecessary if the land is ultimately not eligible for gaming. The process is confusing and the cause of considerable consternation in communities across the state.

F. Other Provisions of S. 2078

As mentioned earlier, S. 2078 also includes amendments to IGRA relating to the National Indian Gaming Commission, to gaming-related contracts, and to increased regulation of Class II gaming. CSAC has not had an opportunity to consider these provisions formally, but the organization will take up these proposals at its earliest opportunity.

In the meantime, I can represent to you that many individual California counties have a serious concern about Class II gaming. As you know, technological advances have severely blurred the line between Class II and Class III gaming devices. With relative ease, a tribe now can establish a large gaming facility, install Class II devices, and trigger virtually the same impacts on local government as those that result from a Class III facility, without any of the safeguards afforded by IGRA. This has, in fact, happened already in at least one California county. For example, once the State Legislature failed to ratify the Lytton Band's compact negotiated with the Governor, which authorized Class III gaming, the Band installed 500 Class II gaming devices in its existing facility. No mitigation of potential or actual impacts has been provided by the tribe. We look forward to providing you with additional comments on this issue.

G. Government-to-Government Relationships

Many tribes have expressed their concern for such participation by local government, equating it with relinquishment of sovereignty and a land acquisition veto. This is simply untrue. There are many examples of California counties working cooperatively with tribes on a government-to-government basis on all issues of common concern including gaming-related issues. These discussions and resulting agreements have preserved tribal sovereignty and assisted tribes in moving forward to achieve their economic goals.

In Santa Barbara County, an agreement was reached with the Chumash Tribe over a trust land acquisition adjacent to its gaming facility. In addition, after the Chumash completed a significant expansion of its casino, it realized the need to address ingress and egress, and flood control issues. Consequently, Santa Barbara County and the Tribe negotiated an enforceable agreement addressing these issues in the context of a road widening and maintenance agreement. Presently, there is no authority that requires the County of Santa Barbara or its local tribe to reach agreements. However, both continue to address the impacts caused by the tribe's acquisition of trust land and development on a case-by-case basis, reaching intergovernmental agreements where possible.

San Diego County has a history of tribes working with the San Diego County Sheriff to ensure adequate law enforcement services in areas where casinos are operating. In addition, San Diego County has entered into agreements with four tribes to address the road impacts created by casino projects. Further, a comprehensive agreement was reached with the Santa Ysabel Tribe pursuant to the 2003 Compact with the State of California.

In Northern California, Humboldt County and tribal governments have agreed similarly on law enforcement-related issues. Humboldt County also has reached agreements with tribes on a court facility/sub station, a library, road improvements, and on a cooperative approach to seeking federal assistance to increase water levels in area rivers.

In central California, Madera, Placer, and Yolo Counties have reached more comprehensive agreements with the tribes operating casinos in their communities. These comprehensive agreements provide differing approaches to the mitigation of off-reservation impacts of Indian casinos, but each is effective in addressing unique community concerns.

The agreements in each of the above counties were achieved through positive, respectful and constructive discussions between tribal and county leaders. It was through these discussions that each government gained a better appreciation of the needs and concerns of the other government. Not only did these discussions result in enforceable agreements for addressing specific impacts, but enhanced respect and a renewed partnership also emerged, to the betterment of both governments and all members of the community.

CSAC supports the Committee's efforts to craft amendments to IGRA that preserve its original goals of supporting tribal economic development while minimizing the impacts of "reservation shopping" on local communities. We believe that the single most important provision you can enact would be the formal participation of state and local affected governments in the process of granting trust lands to tribes who wish to operate gaming casinos. As such, CSAC offers its assistance to Chairman McCain and the Indian Affairs Committee in any manner that you determine to be helpful as you tackle this complex issue.

## **PRINCIPLES FOR IGRA REFORM**

To address these emerging gaming issues, the CSAC Board of Directors adopted a Revised Policy Regarding Development on Tribal Lands on November 18, 2004 (attached as Attachment B). It is CSAC's position that these policies should inform any revisions to IGRA. As a preliminary principle, the Revised Policy reaffirms that:

- \* CSAC supports cooperative and respectful government-to-government relations that recognize the interdependent role of tribes, counties and other local governments to be responsive to the needs and concerns of all members of their respective communities.



With respect to the issues specifically now before the Committee the following policies apply:

- \* CSAC supports federal legislation to provide that lands are not to be placed in trust and removed from the land use jurisdiction of local governments without the consent of the State and affected county.
- \* CSAC opposes the practice commonly referred to as “reservation shopping” where a tribe seeks to place lands in trust outside its aboriginal territory over the objection of the affected county.
- \* Nothing in federal law should interfere with the provision of public health, safety, welfare or environmental services by local governments, particularly counties. (June 2004 NACo Policy sponsored in part by CSAC).

Several of these policies are embodied, at least in part, through IGRA’s two-part test when meaningful input is afforded local governments. When the test is evaded, either through the restored land exception, or legislative fiat (in cases of congressionally mandated land acquisitions), the potential for “reservation-shopping” abuse is heightened, as is the potential for an Indian gaming “backlash” either from other tribes or local communities. To avoid the negative impacts and abuses of reservation shopping, county government must play a significant role in the decision making process to insure that a proposed facility is not significantly detrimental to a community and that impacts of any new gaming establishment are appropriately mitigated.

## **CONCLUSION**

CSAC presents this written testimony to assist the Chairman and Committee Members in their efforts to amend IGRA to address the increasing practice of “reservation shopping.” In California, there is an urgent need for counties to have a greater voice in matters that create impacts that the county will ultimately be called upon by its constituents to address. This voice is critical if California counties are to protect the health and safety of their citizens. Otherwise, counties find themselves in a position where their ability to effectively address reservation shopping and the off-reservation impacts from Indian gaming is very limited.

In California, through the most recent State-Tribe Compacts, counties and other local governments have been provided an appropriate opportunity to work with gaming tribes to address these off-reservation impacts. The result has been improved government-to-government relationships between tribes and county governments. Contrary to the fears expressed by some tribal leaders, local governments have not acted to usurp tribal sovereignty or automatically oppose all gaming proposals. In fact, local government involvement in the gaming and trust acquisition process has led to improved relationships as each government gains a better understanding of the responsibilities and needs of the other. A joint approach to gaming projects has also led to more successful enterprises as both tribes and local governments work jointly to create a safe beneficial community environment for a gaming enterprise. Enactment of

amendments that strengthen IGRA by limiting its exceptions and allowing a greater role for local government would further the original goals of IGRA while helping to minimize abuses that have created a backlash against Indian gaming and the opportunities it affords.

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**ATTACHMENT A:  
CSAC Policy Document Regarding  
Compact Negotiations for Indian Gaming**

Adopted by the CSAC Board of Directors  
February 6, 2003

In the spirit of developing and continuing government-to-government relationships between federal, tribal, state, and local governments, CSAC specifically requests that the State request negotiations with tribal governments pursuant to section 10.8.3, subsection (b) of the Tribal-State Compact, and that it pursue all other available options for improving existing and future Compact language.

CSAC recognizes that Indian Gaming in California is governed by a unique structure that combines federal, state, and tribal law. While the impacts of Indian gaming fall primarily on local communities and governments, Indian policy is largely directed and controlled at the federal level by Congress. The Indian Gaming Regulatory Act of 1988 is the federal statute that governs Indian gaming. The Act requires compacts between states and tribes to govern the conduct and scope of casino-style gambling by tribes. Those compacts may allocate jurisdiction between tribes and the state. The Governor of the State of California entered into the first Compacts with California tribes desiring or already conducting casino-style gambling in September 1999. Since that time tribal gaming has rapidly expanded and created a myriad of significant economic, social, environmental, health, safety, and other impacts.

CSAC believes the current Compact fails to adequately address these impacts and/or to provide meaningful and enforceable mechanisms to prevent or mitigate impacts. The overriding purpose of the principles presented below is to harmonize existing policies that promote tribal self-reliance with policies that promote fairness and equity and that protect the health, safety, environment, and general welfare of all residents of the State of California and the United States. Towards that end, CSAC urges the State to consider the following principles when it renegotiates the Tribal-State Compact:

1. A Tribal Government constructing or expanding a casino or other related businesses that impact off-reservation<sup>3</sup> land will seek review and approval of the local jurisdiction to construct off-reservation improvements consistent with state law and local ordinances including the California Environmental Quality Act with the tribal government acting as the lead agency and with judicial review in the California courts.
2. A Tribal Government operating a casino or other related businesses will mitigate all off-reservation impacts caused by that business. In order to ensure consistent

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<sup>3</sup> As used here the term “reservation” means Indian Country generally as defined under federal law, and includes all tribal land held in trust by the federal government. 18 U.S.C. § 1151.

regulation, public participation, and maximum environmental protection, Tribes will promulgate and publish environmental protection laws that are at least as stringent as those of the surrounding local community and comply with the California Environmental Quality Act with the tribal government acting as the lead agency and with judicial review in the California courts.

3. A Tribal Government operating a casino or other related businesses will be subject to the authority of a local jurisdiction over health and safety issues including, but not limited to, water service, sewer service, fire inspection and protection, rescue/ambulance service, food inspection, and law enforcement, and reach written agreement on such points.
4. A Tribal Government operating a casino or other related businesses will pay to the local jurisdiction the Tribe's fair share of appropriate costs for local government services. These services include, but are not limited to, water, sewer, fire inspection and protection, rescue/ambulance, food inspection, health and social services, law enforcement, roads, transit, flood control, and other public infrastructure. Means of reimbursement for these services include, but are not limited to, payments equivalent to property tax, sales tax, transient occupancy tax, benefit assessments, appropriate fees for services, development fees, and other similar types of costs typically paid by non-Indian businesses.
5. The Indian Gaming Special Distribution Fund, created by section 5 of the Tribal-State Compact will not be the exclusive source of mitigation, but will ensure that counties are guaranteed funds to mitigate off-reservation impacts caused by tribal gaming.
6. To fully implement the principles announced in this document and other existing principles in the Tribal-State compact, Tribes will meet and reach a judicially enforceable agreement with local jurisdictions on these issues before a new compact or an extended compact becomes effective.
7. The Governor should establish and follow appropriate criteria to guide the discretion of the Governor and the Legislature when considering whether to consent to tribal gaming on lands acquired in trust after October 17, 1988 and governed by the Indian Gaming Regulatory Act. 25 U.S.C § 2719. The Governor should also establish and follow appropriate criteria/guidelines to guide his participation in future compact negotiations.

**ATTACHMENT B:  
CSAC Revised Policy Document Regarding  
Development on Tribal Lands**

Adopted by CSAC Board of Directors  
November 18, 2004

Background

On February 6, 2003, CSAC adopted a policy, which urged the State of California to renegotiate the 1999 Tribal-State Compacts, which govern casino-style gambling for approximately 65 tribes. CSAC expressed concern that the rapid expansion of Indian gaming since 1999 created a number of impacts beyond the boundaries of tribal lands, and that the 1999 compacts failed to adequately address these impacts. The adopted CSAC policy specifically recommended that the compacts be amended to require environmental review and mitigation of the impacts of casino projects, clear guidelines for county jurisdiction over health and safety issues, payment by tribes of their fair share of the cost of local government services, and the reaching of enforceable agreements between tribes and counties on these matters.

In late February, 2003, Governor Davis invoked the environmental issues re-opener clause of the 1999 compacts and appointed a three member team, led by former California Supreme Court Justice Cruz Reynoso, to renegotiate existing compacts and to negotiate with tribes who were seeking a compact for the first time. CSAC representatives had several meetings with the Governor's negotiating team and were pleased to support the ratification by the Legislature in 2003 of two new compacts that contained most of the provisions recommended by CSAC. During the last days of his administration, however, Governor Davis terminated the renegotiation process for amendments to the 1999 compacts.

Soon after taking office, Governor Schwarzenegger appointed former Court of Appeal Justice Daniel Kolkey to be his negotiator with tribes and to seek amendments to the 1999 compacts that would address issues of concern to the State, tribes, and local governments. Even though tribes with existing compacts were under no obligation to renegotiate, several tribes reached agreement with the Governor on amendments to the 1999 compacts. These agreements lift limits on the number of slot machines, require tribes to make substantial payments to the State, and incorporate most of the provisions sought by CSAC. Significantly, these new compacts require each tribe to negotiate with the appropriate county government on the impacts of casino projects, and impose binding "baseball style" arbitration on the tribe and county if they cannot agree on the terms of a mutually beneficial binding agreement. Again, CSAC was pleased to support ratification of these compacts by the Legislature.

The problems with the 1999 compacts remain largely unresolved, however, since most existing compacts have not been renegotiated. These compacts allow tribes to develop two casinos, expand existing casinos within certain limits, and do not restrict casino development

to areas within a tribe's current trust land or legally recognized aboriginal territory. In addition, issues are beginning to emerge with non-gaming tribal development projects. In some counties, land developers are seeking partnerships with tribes in order to avoid local land use controls and to build projects, which would not otherwise be allowed under the local land use regulations. Some tribes are seeking to acquire land outside their current trust land or their legally recognized aboriginal territory and to have that land placed into federal trust and beyond the reach of a county's land use jurisdiction.

CSAC believes that existing law fails to address the off-reservation impacts of tribal land development, particularly in those instances when local land use and health and safety regulations are not being fully observed by tribes in their commercial endeavors. The purpose of the following Policy provisions is to supplement CSAC's February 2003 adopted policy through an emphasis for counties and tribal governments to each carry out their governmental responsibilities in a manner that respects the governmental responsibilities of the other.

## **Policy**

1. CSAC supports cooperative and respectful government-to-government relations that recognize the interdependent role of tribes, counties and other local governments to be responsive to the needs and concerns of all members of their respective communities.
2. CSAC recognizes and respects the tribal right of self-governance to provide for the welfare of its tribal members and to preserve traditional tribal culture and heritage. In similar fashion, CSAC recognizes and respects the counties' legal responsibility to provide for the health, safety, environment, infrastructure, and general welfare of all members of their communities.
3. CSAC also supports Governor Schwarzenegger's efforts to continue to negotiate amendments to the 1999 Tribal-State Compacts to add provisions that address issues of concern to the State, tribes, and local governments. CSAC reaffirms its support for the local government protections in those Compact amendments that have been agreed to by the State and tribes in 2004.
4. CSAC reiterates its support of the need for enforceable agreements between tribes and local governments concerning the mitigation of off-reservation impacts of development on tribal land<sup>4</sup>. CSAC opposes any federal or state limitation on the ability of tribes, counties and other local governments to reach mutually acceptable and enforceable agreements.
5. CSAC supports legislation and regulations that preserve—and not impair—the abilities of counties to effectively meet their governmental responsibilities, including the provision

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<sup>4</sup> As used here the term "tribal land" means trust land, reservation land, rancheria land, and Indian Country as defined under federal law.

of public safety, health, environmental, infrastructure, and general welfare services throughout their communities.

6. CSAC supports federal legislation to provide that lands are not to be placed into trust and removed from the land use jurisdiction of local governments without the consent of the State and the affected county.
7. CSAC opposes the practice commonly referred to as “reservation shopping” where a tribe seeks to place land into trust outside its aboriginal territory over the objection of the affected county.
8. CSAC does not oppose the use by a tribe of non-tribal land for development provided the tribe fully complies with state and local government laws and regulations applicable to all other development, including full compliance with environmental laws, health and safety laws, and mitigation of all impacts of that development on the affected county.

**ATTACHMENT C:  
CSAC Indian Gaming Survey  
2003 Results By County**

**County Impacts – Amador County**

Indian Tribes: Buena Vista Rancheria (Current Compact for Gaming)  
Ione Reservation (Request for Compact pending)  
Jackson Rancheria (Current Compact for Gaming)

Summary

Amador County has one operational casino and two proposed casinos. The Jackson Rancheria is the only casino in the county and the county receives limited mitigation payments from the Tribe. This Tribe is also considering an expansion of a hotel, parking lot and food court for the casino.

Impact Analysis

Amador County has provided an impact analysis for the Jackson Rancheria. The following are the impacts noted by the county regarding the expansion plans proposed by the Tribe:

Law Enforcement	\$460,157
Judicial System	\$416,815
Roads	\$6,455,600
<b>Total Costs</b>	<b><u>\$7,332,572</u></b>

Memorandum of Understanding

Amador County has two Memorandum of Understandings (MOUs) with two different tribes in the county. The first is with the Jackson Rancheria and provides \$212,625 annually for Sheriff and District Attorney costs. The current MOU will not be adequate if the casino expansion is approved. The County notes that the current MOU will cause a shortage of at least \$818,947 annually to the County's General Fund.

The County also has an MOU with the Buena Vista Rancheria regarding the proposed casino, which will provide \$436,000 annually for Police and Fire services that the County will provide to the casino. The MOU also provides that the Tribe is responsible for several road improvements in the county (please see attached MOU).



## County Impacts – Butte County

Indian Tribes: Berry Creek Rancheria (Current Compact for Gaming)  
Chico Rancheria (Status Unknown)  
Enterprise Rancheria (Request for Compact for Gaming Pending)  
Mooretown Rancheria (Current Compact for Gaming)

### Summary

Butte County has two casinos (Berry Creek Rancheria and Mooretown Rancheria) and one proposed casino. The two casinos in the County both have significant proposals for expanding the casinos, but the County does not have any Memorandum of Understanding with either Tribe.

\*The Enterprise Rancheria is proposing to build a casino in Yuba County and the information regarding that Tribe will be found in the Yuba County results.

### Impact Analysis

**Berry Creek Rancheria:** The County has completed a preliminary impact analysis for one Tribe, Berry Creek Rancheria, and has identified a minimum impact of \$376,500 annually to the County. The specific information is in response the Draft Environmental Review for the Proposed Gold Country Casino Expansion in which the County responded with the following impacts and comments (attached in Background):

Transportation: The County has noted that the Tribe's assessment that the traffic impacts would total \$350,000 annually is not adequate and has asked for a full traffic study by the Tribe.

Law Enforcement: The County has identified costs of \$26,500 annually for Sheriff services.

Fire: The Fire Department notes that the Rancheria has been receiving free fire service and requests that the Tribe develop its own fire fighting capabilities or enter into an agreement with the County Fire Department to provide services.

Infrastructure: The County has requested that the project provide for full containment of excess runoff.

**Mooretown Rancheria:** The County is currently preparing an analysis on the Mooretown Rancheria and has preliminary identified impacts in the areas of transportation, roads, law enforcement and fire service. The County does note that the Tribe has worked with the County on some road improvements.

### Memorandum Of Understanding

Butte County does not have any agreements or Memorandum of Understanding with any of the Tribes in the County.

## County Impacts – Imperial County

Indian Tribes: Ft. Yuma Quechan Reservation (Current Compact for Gaming)

### Summary

Imperial County currently has one casino, which has recently opened in 2003. However, the Quechan Reservation has operated a casino on the Arizona side of the border since 1998 with significant impacts to Imperial County.

### Impact Analysis

The County has conducted a preliminary analysis noting impacts to roads and solid waste. However, it should be noted that the County does receive some reimbursement for law enforcement according to a Memorandum of Understanding with the Tribe.

The County has noted the following impacts:

Roads	\$20,000,000
Judicial System	Minor impact on courts
Solid Waste	\$100,000 annually
<b>Total</b>	<b>\$20,100,000</b>

The \$20 million impact on roads is an approximate cost to widen 4 lanes of highway for two miles from Interstate 8 to the casino and to provide a bridge over a railroad crossing and canal where there is currently a narrow two lane underpass under the tracks and a deficient bridge over the adjacent canal.

### Memorandum of Understanding

Imperial County currently has a Memorandum of Understanding (MOU) with the Quechan Tribe which was in effect prior to the operation of gaming on the California side of the reservation. The MOU provides for cross deputization of Tribal members and the agreement is for five years. Details of the MOU are as follows:

#### **Tribal Responsibilities**

- Tribal Deputies must enroll and complete law enforcement training courses at no cost to the county.
- Tribe is responsible for payment of compensation of Tribal Deputies and for providing other benefits including annual sick leave, vacation, paid holidays, workers' compensation, health and medical insurance, cost of living adjustments, merit raises, etc.
- Tribe shall acquire and maintain public liability insurance for personal injury in an amount not less than \$3 million per person and \$3 million per incident. The Tribe's

insurance shall be the primary insurance for Tribal Deputies and the County is only required to provide excess insurance should liability exceed the limits of the Tribe's insurance.

### **County Responsibilities**

- Tribal Deputies are subject to the primary supervision of the County Sheriff.
- The County Sheriff must contribute salary compensation for each Tribal Deputy in the amount of 50% of the base salary of a Deputy Sheriff and must supply all safety equipment for the Tribal Deputies.
- The County's excess insurance for personal injury shall be in an amount not less than \$3 million for any person and \$3 million per incident.

### **County Impacts – Kings County**

Indian Tribes: Santa Rosa Rancheria (Current Compact for Gaming)

#### Summary

Kings County currently has only one operational casino, which was finalized in 2000. There is currently a proposal for the expansion of a hotel, parking and additional slot machines. The County does not have a Memorandum of Understanding with the Tribe.

#### Impact Analysis

Kings County has conducted an impact analysis on three specific county departments which total approximately \$4 million in one-time costs and \$5,700 in annual costs as specified:

Roads	\$4,435,000	(One-Time)
Fire Service	\$5,700	(Annually)

**Total**                                 **\$4,440,700**

In addition, the County notes that there are increased costs to law enforcement due to an increase in the number of calls for service and an increase in the number of criminal reports related to the casino filed with the County Sheriff.

#### Memorandum of Understanding

The County currently does not have a Memorandum of Understanding with the Santa Rosa Rancheria.

## County Impacts – San Bernardino County

Indian Tribes: Ani Yvwi Yuchi (Petitioning for Federal Recognition)  
Chemehuevi Reservation (Current Compact for Gaming)  
Ft. Mojave Indian Reservation (Request for Compact)  
San Manuel Reservation (Current Compact for Gaming)

### Summary

San Bernardino County has two operating casinos and one proposed casino. Of the two active casinos, the San Manuel Band is proposing to expand with a hotel, parking and events counter. The County does not receive any mitigation payments and the current fiscal impacts to the county are approximately \$2,366,884 from San Manuel Casino with additional projected costs for the proposed expansion of several casinos.

### Impact Analysis

San Bernardino County has analyzed the impacts to county services for both the San Manuel Band and the Chemehuevi Reservation for some services and this should not be considered a complete fiscal analysis.

The identified fiscal impacts are as follows:

#### *San Manuel Band (Existing and Proposed Development)*

\*Proposed expansion casino and event center

Transportation	\$5,000
Fire Service	\$121,000
Law Enforcement	\$146,288
Judicial System	\$64,596
Infrastructure Needs	\$2,000,000
Social Services	\$30,000

**Total Annual Costs      \$2,366,884**

#### *Chemehuevi Reservation (Proposed Development)*

\*Proposed casino, hotel, golf course and resort project

Fire Service	\$131,000
Sheriff	\$600,000

**Total Annual Costs      \$731,000**

### ***Ft. Mojave Reservation (Proposed Development)***

Sheriff \$130,000

In addition, the County has noted concern regarding the proposal by the Timbasha Band of Shoshone Indians to build a casino near the City of Hesperia. The Sheriff's Department believes that this will significantly impact traffic and require additional Sheriff's personnel, which require funding in the amount of \$600,000. This information is not included in the attached spreadsheet of survey results due to the fact that this Tribe is not located in San Bernardino County. CSAC believes that this Tribe is based in Inyo County.

Attached to this information please find background materials from the County regarding comments on the Tribal Environmental Study. The County also notes that the San Manuel Tribe has refused to provide the County with a copy of the Tribe's current environmental protection ordinance.

### **Memorandum of Understanding**

Currently the County does not have any agreements with the Tribes in San Bernardino.

\*\*Please note that San Bernardino County currently has a philosophical difference of opinion regarding the impacts of Indian Gaming on county services, and as such the numbers provided may be lower than other counties have experienced or documented.

### **County Impacts – San Diego County**

Indian Tribes: Barona Reservation (Current Compact for Gaming)  
Campo Reservation (Current Compact for Gaming)  
Capitan Grande Reservation (Status Unknown)  
Cuyapaipe Reservation/Ewiiapaayp (Current Compact for Gaming, Non-Gaming)  
Inaja-Cosmit Reservation (Status Unknown)  
Jamul Indian Village (Current Compact for Gaming, Non-Gaming)  
La Jolla Reservation (Current Compact for Gaming)  
La Posata Reservation (Request for Compact)  
Los Coyotes Reservation (Status Unknown)  
Manzanita Reservation (Current Compact for Gaming, Non-Gaming)  
Mesa Grande Reservation (Current Compact for Gaming, Non-Gaming)  
Pala Reservation (Current Compact for Gaming)  
Pauma and Yuima Reservation (Current Compact for Gaming)  
Rincon Reservation (Current Compact for Gaming)  
San Luis Rey Band of Mission Indians (Petitioning for Federal Recognition)  
San Pasqual Reservation (Current Compact for Gaming)  
Santa Ysabel Reservation (Request for Compact)  
Sycuan Reservation (Current Compact for Gaming)  
Viejas Reservation (Current Compact for Gaming)

## **Summary**

San Diego County has nineteen Tribes in the County with eight casinos and one slot arcade currently in operation, which is the most for any county in the state. The County does have cooperative agreements with three Tribes in the county to pay for road impacts, and due to the large number of casinos, has prepared a comprehensive impact analysis. Besides the eight casinos currently in operation there are also three additional proposed casinos by the Cuyapaipe Reservation, Jamul Indian Village, and the Manzanita Reservation.

## **Impact Analysis**

San Diego County has conducted a thorough impact analysis on all of the Tribes operating in the County and has specifically analyzed impacts to transportation and roads. The County has also noted on environmental concerns including air quality, pollution, multiple species conservation program, community characteristics, general plan, and water quality. The full impact analysis by San Diego County is attached in a separate binder.

Below please find the fiscal impacts as well as additional comments made by San Diego County on the impacts.

## **District Attorney**

The fiscal impact on the judicial system, as it pertains to Tribal gaming in San Diego County, is significant, yet indefinable in cost. Currently there is no tracking system in place to determine the number of “casino related” cases being handled by the district attorney’s office or the courts. Crimes related to the casinos extend beyond reservation boundaries and include various offenses. Robberies and burglaries committed to satisfy a gambling addiction can only be considered if the habits of the perpetrators are known or admitted. A recent murder/suicide at a local casino evidenced this fact, as several local robberies were attributed to the suspect. The cost of the hours spent investigating, reviewing and prosecuting casino related cases is not quantifiable under the present system.

The San Diego County District Attorney’s Office employs a full time investigator as the “Tribal Gaming Liaison” and has done so for the past two years. The salary and benefits for this position is approximately \$86,000. The District Attorney’s Office has prosecuted and will continue prosecuting cases from the nine gaming facilities in the county. The fiscal impact on the judicial system will most likely increase as the number and size of existing and planned facilities increases.

## **Sheriff**

Law enforcement has felt the impact of Tribal gaming in the northern and eastern geographic regions of the county. It is too early to attach specific costs at this time; any estimate would be inaccurate. Calls for service have increased and the need for criminal intelligence has increased. Two of the tribal governments have contracted with the Sheriff's department for law enforcement services: specifically one deputy sheriff is assigned to each of the tribal lands to enhance patrol coverage. This has increased law enforcement protection, decreased response time, and enhanced the relationship of the Sheriff's department with those tribes. The sheriff wants to replicate this relationship with the other gaming tribes. More information on this issue can be found in Chapter 5 (5.8) of the impact analysis.

## **Planning**

One impact that is not discussed in the County's impact analysis relates to the General Fund impact of reviewing tribal projects, including environmental reports for gaming projects and fee-to-trust application. To date the Department of Planning and Land Use and Public Works have incurred General Fund costs totaling almost \$77,000 and \$100,000 respectively.

## **Memorandum of Understanding**

San Diego County currently has three Cooperative Agreement (Memorandum of Understanding) with the Tribes in the County, as well as two pending agreements. Each of these agreements address transportation issues and provides for reimbursement of county expenses to repair the roads to the casinos. Attached please find fact sheets on the agreements in the background. The specific payments are as follows:

Pauma Band	\$1,451,800
Rincon Band	\$7,030,855
San Pasqual Band	\$6,149,349

**Total**            **\$14,632,004**

The pending agreements are as follows:

- Pala Band has an MOU pending for \$243,000.
- Barona Band has an agreement pending for \$4,041,000.

## County Impacts – Santa Barbara

Indian Tribes: Coastal Band of Chumas Indians (Petitioning for Federal Recognition)  
Santa Ynez Reservation (Current Compact for Gaming)

### Summary

Santa Barbara County currently has one operational casino, which opened in 1994 prior to a Tribal-State compact. The Tribe is operating 2000 slot machines under the current compact and is operating out of the original casino building and temporary tent facility. The Tribe is currently constructing an expanded casino facility, which includes a restaurant, parking garage, proposed hotel, and wastewater package treatment plant.

### Impact Analysis

The County has conducted an impact analysis regarding the Chumash Casino and has identified a total impact of \$7,876,275 for both capital improvements and annual costs to the County. Attached in the Background please find the analysis of the costs and a more specific breakdown of the costs. The specific impacts to the delivery of County services is as follows:

Transportation	\$300,000
Transit	\$390,000
Roads	\$1,000,000
Law Enforcement	\$130,000
Fire Service	\$344,500
Housing	\$5,190,000
Air Quality	\$31,800
Outdoor Recreational	\$489,975
<b>Total for Capital and Annual</b>	<b>\$7,876,275</b>
<b>Total Annual Costs Only</b>	<b>\$407,525</b>

### Memorandum of Understanding

The County has a Memorandum of Understanding (MOU) with the Tribe, which provides \$285,507 annually to fund one firefighter position, which was finalized in April 2002. Currently, Santa Barbara County and the Tribe are negotiating two cooperative agreements limited to the subject of access to the casino and reservation, and involving widening and realignment of an existing access road and construction of a bridge.



## County Impacts – Yolo County

Indian Tribes: Rumsey Rancheria (Current Compact for Gaming)

### Summary

Yolo County has one operational casino, which expanded substantially in 1992 and is proposing another expansion in 2002-2004. The County has an adopted Memorandum of Understanding with the Rumsey Rancheria, which is considered to be one of the most comprehensive of its kind in California.

### Impact Analysis

The County has provided an internal cost analysis of Indian Gaming on the County. The County notes that the actual costs will be at least \$5,270,000 per year, well in excess of the annual payment amounts received through the Memorandum of Understanding with the Tribe. The County indicates, for example, that more than 10% of the Public Defender caseload originates at the casino. Below please find the specific impacts to the County (also provided in Background section):

Law and Justice	\$3,248,764
Land and Recreation	\$102,850
Roads	\$422,085
General Government	\$322,881
Health and Human Services	\$384,293
Other Departments	\$789,860

**Total Impact to County            \$5,270,733**

### Memorandum of Understanding

Yolo County has a comprehensive Memorandum of Understanding with the Rumsey Rancheria, which provides annual payments starting at \$3 million, and capped at \$5 million in the year 2007 for off-site impacts of the casino. The off-site mitigation payments are to address the following: water resources, traffic, noise impacts, increased demand for emergency services, gambling addiction, planning, police, and affordable housing.

Besides the annual payments the Tribe is also required to pay approximately \$3 million for various road improvements.

### *Other Conditions*

- Provides for limitation on alcoholic beverage service on the casino.

- Limitation on future expansion of the hotel until January 2008, including provisions related to the proposed golf course.
- Provides that all non-trust lands contiguous to the casino be placed in agricultural conservation easements at no cost to the County.
- Provisions in the MOU for the operation of a diesel power plant by the Tribe.
- Tribe will provide water recycling and conservation program and other water quality measures.

~end~