CSAC Combined Indian Gaming Policy
June 2006

Original 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[1] 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 regulation, public participation, and maximum

[1] 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.

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.

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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[2]. 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,

[2] As used here the term "tribal land" means trust land, reservation land, rancheria land, and Indian Country as defined under federal law.

including the provision 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.

CSAC Principles Related Federal Tribal Lands Policy

Adopted by the CSAC Board of Directors
February 23, 2006

Background

Congress continues to show an interest in the land-into-trust process and revisiting portions of the Indian Gaming Regulatory Act (IGRA) in 2006, with hearings expected for Senator Feinstein's S. 113, Congressman Pombo's draft legislation to address "reservation shopping" and Senator McCain's newly introduced S. 2078. To give insight into its position on these and future bills relating to the tribal lands into trust process, CSAC, through its Indian Gaming Working Group, wishes to reiterate those policy principles sponsored or adopted by CSAC over the past four years that directly relate to the purposes of the legislative proposals mentioned above.

The overriding principle supported by CSAC is that when tribes are permitted to engage in gaming activities under federal legislation, then **judicially enforceable** agreements between counties and tribal governments must be required in the legislation. These agreements would fully mitigate local impacts from a tribal government's business activities and fully identify the governmental services to be provided by the county to that tribe.

The bold language set forth below presents the applicable principle and the italicized language applies that principle to the legislation as currently proposed.

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1. **Nothing in federal law should interfere with provision of public health, safety, welfare or environmental services by local governments, particularly counties. (June 2004 NACo Policy sponsored in part by CSAC).** *Consistent with this policy, CSAC is supportive of all federal legislation that gives counties an effective voice in the decision-making process for taking lands into trust for a tribe and furthers the overriding principle discussed above.*

2. **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. (CSAC November 2004 Policy).** *Federal legislation is deserving of CSAC's support if that legislation requires counties' consent to the taking of land into trust for a tribe.*

3. **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. (CSAC November 2004 Policy).** *CSAC will support federal legislation that addresses "reservation shopping" or consolidations in a manner that is consistent with existing CSAC policies, particularly the requirements of consent from Governors and local governments and the creation of judicially enforceable local agreements.*

4. **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. (CSAC November 2004 Policy).** *CSAC can support federal legislation that furthers the ability of counties to require and enforce compliance with all environmental, health and safety laws. Counties and tribes need to negotiate in good faith over what mitigation is necessary to reduce all off-Reservation impacts from an Indian gaming establishment to a less than significant level and to protect the health and safety of all of a county's residents and visitors.*

5. **CSAC supports the position that all class II and class III gaming devices should be subject to IGRA.** *CSAC is concerned about the current definition of Class II, or bingo-style, video gaming machines as non-casino gaming machines. These machines are nearly indistinguishable from Class III, slot-style gaming machines, and thereby generate the same type of impacts on communities and local governments associated with Class III gaming. CSAC believes that the operation of Class II gaming machines is in essence a form of gaming, and tribes that install and profit from such machines should be required to work with local governments to mitigate all impacts caused by such businesses.*