

# Manzanita Off-Reservation Casino Project

Proposal to Imperial County

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Letter to Governor Arnold Schwarzenegger


News Article  
Imperial County History

# Manzanita Band of the Kumeyaay Nation

**Leroy Elliott, Chairman**

P.O. Box 1302, Boulevard, CA 91905 ph:619-766-4930 fax:619-766-4957

Areas/Categories	Name L	Name F	Ph:#	Fax#	eMail	Age Group:
<b>Tribal Government</b>						
Manzanita Tribal Office	Elliott	Leroy J.	(619)766-4930	(619)766-4957	ianzmanz@aol.com	
	Stafford	Janice Barnes	(619)766-4930	(619)766-4957		
	Conway	Lance	(619)766-4930	(619)766-4957		
	Santos	Angela	(619)766-4930	(619)766-4957		
	Elliott	John	(619)766-4930	(619)766-4957		
	Ward	Tom	(619)766-4930	(619)766-4957	tward@sctdv.net	
	Adkins	Alexa	(619)766-4930	(619)766-4957		
<b>Culture</b>						
Manzanita Language Program	Alto	Nicole	(619)766-3216	(619)766-4957	nalto@sctdv.net	
<b>Recreation / Community Resources</b>						
Manzanita Activity Center/Library	Santos	Angela	(619)766-3236	(619)766-5952		
<b>Tribal Digital Village Representative</b>						
Manzanita	Alto	Nicole	(619)766-4930	(619)766-4957	nalto@sctdv.net	
Manzanita	Ward	Tom	(619)766-4930	(619)766-4957	tward@sctdv.net	
<b>Education</b>						
Mountain Empire School District Office	Ryan	Greg	(619)473-9022	(619)473-9728		



**JOHN ELLIOTT**  
 BUSINESS COMMITTEE  
 HOUSING COMMITTEE

619 766 4930  
 FAX 619 766 4957  
 CELL 619 251 4551

EST. 1891

PO BOX 1302 BOULEVARD, CA 91905



*Jack R. Smith*

## Liberty Gaming

432 Morning Dove  
 Palm Desert, CA 92260  
 760-861-1412  
 fax 760-779-5952  
 jsmith6@dc.rr.com



**Liberty Gaming**

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jsm11b6@dc.rr.com

July 11, 2003

Supervisor Hank Kuiper  
Imperial County Board of Supervisors  
County of Imperial  
940 W. Main Street, Suite 209  
El Centro, CA 92243-2871

Re: Casino Proposal

Dear Supervisor Kuiper: *Hank*

I enjoyed meeting with you last Wednesday and discussing the possibility of developing an Indian casino/resort in Imperial County. As agreed, this letter will establish our credentials and begin the dialogue that we hope will culminate in the support of the Board of Supervisors for the project. Our proposal would be a tremendous economic stimulus for the Imperial Valley, creating thousands of jobs and bringing much needed revenue to the area. As I indicated in our brief meeting, it is our intention to be the best of corporate neighbors. We do not seek any financial support from the County and intend on paying for all financial impacts that the project might bring.

First, we represent the Manzanita Band of Kumeyaay Indians (Tribe), a federally recognized tribe from San Diego County. The Tribe has as a Compact with the State of California that authorizes it to conduct class III gaming. As such, they are legally authorized to develop and operate a casino in the State, but only on "trust lands". The Indian Gaming Regulatory Act (IGRA), Section 20(b) (1) (A) allows for such Tribes to conduct gaming on newly acquired lands if the Secretary of the Interior issues a two-part determination: that the gaming establishment on the newly acquired lands (1) will be in the best interest of the Tribe and; (2) will not be detrimental to the surrounding community. The Governor of the State must concur in the Secretary's determination and she must consult with appropriate State and local officials, including other nearby Indian tribes. Accordingly, the support of the Board of supervisors is essential to the process and we are committed to working with you to insure the support of not only the County, but the surrounding cities as well.



*Liberty Gaming*

432 Morning Dove  
Palm Desert, CA 92260  
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jsmith6@dc.rr.com

Liberty Gaming, LLC, a Nevada corporation in the business of developing, financing and managing casinos will be responsible for the project. I have attached a resume of the President of the Company, Jack Smith that clearly exhibits his background in gaming, having worked with the MGM Grand Hotel and Casino, Caesars Palace and the Colorado Casino, all located in Las Vegas, NV. More importantly, we have extensive Indian gaming experience that dates back to the very beginning of Indian gaming in California. He was responsible for the development and management of the Barona and Cabazon Band of Mission Indian Casinos in San Diego and Riverside Counties and I was the former Deputy Assistant Secretary of the Interior for Indian Affairs. In this capacity, I was responsible for all Indian gaming related matters before the Department. (Resume attached) Together, Jack and I bring many years of experience in Indian gaming and an unequalled understanding of the governmental process necessary for such projects.

We propose to develop and manage a resort/casino that would include a high-end golf course accessible to the public, first class hotel, RV Park, convention facilities, entertainment center, restaurants and other such amenities appropriate for the community. Furthermore, we believe that a large outlet mall would be a benefit to the community and would propose including one on our site. However, we are aware of the County's interest in the development of an indoor mall and do not in any way wish to conflict or compete with this project. We would be willing to work with the Planning Commission to insure that the project meets all the requirements that the County deems appropriate. If sewage treatment became an issue we would entertain the possibility of building an on-site facility that could also be used by other municipalities. We welcome the opportunity to further discuss our project with your Board at your earliest convenience.

Time is of the essence and we have the capital and experience to get the project moving, but will do so only with the support of the community. Once again, we fully intend on paying for all economic impacts this project might impose on the community and are willing to execute contracts that would be enforceable in the Imperial County Superior Court to insure that all such commitments were legally enforceable.

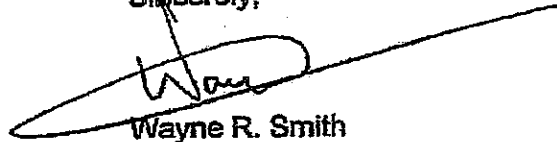


*Liberty Gaming*

*432 Morning Dove  
Palm Desert, CA 92260  
760-867-1412  
fax 760-779-5952  
jsmith6@dc.rr.com*

Thank you for taking time out of your busy schedule to meet with me and I look forward to discussing this proposal in much greater detail at your earliest convenience. We are firmly committed to developing a project that would not only be of tremendous positive economic impact to the County, but one that all citizens would be proud to have in their community.

Sincerely,



Wayne R. Smith



## Manzanita Band of the Kumeeyaay Nation

July 25, 2003

Wally J. Leimgruber, Supervisor  
Imperial County, Fifth District  
County Administration Center  
940 West Main Street, Suite 212  
El Centro, CA 92243-2871

Dear Supervisor Leimgruber;

I am writing as a follow up to our meeting on Thursday July 24<sup>th</sup>, I am glad we had the opportunity to meet with you and to talk about Manzanita's Project and to discuss your concerns, I appreciate your honesty and input in the discussions. I am glad that we had this opportunity and would like to reiterate the Tribes commitment to working with the county and to being a good neighbor to the surrounding communities. I believe this project is a win - win for the Tribe, County and for the people of the Imperial County.

Again thank you, if you have any questions, concerns or would like to meet you can contact me directly at the Manzanita Tribal Office at (619) 766-4930.

Sincerely,

John Elliott, President  
Manzanita Economic Development Corporation (MEDCO)

Posted on Sat, Aug. 02, 2003

## Fired Indian Bureau official aiding tribe

By Don Thompson  
ASSOCIATED PRESS

**SACRAMENTO** - A former top Bureau of Indian Affairs official fired last year during a federal influence-peddling investigation is now working with a San Diego County tribe that wants to open a casino on non-reservation land in Imperial County.

Wayne Smith, formerly the Department of Interior's deputy assistant secretary for Indian affairs, is representing Liberty Gaming on behalf of the Manzanita Band of Kumeyaay Indians.

The 97-member tribe has a state compact to open a casino on its own remote 3,580-acre reservation, but wants to build instead in Imperial County, at a more accessible but as yet unspecified site near El Centro, tribal spokesman John Elliott said Friday. Elliott is president of the Manzanita Economic Development Corp.

Liberty Gaming, incorporated in Nevada early this year, is a potential development partner, Elliott said. It's proposing to develop and manage a resort that would include a casino, public golf course, hotel, recreational vehicle park, convention facilities, an entertainment center, restaurants, and perhaps an outlet mall.

Smith and company officials did not return telephone messages Friday.

The band is now the 23rd tribe seeking permission to operate an off-reservation casino, according to the advocacy group Stand Up for California, which opposes such efforts.

"It's what we call reservation shopping," said Imperial County Supervisor Wally J. Leimgruber. The outside investors would compete with locally owned businesses, he fears, while gambling's social ills would add to the problems of the state's poorest county.

Supervisor Hank Kuiper is intrigued with Smith's promises of thousands of jobs if the project proceeds.

"If there's something that makes sense and it's good for the economic climate and jobs in Imperial County, we're willing to take a look at it," Kuiper said.

In a letter to Kuiper, Smith touts his federal experience overseeing Indian gambling, which he said helps bring Liberty Gaming "an unequalled understanding of the governmental process necessary for such projects."

Obtaining an off-reservation gambling site requires permission from Interior Secretary Gale Norton.

Smith was fired from his Interior post in May 2002 amid allegations that Smith's friend and former business partner, Philip Bersinger, had asked at least three West Coast Indian tribes to pay him for his influence with Smith.

Smith denied wrongdoing, and asked for his own investigation.

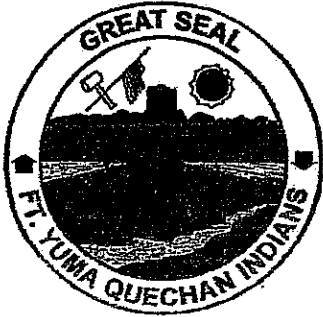


He alleged he was improperly fired after he complained that the White House was making "highly inappropriate" calls urging him to reverse a lower-level decision involving one of the three tribes. That tribe is involved in a leadership struggle over its plans for a \$150 million casino near Sacramento.

The Interior Department's Office of Inspector General has finished its investigation, but is delaying its report while the FBI completes its probe.

Within a month after his firing, Smith formed W.R. Smith and Associates outside Washington, D.C., to advise tribes and governments on gambling and tribal reservation issues, the same issues he oversaw as the No. 2 official at the BIA.

While Smith is promoting a tribe's casino now, shortly after his firing last year he unsuccessfully offered to help Sonoma County residents combat the Dry Creek Rancheria Band of Pomo Indians' River Rock Casino.



**QUECHAN INDIAN TRIBE**  
***Fort Yuma Indian Reservation***

P.O. Box 1899  
YUMA, ARIZONA 85366-1899  
Phone (760) 572-0213  
FAX (760) 572-2102

August 22, 2003

Honorable Gale A. Norton  
Secretary of the Interior  
Department of the Interior  
1849 C Street, N.W.  
Washington D.C. 20240

Honorable Aurene Martin  
Assistant Secretary of the Interior for Indian Affairs  
Department of the Interior  
1849 C Street, N.W.  
Washington D.C. 20240

Re: Opposition to Manzanita Band Gaming Development

Dear Secretary Norton and Assistant Secretary Martin:

The Quechan Indian Tribe of the Fort Yuma Indian Reservation, has learned of plans of the Manzanita Band of Diegueno Mission Indians of San Diego County, California ("Band"), to acquire land in trust for development of a gaming casino complex in Imperial County, California. News reports, quoting representatives of the Band, Imperial County, and others, state that the development would include a golf course, hotel, and shopping, in addition to a 2,000 machine casino. The complex would be located on what is now non-Indian, non-trust, non-reservation land near the Interstate 8 -- State Route 111 intersection, east of El Centro.

The Quechan Indian Tribe is extremely concerned with the impacts such development would have on the Tribe's interests and well being. As you know, the Quechan Indian Tribe is the only federally recognized Indian tribe with a reservation and Indian trust land in Imperial County. For the reasons stated below, the Quechan Indian Tribe will adamantly oppose any attempt by the Manzanita Band to infiltrate the Quechan Tribe's gaming market territory.

The Quechan Reservation extends approximately seven miles west of the city of Yuma into California along the north side of the Interstate 8 corridor. Most of the land within the Interstate 8 corridor is tribal trust land and is prime land for development by the Tribe to foster our economic self-sufficiency and self-governance goals. Included in the Tribe's future development plans is a casino gaming complex within the Interstate-8 corridor west of Yuma. The proposal of the Manzanita Band and its non-Indian developers would conflict with the Quechan Tribe's current gaming operation as well as its future plans.

The Quechan Indian Tribe owns and operates the Paradise Casino on our Reservation. We estimate that approximately 30 percent of the customer base of the Paradise Casino comes from the central Imperial County area that includes El Centro, Calexico, and Mexicali. The proposed Manzanita Band casino would lie well within the 50-mile market radius of our Reservation. Unlike casinos that operate in heavily populated urban areas, the Quechan Paradise Casino relies on a much larger, sparsely populated geographical market area. During at least one-half of the calendar year, the population of the greater Yuma area is not enough to sustain the existing Paradise Casino and nearby Cocopah Casino. Approval of a third casino within this limited market area would be economically disastrous for the Quechan Indian Tribe and would reverse the many achievements of the Tribe since 1996 and the social, economic, and cultural gains that have resulted from gaming.

Since the opening of our Paradise Casino, our Tribe has made dramatic progress. With casino revenues available to the Tribe, we have reached unprecedented levels of achievement in infrastructure development, land acquisition, health care, education, and provision of governmental services and economic development. To lose those advantages now would mean a giant step backwards for the Quechan Tribe to the detriment of our people's health and welfare and the future of our children.

The Fort Yuma Indian Reservation is part of our Quechan homeland. We have been here for thousands of years along the Colorado River and surrounding lands. The Manzanita Band has a reservation of its own in the mountains of central San Diego County. To allow the Band to encroach upon our territory and our markets would be grossly unfair to the Quechan Indian Tribe and a slap in the face to the Tribe's long history of accomplishment in Imperial County.

When Indian tribes first began developing gaming and when Congress passed the Indian Gaming Regulatory Act in 1988, the purpose and intent was for tribes to operate gaming within their jurisdictional boundaries. Special exceptions were made for tribes that are landless or that have only a minimal land base to sustain economic growth. However, even then, acquisition of land in trust for gaming purposes has been severely restricted, generally limited to land acquisitions within existing reservations or that are contiguous to a tribe's existing reservation. Allowing the Manzanita Band to establish a gaming casino in Imperial County would be contrary to this sound policy and underlying legal principles.

Revenue sharing is one way that small tribes with little land base or little opportunity for gaming can obtain some of the benefits of gaming. The California compact includes a tribal revenue sharing provision for that very purpose. The California compact and authorizing legal authority does not anticipate that tribes will go outside of their traditional areas, outside their reservations, into the traditional areas and marketing areas of other tribes, to conduct gaming in direct competition with other tribes. For that reason, we will also request that the governor of California exercise his power to veto the Manzanita's plan for casino land acquisition in Imperial County.

Secretary Norton  
Assistant Secretary Martin  
August 22, 2003  
Page 3

We are mindful that there are numerous environmental and other federal law hurdles that must be overcome by the Manzanita Band before this proposed trust acquisition can become reality. The Quechan Indian Tribe is currently embroiled in a battle to save our rights to water from the Colorado River in the litigation known as *Arizona v. California* pending before the United States Supreme Court. Water in Imperial County is scarce. Available water for additional development is rare. It is not at all clear where the Manzanita Band intends to get its water to support the proposed complex. The Band has no water rights in Imperial County. Our water rights have been recognized by the United States Supreme Court and are currently being quantified. Those rights may be infringed upon by other development in the east Imperial County area. The Manzanita proposal may interfere with those rights as well. All of these things must be taken into consideration before any governmental agency gives any serious consideration to the Manzanita proposal.

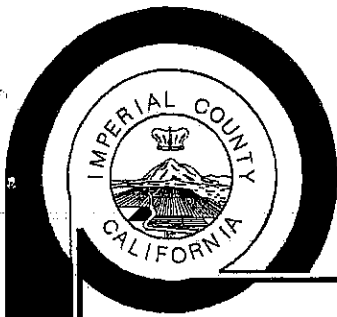
Finally, we understand that the Manzanita Band is preparing a proposal to take to the Imperial County Board of Supervisors. We assume that that proposal will be public record and will be available to the Quechan Indian Tribe. We therefore request a copy of any and all submittals made by the Manzanita Band to Imperial County, the Bureau of Indian Affairs, the state of California, or any other local, state, or federal governmental agency, and that we be given appropriate notice of all hearings, meetings, or other public activities involving the Manzanita Band's proposal.

Sincerely yours,

QUECHAN INDIAN TRIBE

  
Mike Jackson Sr., President

cc: Sherry Cordova, Chairwomen, Cocopah Indian Tribe of Arizona  
Manzanita Band of Diegueno Mission Indians  
Clay Gregory, Acting Regional Director, Bureau of Indian Affairs  
Richard Fielitz, Acting Superintendent, Bureau of Indian Affairs  
Sam Rideshorse, Superintendent, Ft. Yuma Field Office  
Wayne Nordwall, Director, Phoenix Area Office  
Imperial County Board of Supervisors  
Wally Leimgruber, District 5 Supervisor,  
George Skibine, Director, Indian Gaming Management Staff  
Honorable Gray Davis, Governor of the State of California  
Honorable Barbara Boxer, United States Senate  
Honorable Diane Feinstein, United States Senate  
Honorable Jim Battin, California State Senate  
Honorable Bonnie Garcia, California State Assembly  
Honorable Bob Filner, United States House of Representatives



# PLANNING/BUILDING DEPARTMENT

## IMPERIAL COUNTY

PLANNING / BUILDING INSPECTION / PLANNING COMMISSION / A.L.U.C.

JURG HEUBERGER, AICP, CEP  
PLANNING/BUILDING DIRECTOR

CERTIFIED MAIL 7002-3150-0004-6945-6228

October 29, 2003

**RECEIVED**  
OCT 29 2003

Liberty Gaming  
432 Morning Dove  
Palm Desert, CA 92260

Clerk of the Board  
of Supervisors  
County of Imperial, CA

Attention: Jack R. Smith

Subject: Proposed casino development in Imperial County at McCabe and Bowker Roads

Dear Mr. Smith:

This letter is to follow up on our meeting and conversation of Thursday October 23, 2003. As you can recall the meeting was held at the Planning/Building conference room, which Supervisors Carrillo and Maruca also attended. You had asked that I send you in writing the procedures as well as a copy of the applications necessary to commence the project. I will therefore repeat what I said during the meeting:

First, Imperial County has a policy of holding a pre-application meeting for an application before a major project is officially submitted. This allows the developer the opportunity to meet with the various regulatory agencies and service provider agencies. In order to hold this meeting we need a project description usually one or two pages in length along with a site plan to show the location and type of uses anticipated. We will then schedule this pre-application meeting.

Second, once the pre-application meeting has been completed the applicant can submit the formal application. The formal application in your case means:

- a. Letter requesting a General Plan Amendment for the area in question
- b. An application (enclosed) requesting a Change of Zone for the area of land envisioned
- c. A subdivision map (if one is necessary) a copy of the application also enclosed
- d. A fee in the form of a deposit of ten thousand dollars (\$10,000.00). As you recall I advised that our projects are billed on a time and material (T/M) basis, therefore the \$10,000.00 dollars is strictly a deposit

Once the application is submitted the Planning/Building Department staff will provide all information to the ancillary departments and commence the CEQA review process. This typically takes 30 to 75 days however. It is very likely that a project of your type will require an EIR and may require an EIS because of federal involvement.

Typically a full EIR/EIS can take up to a year, however the length of time is not determined by the regulatory agencies rather by the applicant in terms of the applicant's responsiveness to provide the necessary information.

During the meeting, I also asked why this particular site was chosen and although you did not provide a clear explanation, I did advise you that this area was substantially outside of any service providers such as water and sewer. This will be another issue to address. While it is possible that water/sewer services could be extended from one of the cities in the vicinity, that could be a remote possibility, and that will require a LAFCo approval, which will be another process. However, this certainly does not take as long as the land uses process. It appears to me (just as a comment) that a location nearer to Highway 111 or Interstate 8 and in particular a location closer to a City or Special District one which could provide the services would make the project much less cumbersome.

In conclusion, I have enclosed the necessary application forms. Also Supervisor Hank Kuiper informed me that you left our meeting with the misunderstanding that this process could take three years. I do not believe that discussion ever occurred and I thought I was quite specific that the process would be done in one year (more or less) provided the applicant is responsive. There is no doubt that some projects have taken multiple years however, they have been substantially bigger than your proposed project at least in-so-far-as I understand it at this time.

Lastly, you had asked me during the meeting to give an estimate of the cost and I indicated to you at that time that an EIR can cost as much as (or more) two hundred thousand dollars (\$200,000) and the planning process through the County can be as much as \$100,000.00 to \$150,000.00. I would like to remind you that these are only estimates.

If you have any questions please feel free to contact me at (760) 482-4236 extension 4310 or by e-mail at [jurgheuberger@imperialcounty.net](mailto:jurgheuberger@imperialcounty.net)

Sincerely,



Jurg Heuberger, AICP  
Planning Director

#### Attachments

CC: Victor Carrillo, Supervisorial District # 1  
Hank Kuiper, Supervisorial District # 2  
Joe Maruca, Supervisorial District #3  
Gary Wyall, Supervisorial District #4  
Wally Leimgruber, Supervisorial District #5  
Robertia Burns, County Executive Officer  
Ralph Cordova, County Counsel  
Joanne Yeager, Assistant County Counsel  
Darrell Gardner, Assistant Planning Director  
File 10.105, 10.130, 10.133, 40.110

JH/rs/G:/Jurg General Corres/October 29 Casino LTR to Jack Smith



Print Page

## Calexico works to lure Manzanita Tribe

By AARON CLAVERIE, Staff Writer

CALEXICO — Come on down.

That's the message Calexico-based officials are sending to the Manzanita Tribe of Kumeyaay Indians, a casino-less tribe located in the mountains near Boulevard and looking to build a slot palace in the Imperial Valley.

Manzanita tribal leaders talked last year about building a casino on county land near El Centro. They went so far as to bounce the idea off of county supervisors Hank Kuiper and Victor Carrillo. The response from the county supervisors was positive but there hasn't been any formal follow-up on the El Centro plans since then.

Enter Calexico.

Carrillo and Calexico City Councilman John Renison have been bending the ear of tribal Chairman Leroy Elliott, according to Renison, who spoke about the negotiations last week.

While it's a big "if" due to the complicated issues involved with an off-reservation casino, if Calexico is successful, a casino would be a huge boon to the local economy.

Carrillo has said Manzanita officials want to build a casino/ resort complex on par with the Viejas spread east of San Diego. Such a complex could provide up to 1,000 jobs and a large boost to the local tax base.

When interviewed last year, Carrillo said, "We have to have smart growth to offset the people who are opposed to any growth. We need to make sure everyone pays. .... If it was going to benefit my district and the other districts I'd have a take a positive look at it."

Rob Rosette, a lawyer for the Fort Mojave tribe near Needles, helped the tribe build an off-reservation casino in California, the first in the state. Manzanita officials have said the tribe wants to buy parcels of land in Imperial County and put that land in trust for gaming purposes, just as the Fort Mojave tribe did.

Before the federal Bureau of Indian Affairs will approve an off-reservation casino, it has to make a two-part determination, according to Rosette: would an off-reservation casino benefit the tribe and, if it does, would it harm the surrounding community?

In the case of the Fort Mojave tribe, it built a casino off-reservation for practical reasons — the land was near an access road and it was removed from the city, a concern for Needles residents.

It will be tough — but not impossible — for the Manzanita tribe to follow that example.

Dave Palermo of the California Nations Indian Gaming Association told this newspaper the road in front of the Manzanitas is a rough one. Developing land in trust off a tribal reservation for gaming is an extremely complex, legally vexing process. It is an extremely rare occurrence and there are procedures that must be followed, he said.

Manzanita official John Elliott has said some of the tribe's ancestors lived near Calexico before moving to the mountains east of San Diego.

>> Staff Writer Aaron Claverie can be reached at [aclaverie@ivpressonline.com](mailto:aclaverie@ivpressonline.com) or 337-3419.

# **Socioeconomic Impact Analysis of a Manzanita-Owned Casino in Calexico, California**

February 2005

Submitted by Richard A. Parker, Ph.D. and Kimberly Collins

## **Introduction:**

### **Project Overview:**

Richard A. Parker (Department of Public Administration and Urban Studies, San Diego State University and President, Rea & Parker Research) and Kimberly Collins (Director, California Center for Border and Regional Economic Studies, San Diego State University) have prepared this report in order to determine the socioeconomic impacts of a proposed Indian owned casino in the City of Calexico, County of Imperial, State of California. The Calexico casino project is expected to hire 2,400 employees of which 95% would be full-time. The Indian casino in Calexico is proposed to be a facility that will cost approximately \$175 million to construct. It will be comprised of a 91,000 square foot casino with 130,000 square feet of food/beverage and retail components. There will be a 50,000 square foot banquet/meeting hall, a 10,000 square foot entertainment venue, and a 200 room hotel. The casino will have 2,000 slot machines and 45 gaming tables. There will be 3 guest restaurants and one employee dining room. A swimming pool and a 3,000 guest space—400 valet space parking structure will also be developed. It is planned that the casino will be open 365 days per year and 24 hours each day.<sup>1</sup>

The development would be part of a regional area that encompasses a small number of lightly populated cities in the United States and a large metropolitan area in Mexico. Management of the casino has expressed a desire to create a facility that would be a catalyst for economic development in the region. It is working to develop a singularly distinctive facility that is an integral part of the cultural and recreational fabric of the community.

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<sup>1</sup> The casino complex will be located in Calexico near the Hwy 111 or Meadows Road Corridor. Any change in the designation of the Preferred Project Sites from that described could have a material impact on the revenue, expense and construction cost projections provided, the extent to which cannot be determined until definitive site designations/assignments have been made.



The research team was charged with addressing the impact of the casino upon:

- economic development, jobs, and wages and benefits;
- property values;
- sales revenues due to Mexican residents and border crossings;
- the local crime rate;
- infrastructure needs of the City of Calexico;
- labor pool sources;
- health and quality of life for senior citizens; and
- public assistance programs.

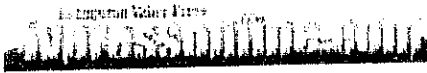
In defining and researching these tasks, the project team conducted independent research and reviewed studies regarding Indian gaming in other parts of the United States and applied these to the Calexico Indian casino. Interviews were conducted with Calexico and Imperial County officials and experts concerning issues surrounding employment and crime in the region.

#### **Regional Overview:**

Calexico, Imperial County is a small city in the southeastern portion of the California desert region bordering Mexico. In 2000, it had a population of 27,109 with 95.3% of its residents classifying themselves as Hispanic. Even though the population of Calexico puts it in the ranks of a small city, it borders Mexicali, a large metropolitan city in Mexico. The Municipality of Mexicali has a population of approximately 850,000 people—600,000 in the urban center and 250,000 in the rural areas. The twin cities of Calexico and Mexicali share retail shopping, restaurants and entertainment centers as well as language and culture. The workforce of the two cities flows back and forth across the border, using their skills where the labor market demands.

Calexico has lower median household and family incomes than does Imperial County, which is also relatively low in relation to the state. Both also have high rates of children living in poverty. Much of this poverty is due to very high unemployment rates, particularly in Calexico. The majority of Calexico employment is in the government sector (mainly education), retail, agricultural, transportation logistics, and services sector. Notably, only a small percentage (7 percent) of residents is employed in construction in Calexico. Three times as many individuals are employed in the service sector.

Table 1 provides a brief look at the demographics and economics of Calexico and Imperial County.



## County OKs casino election

By RUDY YNIGUEZ, Staff Writer

The county Board of Supervisors unanimously granted authority to the city of Calexico to stage a special election June 7 on the issue of building a casino within the city's limits.

Two supervisors emphasized their votes to allow the special election do not mean they approve of building a casino. District 3 Supervisor Joe Maruca said he would not support an off-reservation casino anywhere in the county without a vote by county residents. District 2 Supervisor Larry Grogan said he agrees with Maruca regarding the intention of his vote.

Supervisors Chairman Wally Leimgruber raised questions as to possible meanings of the actual language the board was asked to authorize the vote. He asked if the language could be changed. Leimgruber was told by county elections official Dolores Provencio the problem likely lies in semantics.

"All we're asking is for the board to give the city of Calexico authorization to hold an election," she said.

Calexico City Manager Marlene Best said the language had already been changed three times to ensure the county was comfortable with it, but she offered to change it again if necessary. County Counsel Ralph Cordova Jr. said the language was acceptable.

Provencio also said the ballot language is now available for the public to review. She said the Elections Department received one argument in favor of the issue, to be included on the ballot.

Calexico resident Michael Lowen raised other questions about the board's pending action. He complained that legal advertising was done in the Holtville Tribune, a weekly newspaper "not widely read in Calexico." He also said he was disappointed Maruca and Grogan appeared to have already staked out their positions on the casino. He also said the ballot measure could be illegal since only the state is authorized to negotiate with tribes, and tribes have shown historically, over the matter of casinos, tribes cannot be trusted. He said if the city signs on to a bad deal, there is no recourse later because a sovereign Indian nation cannot be sued.

"I think the ballot over-steps legal authority," Lowen said.

District 4 Supervisor Gary Wyatt agreed on the latter point. He said when the Quechan Nation built Paradise Casino it did so without any oversight from the county's Building Department until the county was asked to inspect it after it was completed. Wyatt said the county refused to do so. Wyatt said there are good agreements and bad agreements and praised the city of Calexico for at least asking its citizenry to vote on the matter.

Calexico has begun preliminary negotiations regarding a casino with the Manzanita Band of the Kumeyaay Nation and Viejas Enterprises, which runs Viejas Casino in Alpine.

Separately, Wyatt said he is concerned the county will have little or no input on the matter and asked whether the city of Calexico would be able to recover property taxes and other revenues from sovereign nations. He conceded the project would be in the city of Calexico.

District 1 Supervisor Victor Carrillo said the two tribes — Viejas and Manzanita — have said the county will be involved in the process and "everybody will get a piece of the pie." Carrillo, in whose district the casino would be located, said potential sites include near Applebee's, near the Calexico International Center and near Toys R Us.

The ballot will ask Calexico voters if an ordinance "to give the city the authority to negotiate an agreement with the Manzanita Band of the Kumeyaay Indians concerning the development and operation of a gaming and entertainment resort within the city of Calexico be adopted?" Voters will be asked to vote "yes" or "no."

Best said the June 7 vote would be an advisory vote to find out if Calexicans want a casino in their city. She would not directly answer whether the Calexico City Council could still negotiate with the tribes if the vote were negative. She said she doesn't think either party would be interested in moving forward if the vote were negative.

Calexico Mayor David Ouzan said much of the same, adding the project is expensive and it is unlikely the city or the tribes would want to move forward without public approval.

"If the vote were 'no,' I think it would end right there," Ouzan said Tuesday afternoon. "I don't think we have the right to override the vote."

>> Staff Writer Rudy Yniguez can be reached at [ryniguez@ivpressonline.com](mailto:ryniguez@ivpressonline.com) and 337-3440.

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## Measure N approved

By *MICHAEL A. SALORIO, Staff Writer*

CALEXICO — The voters of Calexico let their voices be heard during Tuesday's special election in which Measure N was passed, giving the City Council permission to enter negotiations that will ultimately lead to the development of a casino in the city.

According to unofficial results from the Imperial County Registrar of Voters, ballots cast in favor of Measure N were 1,852 to 1,452 against.

Total registration figures for Calexico stand at 13,053 voters and 12,056 are considered active voters. Total turnout for the special election was 3,652 voters with a 2,636 precinct turnout and a 1,016 absentee turnout. The turnout for the special election was 28 percent of the city's total registered voters.

The actual construction and opening of the casino is upward of four years away as tribal, city, state and federal officials must enter negotiations and hammer out agreements that will see the Indian tribes pay their fair share for the impacts their casino will have on the community's infrastructure and public services.

The casino is expected to create 2,400 jobs and will annually pump \$111.5 million into the local economy.

The Manzanita Band of the Kumeyaay Indians and its casino development partner, the Viejas tribe, hope to construct a \$175 million complex consisting of a 91,000-square-foot casino, a 130,000-square-foot retail and food/beverage section, a 50,000-square-foot banquet/meeting hall, a 10,000-square-foot entertainment venue and a 200-room hotel. The casino will have 2,000 slot machines and 45 gaming tables and will most likely be built on Highway 111 or on the Meadows Road corridor.

John Elliott, Manzanita tribe spokesman, was elated with the result of the election. Elliott explained the tribe is looking forward to working with the City Council and also thanked the voters of Calexico.

"We look forward to the next step of working with the City Council. ... We want to thank them (the voters) for their support and we look forward to becoming an economic partner with their community," said Elliott.

Leroy Elliott, Manzanita tribal chairman, explained the passage of Measure N would allow his people to better themselves and solve their high levels of unemployment and poverty.

"With the casino coming about, my people will be more comfortable than they are today. There's some of those folks that need housing. There's a need for education and having our own school. Our children need better education," said Leroy Elliott.

Mary Rangel-Ortega, an organizer with the Friends and Neighbors Against Measure N grassroots coalition, praised the work of the many volunteers who did their best to keep the measure from passing.

"We're disappointed but I think that we didn't make such a poor showing. The fact that we had a small group with no money and we were fighting big money, I think we made a good showing in spite of this. We worked hard and I think we lost this battle, but we haven't lost the war," said Rangel-Ortega.

Rangel-Ortega explained the next move for the Friends and Neighbors Against Measure N will be to closely monitor the casino negotiations to make sure the city keeps the best interests of the public in mind. Rangel-Ortega added her group will be looking into possible litigation asking for a countywide vote on the casino issue and will work to unseat City Council members in



cuauhtemoc beltran photo Viejas tribal Chairman Anthony Pico visits with Measure N volunteers (from left) Eliana Corona, Alejandra Ramos, Cassandra Rivera and Albert Espinoza, all 17 years old, at Yum Yum Chinese Restaurant in Calexico on Tuesday.

favor of the casino.

"There's still hope for us. I'm going to take a look around and see what we can do. We're not going to take this lying down. We're going to continue," said Rangel-Ortega.

Calexico City Mayor Alex Perrone, who voted against Measure N, said the City Council must now do some research and hire consultants to help guide the city through the casino negotiations.

"We need to see how we can really negotiate it. I know we need to be in touch with other cities that have negotiated with tribes for casinos and see what they recommend for how we should negotiate. ... We have to be very cautious and make sure we do the best we can because of all the impacts we'll be getting," said Perrone.

>> Staff Writer Michael A. Salorio can be reached at 357-7336 or [msalorio@ivpressonline.com](mailto:msalorio@ivpressonline.com)

**Population**

COUNTY/CITY	1/1/2005
<b>CALEXICO</b>	<b>36,274</b>

**Registered Voters**

	<b>Total</b>	
	<b>Registered</b>	<b>Turnout</b>
Calexico	12,089	30.2%

Special Election  
Measure N

	6/7/2005	
Yes	2040	56.3%
No	1582	43.7%

Campaign Funds



SUPERVISOR DUANE KROMM  
SUPERVISOR, SOLANO COUNTY, CALIFORNIA  
MEMBER, INDIAN GAMING WORKING GROUP,  
CALIFORNIA STATE ASSOCIATION OF COUNTIES

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.

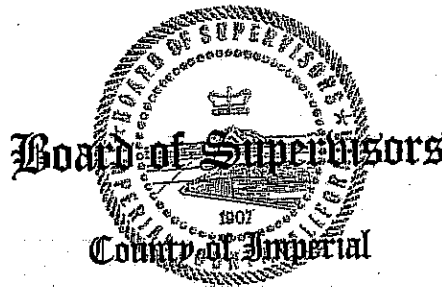
DISTRICT 1  
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DISTRICT 2  
JIM GROGAN  
940 MAIN STREET, SUITE 209, EL CENTRO, CA. 92243

DISTRICT 3  
JOE MARUCA  
940 MAIN STREET, SUITE 209, EL CENTRO, CA. 92243

DISTRICT 4  
GARY WYATT  
940 MAIN STREET, SUITE 209, EL CENTRO, CA. 92243

DISTRICT 5  
WALLY LEIMGRUBER  
940 MAIN STREET, SUITE 209, EL CENTRO, CA. 92243



COUNTY EXECUTIVE OFFICE  
COUNTY ADMINISTRATION CENTER  
940 MAIN STREET, SUITE 209  
EL CENTRO, CA 92243-2871  
TELEPHONE: (760) 482-4290  
FAX: (760) 482-4215

CERTIFIED MAIL 7000 1670 0011 0908 7793

February 14, 2006

City of Calexico  
608 Heber Avenue  
Calexico, CA 92231  
Attn: Marlene Best, City Manager

Subject: Indian Gaming Casino Facility

Dear Ms. Best:

On behalf of the County Board of Supervisors we are submitting this letter to address the concerns the County would expect to have addressed in the location of such a facility.

This letter does not take a position on the pros and cons of a gaming facility. It is a letter to reflect only the environmental and other concerns that the County has.

We would therefore respectfully request that the City address the following:

1. Prepare a Comprehensive Environmental Impact Report for the Project by a qualified firm.
2. Require that a third party independent Traffic Analysis be prepared on a regional basis. We would expect the traffic analysis to be part of the EIR. However, we emphasize the traffic analysis because of the significant amount of vehicular traffic such a facility creates. We would also request that as part of the traffic review, that this be closely coordinated with the County Public Works and Planning & Development Services Departments.
3. Not knowing the exact location of such a facility, there are number of financial considerations that should also be addressed. If the facility is located in the existing City Limits of Calexico, we would expect the City and the County to reach an agreement on the mitigation of the environmental, as well a financial impacts including but not limited to payment in lieu of taxes, T.O.T, etc. Financial impact in this case would be impacts in public services such as Social Services, impacts on Law Enforcement such as the jail facilities, District Attorney, Public Defenders, etc.



## Manzanita Band of the Kumeyaay Nation

April 5, 2006

Clayton Gregory  
Regional Director  
Bureau of Indian Affairs, Pacific Region  
2800 Cottage Way, Room 2820-W  
Sacramento, CA 95825

George Skibine  
Acting Deputy Assistant Secretary  
Bureau of Indian Affairs/U.S. Department of the Interior  
Policy & Economic Development for Indian Affairs  
1849 C Street, NW - Room 4600  
Washington, DC 20240

Dear Mr. Gregory and Mr. Skibine,

By letter of March 10, 2006, the Manzanita Band of the Kumeyaay Nation provided you with the Memorandum of Understanding (MOU) we have developed with the City of Calexico regarding land proposed to be taken into trust for gaming purposes within the municipal boundaries. As discussed in that letter, the Manzanita Band is preparing its trust land acquisition request to carry out the casino and trust land proposal, which has been under consideration and development for over one year.

Enclosed for your information is a revised version of the MOU that makes three changes to the document submitted on March 10. The parties have now signed and executed the document. The changes are as follows:

- 1) Section 3.2, pp. 6-7: The third paragraph has been added to provide for annual adjustments to the Revenue Sharing Payment based upon the rate of inflation.

April 5, 2006

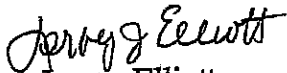
Page 2

- 2) Section 3.5(B), p. 8: A sentence has been added to provide for payment to the school district by the City of the Development Impact Fees within 30 days of receipt from the Tribe.
- 3) Section 3.10, pp. 9-10: Clarification has been provided regarding Calexico Bond Measure J.

Please contact me if you have any questions regarding these changes to the MOU.

Thank you.

Very truly yours,



Leroy Elliott

Tribal Chairman

Manzanita Band of the Kumeyaay Nation

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made this 4<sup>th</sup> day of April, 2006, by and between the City of Calexico ("the City," ) and the Manzanita Band of the Kumeyaay Nation ("the Tribe"), hereinafter also referred to as a "Party," or jointly, "Parties." The Tribe is recognized in the Federal Register as: Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California.

### RECITALS

WHEREAS, the Tribe will seek approval from the Bureau of Indian Affairs ("BIA") of an application pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465, the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* ("IGRA"), and the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* ("NEPA"), requesting that the United States accept trust title to a parcel in the City; and

WHEREAS, pursuant to a favorable vote by the citizens of the City in June 2005, the City and the Tribe seek to work together to mitigate impacts that a casino may have; and

WHEREAS, the Tribe intends to acquire land within the City to construct an Indian gaming Facility, however no specific parcel has been identified at this time; and

WHEREAS, this MOU is based on the estimated size and description of future development of an Indian gaming Facility in the City; and

WHEREAS, no specific timeline has been identified for construction of the Facility at this time; and

WHEREAS, the proposed action of the Tribe is not a City project and is not a project subject to the discretionary approval of the City and, therefore, is not subject to otherwise applicable California laws; and

WHEREAS, the City would not otherwise have any authority with regard to the Tribe's Trust Lands nor receive compensation for impacts resulting from the use of the trust land; and

WHEREAS, this MOU is intended solely as a funding arrangement between the Parties and is not a "project" as defined by the California Environmental Quality Act ("CEQA"); and

WHEREAS, the City will perform any required environmental review for the proposed Indian gaming Facility at the earliest possible time that such review can be meaningfully accomplished; and

WHEREAS, given the uncertainty of approvals and timelines for the Indian gaming Facility, this MOU does not bind the City to providing any services at this time; and

WHEREAS, the City is prepared to support the Tribe's trust application to the United States if the Tribe enters into this enforceable MOU to mitigate the impacts of the development.

NOW, THEREFORE, the Parties agree as follows:

### 1. DEFINITIONS.

As used in this MOU, the terms listed below shall have the meaning as follows:

"Chair" shall mean the Tribal Chairman of the Tribe.

"Chief of Police" shall mean the Chief of Police of the City of Calexico.

"Class II Gaming" shall mean Class II Gaming as defined in the IGRA.

"Class III Gaming" shall mean Class III Gaming as defined in the IGRA.

"City Council" shall mean the governing body of the City of Calexico.

"City Manager" shall mean the City Manager of the City of Calexico.

"Compact" shall mean the Tribe-State Compact or any amendments thereto which the Tribe intends to negotiate and execute with the State of California regarding Class III Gaming, if and when executed between the Tribe and the State and approved pursuant to the IGRA; or such other compact that may be substituted therefore.

"Constitution" shall mean the duly enacted Constitution of the Tribe.

"Day" shall mean calendar day unless otherwise indicated.

"Effective Date" shall mean the date this MOU is approved by the last body authorized to approve this MOU on behalf of each Party. This MOU shall not become effective unless and until the following events have occurred: (i) this MOU has been approved by the City Council and signed by the City's representative; (ii) this MOU has been approved by the

appropriate Tribal entity and signed by the Tribe's representative; (iii) the Tribe has adopted a Resolution of Limited Waiver of Sovereign Immunity substantially identical to Exhibit B attached hereto; and (iv) the Tribe's legal counsel has provided an opinion letter to the City to the effect that the waiver of sovereign immunity has been adopted in accordance with Tribal law and Federal law and is effective.

"Facility" shall mean the Indian gaming casino resort, including all future buildings, structures (temporary or permanent), hotels, restaurants, parking areas and other improvements; and all leased property, fixtures, furnishings and equipment attached to, whether existing on the Effective Date or not, forming a part of or used for the operation of gaming on land in the City.

"Fiscal Year" shall mean the period commencing July 1 of each year and ending on June 30 of the subsequent year.

"Gaming" shall mean any and all activities defined as Class II and Class III Gaming by the IGRA, NIGC Regulations, or the Compact.

"IGRA" shall mean the Indian Gaming Regulatory Act of 1988, PL 100-497, 25 U.S.C. section 2701 *et. seq.* as the same may, from time to time, be amended.

"JAMS" shall mean JAMS Endispute, or if not available, a similar organization identified by agreement of the Parties which provides professional dispute resolution services.

"Mayor" shall mean the Mayor of the City of Calexico.

"NIGC" shall mean the National Indian Gaming Commission.

"Permanent Facility" shall mean any permanent structure of the type described in Exhibit A attached hereto.

"Property" shall mean any land acquired by the Tribe in the City of Calexico prior to the land being taken into trust.

"State" shall mean the State of California.

"State Gaming Agency" shall mean the official, agency, board, or commission duly authorized to investigate, approve, and regulate gaming pursuant to the Compact or the Gambling Control Act (B&P §19800, *et. seq.*) or successor statute.

“Temporary Facility” shall mean any temporary structure placed on the Trust Lands by the Tribe in which gaming operations will be conducted.

“Term” shall mean the term of this MOU as described in Section 9.15, if required by the BIA.

“Trust Lands” shall mean any parcel of land that the Tribe acquires in the City and that is taken into trust by the United States for the benefit of the Tribe. The Parties acknowledge that the land, upon being taken in trust by the United States for the benefit of the Tribe, shall become subject to applicable federal law and shall be afforded the same status as other lands held in trust by the United States for federally recognized Indian tribes, subject to the terms and conditions of this MOU.

“Uniform Codes” shall mean collectively the uniform building code, fire code, plumbing, mechanical, electrical, and other related codes adopted by the City consistent with the State uniform codes.

## **2. PRELIMINARY PROVISIONS**

2.1 Land to be Taken into Trust. The Tribe will request that the United States take into trust for its benefit certain land in the City. If the Tribe seeks to have additional land taken into trust for purposes related to gaming after construction of the proposed Facility, the Tribe agrees to negotiate a new MOU with the City to address the impacts of any new trust land acquisition.

2.2 Compliance with Applicable Laws. The Tribe shall enact laws applicable to the Trust Lands and shall require that the Trust Lands and Facility be used and developed in a manner that complies with all requirements of the Compact, and that is consistent with the City’s general, specific and community plans, zoning ordinances, and design guidelines in effect at the time of construction of any development, to the extent that observance of such City plans, ordinances and guidelines does not infringe upon the internal self-government of the Tribe or its use of the Trust Lands. The Tribe shall adopt building standards as required by the Compact for the construction of a gaming facility, and prior to the use of any structure constructed on the Trust Lands, will provide written certification from the project architect that said structures have been constructed in accordance with said standards.



The Tribe further agrees to use its Property for the operation of a Facility in conformity with the requirements of IGRA, consistent with the requirements of this MOU and all applicable State or federal laws, as described in Exhibit A attached hereto, unless and until this MOU is amended as provided herein.

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The Tribe agrees to operate and maintain the Facility and Trust Lands as a first-class, high quality destination commercial gaming resort and continuously maintain all landscaping thereon in a healthy condition. The Tribe also agrees to remove any graffiti and/or waste matter in a timely manner. If the City finds the Facility and/or Trust Lands not to be so maintained, the City will send written notice to the Tribe, specifying with particularity the grounds of the complaint. If the City and the Tribe disagree as to this matter, either Party may seek to use the dispute resolution procedures as outlined in Section 8 of this MOU.

2.3. Environmental Review. The Tribe's application to have land taken into trust is not governed by State laws, and the Tribe is not required to submit its projects to the City for discretionary approvals. The Tribe does agree, however, to submit its future development plan for review and comment by the City staff prior to commencing any construction on the Trust Lands.

At this time, the Tribe has not purchased land within the City, and no trust application has been filed; therefore, no meaningful CEQA review can be done at this point by the City. The Parties agree that when the City initiates an environmental review process pursuant to CEQA related to any City approval of matters related to this MOU and/or any future construction by the City and/or the Tribe, the Tribe will compensate the City for the costs of environmental review in the same manner as any other similarly situated developer seeking to develop land within the City. The City will complete the environmental review process related to the City's extension of services contemplated in this MOU prior to such extension of services.

2.4 Temporary Facility. The Parties agree that a Temporary Facility may be utilized on the Trust Lands for gaming purposes prior to construction of the Permanent Facility for gaming. As long as economically feasible, the Tribe and the City agree to work cooperatively and expeditiously to pursue the construction of the Permanent Facility in a timely manner.

### 3. COMPENSATION AND BENEFITS

3.1. Payments to City. The Parties agree that the following payments will be made to the City.

3.2. Revenue Sharing Payment. As compensation for the unspecified impacts to the City, the Tribe will make an annual Revenue Sharing Payment into the General Fund of the City in the amount of \$2,000,000.00 (two million dollars). The first payment, equal to 50% of the annual payment, will be paid to the City by the Tribe upon the issuance of an occupancy permit by the Tribe for any Temporary Facility. Thereafter, until the permit for the occupancy of the Permanent Facility is issued by the Tribe, the Tribe shall annually pay the City an amount equal to 50% of the total Revenue Sharing Payment on the anniversary date of the first payment. Once the permit for the occupancy of the Permanent Facility is issued by the Tribe, the Tribe shall pay the remaining 50% of the total Revenue Sharing Payment. Thereafter, the Tribe shall pay the City the total amount of the Revenue Sharing Payment, such payment to be made within 30 days of the one-year anniversary of the previous payment. Because the scheduling and timing of the construction of any Temporary or Permanent Facility is unknown, the parties do not intend to have the Tribe pay an amount which equals more than the amount of the total Revenue Sharing Payment in any one year. Therefore the Parties agree to adjust the scheduled payment date of the total Revenue Sharing Payment accordingly, if necessary.

In the event that the construction cost of the Permanent Facility exceeds \$200,000,000.00 (two hundred million dollars), the Tribe agrees to pay to the City annually, as an additional Revenue Sharing Payment, an amount equal to 1% (one percent) of the excess amount of the construction cost over \$200,000,000.00 (two hundred million dollars). Additionally, in the event that the Tribe shall construct any expansion of or addition to the Permanent Facility that has the effect of increasing the amount of floor space inside the Permanent Facility that is devoted to gaming by 5% (five percent) or more, the Tribe agrees to pay to the City annually, as an additional Revenue Sharing Payment, an amount equal to 1% (one percent) of the cost of construction of any such expansion or addition.

After the Permanent Facility is in operation as a gaming facility, the Revenue Sharing Payment will be adjusted annually to reflect the current rate of inflation. This adjustment for inflation will thereafter be made on a yearly basis. Further, the City agrees that if another competing gaming facility is established within the United States which is located within

twenty-five (25) miles of the Manzanita Tribe's Facility, the Revenue Sharing Payment will be decreased to one million annually, with annual adjustments for the rate of inflation.

### 3.3 Permanent Fire Station.

A. The City anticipates the need for a fire station to be built on or near the Trust Lands. The station should be located at a site that will permit fire and emergency response to the Trust Lands within five (5) minutes of a call. The City estimates based on current costs that a fire station will cost approximately \$3,000,000.00 to construct. Based on the unknown location of the proposed Facility and the uncertain nature of the timing of any development, the exact method of construction of the fire station cannot be ascertained at this time. However, the Tribe agrees to pay its fair share of the cost of designing and constructing a permanent fire station based on a fair share assessment conducted by the City in accordance with applicable State law. The Tribe agrees that, at the request of the City, the Tribe will provide for the costs of the design and construction of a permanent fire station in an amount not to exceed \$3,000,000.00, with reimbursement from the City to be given to the Tribe, as is customarily done with other developers in the City. In such case, the City will reimburse the Tribe for any money that the Tribe pays beyond its fair share after adjoining landowners have paid their fair share to the City for the construction. In the event that the parties agree to utilize a temporary fire station until a permanent fire station can be constructed, the Tribe agrees to pay the costs of a temporary fire station. Construction of a fire station shall be commenced at a time that permits it be fully operational on the scheduled opening date of any temporary or permanent gaming facility to be located on the Trust Lands, provided however, that a temporary station shall be considered sufficient for this requirement.

B. Should it become necessary, the Tribe agrees to negotiate in good faith with the City for a lease agreement for a portion of the Trust Lands to be used for the placement of a temporary or permanent fire station. With respect to any land so provided by the Tribe, the Tribe shall receive a credit for the difference between the fair market rental value of the land and the rate at which the land is leased to the City. The full amount of any such credit will be applied to the benefit of the Tribe to offset its obligation for the construction expenses referenced in Section 3.3. A above, provided that such credit shall be given only towards construction of a permanent fire station. Furthermore, once the credit fully covers the amount of the Tribe's fair share assessment, the Tribe will no longer be entitled to any such credit and the City will no longer be

required to pay a lease payment for use of the land, unless a lease payment is required by the Bureau of Indian Affairs or other federal agency.

3.4. Roads and Traffic Circulation. The Tribe will conduct a traffic study to determine the traffic impacts of its proposed use of the Trust Lands prior to development of a Temporary and Permanent Facility. The Tribe will mitigate traffic and circulation issues from the Facility in compliance with the Compact, which requires that such mitigation be consistent with existing local standards. The Tribe acknowledges that if any street improvements are required, that the Tribe will pay for the costs of those improvements, including City staff time to research and process these issues, in the same manner as any other developer in the City would be required to do. The Tribe further agrees that if any existing roads must be expanded due to the increase in traffic caused by the Tribe's use of the Trust Lands, the Tribe will grant rights-of-way to the City to the extent required to accommodate the expansion. All amounts spent by the Tribe for the construction of any infrastructure that qualifies towards the City's circulation plan will be credited towards the Development Impact Fees ("DIF Fees") due.

3.5 Development Impact Fees.

A. The Tribe agrees to pay a one-time payment to City for DIF Fees pursuant to City's approved rates and process. The Tribe agrees to pay DIF Fees at the rate that is operative and in force and effect on a citywide basis for all the Facilities constructed on the Trust Lands. Upon issuance of a construction permit for the Temporary Facility, the Tribe will pay an amount no less than \$100,000.00 to the City for DIF fees. The total DIF Fee due for the Permanent Facility will be due upon the issuance by the Tribe of a permit for the construction of a Permanent Facility. Any money paid by the Tribe for DIF Fees prior to the construction of the Permanent Facility will be credited toward the total DIF Fees due for the Permanent Facility.

B. School District DIF Fees are regularly charged to projects located in the City at the rate specified in the California Government Code. The Tribe agrees to pay the City the applicable School District DIF Fee that is operative and in force and effect for the Calexico Unified School District. The City agrees to forward such payment to the Calexico Unified School District within thirty (30) days of receiving the payment from the Tribe. The Tribe shall pay the total amount for the school district DIF Fees upon the issuance by the Tribe of a permit for the construction of a Permanent Facility on the Trust Lands.

3.6 Property Tax. The Tribe and the City acknowledge that, because of the status of the Trust Lands, the City will not have jurisdiction to require the payment of property taxes on the Trust Lands.

3.7 Hotel Revenue Sharing. The Tribe agrees to pay the City a Hotel Revenue Sharing payment at a rate equal to one-half of the rate of the City's then current Transient Occupancy Tax ("TOT") to be paid on a quarterly basis beginning the first quarter after the hotel is open. The Hotel Revenue Sharing payment will be derived from the applicable percentage of the revenue received from the actual occupancy figures from the rental of each hotel, motel, or lodging room. The amount of the Hotel Revenue Sharing payment shall not be adjusted unless and until the City's TOT rate is adjusted on a citywide basis. The Hotel Revenue Sharing payment shall not be applicable to rooms occupied by members of the Tribe, or to rooms that are furnished to casino patrons on a complimentary basis. The Tribe agrees that no more than forty percent (40%) of the hotel rooms will be furnished to guests on a complimentary basis during any calendar year. In return, the Tribe agrees to develop, promote and fund a marketing campaign promoting Calexico as a destination for tourists, at a cost equal to the amount of the Hotel Revenue Sharing payment, as described above, that is paid to the City on a quarterly basis. The Tribe can choose when in the year they would like to spend such marketing money, however on a yearly basis, the Tribe must spend an amount for marketing purposes that is equal to the yearly amount paid to the City as specified under this Section.

3.8 Sales Tax. The Tribe agrees to voluntarily collect the applicable sales tax that is in effect in the City of Calexico and remit the tax to the State.

3.9 Support for Public Facilities. The City has requested, and the Tribe agrees, that the Tribe will make an annual contribution to the City in the amount of two hundred fifty thousand dollars (\$250,000) to support the expansion of public facilities in the City. The initial payment shall be made to the City thirty (30) days after an occupancy certificate is issued by the Tribe for any Temporary or Permanent Facility. Thereafter, the payment shall be made on an annual basis, within 30 days of the one-year anniversary of the previous payment.

3.10 Measure J. The Tribe acknowledges that a bond measure known as Measure J has been approved by the citizens of the City for the benefit of the Calexico Unified School District. The Tribe agrees to pay an annual payment in an amount equal to the amount that

(d) Fees and charges other than those specifically described in this MOU may be applied to the Facility only in a manner agreed to by the City and the Tribe in writing during the term of this MOU.

3.13. Reservation of Tribal Status. Nothing in this MOU is intended to or shall operate to waive or impair the tax-exempt status of the Tribe under federal or State law; all such rights and privileges of the Tribe are reserved.

#### 4. MUNICIPAL SERVICES

4.1. Fire Protection and Police Department Services. The Tribe will obtain and pay for Fire Protection Services and Police Department services for the Trust Lands and any Temporary or Permanent Facility under the terms of one or more service contracts to be negotiated between the Parties at a time in which the design and layout of the proposed Facility are more definite. Such service contracts will define the level of service requested by the Tribe and provide for funds for the City to provide such services. The fire and police service contracts shall be fully executed prior to the occupancy or use of any Temporary or Permanent Facility on the Trust Lands. The scope of services included in such contracts will comply with the requirements of the Compact. In the event that the Tribe establishes its own Fire Department and/or Police Department, the service contracts with the City will be adjusted accordingly.

The City Police Department shall have authority to enforce State and local criminal laws on Trust Lands to the extent authorized by Public Law 280. The City Police Department will make every reasonable effort to coordinate and cooperate with appropriate Tribal officials during the investigation or enforcement of any criminal actions except when, in the good faith and reasonable judgment of the law enforcement officers involved, their safety, or the integrity of an investigation or enforcement action, would be materially compromised by doing so. The Tribe also agrees that they will make every reasonable effort to coordinate and cooperate with City law enforcement officials during the investigation or enforcement of any criminal actions, however in no case will the Tribe be required to cooperate in a manner that is inconsistent with the status of the Manzanita Band as a sovereign government, or that impairs or infringes upon the sovereign immunity of the Tribe.

4.2. Sewer and Water Service.

A. The Tribe shall provide for sewage disposal for the Trust Lands and the Facilities thereon by connection to the City's existing sewer collection system. The Tribe will pay fees and/or fair share assessments, obtain required easements for sewer infrastructure, construct to City sewer infrastructure standards, and dedicate to the City such sewer infrastructure, to the same extent any other developer in the City would be required to do so. Sewer service must be completed and inspected pursuant to this MOU and the service contracts described in Section 4.1 must be executed prior to any use occurring on the Trust Lands. Any approvals by the City required to implement this Section shall not be unreasonably withheld, and the standards referred to in this Section shall be substantially identical to those applied to similarly situated users.

B. The Tribe shall obtain its water supply for the Trust Lands and the Facilities thereon from the City municipal water system and shall conform to all standard requirements imposed by the City. The Tribe will pay fees and/or fair share assessments, obtain required easements for water infrastructure, construct to City water infrastructure standards, and dedicate to the City such water infrastructure, to the same extent any other developer in the City would be required to do so. Water service must be completed and inspected pursuant to this MOU and the service contracts described in Section 4.1 must be executed prior to any use occurring on the Trust Lands. Any approvals by the City required to implement this Section shall not be unreasonably withheld, and the standards referred to in this Section shall be substantially identical to those applied to similarly situated users.

C. The Tribe shall acquire the Trust Lands subject to all existing City rights-of-way and easements for the provision of sewer and water.

4.3. Solid Waste Disposal. The Tribe shall contract for solid waste disposal with the City's franchised waste hauler, however waste disposal services must be provided at the same rates as are charged for comparable uses.

4.4. Emergency Disaster Services. Not later than ninety (90) days before the public opening of any casino or related facilities constructed on the Trust Lands, and not less than annually thereafter, the City and the Tribe shall mutually develop a plan for meeting the reasonably expected emergency response needs of the Facility in the event of a disaster. The

plan shall be consistent with State and Federal mandates that are applicable to the Tribe, and shall be approved by the Tribal Government, City Manager, Police Chief and Fire Chief. The Tribe agrees to provide information to the City regarding the safety elements of the Facility and the location of any emergency or disaster preparedness equipment within the Facility. The term "disaster" includes fire, earthquake, or other natural or man-made event that might reasonably be expected to occur and involve the Facility, and that might reasonably be expected to cause catastrophic loss of life or injury. Annually, or upon reasonable request by the Tribe, the State, or the City, the parties agree to conduct an updated assessment of the need for disaster emergency response services at the Facility. If such an assessment is made at the request of the Tribe, it shall be at the Tribe's expense; otherwise the cost of performing the assessment will be borne by the government or agency requesting the assessment.

## **5. ECONOMIC DEVELOPMENT**

5.1. Employment of City Residents. The Tribe shall work in good faith with the City to employ qualified City residents at the Tribe's Facility to the extent permitted by applicable law. The Tribe shall offer, or cause to be offered, training programs to assist City residents to become qualified for positions at the Tribe's Facility to the extent permitted by applicable law. The Tribe agrees to provide information to the City on an annual basis to demonstrate the percentage of the Facility's workforce that are City residents. Nothing in this Section shall be interpreted to limit or modify in any way the Tribe's policy of Indian preference in employment.

## **6. GAMBLING REGULATION**

6.1. Allowed Gaming Age in Casino. The City has requested, and the Tribe agrees, that the gambling age in the casino will be restricted to twenty-one (21) years of age or older.

6.2. Problem Gambling. The Tribe will establish and maintain a comprehensive program to address and prevent problem gambling. The program will include: 1) training of all casino managers to recognize the signs of problem gambling; 2) posting of the problem gambling hotline number in the casino; 3) making flyers and other information available to all casino patrons; 4) making voluntary contributions to organizations that assist people with gambling problems in the Calexico area; and 5) paying into the State fund to mitigate problem gambling, as required by the Compact. The City and the Tribe agree that it is in the best interest of the two governments to work cooperatively to develop a plan to identify and address the impacts of



problem gambling within Calexico. The parties will jointly research existing programs, quantify the needs within the City, design an appropriate program, identify funding requirements, and locate and acquire funding for the program. The City and the Tribe will each appoint a representative to lead the cooperative effort. The representatives will meet periodically to develop the plan. The City and the Tribe agree to cooperate in efforts to reach out to other gaming and health service providers for funding assistance for the program; such sources include, but are not limited to, the State of California, tribal gaming operations, card rooms, racetracks, lotteries, public agencies, grants and private funding.

## **7. OPERATIONS**

7.1. Security. The Tribe shall employ and continuously maintain an adequate security and surveillance force at the Facility to reasonably secure from theft, injury, or threat thereof, the person and property of patrons, contractors, licensees, and other persons entering the Facility, as well as to protect the assets of the Tribe, in compliance with the Compact.

7.2. Parking and Access. The Tribe shall engage qualified professionals to conduct a comprehensive parking study to determine actual parking demand within a reasonable time after operation of the Facility commences. If the study shows a parking shortage, the Tribe shall implement corrective measures. If the Tribe and the City disagree as to the need for additional parking or infrastructure improvements, or the cost thereof, the parties shall resolve the dispute as provided in Section 8 of this MOU.

7.3. Access to Facility. The City shall have the right to inspect the Facility subject to the terms and conditions of the Compact.

## **8. DISPUTE RESOLUTION**

### **8.1. Dispute Resolution.**

A. Meet and Confer Process. In the event the City or the Tribe believes that the other has violated this MOU, it may request in writing that the Parties meet and confer in good faith for the purpose of reaching a mutually satisfactory resolution of the problem within fifteen (15) days of the date of service of said request, provided that if the complaining Party believes that the problem identified creates a threat to public health or safety, the complaining Party may proceed directly to arbitration as provided in Subsection D below.

B. Notice of Dispute. If either Party is not satisfied with the result of the meet and confer process, such Party may provide written notice to the other, describing any alleged violation of this MOU ("Notice of Dispute"), with particularity and setting forth the action required to remedy the alleged violation.

C. Response to Notice of Dispute. Within fifteen (15) business days of service of a Notice of Dispute, the recipient Party shall provide a written response setting forth in detail the steps it has taken and/or will take to address the problem. The failure of the recipient Party to serve a timely response shall entitle the complaining Party to proceed directly to arbitration, as provided in Subsection E below.

D. Expedited Procedure for Threats to Public Safety. If the City or the Tribe reasonably believes that a violation of this MOU has caused or will cause a significant threat to public health or safety, resolution of which cannot safely be delayed for the time periods otherwise specified in this Section, the complaining Party may proceed directly to arbitration as described in Subsection E below. At least twenty-four (24) hours before proceeding in this manner, the complaining Party shall provide to the other a written request for correction and notice of intent to exercise its rights under this Subsection D, setting out the basis for its reasonable belief that there is an imminent threat to public health or safety.

E. Binding Arbitration Procedures. Subject to prior compliance with the meet and confer process set out above in Subsection A, the Notice and Response process in Subsections B and C, and except as provided in Subsection D, either Party may initiate binding arbitration to resolve any dispute arising under this MOU. The arbitration shall be conducted in accordance with the following procedures:

(1) The arbitration shall be administered by the Judicial Arbitration Management (JAMS) in accordance with its Comprehensive Rules and Procedures or other mutually agreed upon rules.

(2) The arbitration shall be held in Imperial County, California, unless otherwise agreed. The arbitrator shall be empowered to grant compensatory, equitable and declaratory relief.

of this MOU. This limited waiver of sovereign immunity shall apply only to the City, and shall not operate for the benefit of, nor confer any rights upon, any third parties. The Tribe shall provide an opinion of its legal counsel, in a form reasonably acceptable to the Attorney for the City, to the effect that the waiver of sovereign immunity as stated in this Section and Exhibit B attached hereto has been adopted by the Tribe in accordance with both Tribal and Federal law and is effective.

8.4 Limitation of Actions. The Tribe's waiver of immunity from suit specifically allows the following actions and remedies:

A. Damages. This includes the enforcement of an award of money and/or damages by arbitration or court enforcement of an arbitration award; provided however that the arbitrator(s) and/or the court shall have no authority or jurisdiction to order execution against any assets or revenues of the Tribe except: (1) undistributed or future revenues of the Tribe's Facility in the City; (2) the future revenues of any other gaming operations conducted by the Tribe; (3) the assets of the Facility; and (4) any property that the Tribe acquires within the City, other than the Property that is intended to be the location of the Gaming Facility. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Tribe other than the limited assets of the Tribe specified in this Section.

B. Consents and Approvals. This includes the enforcement of a determination by an arbitrator that either Party's consent or approval has been unreasonably withheld contrary to the terms of this MOU.

C. Injunctive Relief and Specific Performance. This includes an action brought to preserve the status quo under Section 8.7 of this MOU or to otherwise compel arbitration or performance under this MOU.

8.5. Attorneys Fees. In the event either Party commences an Action (as defined herein) against the other Party which arises out of a default of, breach of, failure to perform this MOU or otherwise related to this MOU, the Prevailing Party in the Action shall be entitled to recover its Dispute Resolution Expenses (as defined herein) from the other Party in addition to whatever relief to which the Prevailing Party may be entitled. For the purposes of this Section, the term "Action" means any actions specified under Section 8.4 above, any arbitration or

mediation, any action to enforce an arbitration award, or any other alternative dispute resolution procedure, and the filing, recording, or services of any process, notice, claim, lien, or other instrument which is a prerequisite to commencement of the Action. For the purposes of this section, the term "Dispute Resolution Expenses" means all costs and expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action. For the purposes of this Section, the term "Prevailing Party," shall have the meaning ascribed in Code of Civil Procedure section 1032(a)(4).

8.6. Indemnification. Equitable indemnification principles under California law shall be applicable to this MOU. Either party may enforce its right to equitable indemnification through the procedures set out under Section 8 of this MOU.

8.7. Performance During Disputes. It is mutually agreed that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this MOU, the City and Tribe shall continue to possess the rights, duties, and obligations set forth in this MOU, and the Tribe and the City shall continue their performance of the provisions of this MOU and its Exhibits. The City and the Tribe shall each be entitled to injunctive relief from a federal court or other competent authority to maintain such rights, duties, and obligations during any dispute, controversy, claim or disagreement arising out of this MOU.

## 9. GENERAL PROVISIONS

9.1. Notice. Any notice required to be given pursuant to this MOU shall be delivered to the appropriate Party by Federal Express or by Certified Mail Return Receipt Requested, addressed as follows:

If to the Tribe:

MANZANITA BAND OF THE KUMEYAAAY NATION  
P.O. Box 1302

Boulevard, CA 91905  
Attn: Tribal Chair

Copies to:

Tribe's Attorney

If to City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
City Manager  
City of Calexico  
608 Heber Ave.  
Calexico, CA 92231

Copies to:

Jennifer Lyon, City Attorney  
Mc Dougal, Love, Eckis,  
Smith, Boehmer & Foley  
460 North Magnolia  
El Cajon, CA 92021

or to such other different address(es) as City or the Tribe may specify in writing. Any such notice shall be deemed given two (2) days following deposit in the United States mail or upon actual delivery, whichever first occurs.

9.2. Authority to Execute and Perform MOU. The Tribe and the City represent and warrant to each other that they have full power and authority to execute this MOU and to be bound by and perform the terms hereof. On request, each Party shall furnish the other evidence of such authority. The persons executing this MOU on behalf of the Parties hereto warrant that (a) such Party is duly organized and existing, (b) they are duly authorized to execute and deliver this MOU on behalf of said Party, (c) by so executing this MOU, such Party is formally bound to the provisions of this MOU, and (d) the entering into this MOU does not violate any provision of any other MOU to which said Party is bound.

9.3. Waivers. No failure or delay by the City or the Tribe to insist upon the strict performance of any term or condition of this MOU, or to exercise any right or remedy upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such term or condition. No term or condition of this MOU, and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this MOU, but every term and condition of this MOU shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

9.4. Captions. The captions for each Section and Subsection are intended for convenience only.

9.5. Interpretation; Severability. It is the intent of the parties that this MOU be interpreted as a whole to carry out the intent of the Parties. If any provision hereof is challenged as being invalid or unenforceable, it shall be construed, insofar as possible, to uphold its enforceability and if it cannot, and is held invalid or unenforceable, it shall be held severable and said invalidity shall not affect the validity of the remainder of this MOU, so long as the fundamental purposes hereof can be obtained.

9.6. Periods of Time. Whenever any action is to be taken on a date specified in this MOU, if such date falls on a Saturday, Sunday, or legal holiday under the laws of the Tribe or the State of California, said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

9.7. Amendment. The parties may from time to time approve amendments hereto in the same manner as this MOU was approved. Any change to or modification of this MOU must be in writing signed by both Parties. Both Parties agree to negotiate in good faith to further the objectives of this MOU.

9.8. Entire MOU. This MOU, including the Exhibits referred to herein and any documents referenced herein or executed by the parties simultaneously herewith, which are expressly incorporated herein by reference, constitutes the entire understanding and MOU of the Parties hereto and supersedes all prior written or oral agreements between the Parties.

9.9. Government Savings Clause. Each Party agrees to execute, deliver and if necessary, record all additional instruments, certifications, amendments, modifications and other documents as may be required by the U. S. Department of the Interior, BIA, NIGC, the office of the Field Solicitor, or by any applicable statute, rule or regulation in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations and interests of the Parties to the fullest extent permitted by law; provided, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of either Party under this MOU or any other MOU or document related hereto.

9.10. Preparation of MOU. This MOU was drafted and entered into after careful review and upon the advice of competent counsel; it shall not be construed more strongly for or against either Party. This MOU may not be unilaterally amended and shall be strictly construed as set forth herein to accomplish the purposes of the MOU.

9.11. Standard of Reasonableness. Unless specifically provided otherwise, all provisions of this MOU and all collateral MOUs shall be governed by a standard of reasonableness.

9.12. Execution. This MOU may be executed in four counterparts, two to be retained by each Party. Each of the four originals is equally valid.

9.13. Status Under Federal Law. This MOU does not constitute, create or convey an interest or encumbrance in real estate and shall not be recorded in any real estate records. In the event of default by the Tribe hereunder, the City's remedies are described in Section 8 of this MOU. The Tribe does not grant to or confer upon the City any authority with respect to the Trust Lands or Facility which is inconsistent with applicable federal law. The City and the Tribe agree that the City's continuing relationship with the Tribe with respect to the Trust Lands or Facility, shall be governed solely by the provisions of this MOU. The Parties further acknowledge that any other regulatory or other rights the City may have or claim with respect to the Trust Lands or Facility, or which are inconsistent with the provisions of this MOU, shall be discharged effective upon the conveyance of title to the Property to the United States to be held in trust for the Tribe as herein contemplated; provided, however that the City shall retain any and all rights provided under federal law.

9.14. No Third Party Beneficiaries. This MOU is not intended to, and shall not be construed to, create any right on the part of a third Party to bring an action to enforce any of its terms, or otherwise to impair the sovereign immunity of the Tribe.

9.15. Term. This MOU shall become effective upon its execution by the Parties hereto. In the event that the BIA determines that 25 U.S.C Section 81 requires this MOU to be executed for a specific period of time, the Parties agree that it shall be effective for the duration of the Compact, or any amendment or extension thereof. In the event that the BIA does not require a specific term, it is the intent of the parties that this MOU shall remain in full force and effect until terminated by mutual agreement of the Parties. If one party seeks to terminate this MOU

and the other party does not agree to terminate, then the Parties shall resolve the dispute as provided in Section 8 of this MOU. If the Tribe is informed that the United States will not take the land into trust or that the Tribe may not conduct gaming activities thereon, this MOU shall terminate thirty (30) days after the Tribe is so informed. The Parties further agree that prior to the Property being taken into trust for the benefit of the Tribe, either party may terminate this MOU if its participation becomes fiscally infeasible subject to the right of the other party to an expedited dispute resolution review under Section 8.1(D) of this MOU.

9.16. Scope of Liability. The Parties intend that the scope of obligations and liabilities of the City to the Tribe and the Trust Lands regarding any municipal services shall be in parity with the obligations and liabilities, which normally operate with respect to citizens and businesses within the jurisdiction of the City. Consequently, nothing in this MOU shall: (1) expand or reduce any obligation of the City to provide services to the Tribe or the Trust Lands, or (2) expand or reduce any liability for damages with respect to the delivery of any services by the City beyond those obligations and liabilities which would be imposed by law as to citizens and businesses otherwise subject to the jurisdiction of the City.

## 10. MISCELLANEOUS PROVISIONS

10.1. Support for Project. In consideration for the obligations undertaken by the Tribe herein, the City shall provide the correspondence attached as Exhibit C to the United States Department of Interior, Bureau of Indian Affairs, in support of the application of the Tribe to the United States, shall request the United States to take the lands identified by the Tribe into trust for the benefit of the Tribe, and shall respond to inquiries about the Tribe's trust application from the Bureau of Indian Affairs in a manner that is consistent with Exhibit C, and shall provide all other correspondence or documents reasonably requested by the Tribe to facilitate or promote the development and successful operation of the Facility.

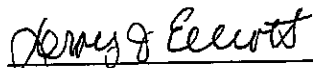
10.2. Tribal-City Joint Meetings. To promote a mutually beneficial relationship between the City and the Tribe, both Parties agree to have regular meetings to discuss ongoing issues with respect to the Trust Land, the Facility, City services, and any joint venture projects. Such meetings shall comply with the Brown Act requirements and any applicable Tribal laws. The parties agree to have these meetings at least once per year.



10.3. Other Development Projects. The Parties understand and agree that the Tribe may in the future undertake projects or development on the Trust Lands which are not specified in Exhibit "A" attached hereto. To preserve good relations and to further the interests of the surrounding community, the Tribe and the City agree that the Tribe shall undertake no new development that would be inconsistent with the moral climate of the community, including but not limited to adult entertainment and sexually oriented businesses as defined in the City's Municipal Code. If the Tribe plans to undertake new development projects, it will notify the City at least three months prior to the commencement of construction of the new project and will negotiate in good faith with the City concerning an MOU for the protection of the Parties' interests and the well being of the surrounding community.

WHEREFORE, IN WITNESS THEREOF, the Parties hereby execute and enter into this MOU with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

Manzanita Band of the Kumeyaay Nation



By: Tribal Chairperson

LEROY ELLIOTT

City of Calexico

  
By: Mayor Perrone

4/5/06

Date

4-04-2006

Date

## EXHIBIT A

The provisions of this MOU are based on the Tribe's proposal to develop a first-class high-quality destination resort including a tribal gaming casino, hotel(s), restaurant(s), and other hospitality and entertainment amenities. The casino will have an anticipated total of 2000 slot machines and will not exceed the maximum allowed under the Tribal-State Gaming Compact between the Tribe and the State of California.

In addition to gaming, the following uses may be developed in conjunction with the Resort specifically authorized under this MOU. All uses shall be supportive uses to the gaming facility:

- Parking Structure
- Hotel/Motel
- Retail Mall
- Restaurants/Coffee Shops/Snack Bars
- Banquet Meeting Hall
- Entertainment Venue

If a use not listed above is proposed, and the City and Tribe cannot agree that the use is gaming-related, or is similar to the uses listed above, then the parties shall resolve the issue under the provisions in Section 8 of this MOU.

# Manzanita Band of the Kumeyaay Nation

## RESOLUTION

NO: 06.01

- WHEREAS,** the Manzanita Band of the Kumeyaay Nation (Tribe), also known as the Manzanita Band of Diegueno Mission Indians is a federally recognized Self-Governance Indian Tribe by the United States Government possessing inherent powers of self-governance with duties, rights, responsibilities, and with power and authority over the lands within the exterior boundaries of the Manzanita Indian Reservation; and
- WHEREAS:** The Tribe operates pursuant to its Constitution and Bylaws adopted on July 12, 1975 pursuant to the Indian Reorganization Act and approved by the Commissioner of Indian Affairs on January 9, 1976; and
- WHEREAS,** Pursuant to Article VI, Section 1 (E) of the Constitution and bylaws, the General Council of the Manzanita Band has the power and responsibility to "administer assets and to manage all economic affairs and enterprises on unassigned lands of the Manzanita Band of Mission Indians;" and
- WHEREAS,** Manzanita Economic Development Corporation ("MEDCO") has identified an opportunity to establish and operate a gaming enterprise pursuant to the Indian Gaming Regulatory Act and a tribal-state gaming compact with the State of California, along with related non-gaming enterprises, in Imperial County, California, for the purpose of creating employment opportunities for tribal members and generating revenues for the Tribe (the "Project"); and
- WHEREAS,** The Project would be developed on lands which must be acquired by the United States in trust for the Tribe for gaming purposes and which are not included in the authorization of the Tribe's Tribal-State Gaming Compact with the State of California dated September 10, 1999 ("Compact"); and
- WHEREAS,** The General Council has previously passed Resolutions 04.20, 04.21, and 04.22, finding that the Project would be in the Tribe's interest, and authorizing the Executive Committee of the Tribe to take all necessary actions in furtherance of the Project, and
- WHEREAS,** The Tribe has negotiated a Memorandum of Understanding ("the MOU") with the City of Calexico (the "City"), which MOU includes numerous benefits for the Tribe, and which MOU includes a dispute resolution provision for the arbitration of disputes between the Tribe and the City concerning the Project; and
- WHEREAS:** form of the MOU has been prepared and submitted to the General Council; and
- WHEREAS:** it is the intent and desire of the General Council: (i) to execute and deliver the MOU, and to perform its obligations under the MOU; (ii) to adopt as applicable law to the MOU certain provisions of California substantive law for the sole and exclusive purpose of providing a mechanism for the establishment of the validity, legality and enforceability of any interest granted or created under the MOU, and

# Manzanita Band of the Kumeeyaay Nation

the enforcement of such interest; (iii) to declare and confirm the legality, validity, enforceability and binding nature of the MOU at such time as it is fully executed; and (iv) to make a limited waiver of the Nation's sovereign immunity from suit, action or arbitration to the extent provided in the MOU; and

**WHEREAS:** As part of the dispute resolution provisions of the MOU, the Tribe has been asked to provide a limited waiver of the sovereign immunity of the Tribe, for the purpose of the enforcement of an arbitration award in the event of a future dispute; and

**NOW THEREFORE BE IT RESOLVED,** he General Council hereby approves and ratifies the MOU between the Tribe and the City, and further authorizes a limited waiver of the sovereign immunity of the Manzanita Band for the purpose of resolving any dispute under the MOU; and

**BE IT ALSO RESOLVED,** that the General Council approves the form of the MOU, subject to such modifications as are deemed appropriate and approved by the Chairperson of the Committee ("Chairperson"), upon the advice of the attorneys for the Nation, which approval shall be conclusively evidenced by execution of the MOU by the Chairperson. The Chairperson is hereby authorized, empowered and directed to execute and deliver the MOU on behalf of the Nation, and to execute and deliver such other instruments, agreements and certifications as may be contemplated by the MOU or as may be required to implement the terms of the MOU or give effect to the transactions herein contemplated, and to take such other actions as may hereafter be necessary and appropriate to carry out the obligations of the Nation thereunder, including but not limited to agreements with the City for fire and police department services; and

**BE IT FURTHER RESOLVED,** that the provisions of the MOU providing for governing law, a limited waiver of sovereign immunity of the Nation, consent to arbitration and the consent to court jurisdiction (collectively, the "Legal Provisions"), are specifically approved by the General Council, and shall constitute the applicable law of the MOU so long as the MOU shall be in effect. However, the Nation's limited waiver of its sovereign immunity shall be irrevocable; and

**BE IT FURTHER RESOLVED,** that in the MOU, the parties have agreed that federal law shall govern the interpretation and enforcement of the MOU or any claim, dispute or controversy arising thereunder, and the General Council hereby approves such choice of law and determines that such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto; and

**BE IT FURTHER RESOLVED,** the General Council hereby declares that upon due execution of the MOU, it shall be and become a legal and valid obligation of the Nation, enforceable in accordance with its terms. Except as expressly set forth in or expressly contemplated by the MOU, no physical delivery, filing or other act need be performed to validate the interests of the City thereunder; and

**BE IT FURTHER RESOLVED,** the General Council hereby consents to any action to enforce the agreement, enforce the agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to enforce an award made by an arbitrator

# Manzanita Band of the Kumeeyaay Nation

pursuant to such agreement to arbitrate and to the jurisdiction of the federal district courts and the federal circuit court located in the state of California, and the U.S. Supreme Court that in any proceeding relating to the enforcement of the MOU, the arbitration provisions in the MOU and any arbitration award; and

**BE IT FURTHER RESOLVED**, that the General Council hereby determines that no laws, ordinances, resolutions or other actions of the General Council, or any of the agencies or instrumentalities of the Nation, either written or established by custom or tradition, prohibit the General Council from approving the execution or delivery of the MOU or undertaking any foregoing approved action; and

**BE IT FURTHER RESOLVED**, that the General Council shall not pass or adopt any resolutions or approve or allow any other action of the Nation, or any of its officers, employees, agents, subdivisions, agencies or instrumentalities, of any nature that shall impair the contractual rights of any party under the MOU or the obligations of the Nation under the MOU, for so long as any amounts owing under the MOU shall remain outstanding. Upon execution of the MOU, as herein authorized, the MOU shall become a legal, valid and binding obligation of the Nation, enforceable in accordance with its terms for purposes of laws of the Nation, laws of the state of California and the laws of the United States and the laws of all other applicable jurisdictions; and

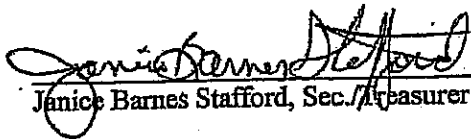
**BE IT FURTHER RESOLVED**, that this Resolution shall become effective as of the date and time of its passage and approval by the General Council.

## CERTIFICATION

This is to certify that this Resolution NO: 06.01 was adopted at a duly called meeting of the Manzanita General Council, San Diego County, California, on the 4<sup>th</sup> day of March, 2006 by a vote of 16 "yes", 0 "no" and 0 "abstaining". This Resolution NO: 06.01 shall stand until rescinded.



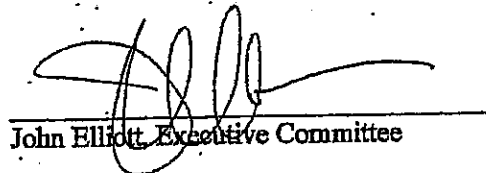
Leroy J. Elliott, Tribal Chairman



Janice Barnes Stafford, Sec./Treasurer



Angela Santos, Executive Committee



John Elliott, Executive Committee

EXHIBIT C

The Parties agree that the City will send a letter supporting the Tribes fee-to-trust application as follows (though this may at a later date be modified by mutual agreement of the Parties):

Name & Address of Contact

Dear \_\_\_\_\_:

It is with great pleasure that I, on behalf of the City Council of the City of Calexico, California, provide this letter of support for the fee-to-trust application, which has or soon will be submitted by the Manzanita Band of Kumeyaay Indian Tribe regarding land located here in the City of Calexico.

Based on information currently available to us we believe that development of an Indian casino in the City of Calexico will provide very significant benefits to the local community. Further, we have worked closely with the Tribe as it has developed its proposal to develop a gaming facility here, and we have reached a mutually agreeable Memorandum of Understanding ("MOU") that we believe will benefit both parties. The MOU provides a workable framework on which the relationship between the City and the Tribe can continue to be effective and mutually beneficial into the future. A copy of that Agreement is enclosed. Additionally, the citizens of the City voted favorably to allow the City to enter into negotiations with the Tribe to create the MOU. The MOU was created after several town hall type meetings to discuss issues of concern to the local community.

The City will be completing the appropriate level of environmental review when the City is required to approve and extend services to any trust lands. The Tribe will also be providing the City with documentation regarding any environmental review that the Tribe will do for the project. The Tribe will be mitigating any impacts from the project pursuant to the MOU.

If you have any questions about the City's support for the Tribe's fee-to-trust application and the proposed gaming facility related thereto, please do not hesitate to contact me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Mayor

cc: The Hon. Arnold Schwarzenegger, Governor of the State of California

**RESOLUTION NO. 06-09**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE MANZANITA BAND OF KUMEYAAY INDIANS REGARDING CERTAIN FINANCIAL ARRANGEMENTS AND TERMS AND CONDITIONS FOR THE PROVISIONS OF SERVICES TO A POTENTIAL TRIBAL CASINO IN CALEXICO.**

**WHEREAS**, the City Council of the City of Calexico is the governing body of the City and charged with the responsibility to enter into memorandums of understanding ("MOU") between the City and other parties, and

**WHEREAS**, the Manzanita Tribe intends to acquire land within the City and seek to have that land put into trust by the Bureau of Indian Affairs ("BIA"), however no specific parcel has been identified at this time; and

**WHEREAS**, pursuant to a favorable vote by the citizens of the City in June 2005, the City and the Tribe seek to work together to mitigate impacts that a casino may have; and

**WHEREAS**, this MOU is based on the estimated size and description of future development of an Indian gaming facility in the City; and

**WHEREAS**, no specific timeline has been identified for construction of the Facility at this time; and

**WHEREAS**, this MOU is intended solely as a funding arrangement between the Parties and is not a "project" as defined by the California Environmental Quality Act ("CEQA"); and

**WHEREAS**, the City will perform any required environmental review for the proposed Indian gaming Facility at the earliest possible time that such review can be meaningfully accomplished; and

**WHEREAS**, given the uncertainty of approvals and timelines for the Indian gaming Facility, this MOU does not bind the City to providing any services at this time; and

**WHEREAS**, the City is prepared to support the Tribe's trust application to the United States if the Tribe enters into this enforceable MOU to mitigate the impacts of the development.

**WHEREAS**, the City formed an ad hoc Casino Advisory Committee which held several public meetings to gather public input for the MOU; and

WHEREAS, the City also held a duly noticed public meeting on February 9, 2006 to review and consider this MOU.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CALEXICO AS FOLLOWS:

SECTION 1. The Council finds that the above-listed recitals are true and correct.

SECTION 2. After considering the interests of the public as reflected, in part, in the Staff Report and public testimony, the City Council hereby approves the Memorandum of Understanding that is attached hereto and incorporated herein by reference as Exhibit "A."

SECTION 3. The Council further directs staff to take all necessary steps to implement the MOU, including the drafting and sending of any letters of support for the trust application or proposed project.

PASSED, ADOPTED, AND APPROVED by the City Council of the City of Calexico at the regular meeting this 9th day of February, 2006.



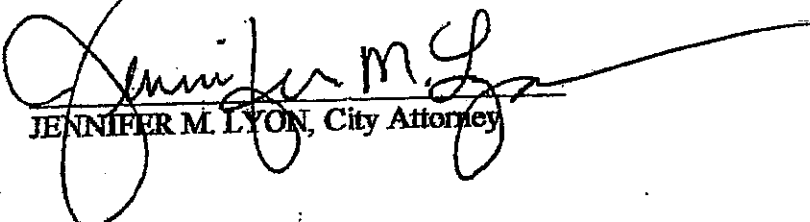
ALEX PERRONE, Mayor

ATTEST:



LOURDES CORDOVA, City Clerk

APPROVED AS TO FORM:



JENNIFER M. LYON, City Attorney



STATE OF CALIFORNIA )  
CITY OF CALEXICO )  
COUNTY OF SAN DIEGO )

ss.

I, Lourdes Cordova, City Clerk of the City of Calexico, do hereby certify under the penalty of perjury, that the foregoing Resolution No. 06-09, was duly adopted by the City Council at a meeting of said City Council held on the 9th day of February, 2006, and that it was so adopted by the following vote:

AYES: Durazo, Ouzan, Perrone, Pacheco, Renison  
NOES: None  
ABSTAIN: None  
ABSENT: None

  
\_\_\_\_\_  
LOURDES CORDOVA, City Clerk  
City of Calexico

## East County tribe gets option on land for hotel-casino

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By **Chet Barfield**  
STAFF WRITER

May 4, 2006

East County's Manzanita Indian band announced this week that it has secured a purchase option on a 60-acre parcel in Calexico for an off-reservation hotel-casino project it has been pursuing since 2003.

The proposed project site in the Imperial County city is on the southwest corner of Jasper Road and state Route 111, about four miles north of the much larger Mexican border city of Mexicali.

The Manzanita tribe, whose reservation is 50 miles from Calexico in the eastern mountains of San Diego County, is being funded by the Viejas Indian band in its bid to develop a \$175 million casino with 2,000 slot machines and a 200-room hotel.

The proposal has been approved by Calexico's city government and voters but also must be approved by the governor and the U.S. Interior Department. Meanwhile, Congress is considering legislation to place added restrictions on Indian casinos outside existing reservations.

In February, Manzanita and Viejas signed a development agreement with Calexico under which the tribal partners would pay the cash-strapped city more than \$2 million a year and fund numerous service and infrastructure upgrades.

Manzanita officials said they are monitoring the proposed congressional legislation but in the meantime applied last month to have the Calexico tract placed into federal trust, essentially annexing it to the Manzanita reservation.

The tribe has made a down payment on the 60-acre parcel, securing the option to buy it on the condition that the casino plan moves forward.

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■ Chet Barfield: (619) 542-4572; [chet.barfield@uniontrib.com](mailto:chet.barfield@uniontrib.com)

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## Gambling in the Golden State 1998 Forward

*By Charlene Wear Simmons, Ph.D.  
Assistant Director*

*Requested by Attorney General Bill Lockyer*

MAY 2006

CRB 06-004

C A L I F O R N I A R E S E A R C H B U R E A U

## EXECUTIVE SUMMARY

This report was requested by California Attorney General Bill Lockyer and provides an overview of gambling in California since 1998, including its social and economic impacts. The report considers each segment of the gambling industry in a separate chapter: Indian casinos, the state lottery, horse racing, card rooms and Internet gambling. The final two chapters broadly examine the literature on the social and economic impact of the gambling industry.

### A FAST GROWING AND PROFITABLE INDUSTRY

Gambling is a major and fast-growing industry. Industry revenues in the United States grew from \$30.4 billion in 1992 to \$68.7 billion in 2002, and increased from 0.48 to 0.66 percent of gross domestic product.<sup>1</sup>

Gambling is a large industry in California, with about \$13 billion in gross gaming revenues in 2004. Indian casino gross gaming revenues were an estimated \$5.78 billion, card clubs took in about \$655 million, the state lottery's sales were nearly \$3 billion, and over \$4 billion was wagered on horse races. Net revenues after prizes and operational expenses are deducted were considerably less. Racetracks and horsemen kept about eight percent (\$302 million) and the state lottery's net revenues were \$1.09 billion; card club and Indian casino net revenue figures are generally proprietary.

What is the potential of the gambling market in California? We know of no way to produce a credible estimate. We simply have no experience with the phenomenon of readily available and skillfully packaged gambling opportunities located relatively near to California's large population centers. We do know that gambling is growing very rapidly in the state and that knowledgeable observers of the industry expect it to continue to expand.

Indian casino gaming in particular has the potential to expand considerably in California. Sixty-six of California's 108 federally recognized tribes have tribal-state compacts to operate gambling facilities, and 61 have gambling facilities. Another 67 California tribal groups are petitioning the Bureau of Indian Affairs for recognition. As tribes gain federal recognition, they have the right to establish reservation lands with federal approval, and the potential to operate gaming facilities on those and other non-ancestral trust lands.

California tribal casinos earn the most revenue of tribal casinos in any state—an estimated \$5.78 billion in 2004, up from \$3.67 billion in 2002. In 2004, the state's 56 Indian gaming facilities had an estimated 58,100 gaming machines, 1,820 non-house banked table games, and large bingo operations. Non-gaming revenues at California Indian gaming facilities (hotels, restaurants, retail shops, etc.) in 2004, earned an estimated \$544.6 million, a seven percent increase from the previous year.<sup>2</sup>

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<sup>1</sup> See Roger Dunstan, "Gambling in California," California Research Bureau, 1997, and Roger Dunstan, "Indian Casinos in California," California Research Bureau, 1998, for our earlier analyses.

greater the distance, the more scrutiny is to be given to the tribe's justification and the greater weight given to state and local concerns. If the land is being acquired for business purposes, the tribe must provide a plan specifying the anticipated economic benefits.

### *Land Acquisition for Indian Gaming*

The IGRA provides that an Indian tribe has the right to locate gaming facilities on land that was within or contiguous to a reservation in 1988, at the time of the Act's passage.

The ability of tribes to offer gaming on off-reservation lands that were not part of a reservation or held in trust at that time is limited and the process is of obtaining approval is complex. After a review process conducted by the Bureau of Indian Affairs, the Secretary of the Interior must find, after consultation with state and local officials, that (1) the gaming is in the best interest of the tribe and (2) is not detrimental to the local community (defined as all units of local government within ten miles of the site and all Indian tribes within 50 miles). Although there is no requirement that the land be located with the tribe's ancestral area, the further the land is from the tribe's original lands, the greater the weight given to local concerns. Finally, the state's governor must concur (a "Section 20 concurrence").

However tribes may conduct gaming on after-acquired lands (post IGRA, 1988) without the governor's concurrence if the lands:

- Are taken into trust due to a court decision or settlement.
- Are acknowledged to have been part of an initial reservation by the Secretary of the Interior.
- Or have been restored to a landless tribe that was restored to federal recognition.

To qualify under the "restoration of lands" exception, a tribe must have been previously recognized, terminated, and subsequently restored by Congressional, judicial, or administrative action. The land must be identified in the restoration legislation or the tribe must establish a strong historical and geographical relation to the land within a reasonable period of time after restoration.<sup>63</sup>

In 2005, former Secretary Norton declared in a letter to the Governor of Oregon that the Department of Interior would no longer consider gambling agreements for sites that are not already Indian lands held in trust for a tribe by the federal government. The new policy requires an extensive environmental review and support from surrounding communities.

Governor Schwarzenegger negotiated state-tribal compacts in 2005 with the Los Coyotes and Big Lagoon tribes to build casinos in Barstow. Neither tribe is from the area or has land in trust there. Former Secretary Norton's policy of not considering compacts when the land is not already Indian land held in trust and eligible for gaming purposes appears to be in conflict with these compacts.

Previously two California gaming tribes gained state approval for a gaming compact before they had land in federal trust, although the United Auburn Indian Community and the Paskenta Band of Nomelaki Indians had received federal permission through Congressional action to re-establish a land base in their home counties.

So far no California tribes have been authorized to conduct gaming on after-acquired lands by the Secretary of the Interior, although a number are in the process of seeking local and state support for their efforts to do so (see Table 4).

Tribe	Location	Section 20 Exception*
Big Lagoon Rancheria 677 miles from reservation	23.10 Acres – Barstow, San Bernardino County	Off-Reservation §2719(b)(1)(A)** Application dated 3/27/06
Chemehuevi Indian Tribe 160 miles from reservation	40 Acres – Barstow, San Bernardino County	Off-Reservation §2719(b)(1)(A) Application dated 2/14/06
Colorado River Indian Tribes of Arizona 10 miles from reservation	75 Acres – Blythe, Riverside County	Off-Reservation §2719(b)(1)(A) Application dated 2/14/06
Fort Mohave Tribe of Arizona 2.5 miles from reservation	300 Acres - Needles, San Bernardino County	Off-Reservation §2719(b)(1)(A) Application dated 10/2/03 Land is in trust
Karuk Tribe	34 Acres - Yreka, Siskiyou County	Off-Reservation §2719(b)(1)(A) Application dated 4/11/06
Los Coyotes Band of Cahuilla & Cupeño Indians 115 miles from reservation	20 Acres – Barstow, San Bernardino County	Off-Reservation §2719(b)(1)(A) Application dated 3/27/06
Manzanita Band of the Kumeyaay Nation 60 miles from reservation	60 Acres – Calexico, Imperial County	Off-Reservation §2719(b)(1)(A) Application dated 4/14/06
Ramona Band of Cahuilla Indians		Off-Reservation §2719(b)(1)(A) Application dated 4/14/06
Tule River Indian Tribe	39.9 Acres, Tulare County	Off-Reservation §2719(b)(1)(A) Land is in trust, 1994
Elk Valley Rancheria	203 Acres, Del Norte County	Restored Tribe exception+ Off-Reservation §2719(b)(1)(A) Application dated 4/13/01
Enterprise Rancheria of Maidu Indians	40 Acres, Olivehurst, Yuba County	Restored Tribe exception Off-Reservation §2719(b)(1)(A) Application dated 8/13/02
Greenville Rancheria of Maidu Indians	333.66 Acres - Red Bluff, Tehema County	Restored Tribe exception Off-Reservation §2719(b)(1)(A) NOA for EIS published 8/22/05++
Greenville Rancheria of Maidu Indians	18.40 Acres – Chester, Plumas County	Restored Tribe exception Off-Reservation §2719(b)(1)(A) Application dated 4/14/06
North Fork Rancheria of Mono Indians	305 Acres, Madera County	Restored Tribe exception Off-Reservation §2719(b)(1)(A) NOA for EIS published 10/27/05
Quartz Valley Indian Community	74 Acres – Siskiyou County	Restored Tribe exception Off-Reservation §2719(b)(1)(A)

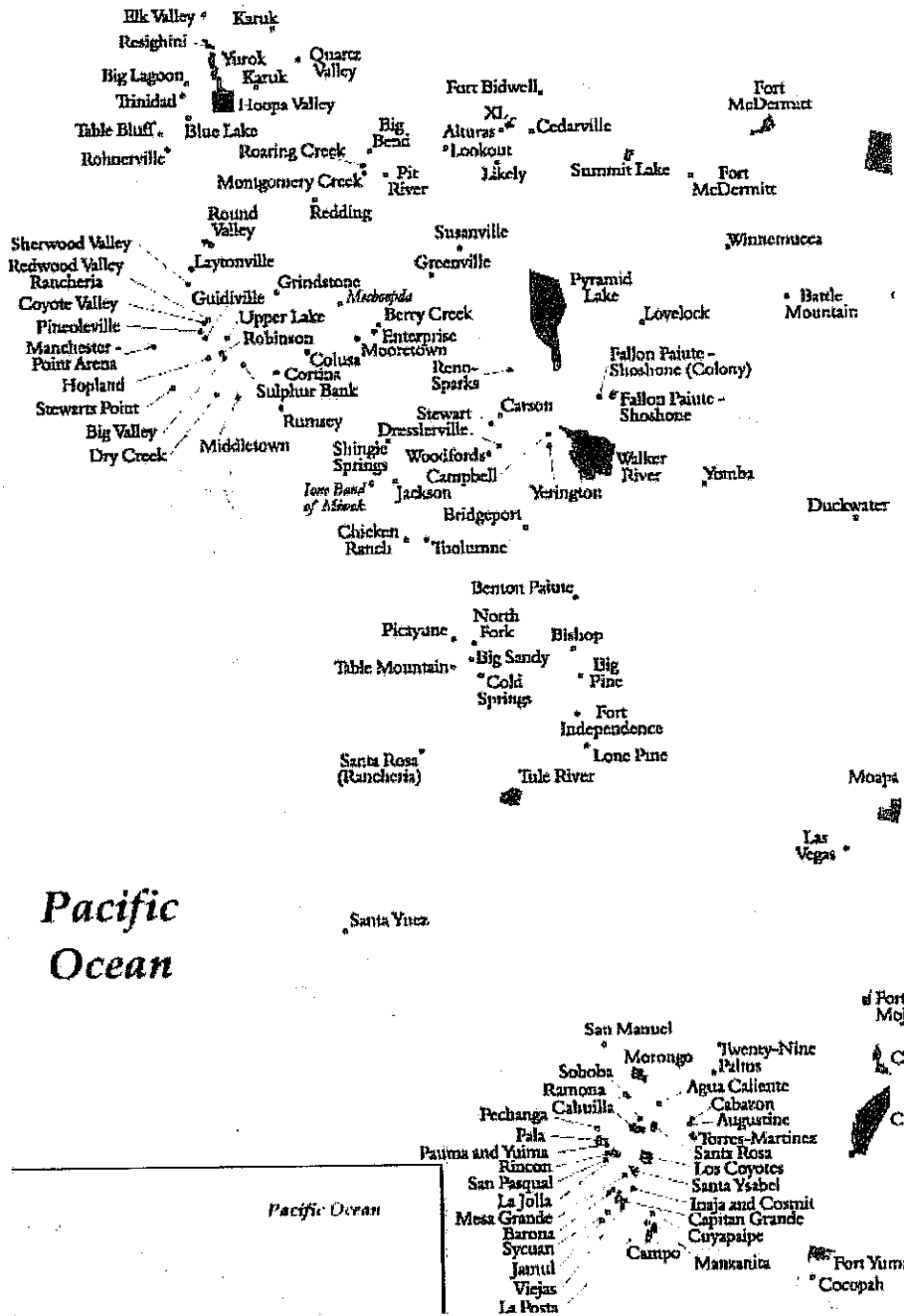
Table 4 Pending Land-Into-Trust Applications for Gaming in California (May 2006)		
Tribe	Location	Section 20 Exception*
		Application dated 4/13/06
Cloverdale Rancheria of Pomo Indians	13.04 Acres – Cloverdale, Sonoma County	Restored Tribe exception Application dated 4/7/06
Graton Rancheria	360 Acres, Rohnert Park, Sonoma County	Restored Tribe exception Application dated 4/14/06
Guidiville Band of Pomo Indians	375 Acres, Richmond, Contra Costa County	Restored Tribe exception Application dated 4/13/06
Ione Band of Miwok Indians	224 Acres, Plymouth, Amador County	Restored Tribe exception NOA for EIS published 11/7/03
Mechoopda Indian Tribe of Chico Rancheria	650 Acres, Chico, Butte County (Tillie Hardwick)	Restored Tribe exception Application dated 1/10/03
Scotts Valley Band of Pomo Indians	29.87 Acres, City of Richmond, Contra Costa County	Restored Tribe 2719(b)(1)(B)(iii) NOA for EIS published 7/20/04
Upper Lake Pomo Tribe	27 Acres – Upper Lake, Lake County	Restored Tribe 2719(b)(1)(B)(iii) Application dated April 10, 06
Timbisha Shoshone 100 miles from reservation	58 Acres, City of Hesperia, San Bernardino County	Settlement of a Land Claim IGRA exception §2719(b)(1)(B)(i) NOA for EIS published 4/7/04
Source: California Tribal Business Alliance, May 2006. *Section 20 of the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2701 <i>et seq</i> **Section 2719 (b)(1)(A) of the IGRA provides that the Secretary of the Interior may determine that a gaming establishment on newly acquired lands may be in the best interest of a tribe, and would not be detrimental to the surrounding community, but only if the governor of the state concurs. +Section 2719(b)(1)(B)(iii) of the IGRA provides that lands restored to a tribe that is restored to federal recognition are excepted from the October 17, 1988 deadline for gaming on trust lands. ++Notice of Availability (NOA) for Environmental Impact Statement		

Separately, the National Indian Gaming Commission (NIGC) must determine whether the proposed gaming will occur on Indian lands, or whether lands taken into trust for non-gaming purposes can be redefined as “Indian lands” for gaming purposes. A number of Indian tribes are seeking this determination. NIGC regulations provide that “Indian lands” are those located within the limits of an Indian reservation, or held in trust by the United States for the benefit of an Indian tribe or individual, over which an Indian tribe exercises governmental power.

In at least one instance, Congress has enacted legislation backdating a post-1988 land acquisition so that it falls within the provisions of IGRA. The Lytton Band of Pomo Indian’s acquisition of a card room in San Pablo, California, about 40 miles south of its ancestral homeland, is the notable and controversial example. The tribe does not have a ratified state-tribal gaming compact (see Table 3).

As noted above, Indian land may also be restored as the result of a lawsuit settlement. For example, the Torres-Martinez tribe entered into a settlement with the United States government in response to the inundation of reservation lands by the Salton Sea. Congress enacted the settlement agreement, providing for additional land near the

Figure 3: Native American Reservations in California  
 Source: U.S. Census Bureau, 2004







THE ASSOCIATE DEPUTY SECRETARY OF THE INTERIOR  
WASHINGTON, DC 20240

FEB 13 2007

The Honorable Leroy J. Elliott  
Chairman, Manzanita Band of Mission Indians  
P.O. Box 1302  
Boulevard, California 91905

Dear Chairman Elliott:

The Manzanita Band of Mission Indians (Tribe) has proposed that the United States take 60 acres in trust for a proposed casino project located in Calexico, Imperial County, California. The Tribe, which has approximately 108 members, owns approximately 4,580 acres of land in trust located east of the City of San Diego 60 miles from the proposed project.

Generally, the Indian Gaming Regulatory Act (IGRA) permits Indian Tribes to establish gaming operations on Indian lands upon which the tribe exercised jurisdiction as of October 17, 1988. Clearly, the Tribe did not exercise jurisdiction on the subject parcel in 1988, therefore it cannot be used for gaming purposes as a matter of law. However, IGRA provides several exceptions in Section 20 of IGRA.

The application from the Tribe seeks to obtain approval under an exception referred to in Section 20 of IGRA. Section 20 allows tribes to conduct casino gaming off-reservation if certain conditions are met. Please be advised that we share the concerns that many have expressed with off-reservation gaming and so-called "reservation shopping." During the 109<sup>th</sup> Congress, legislation was introduced in both the United States Senate and House of Representatives that would have significantly restricted or eliminated the options currently available to Indian tribes under Section 20.

As a result of the public concerns being reflected in the aforementioned proposed legislation and other concerns advanced by local jurisdictions, the Department will be reviewing the regulations that govern the processing of fee-into-trust applications (25 CFR Part 151). We anticipate changes to the rules that may result in fewer off-reservation properties being accepted into trust. In particular, we expect to consider a paradigm where the likelihood of accepting off-reservation land into trust decreases with the distance the subject parcel is from the Tribe's established reservation or ancestral lands, and the majority of tribal members.

Further, we plan to review our approach for soliciting and accommodating the views of elected officials (State, county, city, etc.) and community members in the local area as part of our IGRA Section 20 decisions. We also plan more detailed consideration of the

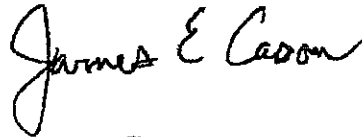
broad implications associated with new gaming operations with established communities where gaming is not currently conducted.

Finally, we expect continued Congressional efforts during the 110<sup>th</sup> Congress to restrict or terminate the options currently available under Section 20. Consequently, the Department plans to review its approach to evaluating Section 20 gaming applications to ensure that we are able to justify to concerned Congressional leaders any action the Department may take to approve an off-reservation gaming application.

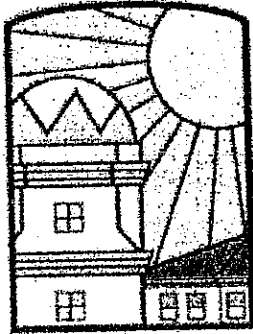
Because the Department has not considered the relative merits of your Section 20 application yet, we cannot advise you further about its prospects for approval. We know that pursuing a Section 20 gaming application can be a long, challenging, and expensive process. We urge you to become fully aware of the changing environment and to discuss the risks of pursuing an off-reservation gaming application with your tribal council, legal counsel, and business partners. In addition, we urge you to consider fully the relative risks, costs, and benefits of pursuing an alternative on-reservation gaming initiative.

After your thoughtful review of the changing gaming environment, and if you should decide to commit the resources required to pursue your application further, we will work with the Tribe, representatives of local jurisdictions, the public, and Congress to ensure that we can properly evaluate your application.

Sincerely,

A handwritten signature in black ink that reads "James E. Cason". The signature is written in a cursive style with a large, looped initial "J".

James E. Cason



# CITY OF CALEXICO

*"Where California And Mexico Meet"*

## NOTICE OF PREPARATION CITY OF CALEXICO

**TO: RECIPIENT**

**SUBJECT: NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT  
REPORT FOR THE 111 CALEXICO PLACE PROJECT**

**Lead Agency:**

City of Calexico  
Development Services Department  
608 Heber Avenue  
Calexico, CA 92231  
*Contact: Armando G. Villa, Director*

The City of Calexico will be Lead Agency and will prepare an Environmental Impact Report (EIR) for the above-referenced project. We are requesting input from resource agencies and the general public as to the scope and content of the environmental information, which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency may need to use the Final EIR prepared by our agency when considering your permit or other approval for the project. The project description, location, and the potential environmental effects are contained in the attached Initial Study.

A 30-day review and comment period for this Initial Study and Notice of Preparation is provided under state law. Please have your response post-marked by April 18, 2007. **Please send your response to Mr. Armando G. Villa, Director of Development Services, at the address shown above.**

*Viva Calexico!*

Also the City of Calexico will hold a public scoping meeting on April 16, 2007 from 4pm to 6pm at the City of Calexico, 608 Heber Avenue, Calexico, CA 92231. This scoping meeting is intended to satisfy Public Resources Code §21083.9 that requires the lead agency to call at least one scoping meeting for a project of regional significance. Noticing of this scoping meeting will also be provided by in the Imperial Valley Press.

**Project Title:** 111 Calexico Place

**Project Location:** The proposed 111 Calexico Place development is located at the southwest corner of the intersection of Jasper Road and State Highway (SH) 111. The irregular-shaped site is bordered on the north by Jasper Road, on the east by SH 111, and to the south and west by the Dogwood Canal (unlined channel) and Central Main Canal (unlined channel). The project site is located within the City of Calexico (Figures 1 and 2 of the Environmental Initial Study). The project site is 232 acres and is currently vacant with level topography.

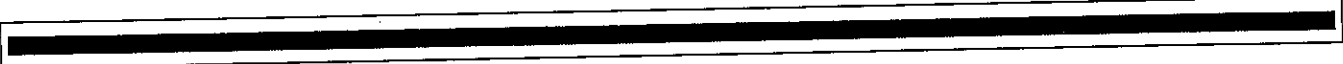
**Project Description:** The proposed project requires the following discretionary actions by the Calexico Planning Commission and City Council, approval of a Specific Plan, General Plan Amendment, Tentative Tract Map, Development Review Approval, and Development Agreement between the City of Calexico and the applicant (Hallwood Calexico Investments, LLC) for the development of an approximately 232-acre project site in the City of Calexico. The Calexico City Council will also be asked to certify an Environmental Impact Report for the project.

The project site has been designated in the City of Calexico's General Plan as Industrial (I), Medium Density Residential (MDR), High Density Residential (HDR), and Commercial Highway (CH). The project site is currently zoned Planned Development (PD). The applicant proposes to develop this site with Commercial Highway land uses, including a Casino and an entertainment facility, which will require changing the designation to Commercial Highway Specific Plan and the zoning to Specific Plan Overlay Zone. The Commercial Highway Specific Plan will be formulated to support land uses conducive to the commercial highway opportunities which may include hotels/conference facilities, restaurants – full service, fast food restaurants, specialty food, specialty retail, “big box” retail, personal services, auto service station/mini mart, car wash, executive suites, professional services, business support services, and recreation/entertainment. Buildout of the proposed project will span over 15 years. For additional project description information please refer to the attached environmental initial study.

**Environmental Review:**

Based on an Environmental Initial Study (enclosed), the City of Calexico has determined that the proposed project could result in potentially significant environmental impacts. The environmental topics that will be addressed in the Draft EIR are as follows:

*Viva Calexico!*



- Aesthetics
- Air Quality
- Biological Resources
- Cultural Resources
- Hazards and Hazardous Materials
- Hydrology/Water Quality
- Land Use/Planning
- Noise
- Public Services
- Transportation/Traffic
- Utilities/Service Systems

The EIR will also identify alternatives to the proposed project that would be capable of reducing or eliminating one or more of the significant environmental effects of the proposed project.

Thank you in advance for your comments on the Notice of Preparation. Again, please provide your comments on or before **April 18, 2007**.

*Signature:*



*Name:* Armando G. Villa

*Title:* City of Calexico Director of Development Services

*Date:* March 19, 2007

**Enclosures:** Environmental Initial Study

***Viva Calexico!***



## 2.0 PROJECT DESCRIPTION

The proposed project is the development of Commercial Highway (CH) land uses, including a Casino and an entertainment facility within an approximately 232-acre project site in the City of Calexico. The proposed project requires the following discretionary actions by the Calexico Planning Commission and City Council, approval of a Specific Plan, General Plan Amendment, Tentative Tract Map, Development Design Approval, and a development agreement between the City of Calexico and the applicant (Hallwood Calexico Investments, LLC). The Calexico City Council will also be asked to certify an Environmental Impact Report (EIR) for the project.

### 2.1 Project Location and Setting

Located at the northernmost gateway to the City of Calexico, the 232-acre project site is situated at the southwest corner of the intersection of Jasper Road and State Highway 111 (SH-111) (Figures 1 and 2). The irregular-shaped property is bordered on the north by Jasper Road, on the east by SH-111, and to the south and west by the Dogwood Canal (unlined channel) and Central Main Canal (unlined channel).

Adjacent properties are flat-lying and at approximately the same elevation as the project site. Properties to the north and west are agricultural fields. A radio station (KXO FM) with broadcast transmission tower and vacant land are located south of the Dogwood Canal and Central Main Canal. Commercial development (Toys "R" Us and Walmart) is located southeast of the site, across SH-111. The Heber Geothermal Company power plant is located approximately 1/2-mile northwest of the site. The Southern Pacific Railroad mainline and semi-truck trailer parking area is located west and southwest of the site, separated by agricultural fields west of the Dogwood Canal and Central Main Canal. The Portico Industrial Park, composed primarily of trucking warehouses and brokerage firms, is located south of the site. The northern portion of Portico Industrial Park is currently undeveloped.

The project site is within municipal boundaries of the City of Calexico, located in Imperial County (Figure 1). The project site has been designated in the City of Calexico's General Plan as Industrial (I), Medium Density Residential (MDR), High Density Residential (HDR), and Commercial Highway (CH); and zoned Planned Development (PD). Under the proposed project, the project site would be designated as Commercial Highway Specific Plan with a primary component of land uses designated as an off Reservation Casino and entertainment facility. The project site would be zoned Specific Plan Overlay Zone. The Commercial Highway Specific Plan will be formulated to support land uses conducive to the commercial highway opportunities which may include hotels/conference facilities, restaurants – full service, fast food restaurants, specialty food, specialty retail, "big box" retail, personal services, auto service station/mini-mart, car wash, executive suites, professional services, business support services, and recreation/ entertainment.

Properties to the north of the project site are located in an unincorporated portion of Imperial County and outside the City's Sphere of Influence. These are designated for agricultural use and zoned for geothermal development. Properties to the west, south and east of the project site are located within the municipal boundaries of the City. These are designated for rail-service industrial use on the west (zoned IR); industrial

and commercial highway uses on the south (zoned IR, IND and CH); and commercial highway on the east (zoned CH).

## 2.2 Project Background

The project site is currently zoned Planned Development (PD) with an approved Specific Plan known as the "Calexico International Center," which was approved by the Calexico City Council in March 7, 2002. The Calexico International Center was a master-planned, mixed-use development project. The project required several discretionary actions, including Specific Plan, annexation of the project site to the City of Calexico, amendment of the City's General Plan and Zoning Ordinance, and approval of a tentative subdivision map, and a street vacation. The annexation of the project site required approval by the Imperial County Local Agency Formation Commission (LAFCO). The project required the approval by the City of Calexico to rezone the site from a pre-zone of Industrial (IND) and Commercial Highway (CH) to Planned Development (PD). Since the project was approved the project site was sold to a new developer (Hallwood Calexico Investments, LLC) and a new Specific Plan and Tentative Tract Map are being prepared for consideration by the Calexico City Council. The following describes the new project (hereinafter referred to as the proposed project) being proposed on this project site.

## 2.3 Project Vision and Objectives

The vision of the proposed project is that the project will create a balance of daily activities, including shopping, recreation, work, and entertainment. The objectives of the developer, Hallwood Calexico Investments, LLC and the proposed project, are as follows:

- To create a high quality business/hospitality development that will become an internationally recognized business and tourism center for those traveling between the United States and Mexico;
- To act as the master developer to the master plan and secure development entitlements for prospective individual tenants in order to fulfill the current and expected market demand for the planned uses; and,
- Facilitate the development of a Class III Indian Gaming Casino to be constructed by the Manzanita Band of the Kumeyaay Nation. A Class III Gaming Casino within the City of Calexico was voter approved by the residents of the City of Calexico through a special election in 2005.

## 2.4 Proposed Project

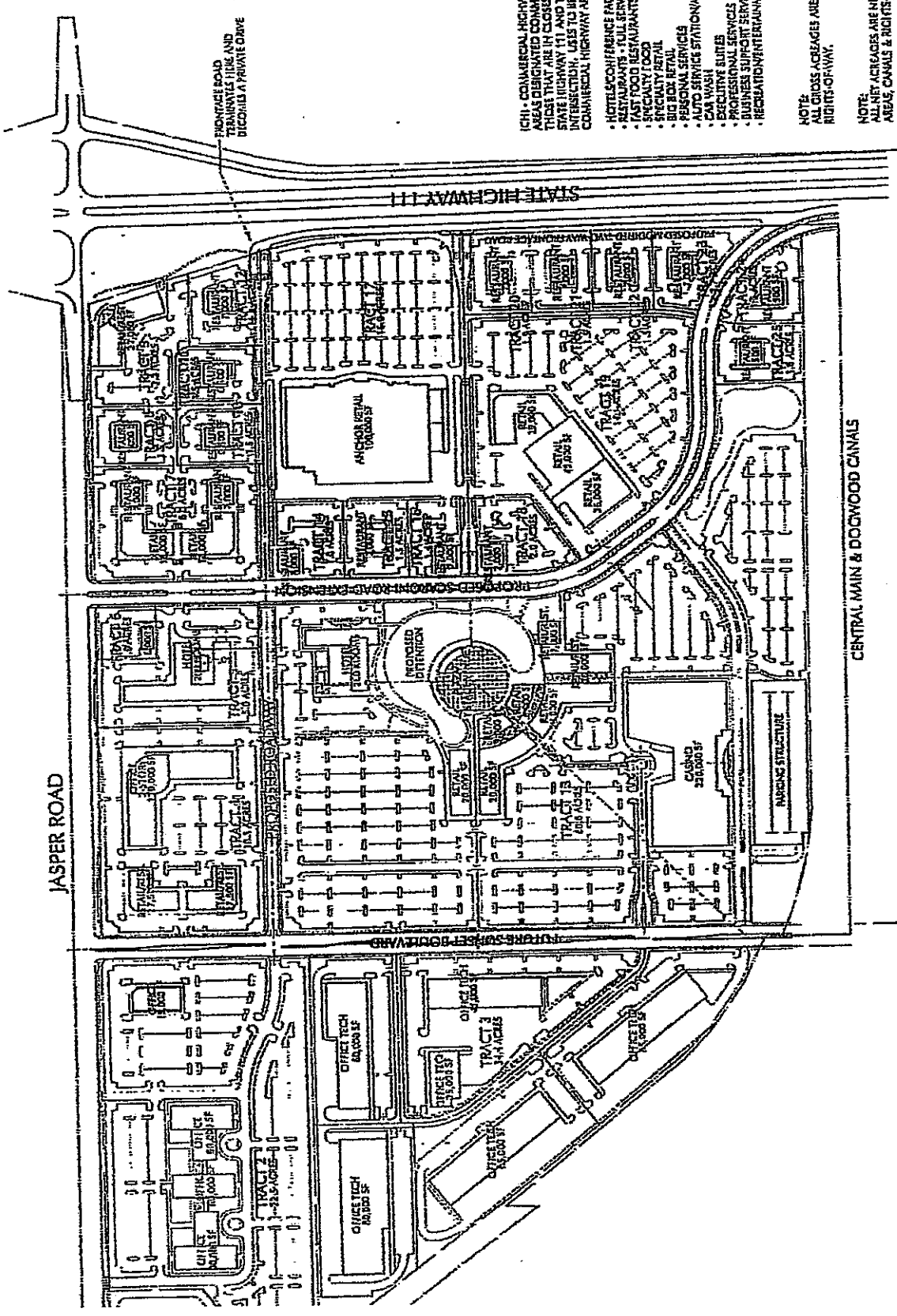
The proposed project is conceptually depicted in the Conceptual Site Plan (Figure 3). The following is a discussion of the proposed planned development for the proposed project.

### 2.4.1 Conceptual Site Plan

Figure 3 depicts the proposed conceptual site plan for the proposed project. Planned uses proposed for the project site include retail uses, restaurants, casino, hotels, plaza stage/venue, office, and office tech. It is anticipated that build-out of the proposed project could span over 15 years.







FRONTAGE ROAD  
TERMINATES HERE, AND  
BECOMES PRIVATE DRIVE

STATE HIGHWAY 111

JASPER ROAD

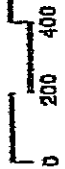
CENTRAL MAIN & DOGWOOD CANALS

ICHI - COMMERCIAL HIGHWAY  
AREAS DESIGNATED COMMERCIAL HIGHWAY ARE  
THOSE THAT ARE IN CLOSEST PROXIMITY TO  
STATE HIGHWAY 111 AND THE 111/JASPER ROAD  
INTERSECTION. LOTS TO BE ALLOWED IN THE  
COMMERCIAL HIGHWAY AREAS ARE:

- HOTELS/CONFERENCE FACILITIES
- RESTAURANTS - FULL SERVICE
- FAST FOOD RESTAURANTS
- SPECIALTY FOODS
- SPECIALTY RETAIL
- BIG BOX RETAIL
- PERSONAL SERVICES
- AUTO SERVICE STATION/HAIR/NAI
- DAY VOUCHER SUITES
- PROFESSIONAL SERVICES
- BUSINESS SUPPORT SERVICES
- RECREATION/ENTERTAINMENT

NOTE:  
ALL GROSS ACRESAGES ARE NET OF CANALS &  
RIGHTS-OF-WAY.

NOTE:  
ALL NET ACRESAGES ARE NET OF DEFINITION  
AREAS, CANALS & RIGHTS-OF-WAY.



800 Feet

April 5, 2007

Governor Arnold Schwarzenegger  
Office of the Governor  
State Capitol  
Sacramento, CA 95814

Dear Governor Schwarzenegger,

Our voices are many and diverse and we represent many California communities affected by Indian casinos. While the signatories of this letter represent many views and differing perspectives on issues of tribal sovereignty, the merits of gambling, and a host of other issues, we are united in our strong opposition to continued expansion of tribal gambling.

The situation is quickly escalating out of control as defenseless hosting counties and communities become collateral damage to our government for the sake of big gambling interests. There is no existing policy to represent the people and the regulatory controls over this burgeoning industry are severely inadequate. Therefore any effort to further expand tribal gambling is irresponsible.

How can the State, representing the interests of all Californians, negotiate in good faith with any tribe seeking more gambling in our state until a comprehensive review of gambling expansion is performed? Where is an economic study showing how gambling is positively impacting the people of California, our communities, our families and our social system? Where is the comprehensive and sufficient data to determine if expansion is at all in the best interests of affected cities/counties and in the best interest of our State?

The reality is there are no studies or numbers and there is no assurance that the voice of the people is considered in this process; protections are not in place for affected communities; and the multitude of oversight issues make the ongoing compact negotiations extremely problematic.

You have the opportunity, as you did in your campaign for Governor, to lead the way and set an example to the nation of true leadership with this complicated and politically sensitive issue. There is a strong impression in the public that tribal gambling policies are dictated by campaign contributions and the growing dependency of our elected officials on Indian gambling revenue is corrupting our political process. We urge you to change this perception by doing the right thing now, before this industry totally undermines California's economy.

The escalating frustration and anger on the part of local governments and citizens struggling to maintain some semblance of regulatory control over their communities is due to most being unable to defend themselves against aggressive expansion plans by casino tribes due to flawed Federal Indian Policy. Casino tribes' ability to circumvent constitutional law, federal and state laws, local taxation and regulatory laws -- including environmental safeguards -- is creating palpable outrage.

One only has to look at the exhaustive list of cases before the courts to understand there are growing grievances as the voice of the people continues to be systematically excluded in favor of casino tribes' unnecessary and excessive demands for casino expansion. Casino tribes continue to use flawed federal law to build their mega-casinos while violating and in most cases trumping the constitutional rights of their neighbors. The State must engage and remedy these grievances.

There is a national blueprint that exists and every casino tribe is building according to this blueprint. Whether a tribe is just acquiring land to build a casino or whether a tribe is petitioning to build a third, it looks the same in every county.

What will become of California when we continue to allow:

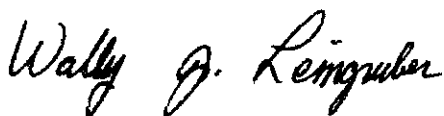
- Taxpayers to be saddled with an unfair burden of subsidizing a multi-billion dollar industry they have little regulatory authority over?
- Non-transparent, federally protected tribal governments to influence changes in public policy concerning gaming issues?
- Gaming tribes to take more land out of local and state regulatory authority and off the tax rolls to increase the size of their sovereign territory within the boundaries of counties throughout California?
- Tribes to branch out into the retail sector while maintaining their special tax status creating unfair business advantages over neighboring non-tribal businesses and subsequently begin to engineer 'Company Towns' out of hundreds of cities and townships across the State?

Recent economic studies of gambling already suggest an economic tremor just below the surface. For every \$1 of gambling revenue the state receives, it costs the taxpayer \$3 in "cost creating" activities such as crime, bankruptcies and other by-products of the gambling industry. These figures are for regulated Nevada-style casinos. The number for tribal casinos is estimated to be \$6-\$10 cost for every \$1 benefit. At this rate it will not take long to bankrupt our State.

The integrity of local and state governance hangs in the balance and we urge your serious consideration of this request and seek a timely meeting with you and your staff to discuss the plight of our communities.

We urge you to exercise your authority and preserve our State sovereignty by freezing all current compacts in the Legislature and any future compacts and complete the necessary studies before it's too late.

Sincerely,



Honorable Supervisor Wally J. Leimgruber  
Imperial County, District 5  
Tel. 760-996-7028 or 760-356-2639  
[WallyLeimgruber@sbcglobal.net](mailto:WallyLeimgruber@sbcglobal.net)  
El Centro, California



Michael Bradbury  
Ventura County District Attorney (Ret)  
Ventura, California

**Wally Leimgruber  
Marjie Leimgruber  
1725 Towland Rd.  
Holtville CA 92250**

April 9, 2007

To: City of Calexico  
Development Services Department  
608 Heber Avenue  
Calexico CA 92231

Contact: Armando G. Villa, Director

Subject: 111 Calexico Place Project

The City of Calexico as Lead Agency has requested that public comment be submitted for the above-referenced project by April 18, 2007. We would like to thank the City of Calexico Development Services Department for the opportunity to comment on the 111 Calexico Place Project.

This project has generated considerable controversy in our community, since its inception in July 2003. The project, suggests taking Fee Lands-to-Trust Lands for the development of an Off-Reservation Casino. The Manzanita Band of the Kumeyaay would be the Tribal Nation conducting the Class III Indian Gambling.

IGRA requires that land taken into trust status must follow a process:

1. The Secretary consults with the Indian tribe and appropriate State and local officials, including officials of other nearby tribes.
2. After consultation, the Secretary of Interior determines that a gaming establishment on newly acquired (**trust**) lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community.
3. The Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination.

We feel it would be premature to continue with this project until all IGRA requirements are met.

Respectfully,

*Wally Leimgruber*  
*Marjie Leimgruber*

Cc: George Skibine  
Acting Principal Deputy Assistant Secretary  
Department of Interior  
Indian Affairs



## Study ties tribe to city

By GREG HOLT, Staff Writer

The Manzanita tribe recently completed a study it says proves there is a historical tie to Calexico and justifies its plan to build a casino in the area.

According to Bureau of Indian Affairs regulations, an Indian tribe can build a casino on an off-reservation location as long as ancestors of the tribe are proven by anthropologists to have settled nearby at some point in their history.

It's a controversial provision that has allowed otherwise poorly located tribes to build casinos in more profitable urban areas.

The Manzanita tribe's 3,600-acre reservation is an hour's drive east of San Diego and three miles from Interstate 8.

Bob Scheid, public relations director for the Viejas tribe, Manzanita's sister tribe and casino business partner, said it is common knowledge among members of both tribes that their ancestors lived in the Imperial Valley and other inland deserts before moving into the mountains between the Valley and San Diego.

"Both tribes were already aware of their close ties to that land. We felt strongly that this could be proven," Scheid said.

The study, completed by the San Diego anthropological firm Jones & Stokes, states that archeological evidence including arrow points found in former Native American settlements in Calexico reflect that the area was once occupied by Kumeyaay Indians, who list both Manzanita and Viejas Indians as descendants.

The study goes on to state that site inhabitants did not appear to share traits with the unrelated Cocopah tribe that now maintains a reservation near Yuma.

"In Native American culture, a lot of history is handed down orally," Scheid said. "I think the study shows what we're expecting and that we're committed to completing all steps in this process."

The anthropological study is one of the most important documents that are part of the off-reservation casino application package, Scheid said.

"BIA has made it clear that they are tightening their restrictions and it has become more important to prove both a tie to the land and also to be in close proximity," Scheid said.

Calexico City Councilman David Ouzan said he's glad the tribe has evidence proving its claims of ancestral ties to Calexico.

"I heard they once had a settlement where the New River is now, and it's nice they were able to obtain proof and get this project moving forward," Ouzan said.

The casino will be a huge asset to the economy of Calexico and Imperial County once it's constructed, he said.

"We would like to see this project become a reality in the next year," Ouzan said. "This will draw many people into our city from Mexico and it will make us much more of a destination."

If the project receives final approval from both BIA and California Gov. Arnold Schwarzenegger, the Manzanita and Viejas tribes plan to build a \$175 million casino and hotel complex at Highway 111 and Jasper Road in north Calexico.

The project would create more than 2,000 jobs in Imperial County and pump an estimated \$112 million into the local economy, according to an independent Socio-economic Impact Analysis completed in 2005.

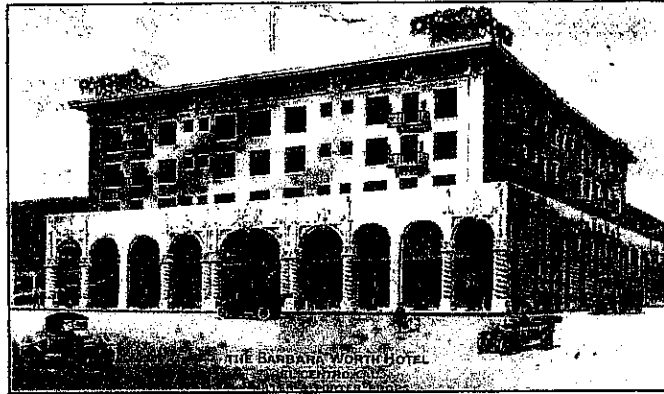
>> Staff Writer [Greg Holt](mailto:greg.holt@ivpressonline.com) can be reached at 337-3452 or [gholt@ivpressonline.com](mailto:gholt@ivpressonline.com)

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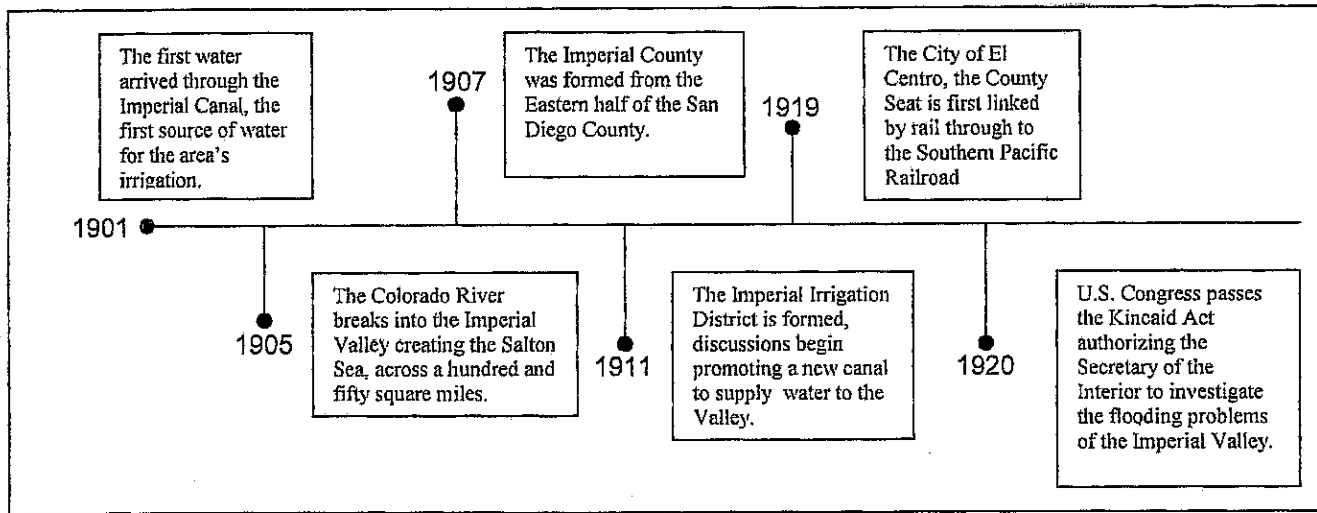
# Imperial County History

Archeological evidence indicates that human occupancy in the form of hunter-gatherer living patterns existed throughout the Salton Trough area until the filling of Lake Cahuilla in approximately A.D. 1050. The very early inhabitants were ancestors of the Desert Cahuilla, Chem-huevi, Cocopah, Kumey-aay, and Quechan, who were established in the Colorado River area near present-day Yuma at least 1,000 to 1,500 years ago.

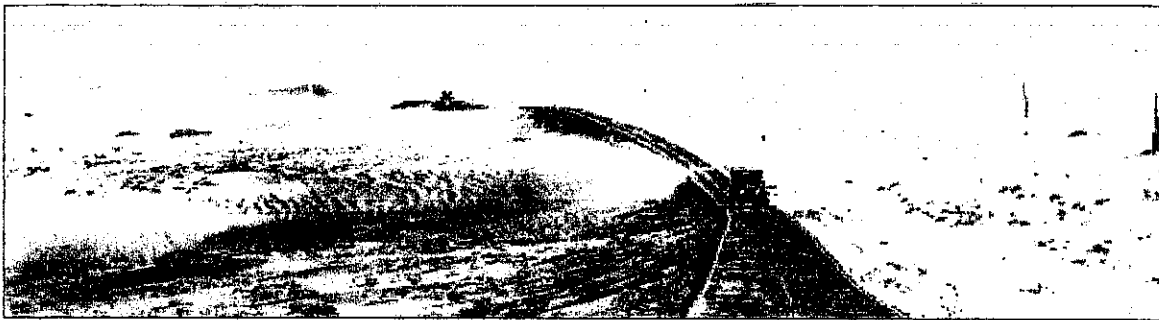
In 1540, Hernando de Alarcon when he sailed up the Colorado River was the first to encounter the native inhabitants. In 1775, an expedition by Spaniard Juan Bautista de Anza and set up two missions in 1779, but by 1781 they were destroyed by an uprising of the Yuman Indians. In 1846, General Kearney with 100 men of the Mormon Battalion crossed the Colorado River to Warner's Ranch during the war with Mexico and afterwards the United States acquired the area in 1848. In 1850, Americans operated a ferry across the Colorado River but were massacred that resulted in the Governor of California sending the state's militia to suppress the uprising and thereafter established Fort Yuma.



Mail by mule was inaugurated in 1857 from Fort Yuma to San Diego through Warner Springs. From 1858 to 1861, The Butterfield Stage took over the overland mail route and was controlled by Wells Fargo. The adobe ruins of some of the Butterfield stage stations can still be found today. In the 1860's, gold was discovered in the Pichacho and Cargo Muchacho mountains and Tumco was a thriving townsite from approximately 1884 to 1914. The search for gold continues today with the Mesquite Gold Mine currently approved for further gold mining.



The Homestead Act of 1862, passed by Congress, offered 40 acres to any person (and up to 160 acres per family) to settle on the land for more than a year in order to bring new residents to the area. In 1878, the Southern Pacific Railroad (SPRR) constructed a transcontinental railroad line through the area from Los Angeles to Yuma, Arizona. In 1903, to serve the new settlements springing up, a branch line was built by SPRR from Niland southward.



In 1901, the California Development Company conveyed the first irrigation water by the opening of the Alamo Canal. This project created a series of towns and a large agricultural area with the first townsite laid out called "Imperial". From 1901 to 1905, Imperial Valley's agricultural activities developed rapidly until the disastrous Colorado River flood between 1905 and 1907 that inundated the newly constructed irrigation ditches, farm fields, and thus creating the Salton Sea. The river's flow was stopped by the combined efforts of the California Development Company and the Southern Pacific Company and the Colorado River was turned back into its previous channel.

In 1907, the California Development Company had attracted nearly 15,000 people and the County of Imperial was formed. In 1916, the "Plank Road" was constructed across the eastern Sand Dunes and in 1926 it was replaced by an asphalt road increasing the population arriving from the east.

In 1941, the All-American Canal was completed by the Imperial Irrigation District and a reliable water supply was made available to local farmers that quickly fueled the tremendous growth of the area's agricultural industry. From the 1940's to date, Imperial County has developed into one of the most productive agricultural areas in the State.

