Indian Gaming

California: Urban Casinos – An Exception to the Rule?

Current federal process allows for manipulation whether perceived or real of the Indian Gaming Regulatory Act (IGRA) exceptions for gaming on after-acquired lands. This White Paper asks whether congressional action is needed to protect the integrity of state and local government rights. The conclusion is that Congress must amend the IGRA to close loopholes and clarify the role of states and affected localities in the establishment of Indian lands eligible for gaming.

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California Casino Dreams

Municipalities need to know how to tell the difference between casino dreams, legitimate viable projects, and looming federal determinations that mandate the siting of a casino in your urban community. What is the impact on local resources and scarce taxpayer money necessary when a city is forced to retain experts in the field? Are experts really necessary? This paper's focus is to describe the exceptions found in Section 20 of the Indian Gaming Regulatory Act ("IGRA") in order to assist municipalities in their initial assessment of a casino proposal. More pointedly, this paper seeks to warn unsuspecting jurisdictions how the manipulation of these exceptions has the potential of permitting the establishment of urban or metropolitan casinos. The conclusion is simple: a congressional fix is desperately needed.

While a discussion of the significant impacts created by the establishment of a reservation in an urban or metropolitan area for gaming is clearly beneficial and necessary to municipalities, it will have to be reserved for a future article. Suffice it to say that transferring land from fee status to trust status (title is held by the United States "in trust" for an Indian tribe) grants a tribal government control over the acquired lands. Transferring urban or metropolitan lands into trust leaves a jurisdictional vacuum because federal, state, and tribal laws all have some application to the "trust" land. State and local governments are forced to deal with the confusion and the uncertainty adversely affects landowners, businesses and the non-tribal public.

As evidenced by the rapid growth, California is a desirable gaming industry market location: the population, tourism and an exclusive monopoly provide for lucrative slot machine gaming. At present there are 108 tribal governments in the State, of which 57 are operating 58 casinos and/or destination resorts. And there remains room for growth. Gaming investors shopping for an urban or metropolitan locations are driven by financial ambition to cash in on California's newest gold rush. The potential rewards are attracting large financial partners who can afford to make your life miserable if you oppose their casino projects. Make no mistake; ever-clever gaming investors have California dreams of locating a casino gold mine somewhere in Los Angeles, Orange County and the San Francisco Bay Area.

But before the casino-fever takes hold, stop and ask the question, is this a boom or bust venture? Pay attention to the old axiom, if it sounds too good to be true, it probably is. Familiarity with unique California Indian law and an acute awareness of the political realities within the state are essential components in making reasonable decisions about the success of any off reservation proposal.

Currently, vague guidelines are still being used as standards by the National Indian Gaming Commission (NIGC) and the Bureau of Indian Affairs (BIA) in determining whether lands are eligible for gaming. Since there is no federal regulation in place, this is a gray area and has left room for both political and gaming money influence. Determinations have been based on a "sliding scale" in which the relationship to the land

wanted and the intensity of the development and the availability of alternatives all play a role.

Current federal process allows for manipulation of IGRA exceptions. This manipulation of IGRA exceptions demands congressional action to protect the integrity of Indian gaming and of state and local government rights. Congress must amend IGRA to close loopholes and clarify the role of states and affected localities in the establishment of Indian lands eligible for gaming.

Urban Casinos – An Exception to the Rule?

The effort to acquire lands for gaming in urban and metropolitan areas of California persists as there are many '*exceptions to the rule'* for the establishment of Indian lands eligible for gaming after the IGRA prohibition. Profiteers waiting to create or manipulate newly developed Indian tribes to promote gaming in areas that would never have supported gaming expansion are more prevalent than ever. So pronounced is this effort by gaming investors and profiteers that the Governmental Accounting Office (GAO) has issued a report addressing this very issue.

> "Weaknesses in the process create uncertainty about the basis for recognition decisions. The end result could be that the resolution of tribal recognition cases will have less to do with the attributes and qualities of a tribe…and more to do with the resources that petitioners and their parties can marshal."[1]

Many cities and county governments have been approached by tribes, seeking to establish a casino or by tribes whose projects affect a city or county. Moreover, certain cities have expressed an interest in hosting a Tribal casino development. As the growth of the tribal gaming industry continues and tribal governments continue to expand their authority and jurisdiction, municipalities which have never before faced Native American Indian issues are now experiencing a steep-learning curve that is both legal and political in nature.

On March 7, 2000, Californians statewide voted to approve Proposition 1A, a ballot measure to allow for a *'limited exception'* to the constitutional ban against casino gaming in order to permit federally recognized tribal governments to promote Las Vegas style casinos on California Indian Lands – By and large, tribes assured the public that Indian lands were located only in remote rural locations of the State. Proposition 1A was approved by 64% of the voters, in large part because they were told that passage would not lead to wide-spread Indian gaming in urban and metropolitan areas of the State. Indeed, Proposition 1A's ballot argument included the following text:

> "Proposition 1A and federal law generally limit Indian gaming to tribal land. The claim that casinos could be built anywhere is totally false." Carl Olson, former federal field investigator, National Indian Gaming Commission.

> "The majority of Indian Tribes are located on remote reservations and the fact is their markets will only support a limited number of machines." Bruce Stromborn, economist and author of the only comprehensive economic impact study of Indian gaming in California.

While the majority of the California public initially supported tribal gaming as an anti-poverty strategy; voters now appear increasingly restless about the direction of the Tribal gaming industry. Voter agitation is spurred primarily by the acquisition of new lands for tribal gaming purposes, newly acquired lands in urban and metropolitan areas or massive land grabs expanding existing reservations. A July 13, 2007, California Statewide Poll by Greenberg Quinlan Rosner Research concluded that 72% of the public opposes the idea of allowing Indian gaming operations outside of Indian reservations. Moreover, the intensity of the opposition was striking:

> "This issue united Democrats, Republicans, and independents in opposition as all reject off reservation gaming, and not a single demographic group or region in the state approves of it. Furthermore, opposition to this appears quite resolute as voter opinion has not budged at all since the survey we conducted last year (21 percent approve to 74 percent disapproved)."[2][2]

The poll conducted among likely California voters assessed the public's attitudes towards Indian gaming and issues related to it. Clearly public support for tribal gaming has dropped significantly since the 2000 vote (64% in favor) to only 50% (plus or minus a 3.5% margin of error) currently supporting tribal gaming.

Overview of After-Acquired Lands Exceptions

How the Exceptions Affect Cities:

The Indian Gaming Regulatory Act provides many exceptions for tribal governments to promote casinos on lands acquired after the cut off date of IGRA of October 17, 1988. Metropolitan or urban casinos may potentially develop as the result of one or a combination of these exceptions.

Under IGRA, gaming on Indian lands acquired in trust by the Secretary after October 17, 1988, is prohibited unless:

(i) the lands are located within or contiguous to the boundaries of a Reservation of the tribe in existence on October 17, 1988,

(ii) the lands are located within the tribe's last recognized reservation within the State within which the tribe is presently located;

(iii) the lands are taken into trust as part of a settlement of a land claim;

(iv) the tribe has been newly acknowledged by the Secretary under the federal acknowledgment process and has had land taken into trust as a result of its new acknowledgment; or

(v) the lands are taken into trust as part of the restoration of lands for the tribe and the tribe has been restored to federal recognition.

Examples: These exceptions can be achieved through Acts of Congress or administrative determinations by the Department of the Interior.

Congressional Action Two controversial examples of tribes being permitted to conduct gambling operations through an exception to IGRA's rule prohibiting gambling on lands acquired after 1988 are: the Lytton Band of Pomo (who have established a successful casino in San Pablo in Contra Costa County) and the Federated Indians of the Graton Rancheria (promoting a casino on the outskirts of Rohnert Park in Sonoma County). These two tribes acquired the right to conduct gaming on land in California through an Act of Congress. Previous Congressional exceptions include the United Auburn Indian Community in Placer County and Paskenta Band of Nomiaki Indians in Tehama County.

United Auburn Indian Community and Paskenta Band of Nomiaki Indians achieved congressional approval in 1994 and established their casino operations prior to 2002. By 2002, the phenomena of "reservation shopping" was being reported nationwide and communities and local jurisdictions began raising serious objections to tribes, fueled by the desires of their investors, began aggressively seeking to move from one location to another in order to maximize casino profits.

While an Act of Congress under section 20 of IGRA declaring a tribe "restored" and providing for the acquisition of lands for the tribe in the past seemed insurmountable, states are now looking closely at the language of each of these legislative actions. A good example is the Federated Miwoks of the Graton Rancheria Restoration Act of 2000. As observed by Andrea Lynn Hoch, Governor Schwarzenegger's Secretary of Legal Affairs, in a letter dated May 1, 2006 responding to the NIGC's request for assistance in determining whether land acquired by the tribe near Rohnert Park in Sonoma County, California constitutes "restored lands" pursuant to Title 25 United Stated Codes section 2719(b)(1)(B)(iii) in the Indian Gaming Regulatory Act, Ms. Hoch notes:

> "Specifically, the Restoration Act restricts eligible lands to unencumbered "Indian owned fee land" held by distributes or dependent members identified in the 1959 distribution plan, or those persons' heirs or successors in interest." (25 U.S.C. Section 1300n-3(a)-(b).)

Thus, the terms of the Graton tribe's Restoration Act may limit the scope of any subsequently acquired lands.

Likewise the technical amendment which transferred 9 acres of land in an urban area of Contra Costa County to the Lytton Band of Pomo has created such widespread controversy that legislative action to amend the 2000 Act has been authored by Senator Feinstein (S. 1347). The Senator's Congressional language restores a voice to local government and prevents expanded development of the Tribe's gaming facility requiring the support of the regional community and elected officials.

Land Settlements and Restorations: The greatest expansion of off-reservation gaming is occurring due to past judicial and current administrative decisions restoring the status of 'landless' tribes to federal recognition. California has a unique Indian law history in the development of Reservations and Rancherias and the recognition of tribal governments. Each tribal government's federal recognition and land status must be reviewed independently. Unlike tribes in other states, California Indians do not have ratified treaties for reservations in California with the federal government. Rather, tribal land and tribal governments were established by Executive Orders, Acts of Congress, or Secretarial Orders.

The Congressional Acts of 1906 (34 Stat. 383) and 1908 (35 Stat. 70-76) were Appropriation Acts that provided money to purchase land for residential and agricultural use for homeless Indians, often of no specific tribal affiliation.[3] Commonly these were small family groups or totally unrelated racially mixed Indian families joined together on land. It is important to note here that the process for transferring land into trust did not develop until the Indian Reorganization Act (IRA) of 1934.[4] There is a specific process governed by regulation to change the status of fee-land into trust land. Indians who shared a common residence of a federal area were permitted by the BIA to organize under the terms and conditions of the Act.

The San Francisco East Bay area is significantly affected by 'landless' tribes attempting to acquire land for gaming activities after the 1988 cut off date of IGRA.. As a general rule, tribal gaming may be conducted on land acquired after October 17, 1988 only if the tribe is newly "restored," has received the land in settlement of a land claim, or is being assigned an initial reservation after receiving federal acknowledgment pursuant to the administrative recognition process. Otherwise, lands acquired after October 17, 1988 cannot be used for gaming purposes unless the Secretary of the Interior determines that the acquisition is in the best interest of the tribe and is not detrimental to neighboring tribes or the surrounding community AND the Governor of the State concurs in that determination.

The tribes promoting casinos in the Bay Area are Rancheria Bands. The Scotts Valley Band of Pomo Indians from Lake County and the Guidiville Band of Pomo Indians from Mendocino County have Rancheria lands in trust in the name of individual Indians. If the tribe exercises governmental control over those lands, they may be eligible for gaming. The Lower Lake Koi, also from Lake County, is a reaffirmed tribal group without land. Yet these tribes with their out-of-state investors are seeking land far from their last recognized Rancheria or aboriginal lands – in Contra Costa and Alameda Counties.

In the case of many California Rancheria lands, title to the property is still held in fee-simple in the name of the United States for the use and occupancy of homeless Indians; the land is generally not held in trust for the benefit of the tribe. Some of these Rancheria Bands have litigation pending over the legitimacy of their tribal recognition or restoration. Local community groups and jurisdiction are raising questions about tribal re-affirmation or the ability to conduct gaming on lands which are not held in trust.

Federal Acknowledgment and Initial Reservations: California urban and metropolitan municipalities are on the crest of the next wave of tribal gaming expansion. Herein lays the potential for the *mandatory* establishment of Indian lands and tribal casinos in the City of San Francisco, San Bernardino and San Diego Counties. Even metropolitan Counties such as Orange and Los Angeles, which currently have no federally recognized tribes or Indian lands eligible for the establishment of gaming, are now faced with tribal groups involved in the federal process of acknowledgement who are backed by gaming investors.

California currently has 67 tribal groups seeking federal recognition through the federal acknowledgment process. Once begun, the process found in 25 CFR Part 83.10 has an inertia all of its own. This process requires seven mandatory criteria to be met in order to achieve federal acknowledgement.

In sum, to be acknowledged as an Indian tribe, as distinct from an Indian group, the petitioning entity must establish that:

1) The petitioner must have been identified as an Indian entity on a substantially continuous basis since 1900;

2) The predominant portion of the petitioning group must compose a distinct community in existence as a community from historical times until the present;

3) It must have maintained political influence or authority over its members from historical times;

4) It must have a governing document with membership criteria;

5) The individuals must descend from a historical Indian tribe;

6) The individual members are not also members of any other acknowledged North American Indian tribe, and;

7) Neither the petitioner nor its members have been expressly terminated or forbidden a federal relationship.

These are high standards. Such a government is a dependent sovereign within our federal system. That status vastly exceeds most organizations and approaches the power and independence of the individual states. Upon acknowledgment, the Indian group becomes a tribal government and thereafter deals on a government-to-government basis with cities, counties and states.

Failure to achieve the status does not mean that the individual Indians are deprived of benefits and programs. The Bureau of Indian Affairs is required to advise

individuals how they may become eligible for services and benefits as individual Indians or become members of an acknowledged tribe.

While a tribe may not meet the criteria and indeed, may receive a negative determination from the federal office of acknowledgment, the process is not yet over.

The tribal group still has the right to appeal the negative determination through the court system. This is occurring right now with the Muwekma Band, a tribal group who has claimed ancestral lands in San Francisco and the surrounding Bay Area. The outcome of the Mewakma Band's litigation will set a precedent for tribal groups seeking federal recognition in California.[5]

In Southern California, the Juaneno Band of Mission Indians is in the early stages of the acknowledgment process. This tribal group has the potential to set a precedent for 11 other petitioning Mission Indian groups. Many affected cities in both Orange County and Los Angeles are considering participation in the federal process but are hampered by the fact that the federal process is Byzantine and is often conducted in an *ad hoc* manner without regulations or other published guidelines.

For example, Orange County Supervisors were approached by tribal group representatives asking for a County Resolution to recognize their existence. Such a resolution appeared laudable and seemed innocent enough; after all what could it hurt? But unknown to the County Supervisors and not discussed was the fact that the tribal group was in the preliminary stages of the acknowledgment process. The resolution could then become evidence and a political tool to support one of the most difficult criteria of "continuous existence" and recognition by another government.

State Recognized Tribe and State Reservation

In 2000/01 the Gabreileno-Tongva attempted to achieve federal recognition and an initial reservation through a Congressional Act authored by Congresswoman Hilda Solis. The legislation was dropped in part due to opposition from the County of Los Angeles and other local governments. As a result, gaming investors were motivated to create new strategies to develop gaming in metropolitan and urban areas of the State.

One such strategy is gaming on a State Reservation by a State Recognized Tribe. In 2004, Assembly Member Mervyn M. Dymally authored two bills, one to create a State Reservation (AB 2272) and the other to recognize the Gabreileno-Tongva as a State Tribe (AB 2273). This controversial legislation was never heard in the Legislature, but nevertheless, investors and promoters of this concept have been relentless. Indeed, as recent as June 2007, Council members from the City of Garden Grove in Orange County have entertained talks with the Gabreileno-Tongva Band tribal group. The tribe's attorney, representing one of several factions of the Gabreileno group, is promising $100 million upfront for infrastructure and $70 million per year for the next 30 years from the proposed casino project.[6]

The U.S. Constitution provides that Congress has the exclusive power to regulate Indians and Indian tribal governments. (Article 1, section 8, clause 3) IGRA both regulates and prohibits gaming on Indian lands for federally recognized tribes, but does not address Indian groups that are not federally recognized.

California's Constitution (Article 1 Section 7(b)) guarantees that "a citizen or class of citizens may not be granted privileges and immunities not granted on the same terms to all citizens." Arguably, a state-recognized tribe is subject to all the same rights and obligations as any other group of citizens. Because state recognition does not provide the "political treatment" afforded federally recognized tribes, it is likely that such a tribe, like any other gaming interest wishing to establish a full service casino, must attempt to amend the state Constitution to provide for a further exception to the ban on casino gambling. This is unlikely as demonstrated by voters in the 2004 statewide election in an overwhelming defeat of Proposition 68 (82% No), a measure to allow slot machines at established race tracks and card clubs all in metropolitan locations in California.

New State Policy Affecting Off Reservation Gaming

In a nationally unprecedented action, Governor Schwarzenegger on May 18, 2005, issued a Proclamation on off-reservation gaming. This Proclamation sought to halt reservation shopping and set specific standards for the exercise of executive authority in approving two-part determinations for gaming and establishing a process for gubernatorial involvement in all land acquisitions. (It should be noted, this is just a proclamation – the next governor of California may set a different policy)

This proclamation redirected the efforts of tribes and gaming investors. Tribes, instead of seeking a collaborative approach through a two-part determination process, announced they were landless and sought a "restored lands" determination from the Bureau of Indian Affairs (BIA). Local governments have a limited voice in this process and an uphill battle in restored land determinations. Although the Governor's action is laudable, it has not stopped the manipulation of the process. The only remedy appears to be congressional action.

The following is an excerpt from the Governor's off-reservation Proclamation specifically stating the State's position of "No Urban Casinos" and outlining the criteria necessary for gubernatorial approval of an off reservation casino:

> **NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER**, Governor of the State of California, do hereby proclaim the following statements as my general policy on the specified matters related to tribal gaming:
>
> 1. I shall oppose proposals for the federal acquisition of lands within any urbanized area where the lands sought to be acquired in trust are to be used to conduct or facilitate gaming activities.
>
> 2. I shall decline to engage in negotiations for tribal-state gaming compacts where the Indian tribe does not have Indian lands eligible for class III gaming.

3. I shall consider requests for a gubernatorial concurrence under section 20(b)(1)(A) of IGRA, that would allow a tribe to conduct class III gaming on newly acquired land, only in cases where each of the following criteria is satisfied:

   a) The land that is sought for class III gaming is not within any urbanized area.

   b) The local jurisdiction in which the tribe's proposed gaming project is located supports the project.

   c) The tribe and the local jurisdiction demonstrate that the affected local community supports the project, such as by a local advisory vote.

   d) The project substantially serves a clear, independent public policy, separate and apart from any increased economic benefit or financial contribution to the State, community, or the Indian tribe that may arise from gaming.

Governor Schwarzenegger has approved three compacts for a two-part determination consistent with the May Proclamation. These include Fort Mojave, Big Lagoon and Los Coyotes. The two-part determination process for after-acquired lands is painstaking and thorough. For example the Los Coyotes Compact demonstrates a collaborative approach by the state, and affected local government to come together early in the decision process and work out solutions to identified environmental, taxation, jurisdictional, social and infrastructure problems. This is very different from the abuse of the process that occurs with tribes and their investors seeking to exploit the "restored lands" loophole in IGRA, where no such analysis and review is undertaken.

Gubernatorial concurrence judiciously used solves land use problems such as casino development in sensitive environmental locations, or placement of a casino adjacent to park lands or social concerns over the health and public welfare that result from casino placement near homes, churches and schools. Gubernatorial concurrence empowers the state with the ability to manage the location and growth of tribal gaming and is clearly the preferred route to determine whether a tribe's newly-acquired lands should be used for gaming purposes.

Meeting the Off-Reservation Criteria for Gubernatorial concurrence:

For example, the Los Coyotes is a land locked Tribe. The Reservation is bordered on all four sides by environmentally sensitive public lands and vital resources. The north east side is bordered by the Cleveland National Forest and the Anza-Borrego Desert State Park. The park includes the critical habitat of the endangered Peninsular Big Horn Sheep. The reservation includes the highest point in San Diego County and one of the last intact forests. It is within the East County Multi-Species Conservation Plan Study Area. A casino at this location would be an environmental travesty. Thus the Tribe has agreed in the tribal-state compact not to develop this area in exchange for development in the City of Barstow.

The Los Coyotes Compact and stringent compliance under the gubernatorial concurrence of IGRA resolves the environmental issues associated with the location of

the tribe's existing lands. This solution is beneficial to the State of California, whereas future solutions conceivably offered by the Department of the Interior may not be, and is a prime example of why the two-part determination in IGRA should be used in all cases where a tribe seeks to use newly-acquired lands for gaming purposes.

Federal Legislative and Administrative Actions

In May of 2005, the Department of the Interior (DOI) in an effort to affect the proliferation of off reservation gaming made a major shift in policy. This policy shift is documented in a letter that has become known as the "Warm Springs letter". This letter documented the action of the DOI in a sweeping policy change making clear it would not approve tribal-state compacts for tribes unless it was for gaming on already-established Indian lands of such an Indian Tribe. "Accordingly, under the new policy, suitable land must be taken into trust for gaming before the gaming compact will be approved."[7]

In 2006 federal legislation was introduced which attempted to amend IGRA and clarify the role of the National Indian Gaming Commission (NIGC) to regulate tribal gaming and limit the location of lands eligible for gaming. Separate legislative bills introduced by both Senator John McCain and Congressman Richard Pombo provided the first opportunity for public debate on the growth of the tribal gaming industry in California. California elected officials and Stand Up For California! provided oral testimony before these Congressional committees, basically stating the rapid growth of the tribal gaming industry reflected the need to re-evaluate what constitutes appropriate regulation and management of the growth and location of the burgeoning industry.

Needless to say, amendments to IGRA tightening the exceptions were opposed heavily by tribes and gaming investors across the nation. While the amendments died on the Senate floor and in the House Resources Committee, they succeeded in bringing to the forefront the extent of the reservation-shopping issue across the nation. A July 2006 list produced for Congress by the Office of Indian Gaming Management of off-reservation casinos included 52 off-reservation casino land acquisitions *in process*. Twenty-five of these are in California. A positive result from the testimony before these committees was that the Department of the Interior responded to Congressional concerns by immediately beginning to draft regulations for implementation of section 20 of IGRA. Section 20 of IGRA provides all of the exceptions for gaming on after acquired lands.

The initial rulemaking comment period on Section 20 has concluded. The Office of Indian Gaming Management as of this writing has yet to offer the proposed rule for final comment.

2007: In January, James Cason, Associate Deputy Secretary of the Interior sent a letter to 35 tribal governments involved in two-part determinations. The letter made it clear there would be stringent rules which would reduce the likelihood of land off-reservation being accepted into trust. The chances of success decreased with the distance the subject parcel is located from the Tribe's established reservation or ancestral lands and the majority of tribal members. More importantly, the letter for the first time stated

the intent of the BIA to change the Department's overall approach for soliciting and accommodating the views of elected officials (State, county, city, etc.) and community members in the local area as part of the IGRA Section 20 decisions. The letters of elected officials and community members were previously required to be accepted however, the BIA officials were not required by regulation to read the comment letters or give them consideration.

This Congressional session is not without amendments or technical corrections to IGRA. In a recent vote on the 2008 Appropriations Bill, Congressman Dent offered a technical amendment restricting funding to the Department of the Interior for the processing of off-reservation land acquisitions.[8] The measure failed, but it was close considering there was no lobbying effort. The vote was 194 – 236, indicating there is still a political will in Congress to restrict off reservation gaming proliferation. Listed below is creditable legislation beneficial to the State of California:

- **H.R. 1654** - Congressman Daniel Lungren - To amend the Indian Gaming Regulatory Act to require that the Secretary of the Interior determine that a gaming establishment on certain newly acquired Indian lands would be in the best interests of certain Indian tribes and not detrimental to the surrounding community before such lands would be eligible for certain exceptions to the general prohibition on gaming on such lands.

- **HR. 2562** - Congressman Charles Dent – To amend the Indian Gaming Regulatory Act to limit tribal casino expansion.

- **S. 1347** - U.S. Senator Dianne Feinstein - A bill to amend the Omnibus Indian Advancement Act to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust and to provide for the conduct of certain activities on the land.

- Draft Legislation introduced by U. S. Senator Dorgan, Chairman of the Senate Indian Affairs Committee focused on clarifying the authority of the National Indian Gaming Commission to regulate Class III gaming. The intent is to restore NIGC's authority to enforce the Minimum Internal Control Standards (MICS). The necessity of this legislation cannot be overstated. Letters must be sent to U. S. Senator Dorgan and the NIGC.

An Informed City is a Well Armed City

Clearly, well-prepared and well-researched localities can be very effective in addressing an array of tribal gaming and related Indian law issues. Another axiom is called to mind: "Knowledge is power." Just because a tribal group or a tribal government makes a claim of historic or sacred lands does not make it so, because these claims must meet stringent federal standards. Cities must do their own independent evidence gathering and become experts (or hire experts) on these issues. In cases of

acknowledgement, anthropological, genealogical and historical information is necessary to support the merits of claims.

The need for information and expertise becomes clear if localities are going to comment appropriately on acknowledgements of petitioning tribal groups, land acquisitions or reaching out to established tribal governments to develop mutually beneficial intergovernmental agreements. In some instances, cities and counties have formed *Joint Powers Authorities or a Consortium* to address these concerns and share the financial burdens of information gathering, lobbying and expert legal advice.

Without exception, courageous elected officials that have exercised their political power while adhering to the rule of law have made a difference and achieved goals that promote fairness for all. Their actions have included: issuing public letters, speaking out in the press, testifying before state or federal legislative bodies or addressing other affected city councils and state wide organizations.

Snap-Shot of Tribal Gaming in California

California is fast becoming the largest gaming state in the nation. The state's gaming industries offer tribal gaming, horseracing, off-track-wagering, (OTB (betting)) parlors, state lottery, card clubs and a variety of charitable bingo halls and raffle events. This section presents a snap-shot in time of the big-picture of the 'tribal gaming industry' in California. As evidenced by each new proposal for Tribal gaming, it is an industry with lots of room for growth. It is an industry that demands state regulatory oversight through the development of policy in tribal state compacts as well as federal action to amend IGRA restricting and limiting the location of gaming facilities.

- California is home to 108 Tribal governments with approximately 31,623 enrolled tribal members benefiting from the growth of the gaming industry. For example, the 5 Tribes seeking compact ratification for an additional 22,500 slot machines, a $60 billion dollar deal have approximately 2100 enrolled tribal members.

- 57 Tribes are operating 58 Casinos (Agua Caliente has two- Palm Springs and Rancho Mirage) throughout California.

- In California 66 Tribes have compacts. The 9 Tribes that have compacts but without operating casinos have proposed projects that are in some aspect of development which includes: resolving internal disputes, seeking investors, resolving land issues, developing local agreements, grading or construction.

- 20 federally recognized tribes without compacts mostly in Northern California have restored lands applications in various stages processing through the Bureau of Indian Affairs for the development of off reservation casinos. (Contiguous to established Indian lands to 150 miles from historical land bases)

- Additionally there are 9 two-part determination applications in process for the development of off reservation casinos– (ranging 20 to 700 miles from historical lands) three have compacts signed by Governor Schwarzenegger. Fort Mojave, Big Lagoon and Los Coyotes.

- There are 67 tribal groups petitioning the Bureau of Indian Affairs for federal recognition.

- Of those 67 tribal groups 2 are active in the process and near a final federal determination: the Mewakma of San Francisco (through a judicial appeal) and the Juaneno Band of Mission Indians in San Juan Capistrano (currently in the federal regulatory process).

- In 2006 California's 57 tribal casinos produced $7 billion in earnings. Nationally, if tribal gaming were a single company, rather than 307 casinos; it would rank near the top 100 corporations in America.

- Congressional Acts have provided at least 8 tribes and their investor's exceptions to the Indian Gaming Regulatory Act (IGRA) providing for the acquisition of land into trust allowing for the exception of a casino on new lands acquired well after 1988.

- California is home to approximately 44 Tribes that have been restored to federal recognition through court stipulated judgments. These tribes are landless and several are seeking locations near urbanized areas or freeway off-ramps for casino developments.

- The transfer of lands into trust results in the loss of state and local tax revenue on property and businesses located on federal trust land such as retail sales, resort hotels, spas and automobile dealerships.

- Tribal governments, which utilize law enforcement, fire and ambulance services without mitigation agreements diminish local government tax revenues. This creates serious cost shifting between local and state revenues for services provided to entities that pay no local or state tax as well as reduced services and resources for taxpayers. This has promoted local governments to request judicially enforceable agreements in Tribal State compact negotiations.

In July 2002 - the California State Association of Counties in conjunction with the California State Sheriffs Association and the California League of Cities released their Survey of Tribal Gaming Impacts on County Governments.

> In 2002, statewide Indian Casinos cost the counties more than $200 million in non reimbursed road, water, sewage, and fire and law enforcement costs. The Special Distribution Fund has only provided 21.9 million in total to off set the costs.

In just 8 counties with tribal casinos, the burden of costs continues to mount exceeding $20 million annually.

35 of the 58 counties are affected by tribal gaming. Only 20 mitigation agreements exist between Counties and Tribes and only a handful are comprehensive and address local concerns and costs.

In May 2006 - Attorney General Lockyer requested a report from the California State Library – *Gambling in the Golden State 1998 Forward.* The report identified additional impacts and costs.

There are nearly 1.5 million problem and compulsive gamblers in the State today.

Using data from every U.S. county between 1977 and 1996, found that casinos including Indian casinos and riverboat casinos are associated with increased crime which includes: aggravated assault, rape, murder, robbery, larceny, burglary, and auto theft after a lag of three or four years.

Prior to the opening of a casino, casino and non-casino counties had similar crime rates, but six years after casino openings property crimes were eight percent higher and violent crimes were ten percent higher in casino counties.

2007 –*National Money Laundering Strategy Report* – produced by the Department of Homeland Security and the United States Department of Treasury, the report found that tribal casinos are under constant threat by insiders taking advantage of their position either to steal or assist others with money laundering.

ICE recently charged six people including a tribal leader, with attempting to steal $900,000 from a Native American casino. Among the charges are conspiracy, theft, and money laundering.

The FBI has acknowledged that it has been unable to devote limited investigative resources to Indian gaming violations even as the Indian gaming industry has grown. This growth, coupled with overlapping regulatory jurisdictions and limited enforcement resources has generated concern over the potential for large scale criminal activity in the Indian gaming industry.

San Diego, CA. May 2007 – A California based Asian crime ring was indicted. Authorities said the scheme targeted 18 gaming parlors in Canada, California, Nevada, Mississippi, Louisiana, Washington State, Indiana and Connecticut.

Ten casinos were owned by American Indian tribes. The charges in San Diego range from conspiracy to money laundering to theft from an Indian casino. "We are not

aware of any other cases of this magnitude," said Kathy Leodler, acting head of the San Diego FBI field office.[9] Conspiracy carries a maximum penalty of 5 years in prison; theft of funds from Indian casinos carries a maximum 10 years. The investigation is not over and more indictments have been promised.

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About the Author:

Cheryl A. Schmit is Founder and Director of Stand Up for California and has been involved with issues associated with Indian gaming for many years. Stand Up For California acts as a resource of information to community groups as well as local, state and federal policy makers. Her activism includes speaking engagements to community groups, local government and professional organizations. She has organized and hosted conferences in Sacramento. She sits on the County/Tribal Advisory Committee in Placer County developed to provide a public forum and voice in the ongoing developments of the United Auburn Indian Community gaming facility. Ms. Schmit has been a participant/moderator throughout the Country as well as providing testimony before Congress.

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Footnotes:

[1[] November 2001 Indian Issues: Improvements Needed in Tribal Recognition Process authored by Governmental Accounting Office- 02-49

[2] July 13, 2007, *Greenberg Quinlan Rosner Research Statewide Poll* – Tribal Gaming. From June 28- July 2007, Greenberg Quinlan Rosner Research conducted a statewide survey in California by telephone among 810 likely voters. The survey's margin of error is plus or minus 3.5 percent. References to a previous poll refer to a statewide poll conducted from February 19-23, 2006, by Greenberg Quinlan Rosner Research in California by telephone among 800 likely voters. The survey's margin of error is plus or minus 3.5 percent.

[3] RG 75 Reno Indian Annual Narrative and Statistical Reports 1912-1924 box 6: Folder [Annual Narrative Reports 1923 Reno Ind. A.]" pgs. 1-31.

[4]**1934 The Wheeler Act—**(This act may not legally include Rancheria Tribes, the DOI may in error have allowed California Rancheria Tribes to organize and take land under section 5 of this Act.) An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes.

Sec. 19. The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all person who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any "reservation", and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

[5] Ron Russell, SF Weekly, March 28, 2007, *The little tribe that could*

[6] Deepa Bharath, Orange County Register, June 14, 2007, *Indian Tribe approached Garden Grove about Casino Resort*

[7] United States Department of the Interior *Letter to Honorable Theodore r. Kulongoski*, Governor, State of Oregon, May 20, 2005

[8] (A027) Amends: H.R.2643 Sponsor: Rep Dent, Charles W. [R-PA-15] (offered 6/26/2007) AMENDMENT PURPOSE: An amendment numbered 13 printed in the Congressional Record to prohibit the use of funds to be used to implement, administer, or enforce section 20(b)(1) of the Indian Gaming Regulatory Act.

[9] Staff writer Nell Luter Floyd and Associated Press writers Allison Hoffman, Gene Johnson and Melanthia Mitchell, Associated Press, May 22, 2007, Clarion Ledger, *Casino Fraud Alleged*