



SUPERVISOR MIKE MCGOWAN, YOLO COUNTY  
CHAIRMAN, INDIAN GAMING WORKING GROUP  
CALIFORNIA STATE ASSOCIATION OF COUNTIES

TESTIMONY  
BEFORE THE COMMITTEE ON RESOURCES  
UNITED STATES HOUSE OF REPRESENTATIVES

OVERSIGHT FIELD HEARING ON H.R. (DISCUSSION DRAFT) (POMBO),  
TO AMEND THE INDIAN GAMING REGULATORY ACT  
TO RESTRICT OFF-RESERVATION GAMING  
CALIFORNIA STATE CAPITOL BUILDING  
SACRAMENTO, CALIFORNIA

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On behalf of the California State Association of Counties (CSAC) I would like to thank Chairman Pombo, Ranking Member Rahall, and the other distinguished members of the Committee of Resources for giving us this opportunity to submit testimony as part of the hearing to consider Chairman Pombo's proposed legislation to restrict off-Reservation gaming. I am Mike McGowan, a member of the Yolo County Board of Supervisors, and Chairman of the CSAC Indian Gaming Working Group.

CSAC is the single, unified voice speaking on behalf of all 58 California counties. The issue raised in this hearing has direct and unique bearing on counties, more so than any other jurisdiction of local government.

There are two key reasons this issue is of heightened importance for California counties. First, counties are legally responsible to provide a broad scope of vital services for all members of their communities. Second, throughout the State of California and the nation, tribal gaming has rapidly expanded, creating a myriad of economic, social, environmental, health, safety, and other impacts. The facts clearly show that the mitigation and costs of such impacts increasingly fall upon county government.

For the past three years, CSAC has devoted considerable staff time and financial resources to 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 the Indian Gaming Regulatory Act.



**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 its recognition of the need for tribes to preserve their tribal heritage and to pursue economic self-reliance.

However, CSAC maintains that 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. As we all know, these reservation commercial endeavors attract large volumes of visitors.

Every Californian, including all tribal members, depend upon county government for a broad range of critical services, from public safety and transportation, to waste management and disaster relief.

California counties are responsible for nearly 700 programs, including the following:

- \* sheriff
- \* public health
- \* fire protection
- \* family support
- \* alcohol & drug abuse rehabilitation
- \* elections & voter services
- \* roads & bridges
- \* welfare
- \* probation
- \* 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 their 58 counties. It is no exaggeration to say that county government is essential to the quality of life for over 35 million Californians. 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.

CSAC fully recognizes the counties’ legal responsibility to properly provide for and protect the health, safety, and general welfare of the members of their communities. California counties’ efforts in this regard have been significantly impacted by the expansion of Indian gaming.

Certainly compounding this problem is the fact that the expansion in gaming has led some tribes and their business partners to engage in a practice that is sometimes referred to as “reservation shopping” in an attempt to acquire land not historically tied to these tribes but which has considerable economic potential as a site for an Indian casino. CSAC opposes “reservation shopping” as counter to the purposes of the Indian Gaming Regulatory Act (IGRA). “Reservation shopping” is an affront to those tribes who have worked responsibly with counties and local governments on a government-to-government basis in compliance with the spirit and

intent of the IGRA as a means of achieving economic self-reliance and preserving their tribal heritage.

CSAC commends Chairman Pombo and the other Members of the House Resources Committee for seeking to curb the increasing practice of “reservation shopping.” This written testimony is in support of your efforts to craft amendments to the IGRA that preserve the original goal of the IGRA while minimizing the impacts of “reservation shopping” on local communities. CSAC offers its assistance to Chairman Pombo and the House Resources Committee in any manner determined necessary by the Chairman and the Committee in its ongoing consideration of amendments to the IGRA that balance the interests of gaming tribes with local communities and governments.

### **Background:**

#### A. The Advent of Indian Gaming

Even before the enactment of the IGRA in 1988, California counties were experiencing impacts in rural areas from Indian gaming establishments. These early establishments were places where Indian bingo was the primary commercial enterprise in support of tribal economic self-reliance. The impacts on local communities were not significant in large part because the facilities where Indian bingo was played were modest in size and did not attract large numbers of patrons. Following enactment of the IGRA, the impacts to counties from Indian gaming establishments increased with the advent of larger gaming facilities. Even so, the impacts to local communities from these larger gaming facilities were generally manageable except in certain instances.

Over the last five years, the rapid expansion of Indian gaming in California has had profound impacts beyond the boundaries of tribal lands. Since 1999 and the signing of Compacts with approximately 69 tribes and the passage of Propositions 5 and 1A (legalizing Indian gaming in California), the vast majority of California’s counties either have a casino, a tribe petitioning for federal recognition, or is the target or focus of a proposed casino plan. As the Committee is aware, many pending casino proposals relate to projects on land far from a tribe’s ancestral territory.

A 2004 CSAC survey reveals that 53 active gaming operations exist in 26 of California’s 58 counties. Another 33 gaming operations are being proposed. As a result, 35 counties out of 58 in California have active or proposed gaming. Most important, of those 35 counties impacted by Indian gaming, there are 82 tribes in those counties but only 20 local agreements for mitigation of the off-reservation impacts on services that counties are required to provide.

#### B. Development of CSAC 2003 Policy

In 1999, California Governor Gray Davis and approximately 65 tribes entered into Tribal-State Compacts, which permitted each of these tribes to engage in Class III gaming on their trust lands. The economic, social, environmental, health, safety, traffic, criminal justice, and other impacts from these casino-style gaming facilities on local communities were significant, especially because these gaming facilities were located in rural areas. The 1999 Compacts did not give

counties an effective role in mitigating off-reservation impacts resulting from Indian casinos. Consequently, mitigation of these impacts could not be achieved without a tribe's willingness to work with the local governments on such mitigation. Some tribes and counties were able to reach mutually beneficial agreements that helped to mitigate these impacts. Many other counties were less successful in obtaining the cooperation of tribes operating casino-style gaming facilities in their unincorporated areas.

The off-reservation impacts of current and proposed facilities led CSAC, for the first time, to adopt a policy on Indian gaming. In the fall of 2002, at its annual meeting, CSAC held a workshop to explore how to begin to address these significant impacts. As a result of this workshop, CSAC established an Indian Gaming Working Group to gather relevant information, be a resource to counties, and make policy recommendations to the CSAC Board of Directors on Indian gaming issues.

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

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

### C. Implementation of CSAC's 2003 Policy

Following adoption by CSAC of its 2003 Policy, the Indian Gaming Working Group members met on three occasions with a three-member team appointed by Governor Davis to renegotiate existing Compacts and to negotiate with tribes who were seeking a compact for the first time. As a result of these meetings, three new State-Tribe Compacts were approved for new gaming tribes. These new Compacts differed from the 1999 Compacts in that the 2003 Compacts gave a meaningful voice to the affected counties and other local governments to assist them in seeking tribal cooperation and commitment to addressing the off-reservation environmental impacts of the Indian casinos that would be built pursuant to those Compacts.

#### Illustrations of Successful County/Tribal Cooperation

There are many examples of California counties working cooperatively with tribes on a government-to-government basis on all issues of common concern to both governments, not just gaming-related issues. Yolo County has a history of working with tribes to ensure adequate services in areas where casinos are operating. In addition, Yolo County has entered into agreements with two tribes to address the impacts created by casino projects in the county.

In Southern California, San Diego County has a history of tribes working with the San Diego County Sheriff to ensure adequate law enforcement services in areas where casinos are

operating. In addition, San Diego County has entered into agreements with four tribes to address the road impacts created by casino projects. Further, a comprehensive agreement was reached with the Santa Ysabel Tribe pursuant to the 2003 Compact with the State of California.

Humboldt County, located on the north coast of the state, and tribal governments have agreed similarly on law enforcement-related issues. Humboldt County also has reached agreements with tribes on a court facility/sub station, a library, road improvements, and on a cooperative approach to seeking federal assistance to increase water levels in nearby rivers.

In central California, Madera and Placer Counties have reached more comprehensive agreements with the tribes operating casinos in their communities, which are similar to those in place in my county. These comprehensive agreements provide differing approaches to the mitigation of off-reservation impacts of Indian casinos, but each is effective in its own way to address the unique concerns of each community.

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

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

#### Illustrations of Continued Problems Addressing Casino Impacts

On the other hand, there are examples of Indian casinos and supporting facilities where a tribal government did not comply with the requirements of the IGRA or the 1999 Compacts. In Mendocino County, a tribe built and operated a Class III gaming casino for years without the requisite compact between it and the California Governor. In Sonoma County, a tribe decimated a beautiful hilltop to build and operate a tent casino that the local Fire Marshal determined lacked the necessary ingress and egress for fire safety.

In other California counties, tribes circumvented or ignored requirements of the IGRA or the 1999 Compacts prior to construction of buildings directly related to Indian gaming. In San Diego County there have been impacts to neighboring water wells that appear to be directly related to a tribe's construction and use of its water well to irrigate a newly constructed golf course adjoining its casino, and several other tribal casino projects have never provided mitigation for the significant traffic impacts caused by those projects.

In 2004, the focus of CSAC on seeking mechanisms for working with gaming tribes to address off-reservation impacts continued. Governor Schwarzenegger and several tribes negotiated amendments to the 1999 Compacts which lifted limits on the number of slot machines, required tribes to make substantial payments to the State, and incorporated most of the provisions of CSAC's 2003 Policy. Of utmost importance to counties was the requirement in each of these newly amended Compacts that each tribe be required to negotiate with the appropriate county government to develop local agreements for the mitigation of the impacts of casino projects, and that these agreements are judicially enforceable. Where a tribe and county cannot reach a mutually beneficial binding agreement, "baseball style" arbitration will be employed to determine the most appropriate method for mitigating the impacts.

#### D. The Advent of "Reservation Shopping" in California

The problems with the 1999 Compacts remain largely unresolved, as most existing Compacts were not renegotiated. These Compacts 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. For example, in the Fall of 2002 a Lake County band of Indians was encouraged by East Coast developers to pursue taking into a trust land in Yolo County for use as a 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 Band 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 being urged on 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 be an environmental and financial disaster for their neighbors and the County, which already has one major Indian casino.

In the past two years in Contra Costa County, there have been varying 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 any meaningful exploration of whether these tribes have any historical connection to the area in which they seek to establish gaming facilities.

In addition, in 2004, California counties faced a new issue involving tribes as a result of non-gaming tribal development projects. In some counties land developers were seeking partnerships with tribes in order to avoid local land use controls and to build projects that would not otherwise be allowed under local land use regulation. In addition, some tribes were seeking to acquire land outside their current trust land or their legally recognized aboriginal territory and to have that land placed into federal trust, beyond the reach of a county's land use jurisdiction.

## CSAC's 2004 Policy Regarding Development of Tribal Lands

To address these issues, the CSAC Board of Directors adopted a Revised Policy Regarding Development on Tribal Lands on November 18, 2004 (attached as Attachment B). The Revised Policy reaffirms that:

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

With respect to the issues specifically now before the Committee the following new Revised Policies apply:

- \* CSAC supports federal legislation to provide that lands are not to be placed in trust and removed from the land use jurisdiction of local governments without the consent of the State and affected County.
- \* CSAC opposes the practice commonly referred to as “reservation shopping” where a tribe seeks to place lands in trust outside its aboriginal territory over the objection of the affected County.

### **Importance of County Involvement in Developing Mitigation:**

The history and examples provided above illustrate the need for counties to be involved in developing appropriate off-reservation mitigations related to Indian casino activities. 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 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.

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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)).

In 2003 CSAC took a “snapshot” of local impacts by examining information provided by eight of the then twenty-six 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 particular gaming facility is within a City’s jurisdictional limits, the impacts on County government and services may be profound. 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 the people within their borders. Counties are responsible for a countywide justice system, social welfare, health and other services. The California experience has also made clear that particularly 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 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 often the key political 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.

### **Comments on Draft Legislation:**

CSAC fully understands that addressing impacts from Indian casinos has been a contentious subject in some California communities. In an attempt to minimize this contentiousness, CSAC has focused on resolutions that show proper respect for all governments with roles in Indian gaming. Ultimately, the two most involved governments are tribal governments and county governments.

The overwhelming majority of Indian casinos are in rural areas. Accordingly, county governments are those local governments in California who find themselves most often in the position of needing to address off-reservation impacts from Indian casinos. Current federal law does not provide counties an effective role in working with tribes to address off-reservation impacts from Indian gaming.

In California, through the most recent State-Tribe Compacts, counties and other local governments have been provided an appropriate opportunity to work with gaming tribes to address these off-reservation impacts. The result has been improved government-to-government relationships between tribes and county governments. Contrary to possible fears of tribal

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<sup>2</sup> CSAC Fact Sheet on Indian Gaming in California (11/5/03) (attached as Attachment C.)

leaders, local governments have not acted arbitrarily or capriciously in their dealings with tribes. In fact, the improved relationships are the result of each government gaining a better understanding of the responsibilities and needs of the other. Because we in California have several positive examples of counties and tribes working together for the betterment of their respective communities, CSAC is very supportive of Chairman Pombo's efforts to give local governments an effective voice in addressing the increasing practice of "reservation shopping."

#### Two-Part Determination

Chairman Pombo's bill would effectively end the two-part determination presently set forth in the IGRA and prohibit tribes from crossing state lines to build gaming facilities in states where those tribes do not have any trust land. This is a significant first step in solving a large portion of off-reservation gaming proposals considered problematic by a number of tribal leaders, Members of Congress, and State and local government officials. CSAC wholeheartedly endorses this approach.

#### Newly Recognized, Restored, Landless Tribes

CSAC endorses Chairman Pombo's efforts to clarify how and where newly recognized, restored, and landless tribes acquire lands in trust for gaming purposes. The Chairman's effort to first ascertain a tribe's geographic and historical ties to a particular area of the State makes abundant sense. This approach recognizes that when a tribe has geographic and historical ties to a community, a precedential effect to those ties is warranted. Without those geographic and historical ties, a tribe is no different than any other developer in seeking an economic opportunity on lands that were not part of its heritage.

#### Indian Economic Opportunity Zones

CSAC does not oppose the concept of allowing two Indian Economic Opportunity Zones per state. However, based on its experiences with Indian gaming issues, CSAC believes that more details are needed. CSAC has several recommendations on how to clarify this provision:

- Zones should be limited to a tribe's trust lands, and tribes should not be permitted to merge their separate trust lands to create a mega-economic opportunity zone.
- The size of the zones should be limited to an area not exceeding two square miles in unincorporated areas or one square mile in incorporated areas.
- In states where zones are created pursuant to this amendment, Indian gaming should not be permitted on land outside of a zone or on land not already held in trust by the federal government at the time this amendment is adopted, unless the tribe and affected state and local jurisdictions agree in writing that any unavoidable significant adverse impacts will be fully mitigated by the tribe.
- The location of such zones should take into account the impact that the zones could have on existing commercial endeavors.

#### Primary Geographic, Social and Historical Nexus

When the phrase "primary geographic, social and historical nexus" is used in this bill, CSAC recommends that it be based on objective facts that are generally acceptable to practicing historians, archeologists, and anthropologists. If there is a question by a tribal, state or local government as to whether the nexus has been established, the bill should provide for a judicial determination in either federal or state court on the issue, where the tribe would have the burden

of showing the requisite nexus by a preponderance of evidence. This would provide a credible mechanism for determining a tribe's primary geographic, social and historical nexus and allow for judicial review of the facts in cases of doubt.

#### Suggested Revisions and Clarifications

There are portions of Chairman Pombo's bill that CSAC respectfully suggests require clarification or modification to eliminate ambiguity, to clarify the intent of the bill, or to avoid misinterpretation. The specific suggested revisions are shown in Attachment D. In addition to these revisions, CSAC requests that language be added to give certainty to the date that the amendment would become applicable so that, for example, federal agencies would know whether a tribe's trust application filed before the effective date of the amendment, but approved after the effective date, would be subject to the amendment's requirements.

#### Conclusion:

CSAC presents this written testimony to assist the Chairman and Committee Members in their efforts to amend the IGRA to address the increasing practice of "reservation shopping." In California the Chairman's bill, with necessary and appropriate revisions, would allow counties a voice in matters that create impacts that the County will ultimately be called upon by its constituents to address. This voice is critical if California counties are to protect the health and safety of their citizens. Otherwise, counties find themselves in a position where their ability to effectively address the off-reservation impacts from Indian gaming is very limited and dependent on the willingness of a tribe to mitigate these impacts.

In those instances in California where tribal governments and counties have met to work together to resolve issues of concern to each government, responsible decisions have been made by both governments to the benefit of both tribal members and local communities. Enactment of this amendment, with some minor revisions, would provide for more opportunities for these governments to work together. It would further the original goals of the IGRA while helping to minimize abuses of the IGRA that have proven to be detrimental to those tribes in full compliance with all applicable federal laws.

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

**Adopted by the CSAC Board of Directors  
February 6, 2003**

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

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

CSAC believes the current Compact fails to adequately address these impacts and/or to provide meaningful and enforceable mechanisms to prevent or mitigate impacts. The overriding

purpose of the principles presented below is to harmonize existing policies that promote tribal self-reliance with policies that promote fairness and equity and that protect the health, safety, environment, and general welfare of all residents of the State of California and the United States. Towards that end, CSAC urges the State to consider the following principles when it renegotiates the Tribal-State Compact:

1. A Tribal Government constructing or expanding a casino or other related businesses that impact off-reservation<sup>3</sup> land will seek review and approval of the local jurisdiction to construct off-reservation improvements consistent with state law and local ordinances including the California Environmental Quality Act with the tribal government acting as the lead agency and with judicial review in the California courts.
2. A Tribal Government operating a casino or other related businesses will mitigate all off-reservation impacts caused by that business. In order to ensure consistent regulation, public participation, and maximum environmental protection, Tribes will promulgate and publish environmental protection laws that are at least as stringent as those of the surrounding local community and comply with the California Environmental Quality Act with the tribal government acting as the lead agency and with judicial review in the California courts.
3. A Tribal Government operating a casino or other related businesses will be subject to the authority of a local jurisdiction over health and safety issues including, but not limited to, water service, sewer service, fire inspection and protection, rescue/ambulance service, food inspection, and law enforcement, and reach written agreement on such points.
4. A Tribal Government operating a casino or other related businesses will pay to the local jurisdiction the Tribe's fair share of appropriate costs for local government services. These services include, but are not limited to, water, sewer, fire inspection and protection, rescue/ambulance, food inspection, health and social services, law enforcement, roads, transit, flood control, and other public infrastructure. Means of reimbursement for these services include, but are not limited to, payments equivalent to property tax, sales tax, transient occupancy tax, benefit assessments, appropriate fees for services, development fees, and other similar types of costs typically paid by non-Indian businesses.

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

5. The Indian Gaming Special Distribution Fund, created by section 5 of the Tribal-State Compact will not be the exclusive source of mitigation, but will ensure that counties are guaranteed funds to mitigate off-reservation impacts caused by tribal gaming.
6. To fully implement the principles announced in this document and other existing principles in the Tribal-State compact, Tribes will meet and reach a judicially enforceable agreement with local jurisdictions on these issues before a new compact or an extended compact becomes effective.
7. The Governor should establish and follow appropriate criteria to guide the discretion of the Governor and the Legislature when considering whether to consent to tribal gaming on lands acquired in trust after October 17, 1988 and governed by the Indian Gaming Regulatory Act. 25 U.S.C § 2719. The Governor should also establish and follow appropriate criteria/guidelines to guide his participation in future compact negotiations.

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

Adopted by CSAC Board of Directors

**November 18, 2004**

Background

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

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

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

The problems with the 1999 compacts remain largely unresolved, however, since most existing compacts have not been renegotiated. These compacts allow tribes to develop two casinos, expand existing casinos within certain limits, and do not restrict casino development to areas within a tribe's current trust land or legally recognized aboriginal territory. In addition, issues are beginning to emerge with non-gaming tribal development projects. In some counties, land developers are seeking partnerships with tribes in order to avoid local land use controls and to build projects, which would not otherwise be allowed under the local land use regulations. Some tribes are seeking to acquire land outside their current trust land or their legally recognized aboriginal territory and to have that land placed into federal trust and beyond the reach of a county's land use jurisdiction.

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

## **Policy**

1. CSAC supports cooperative and respectful government-to-government relations that recognize the interdependent role of tribes, counties and other local governments to be responsive to the needs and concerns of all members of their respective communities.
2. CSAC recognizes and respects the tribal right of self-governance to provide for the welfare of its tribal members and to preserve traditional tribal culture and heritage. In similar fashion, CSAC recognizes and respects the counties' legal responsibility to provide for the health, safety, environment, infrastructure, and general welfare of all members of their communities.
3. CSAC also supports Governor Schwarzenegger's efforts to continue to negotiate amendments to the 1999 Tribal-State Compacts to add provisions that address issues of concern to the State, tribes, and local governments. CSAC reaffirms its support for the local government protections in those Compact amendments that have been agreed to by the State and tribes in 2004.
4. CSAC reiterates its support of the need for enforceable agreements between tribes and local governments concerning the mitigation of off-reservation impacts of development on tribal land<sup>4</sup>. CSAC opposes any federal or state limitation on the ability of tribes, counties and other local governments to reach mutually acceptable and enforceable agreements.

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

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

**ATTACHMENT C:**  
CSAC Fact Sheet on Indian Gaming in California (11/5/03)



**Indian Gaming and Local Impacts**

**A Forum about the Future of California**

Indian Gaming In California...  
A Growing Number

|            |                                                                                                                             |
|------------|-----------------------------------------------------------------------------------------------------------------------------|
| <b>172</b> | Tribes in California with current Compacts, Request for Compacts, or Petitioning for Federal Recognition, or unknown status |
|------------|-----------------------------------------------------------------------------------------------------------------------------|

|            |                                                    |
|------------|----------------------------------------------------|
| <b>108</b> | Tribes in California that have Federal Recognition |
|------------|----------------------------------------------------|

|           |                                     |
|-----------|-------------------------------------|
| <b>62</b> | Tribal-State Compacts in California |
|-----------|-------------------------------------|

|           |                                                     |
|-----------|-----------------------------------------------------|
| <b>52</b> | Compacted Tribes that have active gaming facilities |
|-----------|-----------------------------------------------------|

|           |                                      |
|-----------|--------------------------------------|
| <b>10</b> | Compacted Tribes that are non-gaming |
|-----------|--------------------------------------|

|           |                                                                                                            |
|-----------|------------------------------------------------------------------------------------------------------------|
| <b>44</b> | Counties with Indian Tribes in gaming, non-gaming, petitioning for federal recognition, or proposed gaming |
|-----------|------------------------------------------------------------------------------------------------------------|

|           |                                                  |
|-----------|--------------------------------------------------|
| <b>25</b> | Counties with active gaming in their communities |
|-----------|--------------------------------------------------|

|           |                                          |
|-----------|------------------------------------------|
| <b>33</b> | Counties with active and proposed gaming |
|-----------|------------------------------------------|

|           |                                                         |
|-----------|---------------------------------------------------------|
| <b>53</b> | Total number of fully operational casinos in California |
|-----------|---------------------------------------------------------|

|           |                                  |
|-----------|----------------------------------|
| <b>23</b> | Total number of proposed casinos |
|-----------|----------------------------------|

ATTACHMENT D:  
Recommended Revisions to Pombo Discussion Draft

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**SECTION 1. RESTRICTION ON OFF-RESERVATION GAMING.**

Section 20 of the Indian Gaming Regulatory Act (25 U.S.C. 2719) is amended—

(1) by amending subsection (b)(1) to read as follows:

“(b)(1) Subsection (a) will not apply to any Indian tribe—

“(A) that is newly recognized<sup>5</sup> under the Federal Acknowledgement Process at the Bureau of Indian Affairs, if the Secretary determines that the lands acquired in trust for the benefit of that Indian tribe for the purposes of gaming are lands within the State where the Indian tribe has its primary geographic, social, and historical nexus to land; or

“(B) that is restored by legislation, court decree,<sup>6</sup> or is landless on the date of the enactment of subsection (e) if—

“(i) the Secretary determines that the land acquired in trust for the benefit of the

Indian tribe for the purposes of gaming are lands within the State where the Indian tribe has its primary geographic, social, and historical nexus to the land;

“(ii) the Secretary determines that the proposed gaming activity is in the best interest of the Indian tribe, its tribal members, and would not be detrimental to the surrounding community; and

“(iii) the affected State, city, county, town, parish, village, and other general purpose subdivisions each agree in writing within a reasonable time following a written request from tribal representatives that Indian gaming being conducted on the subject site will not cause unavoidable significant adverse off-Reservation impacts that the tribe is

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<sup>5</sup> CSAC is aware of only one means that a tribe can be “newly recognized” and that is under the Federal Acknowledgement Process of the Bureau of Indian Affairs.

<sup>6</sup> Other than restoration by legislation or court decree, CSAC is not aware of any other means by which a tribe can be restored.

unwilling to fully mitigate in a manner reasonably acceptable to the affected State, city, county, town, parish, village, and other general purpose subdivision.

“(a) The phrase “the affected State, city, county, town, parish, village, and other general purpose subdivision,” for purposes of this statute, shall mean all governmental entities with land use, law enforcement, or health and safety jurisdiction over the land proposed to be taken into trust for the tribe as well as all governmental entities providing social services to residents living within the immediate vicinity of the land proposed to be taken into trust or, if land has already been taken into trust for the tribe, then over land within two miles of the trust land.

“(b) The phrase “within a reasonable time following a written request from tribal representatives,” for purposes of this statute, shall mean that the affected governmental entity of whom the request is made shall have two hundred seventy (270) days<sup>7</sup> from the date of the request to respond to the request. If no response is given within this timeframe, then it shall be understood that there are no significant off-Reservation impacts as a result of Indian gaming being conducted on the subject site.; and

(2) by adding at the end the following new subsections:

“(e)(1) Notwithstanding any other provision of law, the Secretary may designate 2 Indian Economic Opportunity Zones, for the purposes of class II gaming and class III gaming

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<sup>7</sup> This time period was chosen because, in California, the State environmental laws would likely apply to any governmental determination regarding the significant off-Reservation impacts. For projects that might engender consideration public commenting leading to an Environmental Impact Report, the time period for preparation and review of this report would be at least 180 days.

development, in each State within the contiguous United States where at least one Indian tribe has its primary geographical, social, and historical nexus to land within that State as follows:

“(A) One Indian Economic Opportunity Zone in each State on lands that were Indian lands on the date of enactment of this subsection.

“(B) One Indian Economic Opportunity Zone in each State on lands that were not Indian lands on the date of the enactment of this subsection, but which the Secretary takes into trust for all of the Indian tribes participating in that Indian Economic Opportunity Zone.

“(2) An Indian tribe may participate in class II gaming and class III gaming within an Indian Economic Opportunity Zone designated under paragraph (1)(A) if—

“(A) the Secretary determines that participation in the Indian Economic Opportunity Zone is in the best interest of each participating Indian tribe;

“(B) the participating Indian tribe for which the Indian lands within the Indian Economic Opportunity Zone are held in trust—

“(i) receives no funds related to the gaming activities of any other participating tribe within the Indian Economic Opportunity Zone, other than not more than 10 percent of gross revenues as a management fee to operate the gaming facility; and

“(ii) provides no financial support to any other participating Indian tribe;

“(C) the affected State, city, county, town, parish, village, and other general purpose subdivisions each agree in writing within a reasonable time following a written request from tribal representatives that Indian gaming being conducted on the subject site will not cause unavoidable significant adverse off-Reservation impacts that the tribe is unwilling to fully mitigate in a manner reasonably acceptable to the affected State, city, county, town, parish, village, and other general purpose subdivision.; and

“(D) the Indian tribe does not have any ownership interest in any other gaming facility on any other Indian lands.

“(3) An Indian tribe may participate in class II gaming and class III gaming within an Indian Economic Opportunity Zone designated under paragraph (1)(B) if—

“(A) the Secretary determines that participation in the Indian Economic Opportunity Zone is in the best interest of each participating Indian tribe;

“(B) the lands within the Indian Economic Opportunity Zone are taken into trust by the Secretary for the benefit of each participating Indian tribe;

“(C) the affected State, city, county, town, parish, village, and other general purpose subdivisions each agree in writing within a reasonable time following a written request from tribal representatives that Indian gaming being conducted on the subject site will not cause unavoidable significant adverse off-Reservation impacts that the tribe is unwilling to fully mitigate in a manner reasonably acceptable to the affected State, city, county, town, parish, village, and other general purpose subdivision;

“(D) each Indian tribe that has its primary geographic, social, and historical nexus to land within 200 miles of the Indian Economic Opportunity Zone approves; and

“(E) the Indian tribe does not have any ownership interest in any other gaming facility on any other Indian lands.

“(4) The Secretary may approve gaming compacts with 2 or more Indian tribes and the Governor of each State to carry out this subsection.

“(f) Notwithstanding any other provision of this Act, an Indian tribe shall not conduct gaming regulated by this Act on Indian lands outside of a State in which the Indian tribe has an existing reservation as of the date of enactment of this subsection, unless such lands are contiguous to an existing reservation of that Indian tribe in that State.”.

## **SEC. 2. STATUTORY CONSTRUCTION.**

The amendments made by paragraph (1) of section 1 shall be applied prospectively. Compacts or other agreements that govern gaming regulated by this Act on Indian lands that

were in effect on the date of the enactment of this Act shall not be affected by the amendments made by paragraph (1) of section 1 of this Act.