SECOND DISCUSSION DRAFT OF LEGISLATION REGARDING OFF-RESERVATION INDIAN GAMING

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

Wednesday, November 9, 2005

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OVERSIGHT HEARING ON "THE SECOND DISCUSSION DRAFT OF LEGISLATION REGARDING OFF-RESERVATION INDIAN GAMING."

Wednesday, November 9, 2005
U.S. House of Representatives
Committee on Resources
Washington, D.C.

The Committee met, pursuant to call, at 10:09 a.m. in Room 1324, Longworth House Office Building. Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Hayworth, Walden, Gibbons, Cubin, Gallegly, Tom Udall, DeFazio, Kind, Inslee, Napolitano, Pearce, Costa, Herseth, and Cardoza.

STATEMENT OF THE HONORABLE RICHARD W. POMBO, A REPRESENTATIVE FROM THE STATE OF CALIFORNIA

The CHAIRMAN. The Committee on Resources will come to order. The Committee is meeting today to hear testimony on the second version of a discussion draft bill regarding off-reservation Indian gaming.

Under Rule 4[g] of the Committee Rules, any oral opening statements at hearings are limited to the Chairman and Ranking Minority Member. This will allow us to hear from our witnesses sooner and help members keep to their schedules. Therefore, if other members have statements, they can be included in the hearing record under unanimous consent.

Today the Committee is seeking testimony regarding the second draft of legislation that I authored to amend Section 20 of the Indian Gaming Regulatory Act regarding off-reservation gaming. My intention in this public process is to ensure that Indian gaming is conducted on Indian lands consistent with the original intent of IGRA.

The vast majority of tribes that conduct Indian gaming do so on Indian lands that are not involved in any off-reservation gaming controversies whatsoever. However, IGRA makes several exceptions for the possibility of off-reservation gaming.

While only a small handful of these have been approved since 1988, the mere existence of these exceptions has proven to be a great incentive for the proliferation of off-reservation gaming proposals. Lured by the potential profits of an off-reservation facility and the ambiguity about what may or may not be allowed under

Section 20 of IGRA, there has been an ever-increasing ground swell of new proposals for off-reservation gaming facilities.

This great increase in new proposals has led to new problems for tribal gaming. Tribes seeking to go off reservation, and their development backers, have been all too willing to trade away sovereign tribal rights in exchange for an off-reservation gaming location. It has increased conflict between Indian tribes. It has led to the frustration in local communities who feel powerless to affect whether or not a casino is located in their community, and it has severely damaged the public image of Indian gaming, causing the public focus to shift away from the good things that gaming has done for tribal self-governance and self-sufficiency, and instead focus on the perceived negatives of tribal gaming.

These conflicts and controversies over off-reservation gaming proposals are not a matter of perception. They are real and have very real consequences.

Colleagues of mine who do not often have to deal with tribal issues all of a sudden are exposed to them in a very negative way when an Indian casino is proposed in their district where a tribe does not reside. Off-reservation gaming is not just bad publicity for the tribes, it is all too often the only publicity they are getting, and this bad publicity definitely affects how members look at all bills affecting Indian tribes.

I distributed my initial discussion draft bill in March, and since then the Committee has conducted several hearings, held hundreds of meetings, and taken countless comments from Indian tribes, state and local officials, and local citizens groups on that draft.

After careful consideration of that input, I have revised the draft legislation with a number of improvements to clarify the law and empower local communities and tribes. This discussion draft bill clarifies where Indian casinos can be located while increasing the role and power of local community state legislatures and nearby Indian tribes in the process of considering an off-reservation gaming proposal.

The vast majority of tribes that conduct gaming have done so on their own lands regardless of location rather than seeking the most commercially lucrative off-reservation site. This draft ensures that those tribes who have faithfully adhered to the spirit and intent of IGRA will not be harmed by off-reservation facilities.

I have also included language that will make it easier for tribes to work together in cooperative gaming development proposals on current reservation land. This gives tribes a new economic development option without having to resort to introducing gaming in areas where it is does not already exist.

Additionally, it will empower local communities to be a part of the process in determining whether or not land is taken into trust in their community for Indian gaming, giving them a voice in the final determination.

I know that the inclusion of local communities in the process has been cause of concern to the Indian country who have pointed out repeatedly that it is against current precedent and Federal Indian policy to allow local communities any power over affairs on tribal lands.

While I hear and understand the concerns, I respectfully submit to the tribes that this situation with off-reservation gaming covered in my draft is different and deserves to be handled differently. No one is suggesting that local communities in Arizona should be able to tell the San Carlos Apache how much timber they should harvest from their lands or the communities in South Dakota should be able to dictate the Cheyenne River Sioux how to run their tribal housing program.

What I am saying in this draft is that in the circumstances of off-reservation gaming proposals, we are not talking about existing reservation lands. Instead, we are talking about a land within a community that a tribe wishes to purchase, and then have the government designate that land as an Indian reservation and eligible for Indian casino gaming.

This is an entirely different situation where the tribe is asking to join and become part of a new community and it is entirely proper for the community to have a say in that matter.

In any other situation where an entity wants to come into a community and develop property, whether for a house, hospital, factory, garbage dump, nuclear power plant or even a Federal facility like a military base, the local community has the ability to determine whether or not they want that type of development in their midst. Even a homeowner wanting to put an addition on their house or other improvements to their own property has to get local approval through the zoning process.

Why should a proposal for an off-reservation Indian casino be treated any different? Put another way, why should off-reservation casinos be the only type of development in the country where the local community has no say?

This is an important concept that I look forward to having a very thorough dialogue on. In distributing the second draft bill, I want to emphasize my continued commitment to consultation with the tribes on this topic on a government-to-government basis.

Once again, I emphasize that this is a work in progress. I welcome the continued valuable input from tribes and other interested parties, and will use this input constructively to craft quality legislation that lays the off-reservation gaming controversy to rest.

With that in mind, I want to hear from today's witnesses about their experiences with off-reservation gaming and what they think of the current discussion draft.

At this time I would like to recognize Mr. Udall.

[The prepared statement of Chairman Pombo follows:]

Statement of The Honorable Richard W. Pombo, Chairman, Committee on Resources

Today the Committee is seeking testimony regarding the second draft of legislation I authored to amend Section 20 of the Indian Gaming Regulatory Act regarding off-reservation gaming. My intention in this public process is to ensure that Indian gaming is conducted on Indian lands, consistent with the original intent of IGRA.

The vast majority of tribes that conduct Indian gaming do so on Indian lands and are not involved in any off-reservation gaming controversies whatsoever. However, IGRA makes several exceptions for the possibility of off-reservation gaming. While only a small handful of these have been approved since 1988, the mere existence of these exceptions and has proven to be a great incentive for the proliferation of off reservation gaming proposals. Lured by the potential profits of an off-reservation facility, and the ambiguity about what may or may not be allowed under Section 20

of IGRA, there has been an ever-increasing groundswell of new proposals for off-reservation gaming facilities.

This great increase in new proposals has led to new problems for tribal gaming. Tribes seeking to go off reservation, and their development backers, have been all too willing to trade away sovereign tribal rights in exchange for an off reservation gaming location. It has increased conflict between Indian tribes. It has led to frustration in local communities who feel powerless to affect whether or not a casino is located in their community. And it has severely damaged the public image of Indian gaming, causing the public focus to shift away from the good things gaming has done for tribal self-governance and self-sufficiency, and instead focus on the perceived negatives of tribal gaming.

These conflicts and controversies over off-reservation gaming proposals are not a matter of perception; they are real, and have very real consequences. Colleagues of mine who do not often have to deal with tribal issues all of a sudden are exposed to them in a very negative way when an Indian casino is proposed in their district where a tribe does not reside. Off-reservation gaming is not just bad publicity for tribes; it is all too often the only publicity they are getting. And this bad publicity definitely affects how Members look at all bills affecting Indian tribes.

I distributed my initial discussion draft bill in March and since then the Committee has conducted several hearings, held hundreds of meetings, and taken countless comments from Indian tribes, State and local officials, and local citizens' groups on that draft. After careful consideration of their input, I have revised this draft legislation with a number of improvements that clarify the law and empower local communities and Tribes.

This discussion draft bill clarifies where Indian casinos can be located while increasing the role and power of local communities, state legislatures, and nearby Indian tribes in the process of considering an off-reservation gaming proposal.

The vast majority of tribes that conduct gaming have done so on their own reservation lands, regardless of location, rather than seeking the most commercially lucrative off-reservation site. This draft ensures that these tribes, who have faithfully adhered to the spirit and intent of IGRA, will not be harmed by off-reservation facilities.

I have also included language that will make it easier for Indian tribes to work together in cooperative gaming development proposals on current reservation land. This give tribes a new economic development option without having to resort to introducing gaming in areas where it does not already exist.

Additionally, it will empower local communities to be a part of process in determining whether or not land is taken into trust in their community for Indian gaming, giving them a voice in the final determination.

I know that the inclusion of local communities in the process has been a cause of concern to Indian Country, who have pointed out repeatedly that it is against current precedent in federal Indian policy to allow local communities any power over affairs on tribal lands. While I hear and understand these concerns, I respectfully submit to the tribes that this situation with off reservation gaming covered in my draft is different and deserves to be handled differently.

No one is suggesting that local communities in Arizona should be able to tell the San Carlos Apache how much timber they should harvest from their lands, or that communities in South Dakota should be able to dictate to the Cheyenne River Sioux how to run their tribal housing program. What I am saying in this draft is in the circumstance of off "reservation gaming proposals, we are not talking about existing reservation lands. Instead, we are talking about land within a community that a tribe wishes to purchase, and then have the government designate that land as Indian reservation land and eligible for Indian casino gaming. This is an entirely different situation—where the tribe is asking to join and become part of the community, and it is entirely proper for the community to have a say in the matter.

In any other situation where an entity wants to come into a community and develop property, whether for a school, hospital, factory, garbage dump, nuclear power plant, or even a federal facility like a military base, the local community has the ability to determine whether or not they want that type of development in their midst. Even a homeowner wanting to put an addition on their house or other improvements to their property, has to get local approval through the zoning process. Why should a proposal for an off-reservation Indian casino be treated any differently? Put another way, why should off-reservation casinos be the ONLY type of development in the country where the local community does not have the final say on whether or not it happens? This is an important concept that I look forward to having a very thorough dialogue on.

In distributing a second draft bill, I want to emphasize my continued commitment to consultation with Indian tribes on this topic on a government-to-government

basis. Once again, I emphasize that it is a work in progress. I welcome the continued valuable input from tribes and other interested parties, and will use this input constructively to craft quality legislation that lays the off-reservation gaming controversy to rest.

With that in mind, I want to hear from today's witnesses about their experiences with off-reservation gaming and what they think of the discussion draft.

STATEMENT OF THE HONORABLE TOM UDALL, A REPRESENTATIVE FROM THE STATE OF NEW MEXICO

Mr. TOM UDALL. Thank you, Mr. Chairman, and we very much appreciate all the witnesses that are here today, and Mr. Chairman, we very much appreciate you having a number of hearings and getting input from the public and all the concerned parties. We appreciate that way of legislating, and we hope that it will continue on this issue.

One of the panels today has a witness on it that will deal with a gaming issue in New Mexico. My constituent involving that issue is the Pueblo of Jemez, which is in the 3rd congressional district in New Mexico. At this time the Pueblo of Jemez is celebrating its religious feast day and was unable, Mr. Chairman, to be here.

The Governor of the Pueblo has written Chairman Pombo a letter regarding the Jemez application before the Department of Interior. This is an application under Section 20. Included with the letter is the Dona Ana County resolution supporting the Pueblo's application before the Department of the Interior.

At this time, Mr. Chairman, I would like to make that letter, the Governor's letter to you and the Dona Ana County resolution an official part of the record.

The CHAIRMAN. Without objection.

[NOTE: The letter and resolution have been retained in the Committee's official files.]

Mr. TOM UDALL. Thank you, Mr. Chairman.

I also note that serving on one of these panels is one of our very able senators from the State of New Mexico, Senator Mary Kay Papen. She is a hard working and dedicated legislator, and I am sure she is going to be giving very valuable testimony today on this issue.

I hope that I will be able to be here for most of her testimony, although commitments are going to have me going in and out this morning.

So with that, Mr. Chairman, I would yield back, and appreciate very much the panelists being here today to offer their testimony on this piece of legislation.

The CHAIRMAN. Thank you. And as I said earlier, any other opening statements will be included in the record. Our panels, most of those on our panels have traveled great distances to be here and to participate in this hearing, and I want to get to their testimony, and having the opportunity to have a discussion on the draft bill as quickly as we can.

I would like to call up our first panel of witnesses: Chairman Ernest Stevens; Chairman Ron Suppah; Chairman Deron Marquez, Chairperson Cheryle Kennedy; and Chairman John Barnett. If you would join us at the witness stand, and just remain standing.

As is the custom of the Committee, we swear in all of our witnesses.

[Witnesses sworn.]

The CHAIRMAN. Let the record show they have all answered in the affirmative.

Thank you very much for being here. I have had an opportunity to discuss this with most of you individually in the past, but I do look forward to having the opportunity to have you testify at the hearing.

Chairman Stevens, we are going to begin with you. I will tell you and all of our witnesses that your entire written statements will be included in the record. If you could try to summarize those statements and stay within the five minutes for your oral testimony, it would help to get to the questions and move on with the hearing.

So Chairman Stevens, we are going to begin with you.

STATEMENT OF CHAIRMAN ERNEST L. STEVENS, JR., NATIONAL INDIAN GAMING ASSOCIATION

Mr. STEVENS. Thank you and good morning. It is a great honor to be here before you, Chairman Pombo, and the rest of the Committee members. I would like to also acknowledge the fellow tribal leaders that are here present today.

As you know, my name is Ernie Stevens, Jr., and I have had the great honor of serving as Chairman of the National Indian Gaming Association for the past five years, and with me today is NIGA's executive director, Mr. Mark Van Norman.

I want to thank you for inviting me to testify this morning and for the serious process that you have given this very important issue. We appreciate that you have issued the second version of the bill in draft form so the tribal leaders have a chance to comment on the legislation as the bill continues to develop.

As you know, the issue of off-reservation gaming is a difficult one for all of Indian country. As NIGA promised the Committee last March, we convened a NIGA/NCAI tribal leaders task force to form a national position on off-reservation gaming.

Over a period of four months, we held four hearings, the first in Washington, D.C., the second in San Diego, California, the third in Minneapolis, Minnesota, and the final meeting in Green Bay, Wisconsin, in conjunction with the National Congress for American Indians mid-year meeting. Over 150 tribal leaders and representatives attended each meeting.

Many tribal leaders stated that IGRA is working, citing the fact that only four off-reservation gaming sites have been approved in 17 years. Others have voiced concern that off-reservation gaming may infringe on the aboriginal lands of nearby tribes, and is generating controversy in the media.

While tribal leaders were not unanimous in their views, the great majority of tribal leaders participating in the task force agreed that opening IGRA was not a way to address the issue. Instead, the leaders chose to support a regulatory process to clarify off-reservation gaming. NIGA and NCAI adopted a joint resolution to this effect. We have submitted that to the Committee.

The Interior Department recently announced that it will soon issue a discussion draft of regulations to implement Section 20. We believe that this as rulemaking process will shed much needed light on the extensive process already in place for off-reservation gaming, and will bring clarity to the issue that will ease the concerns of Congress and the public.

For the two-part process, Interior's rule will require:

One, tribal state and local community input; the Secretary's approval for gaming benefits to the tribe and it is not detrimental to nearby tribes and local community; and third, the Governor's concurrence.

In addition, Interior uses a sliding scale under its 151 trust land regulations that gives more weight to the state and local concerns if the off-reservation site is located far from the tribe's current reservation.

As a result of this extensive process, only three tribes used the two-part process in 17 years, and none have used it for gaming on lands outside their current state.

Interior's rule will also include a significant hurdle in place for the Section 20's land claim exception, which is that Congress must pass legislation approving the land claim settlement before a tribe could conduct gaming on the land. This gives everyone that may have an interest in the process, including tribal, state, and local governments, an opportunity to voice their concerns. This exception has only been used once in 17 years.

Interior's regulations will spell out all of these and other requirements to off-reservation gaming, and the establishment of initial reservations. In addition, these clear rules will discourage unrealistic proposals.

NIGA supports the existing provisions in Section 20 that provide nearby tribes, state, and local governments with input on off-reservation process, and the general requirement that tribes must have a historical connection to lands that they seek for the purposes of gaming. These are important policy statements that NIGA and NCAI included in our joint resolution, and Interior has indicated that its proposal will include such requirements.

We hope that the Resources Committee and the Senate Committee on Indian Affairs will give Interior's regulatory proposal an opportunity to move forward. NIGA appreciates the opportunity to be a part of this legislative process, yet we are concerned with several provisions in the second draft.

First, it would delete the two-part process and the land claim exception. As I noted, in 17 years under IGRA only four tribes have met the strict requirements necessary to meet these exceptions.

In addition, we are concerned that adding requirements for newly acknowledged, restored and landless tribes may infringe on vested property rights. Initial reservations are not of-reservation. The Section 20 exception for these tribes seek to address the previous wrongs. Interior has indicated that its proposal will require these tribes to show that they have historic connection to these lands that they seek as their initial reservation.

And finally, we are concerned that with the provisions that will require local community input for the establishment of initial reservations. Requiring local community approval for the exercise of

tribal rights on their own lands would set a bad precedent for us. We believe that local governments are subdivisions of the state, not separate sovereigns. State governments have the power and authority to protect the interests of local government.

NIGA will continue this dialogue, Mr. Chairman, with our tribal leaders task for next week in Seminole, Florida at our mid-year conference, and we will continue to discuss this matter and do its best to provide valuable feedback as you move through the process.

In conclusion, Mr. Chairman, and Members of the Committee, I want to just assure that our concerns—we approach this, any attempt to amend IGRA with great caution. Indian gaming has provided our communities with a new hope because Indian gaming continues to rebuild our communities, and that is why we speak with great concern from our heart through this process.

Again, I emphasize, Mr. Chairman, that we will continue to interact, and I have discussed this briefly with President Hall who now has stepped down as President of NCAI, and he will hand this process very firmly over to President, new President Joe Garcia of the National Congress for American Indians, and we will continue to be here to speak to any of the issues that you might have.

So as the Committee moves forward in this process, we ask that Congress work to protect the integrity of the Act, and protect legislative process to prevent any unrelated amendments. With due respect, we also ask that you give Interior time to pursue its regulatory process.

Once again, sir, we thank you for the opportunity to testify, and we are here to answer any questions. Thank you very much to the Members of the Committee as well.

[The prepared statement of Mr. Stevens follows:]

Statement of Ernest L. Stevens, Jr., Chairman, National Indian Gaming Association

Good morning. Chairman Pombo, Congressman Rahall and Members of the House Resources Committee, thank you for the opportunity to testify on the second discussion draft of legislation regarding off-reservation Indian gaming.

My name is Ernest L. Stevens, Jr. and I am the Chairman of the National Indian Gaming Association ("NIGA"). NIGA is an inter-tribal association of 184 Indian tribes that use Indian gaming to generate essential tribal government revenue.

Introduction

At the outset, I should note that 98 to 99% of Indian Gaming is conducted "on reservation." Indian tribes generally oppose amending the Indian Gaming Regulatory Act ("IGRA") because we are concerned that amendments will diminish tribal rights and that once lost, we would have great difficulty restoring our rights.

We ask the Committee to continue to consider any amendment to IGRA only through regular order, and if any amendments are marked out of Committee, we ask that they be considered under a closed rule. We also respectfully request that the Committee reject extraneous amendments that would undermine tribal rights to self-government. After all, for Indian nations tribal self-government is our original democracy. Finally, any amendment to IGRA should approve the Secretary's procedures in lieu of compact to address the Supreme Court's Seminole decision.

A. Indian Gaming: the Native American Success Story

Indian gaming is the Native American success story. Where there were no jobs, now there are 553,000 jobs.

Where our people had only an eighth grade education on average, tribal governments are building schools and funding college scholarships.

Where the United States and boarding schools sought to suppress our languages, tribal schools are now teaching their native language.

Where our people suffer epidemic diabetes, heart disease, and premature death, our tribes are building hospitals, health clinics, and wellness centers.

Historically, the United States signed treaties guaranteeing Indian lands as permanent homes, and then a few years later, went to war to take our lands. This left our people to live in poverty, often on desolate lands, while others mine for gold or pumped oil from the lands that were taken from us.

Throughout all of those long years, Indian tribes always fought to maintain our inherent right to self-government and Indian gaming is an exercise of that right.

Today, for over 60% of Indian tribes in the lower 48 states, Indian gaming offers new hope and a chance for a better life for our children.

Two-thirds of American voters support Indian gaming, and when they are informed that Indian gaming is rebuilding our communities, 74% of American voters support Indian gaming.

B. Government-to-Government Consultation

The Commerce Clause of the Constitution recognizes Indian tribes as pre-existing governments. The Constitution also acknowledges the status of tribal governments as sovereigns and the sanctity of our treaties in the Treaty Clause. As a result, the historical relations between the United States and Indian nations are built on a foundation of government-to-government relations.

Honoring the historical policy of government-to-government relations between the United States and Indian tribes, on September 23, 2004, President Bush issued an Executive Memorandum to the Heads of Executive Departments and Agencies explaining:

> The United States has a unique legal and political relationship with Indian tribes and a special relationship with American Indian tribes and Alaska Native entities as provided in the Constitution of the United States, treaties, and Federal statutes. Presidents for decades have recognized this relationship". My Administration is committed to continuing to work with federally recognized tribal governments on a government-to-government basis and strongly supports and respects tribal sovereignty and self-determination for tribal governments in the United States.

The House Committee on Resources also has a strong tradition of respect for tribal self-government and government-to-government consultation.

Chairman Pombo released the first discussion draft bill on off-reservation gaming in March and since then the Committee has held four hearings to give tribal governments, state officials and members of the public an opportunity to present views. On October 31, Chairman Pombo released a second draft bill.

We thank you, Chairman Pombo, Congressman Rahall, and the Committee, for working with tribal governments in a manner that respects the principle of government-to-government consultation.

NIGA/NCAI Tribal Leaders Task Force on Indian Gaming

The National Indian Gaming Association and our sister organization, the National Congress of American Indians ("NCAI"), conducted several meetings around the country with tribal leaders to review the discussion draft: March 27 in Washington, D.C.; April 13 in San Diego, California; May 25 in Minneapolis, Minnesota; June 16 in Green Bay, Wisconsin; and October 30 in Tulsa, Oklahoma.

Our meetings included mostly tribal governments that use Indian gaming on their reservation lands, tribal governments that have used the Section 20 process to engage in gaming on after acquired lands, a few tribal governments that now seek to use the Section 20 process, and tribal governments opposing Section 20 applications by neighboring tribes. While tribal governments were not unanimous in their views, 95% or more of the tribal governments that participated in our meetings opposed amendments to the Indian Gaming Regulatory Act concerning off-reservation gaming.

Accordingly, NIGA and NCAI worked on a joint set of principles regarding this issue. First, in regard to newly recognized or landless tribes, there is no existing reservation, so reacquired lands are by definition "on reservation."

Only 3 Indian tribes have used the Section 20 two part secretarial consultation process for Indian gaming on lands acquired after 1988: Forest County Potawatomi in Milwaukee, Wisconsin; Kalispel Tribe near Spokane, Washington; and Keweenaw Bay Indian Community in Marquette, Michigan. Only 3 Indian tribes in 17 years. All three had a determination by the Secretary of the Interior that gaming was in the best interest of the tribe and not detrimental to the surrounding community and Governor's agreement. All three had local government support, and the Department of Interior staff explained that without local government support, an application under the two part process would not be approved by the Secretary.

Only one Indian tribe in 17 years—the Seneca Nation of New York—has been able to use land reacquired under a land claim settlement for gaming pursuant to Section 20. That is, in part, because the Secretary of the Interior requires that Congress approve any land claim settlement before an Indian tribe may use settlement lands for Indian gaming.

Tribal governments generally do not believe that the actual record under Section 20 justifies amendments to the Indian Gaming Regulatory Act. Thus, the NIGA/NCAI Tribal Leaders Task Force on Indian Gaming opposed legislative amendments to Section 20.

Tribal governments generally agree that in any Section 20 two-part process application for gaming on reacquired Indian lands:

- A tribal government should thoroughly consult with state and local officials;
- A tribal government should thoroughly consult with nearby Indian tribes; and
- The existing Section 20 process and the Tribal-State Compact process for Class III gaming provide important opportunities for consultation between tribal governments, Federal, state and local officials, and nearby Indian tribes about Indian Gaming.

The NIGA/NCAI Tribal Leaders Task force called upon the Secretary of the Interior to issue a new regulation under Section 20 that would clarify the existing process for reacquiring tribal lands for Indian gaming through negotiated rulemaking.

IGRA Section 20 and Chairman Pombo's Second Discussion Draft

A. Section 20: Existing Law

Through Section 20, the Indian Gaming Regulatory Act establishes a general policy that Indian tribes should conduct Indian gaming on lands held on October 17, 1988. Congress provided several exceptions to this general rule to take account of the historical mistreatment of Indian tribes, including:

- The fact that too many lands were taken from Indian tribes, leaving some tribes landless or with no useful lands;
- The fact that many Indian lands were unlawfully taken from Indian tribes in violation of Federal law; and
- The fact that after it was no longer militarily necessary to treat with some Indian tribes, the United States neglected and ignored those tribes.

Accordingly, Section 20 provides exceptions to the general rule for several reasons, including:

- Land Claim Settlement: Land is taken into trust as a result of a land claim settlement;
- Initial Reservation: Land is acquired in trust status as the initial reservation of an Indian tribe acknowledged by the Secretary of the Interior under the Federal Acknowledgment process; or
- Restored Lands: Land is restored to an Indian tribe in trust status when the Tribe is restored to Federal recognition;
- Landless Tribes: Land is put into trust for federally recognized tribes that did not have reservation land on the date IGRA was enacted; or
- Two-Part Secretarial Process: More generally, Section 20 provides for a two-part secretarial consultation process, whereby an Indian tribe may generally apply to the Secretary of the Interior for land to be taken into trust status for gaming purposes. Under the two-part process, upon application by the Indian tribe the Secretary of the Interior consults with state and local officials and nearby Indian tribes to determine whether an acquisition of land in trust for gaming would be in the tribe's "best interest" and "not detrimental to the surrounding community."

25 U.S.C. sec. 2719(b)(1).

B. Pombo Second Discussion Draft

The Second Discussion Draft would amend Section 20(b)(1) significantly. First, the second draft would strike the existing Section 20 Two-Part Secretarial Consultation Process and nullify pending applications under Section 20(b)(1)(A). Several tribes have invested millions of dollars to perform environmental assessments to apply to have land taken in trust under this provision. Some of them have the support of both the Governor and the local government where the land acquisition is proposed. Where the State, local governments, and nearby Indian tribes support an application under the Section 20 Two-Part Secretarial Consultation Process, we do not believe that Congress should prohibit the trust land reacquisition. In sum, we do not believe that the actual record of Section 20's implementation justifies eliminating the Two-Part Secretarial Consultation Process.

Second, the new discussion draft would eliminate the land claim settlement provision. Only one Indian tribe has successfully utilized this process to date, and the

proposal to eliminate this provision is tantamount to a 5th Amendment taking of vested property rights and the frustration of justifiable expectations.

Third, the second draft would require "newly recognized, restored, or landless tribes" to apply to have land taken in trust through a Five-Part Secretarial Consultation Process:

- Newly Recognized, Restored, and Landless Tribes would apply to the Secretary of the Interior to have land taken in trust for gaming;
- Secretarial Determination: The Secretary would consult with state, local officials, and nearby Indian tribes to determine that the reacquisition of land was in the best interest of the applicant tribe and not detrimental to the surrounding community;
- Governor concurs in the Secretary's Determination;
- State Legislature concurs;
- Nearby Indian tribes concur; and
- County Government concurs.

Subjecting "newly recognized, restored, or landless tribes" to this new and cumbersome process discounts the fact that the United States mistreated these tribes by ignoring and neglecting them, taking all of their lands or allowing their lands to be stolen by others. These Indian tribes had aboriginal and historical lands. We believe that Congress should restore these tribes to a portion of their aboriginal or historical lands and that these lands should be held on the same basis as other Indian lands.

It is not necessary to add the State Legislature to Gubernatorial concurrence authority. The question of state law authority and decision-making is reserved to the States under the 10th Amendment. In addition, subjecting Indian lands to a veto by local governments is a bad precedent for Indian tribes. We believe that local governments are subdivisions of the state—not separate sovereigns. State governments have the power and authority to protect the interests of local governments.

The second draft also provides for the cooperative use of existing reservation lands, whereby an Indian tribe may invite another Indian tribe to conduct gaming on its reservation lands. We support this provision, yet we believe that this could be enacted on a more specific basis without amending IGRA.

The new draft again would prohibit Indian tribes from crossing state lines to engage in gaming. The reason why a few tribes are seeking to cross state lines has to do with the 19th Century Removal Policy, which was a historical wrong by the United States against Americans Indians. When an Indian tribe seeks to return to aboriginal lands, due consideration should be given to historical facts. Not all states reject a return by Indian tribes to ancestral lands. There are ways to promote respect for the interests of states and nearby tribes other than a prohibition. Colorado Governor Bill Owens, for example, told the Cheyenne-Arapaho Tribes that Colorado voters could approve their return from Oklahoma to Colorado.

Alternative to Legislation: A New Regulation Under Section 20

Under Section 20 there are more proposals than actual gaming facilities. Only 3 new gaming facilities have gone forward under the Section 20 Two-Part Secretarial Consultation Process. Each facility had the support of the local government. A new regulation under Section 20 could clarify the rights of states, local governments, and nearby Indian tribes to consult with the Secretary before her decision on the potential impacts of a new gaming facility in the surrounding community. The Secretary now gives great weight to local government comments thereby protecting local interests. The Secretary should give the same weight to interests of nearby Indian tribes. Through the Governor, states have a right to agree or disagree—which is sufficient to protect state rights.

Concerning land claim settlement lands, a new regulation could simply spell out the fact that congressional ratification of a land claim settlement is necessary before such lands can be used for gaming. State, local governments, nearby Indian tribes and the public have an opportunity to fully participate in the legislative process for ratification. That should protect everyone's interest in ensuring a fair settlement process.

With regards to "newly recognized, restored, and landless tribes," we agree that these tribes should seek to reacquire lands in their aboriginal or historic land areas to avoid any infringement on the aboriginal land rights of nearby Indian tribes. The Secretary now requires "significant historical, cultural, and geographic ties" to the land sought for tribal reacquisition. We believe that the Secretary of the Interior has authority to require an aboriginal or historical connection to the lands and that issue should be dealt with in a new regulation under Section 20.

We understand that the Department of the Interior is currently in the process of developing a new regulation under Section 20 that will clarify these issues.

Conclusion

Chairman Pombo, Congressman Rahall, and Members of the Committee, we thank you for undertaking a process that is respectful of government-to-government relations. The underlying principle of government-to-government relations, similar to protection of states rights under the 10th Amendment, is idea that the least intrusive means to achieve a Federal goal is generally the best avenue to pursue. In this case, the least intrusive means of protecting the rights of state, local governments, and nearby Indian tribes is through a new regulation under Section 20 that will clarify the right to consult with the Secretary and the State's right to concur or not concur in the Secretary's determination. Accordingly, we respectfully request that the Committee give the Department of the Interior time to develop and promulgate its new regulation before amending Section 20 of the Indian Gaming Regulatory Act.

ATTACHMENTS

Chairman Pombo's Revised Proposed Amendments to 25 U.S.C. 2719 (Gaming on Lands Acquired After October 17, 1988)

(a) Prohibition on lands acquired in trust by Secretary—Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless——

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and——

(A) such lands are located in Oklahoma and——

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions——

(1) Subsection (a) of this section will not apply when to any Indian tribe that is newly recognized, restored, or landless as of the date of enactment of this [bill] including those newly recognized under the Federal Acknowledgment Process at the Bureau of Indian Affairs, if—

(A) the Secretary ~~, after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or~~ *determines that the lands, acquired in trust for the benefit of the Indian tribe for the purposes of gaming, are lands within the State of such tribe, and are where the Indian tribe has its primary geographic, social, and historical nexus to the land;*

(B) ~~lands are taken into trust as part of~~ *The Secretary determines that the proposed gaming activity is in the best interest of the Indian tribe and its tribal members, and would not be detrimental to the surrounding community and nearby Indian tribes;*

~~(i) a settlement of a land claim,~~

~~(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or~~

~~(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.~~

(C) the Governor and the State legislature of the State in which the gaming activities will be conducted concur;

(D) the nearby Indian tribes concur; and

(E) the county or parish with authority over land that is contiguous to the lands acquired in trust for the benefit of theIndian tribe for the purposes of gaming approve by a majority vote in a county or parish referendum.

(2) Subsection (a) of this section shall not apply to——

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected—Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of Internal Revenue Code of 1986

(1) The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(q), 6041, and 6050 I, and chapter 35 of such Code) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

(e) (1) In order to consolidate class II gaming and class III gaming development, an Indian tribe may invite one or more other Indian tribes to participate in or benefit from gaming conducted under this Act upon any portion of Indian land that was, as of October 18, 1988, located within the boundaries of the reservation of the inviting Indian tribe, so long as each invited Indian tribe has no ownership interest in any other gaming facility on any other Indian lands and has its primary geographic, social, and historical nexus to land within the State in which the Indian land of the inviting Indian tribe is located.

(2) Notwithstanding any other provision of law, an Indian tribe invited to conduct class II gaming or class III gaming under paragraph (1) may do so under authority of a lease with the inviting Indian tribe, which lease shall be lawful without the review or approval of the Secretary and which lease shall be deemed by the Secretary to be sufficient evidence of the existence of Indian land of the invited Indian tribe for the purposes of secretarial approval of the Tribal-State compact under this Act.

(3) Notwithstanding any other provision of law, the Indian tribes identified in paragraph (1) may establish this terms and conditions of their lease and other agreements between them in their sole discretion, provided that in no case may the total payments to the inviting Indian tribe under the lease and other agreements exceed 40 percent of the net revenues (defined for such purposes as the revenue available to the 2 Indian tribes after deduction of costs of operating and financing the gaming facility developed on the leased land and of fees due to be paid under the Tribal-State compact) of the gaming activity conducted by the invited Indian tribe.

(4) An invited Indian tribe under this subsection shall be deemed by the Secretary and the Commission to have the sole proprietary interest and responsibility for the conduct of any gaming on lands leased from an inviting Indian tribe.

(5) Conduct of gaming by an invited Indian tribe on lands leased from an inviting Indian tribe under this subsection shall be deemed by the

Secretary and the Commission to conducted under the Act upon Indian lands—

(A) of the invited Indian tribe;

(B) within the jurisdiction of the invited Indian tribe; and

(C) over which the invited Indian tribe has and exercises governmental power.

(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 a reservation on the date of the enactment of this subsection, unless such Indian lands are contiguous to such a reservation of that Indian tribe in the State.

Sec. 2 Statutory Construction

The amendment 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.

NIGA/NCAI TRIBAL LEADER
TASK FORCE ON INDIAN GAMING

RESOLUTION # GBW-005-009
BY THE NATIONAL CONGRESS OF AMERICAN INDIANS
CONCERNING OFF-RESERVATION GAMING

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the United States has a government-to-government relationship with Indian Tribes which is carried out by the Department of Interior pursuant to its policy of government-to-government consultation on regulations and rules impacting Indian Tribes; and

WHEREAS, the Bureau of Indian Affairs (BIA) has established an internal guideline titled "Checklist For Gaming Acquisitions Gaming-Related Acquisitions And IGRA Section 20 Determinations for implementation of the Indian Gaming Regulatory Act (IGRA) Section 20", which was amended on March 7, 2005, without consulting Tribal Governments in violation of the government-to-government policy of the United States; and

WHEREAS, IGRA was enacted to promote tribal economic development, self- sufficiency and strong tribal governments, and reflects a delicate balance of Tribal, Federal, and State Sovereign interests; and

WHEREAS, Indian gaming is the Native American success story and through Indian gaming, Indian tribes have created more than 550,000 jobs, fund essential government services including education, health care, police and fire services, water, sewer, and sanitation services, transportation, child care and elderly nutrition, and museums and cultural centers; and

WHEREAS, Section 20 of the IGRA (25 U.S.C. § 2719) establishes a general rule that Indian gaming shall be conducted only on Indian lands held prior to 1988, with exceptions for contiguous lands, landless Indian tribes, newly recognized Indian tribes, restored tribes, land claims settlements, and the Section 20 two-part determination for off-reservation land; and

WHEREAS, under the Section 20 two-part determination, the Secretary of the Interior must consult with state and local officials and nearby Indian tribes to determine that any proposed off-reservation gaming is in the best interests of the applicant tribe and not detrimental to the surrounding community which includes nearby Indian Tribes; then the Governor must concur in the Secretary's determination before the applicant tribe may conduct gaming on the off-reservation land;

WHEREAS, through IGRA, Congress provided State and local governments a voice in Indian gaming policy through the Section 20 two-part determination process and through the Tribal-State Compact process;

WHEREAS, the reality of off-reservation gaming is far different than the media misrepresentations and in fact since the enactment of IGRA in 1988 only three Indian Tribes have ever successfully navigated the Section 20 two-part process: all three Tribes had the support of the local government and the concurrence of the Governor; and

WHEREAS, Tribal Governments acknowledge the responsibility to speak on their own behalf regarding gaming locations under the Section 20 two-part process, to promote positive media coverage and reduce public misunderstanding of the land into trust process; and

WHEREAS, Tribal Governments have a long history of respect for and consultation with neighboring Tribes and local governments, which is reflected within the Section 20 two-part process; and

WHEREAS, there have been recent efforts to bypass the Section 20 two-part process through appropriation riders without the benefit of hearings and tribal input.

NOW THEREFORE BE IT RESOLVED, the NCAI strongly opposes amending the Indian Gaming Regulatory Act.

BE IT FURTHER RESOLVED, the NCAI opposes legislation that would diminish the sovereign rights of Tribal Governments and opposes any effort to subordinate Tribal Governments to local governments.

BE IT FURTHER RESOLVED, the NCAI does hereby call upon tribal governments proposing off-reservation gaming locations to promote positive relationships with State and local governments and minimize impacts on the aboriginal rights of nearby Tribes; NCAI also supports the development of a joint subcommittee of the NIGA/NCAI Task Force on Gaming that will encourage cooperation and support for this policy similar to the Tribal Supreme Court Project.

BE IT FURTHER RESOLVED, that the NCAI calls upon state and tribal governments to work together to ensure that local government concerns are addressed through the existing Tribal-State Compact process and the Section 20 two-part determination process.

BE IT FURTHER RESOLVED, that the NCAI does hereby call upon Congress to adhere to the significant process set forth in IGRA's Section 20 and to refrain from appropriations riders that bypass Section 20 or otherwise amend IGRA.

BE IT FURTHER RESOLVED, that the NCAI requests that the Department of Interior engage in a negotiated rulemaking process with Tribal Governments to adopt formal regulations governing the implementation of the Section 20 two-part determination process that respects the interests of tribal governments, including nearby Indian tribes, and state and local governments.

BE IT FURTHER RESOLVED, that the NCAI supports the initial intent of IGRA to support the development of tribal economies.

BE IT FINALLY RESOLVED, that the NCAI requests that Congress pass legislation that will encourage other forms of economic development in Indian country such as energy development incentives and equitable tax exempt bond authority.

The CHAIRMAN. Thank you. At this time I am going to recognize Mr. Walden to introduce our next witness.

Mr. WALDEN. Thank you very much, Mr. Chairman.

I am honored to introduce Mr. Ron Suppah from the Confederated Tribes of the Warm Springs. He is a gentleman I have worked with on numerous issues since coming to the Congress, and I am delighted that he has made the trip here, and I think you will find his testimony informative and enlightening.

Ron, we want to welcome you, and your other tribal members here today.

Thank you, Mr. Chairman.

STATEMENT OF CHAIRMAN RON SUPPAH, CONFEDERATED TRIBES OF WARM SPRINGS, OREGON

Mr. SUPPAH. Good morning, Mr. Chairman, Members of the Committee.

My name is Ron Suppah. I am Chairman of the Confederated Tribes of Warm Springs Reservation of Oregon, and I want to thank you for inviting me to testify today.

Mr. Chairman, Warm Springs has been diligently pursuing a casino in our aboriginal and treaty reserved area near our reservation for the past seven years. While we are nearing the final stages of that long and difficult process, the second discussion draft, if enacted, would almost certainly kill our project.

Consequently, we ask that when off-reservation gaming legislation is formally introduced it include a grandfather clause that would allow Warm Springs and any other tribes in similar circumstances to complete the process under the current rules.

I would also like to submit for the record at this time the testimony of Hood River County, Oregon, also supporting the grandfather provisions.

Warm Springs Reservation is in rural and remote area of north-central Oregon. Our tribal income which historically is based on timber has been declining steadily. We have a small casino, but its income is too modest to cover the growing gap in our budget, and we are now drawing on our emergency reserves. This is unsustainable, and to address this increasingly difficult financial circumstance we have been pursuing an off-reservation casino in the Columbia River Gorge since the mid-1990s.

From time immemorial, Warm Springs people have lived and fished along the Columbia River. While our 1955 treaty with the U.S. located our reservation about 38 miles to the south, it preserved our fishing rights on the Columbia, and we continue to maintain very close ties to the river. In fact, we have trust allotments along the Columbia, including a pre-1988 gaming eligible allotment just outside the City of Hood River, Oregon.

We propose building a casino on that Hood River trust land, but the City of Hood River objected. Then in 1998, the nearby community of Cascade Locks 17 miles west asked if we would consider siting our project on their under-utilized industrial park. Although that land is not in trust, Cascade Locks offered a positive solution for all parties, and we approached Oregon's Governor.

The ensuing years-long discussions culminated last April 6, 2005, when Governor Kulongoski and I signed our compact, at the same time we also signed a participating agreement with Cascade Locks and Hood River County that addresses impacts on the local community.

On April 8, 2005, we submitted our land-into-trust application for the Cascade Locks industrial park site. Also, on April 8, we submitted our compact to the Secretary of the Interior for the 45-day review provided under IGRA.

Interior has previously approved several compacts before the land was in trust, but four days before our 45-day review ended Interior announced to us with no forewarning that they were changing their policy and would require the Cascade Locks' lands to be in trust before they would consider our compact.

This eleventh hour change was a disappointment to us, but we are proceeding with our efforts to have the land taken into trust. On June 15th of this year, the BIA initiated the IGRA Section 20 secretarial two-part determination process.

Additionally, pursuant to our April 8th land-into-trust application, the BIA has started a full NEPA environmental impact statement for the Cascade Locks' and. The public scoping period ended on October 15th, and the BIA and its contractor for whom we are paying are now moving into the draft EIS stage.

So Mr. Chairman, you can see we are well along in the established off-reservation gaming process. We have worked diligently to make it a model process, and the Cascade Locks project has been endorsed by 32 state and local elected officials, including Representative Walden, who represents Cascade Locks and Water Springs.

We have spent more than $10 million of our own funds. We have no financial backers, and expect to spend another $10 million before construction.

Our project is in our state, and it is within our exclusive aboriginal territory as recognized by the U.S. Indian Claims Commission.

The government has signed our compact and Cascade Locks and Hood River County have also fully endorsed the project, and it is economically important to all of us. EIS has been started and Interior has already changed the rules on us once.

Unfortunately, the second discussion draft would do that again by ending as of the date of enactment all off-reservation efforts by established tribes like Warm Springs who do not have a compact in effect.

Given the long existing process, especially with NEPA, it is unlikely we could get secretarial approval before the legislation is enacted. It would pit us in a race against random events.

Instead, we ask that when legislation is developed and introduced, it will allow the Warm Springs Tribe to complete the process under the existing rules. We believe that is the fair and honorable thing to do.

Thank you.

[The prepared statement of Mr. Suppah follows:]

Statement of Ron Suppah, Chairman, Warm Springs Tribal Council, Confederated Tribes of the Warm Springs Reservation of Oregon

Good morning, Chairman Pombo and members of the Committee. My name is Ron Suppah and I am Chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon ("Warm Springs" or "Warm Springs Tribe"). I am appearing today to express our Tribe's very serious concerns with the second discussion draft of legislation regarding off-reservation Indian gaming. As explained in further detail in our testimony, Warm Springs believes that the second discussion draft, if enacted into law, would unfairly terminate our Tribe's very costly and years-long effort to pursue vitally necessary financial self-sufficiency through a gaming facility on our aboriginal, Treaty-reserved lands in a small, rural community that shares our hope for future economic security.

INTRODUCTION

The Warm Springs Tribe is now engaged in the process of seeking federal approval of a tribal gaming facility at a location within our Treaty ceded lands 38 miles from our Reservation and 17 miles from a parcel of Warm Springs trust land that is eligible for gaming. Our actions are based on unique circumstances, and we are well along in the process. In our efforts, all the parties have been diligent, open and fair, and have scrupulously abided by all established laws and guidelines. Although we do not know whether we will succeed in this effort, we believe we have been following a model process for pursuing gaming on after-acquired land and ask that, as the Resources Committee considers the second discussion draft, you make appropriate changes to the draft to allow us to complete the process as it is currently written.

The process we are following is set out in Section 20(b)(1)(A) of the Indian Gaming Regulatory Act (IGRA). It is a demanding process successfully used only three times in the past 17 years. To establish gaming facilities on lands taken into trust after IGRA's enactment, Section 20(b)(1)(A) requires the state governor's concurrence in the Secretary of Interior's "two part determination" that the proposed tribal gaming operation would be in the best interest of the tribe and its members and would not be detrimental to the surrounding community.

The second discussion draft would almost certainly deny our Tribe the opportunity to establish a gaming facility on new trust lands because it is very unlikely Warm Springs will be able to have our Compact "in effect" by the draft's date of enactment, nor will our Tribe, which has had a government-to-government relationship with the United States since our Treaty of June 25, 1855, qualify within the limited exception for "newly recognized, restored, or landless" tribes on that date.

Not only does the second discussion draft eliminate this Sec. 20(b)(1)(A) process, it makes no effort to allow a tribe like ours, which has spent millions of dollars of the tribe's own money and spent years diligently pursuing the Sec. 20(b)(1)(A) process, to complete the process. Instead, as we near the end of the process and move close to the Secretary's "two-part determination" and the Governor's concurrence, the second discussion draft would change the rules at the eleventh hour by almost certainly terminating our Tribe's efforts upon the date of the draft's enactment.

Before examining the second discussion draft in more detail, I would like to provide some background on the dire financial circumstances that have led us to pursue this project, how we gained the support of Oregon's Governor and the local community for the project, and the costly and time-consuming efforts we have been making to pursue the project to this late stage in the existing IGRA process.

DECLINING TRIBAL ECONOMY

Warm Springs Background

The Warm Springs Indian Reservation is a beautiful but remote expanse of 650,000 acres in north Central Oregon. The Warm Springs Reservation is almost entirely trust land and, as the only reservation in Oregon excluded from Public Law 280, 67 Stat. 588 (1953), the Tribe is the governmental entity primarily responsible for public safety and other essential governmental services on the reservation. For many years, the Warm Spring tribal government has relied on timber and hydroelectric revenues to support governmental services to our more than 4,400 enrolled members. But in recent years, these revenues have declined and have been insufficient to meet our governmental needs.

Declining Tribal Revenues

The dramatic decline in our timber revenues illustrates the problem we are facing. In 1994, timber revenues contributed $23.8 million toward our total tribal revenues of $37.6 million. By 2002, timber revenue had plummeted to just $5.7 million, bringing total tribal revenues down to $25.3 million. Thus, over this recent eight-year period a 74% drop in tribal timber revenue resulted in a 33% decline in total tribal revenues.

The long-term outlook for timber income continues to be pessimistic as our tribal forest resource adjusts to conservative sustained yield forest management practices and the national and global wood products markets continue to remain depressed. As a result, the decade-long decline in the Tribe's revenue picture is projected to only worsen in the years ahead. Tribal revenue projections show 2002 actual revenues of $25,594,000 declining steadily to 2011 forecasted revenues of just $19,404,000. The Tribe's cash flow forecasts show that, beginning next year in 2006, operational expenditures are likely to exceed revenues. This means the Tribe will be required to dip further into its Revenue Reserve ("Rainy Day") Fund, just to try to provide minimum governmental services to the tribal members and reservation residents. Eventually, if this situation is not changed by significant new revenues, the reserve fund will be exhausted forcing the Tribe to make truly draconian cuts in services and employment. Indeed, such cuts are proposed for the 2006 tribal budget currently under review by the Tribal Council.

Consequences

As tribal revenues decline over time, essential services and needs go unmet and additional needs accrue. In addition, while essential governmental needs go unmet, tribal enterprises are deprived of capital to grow their enterprises and provide on-reservation job and training opportunities. Because of the shrinking job base and high unemployment, a sizable portion of the reservation population depends entirely on federal and tribal social service programs, which have experienced budget cuts in each of the last ten years.

As the Tribe's membership grows and its revenues decrease, needs continue to go unmet and increase in number and magnitude. This is an unsustainable cycle that the Tribe seeks to remedy with revenues from the Cascade Locks gaming facility. Increased tribal income is needed to provide services and infrastructure to help reverse this negative trend, especially in the areas of education, health care and economic opportunity programs.

CASCADE LOCKS GAMING PROJECT

Our Current Casino

In an effort to address this growing financial crisis, in 1995 the Tribe opened a small Class III casino on the reservation as part of the Tribe's existing Kah-Nee-Ta Resort. However, the Kah-Nee-Ta casino is isolated from Oregon's major population centers, and its revenues have done little to span the growing gap between our Tribe's income and our governmental requirements. As a result, our tribal budgets have continued to decline and we have been forced to cut services as well as draw upon our limited emergency reserve funds.

Under the terms of our Compact with Oregon's Governor, we are required to close the casino at Kah-Nee-Ta if we open a facility at Cascade Locks.

The Columbia River

To address the Tribe's increasingly difficult financial circumstances, in the late 1990s we conducted a survey of potential alternative gaming sites, and in 1999 the tribal membership approved a referendum by a wide margin directing the Tribal Council to pursue development of a casino on our traditional lands along the Columbia River. We initially focused on a 40 acre parcel of pre-IGRA tribal trust land, which is eligible for gaming, on a wooded hillside overlooking the Columbia River just outside the City of Hood River, Oregon.

Since time immemorial, the Columbia River has been the home of our people. Its salmon, eels and other foods have nourished untold generations, and when we agreed in our 1855 Treaty to move from our traditional homes along the Columbia River and its Oregon tributaries to our current reservation south of the Columbia, our forefathers were careful to reserve our rights to continue to fish on the river as well as hunt, graze and gather traditional foods throughout our Treaty ceded lands. Fishing on the Columbia River remains at the core of our culture, and many of our people continue to fish today for ceremonial, subsistence, and commercial purposes. Indeed, many of our tribal members live year-round on the Columbia's banks, and thousands of acres of individual Indian and tribal trust allotments are scattered along the Columbia.

Hood River and Cascade Locks

As the Tribe moved forward with preparations to develop a casino on the Hood River trust land, the City of Hood River and others in the area expressed concerns about locating a casino there. At that time, 1998 and 1999, the struggling community of Cascade Locks, Oregon, seventeen miles to the west, approached the Tribe about the possibility of locating a facility in the mostly vacant Cascade Locks Industrial Park, which was created in the 1970s along the banks of the Columbia River out of fill material from construction at nearby Bonneville Dam. The Cascade Locks site is within the Tribe's Treaty ceded lands along the Columbia River in which Warm Springs holds federally protected off-reservation treaty reserved fishing, hunting and gathering rights. The Cascade Locks site is also within the area determined by the Indian Claims Commission in Confederated Tribes of the Warm Springs Reservation of Oregon v. United States (Docket No. 198) to be CTWS aboriginal lands exclusive of the claims of any other tribe or tribes.

Shifting the Tribe's Columbia River casino development plans from the gaming-eligible Hood River site to the Cascade Locks Industrial Park site will be beneficial for both the Cascade Locks and Hood River communities as well as the State of Oregon. Cascade Locks, like our Tribe, desperately needs an economic boost. Developing a casino at the Cascade Locks Industrial Park preserves the pristine and undeveloped Hood River trust lands, thus alleviating Hood River's concerns about a casino in their community. Forgoing development of the Hood River trust lands also means the trust land's scenic values will be retained and the land, otherwise exempt from State and federal Columbia River Gorge National Scenic Area Act restrictions, will be managed consistent with an adjacent Oregon State Park.

The Compact and Other Agreements

Informing the Oregon Governor's Office and the Department of the Interior of the Tribe's intention to develop a casino at the Cascade Locks site in lieu of the Hood River trust lands site, in 1999 the Tribe initiated what became years-long

discussions with Cascade Locks and the State that resulted in a series of agreements signed earlier this year between Cascade Locks, the Tribe and the State. These agreements include a Class III gaming Compact with the State, a separate agreement with the State regarding preservation of the Hood River trust lands and a Memorandum of Agreement with the City of Cascade Locks and Hood River County addressing impacts of the casino on the local community. Our approach of entering into these agreements before taking the land into trust for gaming was intended to address any local concerns about developing a casino in the Cascade Locks Industrial Park and to secure the Governor's commitment to concur in the Secretary's two-part determination pursuant to Section 20(b)(1)(A) based on the Tribe's obligations regarding environmental protection, working conditions, the Community Benefit Fund and revenue sharing as set out in the Compact. This approach has led to near unanimous acceptance of the Cascade Locks site, as indicated by the thirty-two federal, State and locally elected officials who have endorsed and embraced the Cascade Locks site in an April 29, 2005 letter to Interior Secretary Norton.

Regarding the Compact, in March of 2004, we entered into formal negotiations with the State that concluded over a year later when the Governor and the Tribe signed the Compact on April 6, 2005. The Compact is unusually comprehensive and fair, and is supported by the local counties, nearby cities and towns in Oregon and Washington, Congressman Greg Walden who represents Cascade Locks and Hood River, and State legislators from the area, in addition to the Governor, Cascade Locks, and our Tribe. The Compact provides the public in Oregon and Washington with an advanced notice of the environmental benefits to Cascade Locks and nearby Columbia River Gorge communities should the contingency of taking the Cascade Locks land into trust become a reality. Specifically, approximately 40 acres of tribal trust lands near Hood River would be perpetually protected against development; an additional 175 acres of adjacent scenic Columbia River Gorge lands currently owned by our Tribe would be perpetually protected and conveyed to the Oregon State Parks Division; environmental protection, energy efficiency and sustainable building standards would define and control our casino/resort development; and millions of dollars from a tribally established Community Benefit Fund would be used to protect and enhance the Columbia River Gorge National Scenic Area. The Compact also provides very significant benefits to the State as a whole through revenue-sharing payments of up to seventeen percent of the casino's annual "net win" to a Warm Springs Tribe/Oregon Benefit Fund to be used primarily for college scholarships as well as for protection of the Columbia River Gorge and for economic development projects throughout Oregon.

Compact Disapproved by Interior Policy Change

On April 8, 2005, the Tribe and the Governor submitted the Compact to the Secretary of the Interior for the 45-day review provided under IGRA. As usual, the Secretary's review team asked for clarification regarding several sections of the Compact. When the Governor and Warm Springs submitted a response, we requested a meeting to go over the questions and responses. On the afternoon of May 17, four days before the end of the 45 day review period, we met with personnel from the Office of Indian Gaming Management, the Secretary's Office and the Solicitor's Office. In the meeting, we proceeded through our responses to the Department's questions, and while not all issues were resolved, there were no significant objections. Then, in the final ten minutes of the meeting, the Director of the Office of Indian Gaming Management informed us that the Secretary's Office had a fundamental concern about approving the Compact before the land was taken into trust, and was considering whether to disapprove the Compact on that basis.

The Tribe and the Governor's Office filed written responses within two days noting that we had acted in good faith on Interior Department representations that doing the Compact first was acceptable, that the Compact specifies it becomes effective only when the subject land is taken into trust for gaming, and that IGRA does not require that the land be in trust at the time the Compact is approved. We also noted that the Secretary has, in the past, approved a number of compacts before the subject land has been taken into trust for gaming. Unfortunately, two days later, the Department disapproved our Compact due to the new procedural requirement, previously unknown and unpublished and representing a reversal of previous practice, interpreting IGRA Section 11(d)(8)(A) to require that land must be in trust for gaming before the Secretary will consider the related compact. The Secretary's letter noted it does not address any element of the Compact other than that regarding procedural sequence.

Land into Trust Request

Coming at the 11th hour of our Compact's consideration, the Secretary's surprise policy announcement of course disappointed us. However, as a result of this decision, and as recommended in the Secretary's disapproval letter, we are proceeding forward with our application to take the land into trust under 25 C.F.R. Part 151 and IGRA Section 20(b)(1)(A). On April 8, 2005 the Tribe formally submitted Tribal Council Resolution No. 10,500 to the BIA's Northwest Regional Office and to the BIA Office of Indian Gaming Management in Washington, D.C. requesting the initiation of land-into-trust proceedings for the Cascade Locks casino site. The request seeks 25 acres in the Cascade Locks Industrial Park to be taken into trust for the proposed casino and accompanying hotel. Once that process is completed, we will resubmit the Compact for the Secretary's 45 day review.

IGRA Section 20 "two-part determination"

On June 15, 2005, the BIA Northwest Regional Office initiated the Secretarial "two-part determination" pursuant to IGRA Section 20(b)(1)(A) by sending our Tribe a consultation letter requesting information and responses to thirteen specific questions. At the same time, BIA Northwest Regional Office solicited information and responses from appropriate State and local officials, nearby Indian tribes, and surrounding communities regarding the Cascade Locks project. On August 15, 2005, as that comment period concluded, Warm Springs formally submitted our 45-page response, with hundreds of pages of supporting exhibits.

National Environmental Policy Act (NEPA)

Having completed the Compact agreement with Oregon's Governor and having executed agreements with the local governments to accommodate impacts, and pursuant to our April 8, 2005 land-into-trust application, we have moved into the very costly NEPA environmental review process required by the BIA's decision on our fee-to-trust application. The process will generate a full environmental impact statement (EIS), and not just an environmental assessment. From September 15, 2005 to September 28, 2005, the BIA Northwest Regional Office hosted five public scoping meetings on the EIS, with meetings in Hood River, Cascade Locks, Portland, and Stevenson, Washington. The scoping comment period concluded October 15, 2005. We anticipate a draft EIS late this winter or spring, with a final EIS to follow. This process, which is the last major step leading up to the Secretary's "two-part determination" and the Governor's concurrence, requires the Tribe to pay for the BIA's environmental contractor hired to prepare the EIS on the project.

Funding

We wish to emphasize that Warm Springs is paying for these efforts ourselves. Throughout the Tribe's nearly decade-long effort to address its worsening financial crisis through development of a casino on the Tribe's traditional lands along the Columbia River, the Tribe has utilized its own funds and resources. No management company or outside financial partner has been involved. To date, the Tribe has expended approximately $10.7 million in tribal funds pursing this project. To complete the fee-to-trust process, which would allow construction to begin, we expect to spend an additional $10.3 million on the EIS and other planning expenses.

SECOND DISCUSSION DRAFT

As described above, our Tribe, the Oregon Governor, Cascade Locks and many surrounding communities and jurisdictions have invested great amounts of time, energy and scarce resources in fully complying with established processes thus far. Moreover, and perhaps unique among tribes, Warm Springs has followed this costly and time-consuming process relying solely on our own funds in an effort to produce a model partnership between the Tribe, State and local communities. As Congress this Session began to consider possible amendments to IGRA that might alter the Section 20 process we have been following, we have hoped that we would be permitted to see these processes through to the end, and that Congress will not deliver us a last minute fatal blow. However, the provisions of the second discussion draft virtually assure us precisely the last minute fatal blow we have feared.

The second discussion draft completely terminates the Section 20(b)(1)(A) process we have been following and relying upon for years. The statutory construction provisions in Section 2 of the draft appear to permit the continuation after the date of enactment of only those compacts that are "in effect" on that date. With no provision for continuation of any Section 20(b)(1)(A) process after that date, the draft places us in an impossible race to secure the Secretary's approval of our Compact, placing it into effect, before the draft's enactment. Interior has already changed the rules on us to preclude our Compact's consideration until the subject land is in trust. Given the potentially long time periods involving the EIS and completing the land-

into-trust process, that is a race we would almost certainly lose. Such a change would be unfair and almost punitive. We ask that our treatment at the hands of Congress not be so harsh, and that legislation to revise Section 20 include a "grandfather" clause allowing projects such as ours, which is in our state, in our aboriginal and Treaty-reserved territory, and is based on a signed Compact with Oregon's Governor, to finish the process it started several years and many millions of dollars ago. If Congress is determined to end the Section 20(b)(1)(A) process, even though only three gaming operations have been authorized under this process is 17 years, it should in all fairness allow a project such as our to finish the process under the existing rules.

CLOSING

Mr. Chairman, in closing, we would like to appeal to your Committee's sense of history and fairness in dealing with Indian tribes such as ours. This year we celebrate the 150th anniversary of the Treaty that moved our ancestors from the land along the Columbia River to our current Warm Springs Reservation. Although the history of relationships between the United States government and Indian tribes has not always been smooth, the people of the Warm Springs Reservation have sought to work cooperatively with our Federal partners on the basis of mutual trust. Together, over time, we have learned how to solve our problems by establishing mutual agreements and playing by the rules. Now this Committee's consideration of revisions to IGRA's Section 20 provides a modern opportunity to reinforce those timeless values of reliability and fairness.

Accordingly, we urge changes in the second discussion draft so that any legislation addressing the off-reservation gaming process take good faith efforts such as ours into account, and permit us to complete the existing process. Our experience with our Cascade Locks site is proof to us that parties working diligently together in good faith can successfully resolve differences within the existing land-into-trust framework.

Thank you.

The CHAIRMAN. Thank you. Chairman Marquez.

STATEMENT OF DERON MARQUEZ,
SAN MANUEL BAND OF MISSION INDIANS

Mr. MARQUEZ. Chairman Pombo, Members of the Committee, I am honored to be invited to testify before this committee on the difficult issue of off-reservation land acquisition for gaming purposes.

General Pombo, thank you for releasing the second discussion draft for comment prior to issuing formal legislation. I appreciate the respect you have shown the tribes.

As I stated before this committee in July of 2004, certain of these land acquisitions to build new casinos threaten the long-term viability of tribal government gaming. The efforts of unscrupulous developers to match economically depressed non-Indian communities with willing tribes to acquire lands far from willing tribes' existing lands—also called "reservation shopping"—has caused a backlash against tribes by the general public.

Often the lands sought for acquisition are within the ancestral homelands of other tribes, leading to enormous tensions between tribes.

In California, there is a remarkable spin-off phenomenon to reservation shopping. The Governor's office now picks the developers and the tribes it wants to deal with and points them to willing towns for gaming deals. In these instances, reservation shopping has turned into "tribal shopping". This is occurring on San Manuel's ancestral lands, where Big Lagoon and Los Coyotes seek land in Barstow to establish a reservation and build a casino. Another tribe with ancestral ties to Barstow, the Chemehuevi, who San Manuel would not oppose, is not part of the Governor's deal.

One difficult question is what Congress should do, if anything to address this issue. Unfortunately, Indian country is not of one mind. I, like other tribal leaders from across the country, would greatly prefer to avoid the inherent risks in the political process of amending the Indian Gaming Regulatory Act.

It would be preferable to address this problem through administrative processes or inter-tribal protocols. But the Interior Department has interpreted IGRA's Section 20 two-part determination to not allow the Secretary to consider ancestral ties to land. Well-heeled developers persist in pouring millions of dollars into seeing these projects through, including the real and ongoing threat to San Manuel ancestral lands. These alternatives no longer appear to be a viable solution to a growing problem.

In searching for a solution, San Manuel has worked with other tribes from across the country who share a common concern with the practice of reservation shopping. We have listened to the voices of other non-tribal entities who also are concerned with this practice. With advice from other tribes, San Manuel believes that the Federal legislation addressing reservation shopping should do four things:

First, amend the two-part determination to require the Secretary to make an affirmative finding that a proposed off-reservation acquisition would not have a detrimental impact on nearby tribes.

Under the current law, the Secretary is required to consult with nearby tribes but not affirmatively determine that those nearby tribes would not be harmed by the proposed acquisition.

Second, require that lands proposed for acquisition under the two-part determination be within the petitioning tribe's ancestral lands.

The second discussion draft requires a newly recognized, restored, or landless tribe to have a "primary geographic, social, and historical nexus to the land" when determining gaming eligibility of those lands. San Manuel believes this is an adequate definition for determining ancestral land ties.

Third, for gaming purposes, require state legislatures, not Governors alone, to concur with acquisitions under the two-part determination.

This would be accomplished by replacing the term "Governor" with the term "state" in the two-part determination.

Finally, prohibit crossing state lines into areas where the tribe has no existing lands.

Crossing state lines has been the source of much inter-tribal tension and negative state government reaction and interaction.

The second discussion draft reflects, in part, these principles. I have three general concerns about this draft, with recommendations for improving it before it is introduced as a formal bill.

First, eliminating the two-part determination altogether would deprive tribes seeking to acquire lands near their existing reservations and within their ancestral territory the opportunity to legitimately improve their situations. There are instances in which tribes are seeking to accomplish this today. In my view, this is not reservation shopping.

Therefore San Manuel recommends a "mend it, don't end it" approach to the two-part determination. Apply the new requirements

in the second discussion draft for newly recognized, restored, and landless tribes to an amended two-part determination.

Second, the requirement of a local referendum would be a shift in Federal Indian law and policy, giving local communities unprecedented intrusion into the trust relationship between the United States and the tribes. We understand that not all counties have a referendum process. As I mentioned earlier, San Manuel supports state concurrence of a two-part determination acquisition, not simply gubernatorial approval.

Third, the off-reservation economic development zone could have unintended consequences on the delicate balance reached in many trial-state gaming compacts. It may be that such a provision should address the tribe-specific situation rather than create a nationally applicable rule.

Thank you for this opportunity to testify. If you have any questions, I will be pleased to answer them.

[The prepared statement of Mr. Marquez follows:]

Statement of Deron Marquez, Chairman,
San Manuel Band of Mission Indians

Chairman Pombo, Ranking Member Rahall, members of the House Resources Committee, I am honored to be invited to testify before this Committee on the difficult issue of off-reservation land acquisitions for gaming purposes. Chairman Pombo, thank you for releasing this second discussion draft for comment prior to introducing formal legislation. I appreciate the respect you have shown the tribes.

As I stated before this Committee in July of 2004, certain of these proposed land acquisitions to build new casinos threaten the long-term viability of tribal government gaming. The efforts of unscrupulous developers to match economically depressed non-Indian communities with willing tribes to acquire lands far from the willing tribes' existing lands—also called "reservation shopping"—has caused a backlash against tribes by the general public. Often the lands sought for acquisition are within the ancestral homelands of other tribes, leading to enormous tensions between tribes.

In California, there is a remarkable spin-off phenomenon to reservation shopping. The Governor's office now picks the developers and tribes it wants to deal with and points them to willing towns for gaming deals. In these instances, reservation shopping has turned into "tribe shopping." This is occurring on San Manuel's ancestral lands, where Big Lagoon and Los Coyotes seek land in Barstow to establish a reservation and build casinos. Another tribe with ancestral ties to Barstow, the Chemehuevi, who San Manuel would not oppose, is not a part of the Governor's deal.

One difficult question is what Congress should do, if anything, to address this issue. Unfortunately, Indian country is not of one mind. I, like other tribal leaders from across the country, would greatly prefer to avoid the inherent risks in the political process of amending the Indian Gaming Regulatory Act. It would be preferable to address this problem through administrative processes or inter-tribal protocols. But the Interior Department has interpreted IGRA's Section 20 two-part determination to not allow the Secretary to consider ancestral ties to land. Well-heeled developers persist in pouring millions of dollars into seeing these projects through, including the real and ongoing threat to San Manuel ancestral lands. These alternatives no longer appear to be viable solutions to a growing problem.

In searching for solutions, San Manuel has worked with other tribes from across the country who share a common concern with the practice of reservation shopping. We have listened to the voices of other non-tribal entities who also are concerned with this practice. With advice from other tribes, San Manuel believes that federal legislation addressing reservation shopping should do four things:

1. Amend the two-part determination to require the Secretary to make an affirmative finding that a proposed off-reservation acquisition would not have a detrimental impact on nearby tribes.

Under the current law, the Secretary is required to consult with nearby tribes but not affirmatively determine that those nearby tribes would not be harmed by the proposed acquisition.

2. Require that lands proposed for acquisition under the two-part determination be within the petitioning tribe's ancestral lands.

The second discussion draft requires a newly recognized, restored, or landless tribe to have a "primary geographic, social, and historical nexus to the land" when determining gaming eligibility of those lands. San Manuel believes this is an adequate definition for determining ancestral lands ties.

3. For gaming purposes, require state legislatures, not governors alone, to concur with acquisitions under the two-part determination.

This could be accomplished by replacing the term "Governor" with "State" in the two-part determination.

4. Finally, prohibit crossing state lines into areas where the tribe has no existing lands.

Crossing state lines has been the source of much inter-tribal tension and negative state government reaction and interaction.

The second discussion draft reflects, in part, these principles. I have three general concerns about this draft, with recommendations for improving it before it is introduced as a formal bill.

First, eliminating the two-part determination altogether would deprive tribes seeking to acquire lands near their existing reservations and within their ancestral territory the opportunity to legitimately improve their situations. There are instances in which tribes are seeking to accomplish this today. In my view, this is not reservation shopping. Therefore, San Manuel recommends a "mend it, don't end it" approach to the two-part determination. Apply the new requirements in the second discussion draft for newly recognized, restored, and landless tribes to an amended two-part determination.

Second, the requirement of a local referendum would be a shift in federal Indian law and policy, giving local communities unprecedented intrusion into the trust relationship between the United States and the tribes. We understand that not all counties have referenda processes. As I mentioned earlier, San Manuel supports State concurrence of a two-part determination acquisition, not simply gubernatorial approval.

Third, the on-reservation economic development zone could have unintended consequences on the delicate balance reached in many tribal-state gaming compacts. It may be that such a provision should address tribe-specific situations rather than create a nationally-applicable rule.

Thank you for this opportunity. I would be pleased to answer any questions you have.

The CHAIRMAN. Thank you. Chairperson Kennedy.

STATEMENT OF CHAIRPERSON CHERYLE A. KENNEDY, GRAND RONDE INDIAN TRIBE, OREGON

Ms. KENNEDY. Good morning, Distinguished Panel, Chairman Pombo, and other tribal leaders who are here in the room.

My name is Cheryle Kennedy. I am the Chairwoman of the Confederated Tribes of Grand Ronde Community of Oregon. I will give a little background about our tribe.

Our tribe is composed of 22 bands of tribes that had five treaties during the 1850 treaty area. Our land base, if I had a map here I could show you, in regards to the treaties included all of western Oregon. Through the various land deals that were made, the Confederated Tribes of Grand Ronde ended up with 60,000 acres. We were a victim of the Termination Act in the 1950s, and the land that we had was all taken.

The Western Oregon Termination Act was signed in 1954. All that we retained after termination was our cemetery. Through the efforts of our cemetery and our continuing to meet and continue to build our government and to maintain it, we sought restoration.

Through a 15-year time span, restoration was sought, and was finally acquired November 22, 1983. We began building our government and our cemetery.

Now, our cultural belief is that you do not—you do not do anything inappropriate in your sacred land area. That was the only land that we had, and so we set up in our greenhouse garage in the cemetery a tribal office. I was one of the first employees who was hired at that time, and when I would look out my window, I see the graves of my ancestors, my father, my grandparents, and it was a very uncomfortable situation.

We then moved forward with the Reservation Land Bill that was approved in 1988. So for the cessation of millions of acres of land, we then were approved by Congress to have a 9,800 acre reservation land base. That proved to be our timberland base. So from 1983 to today, we have had to undertake building an entire infrastructure, to provide services for our members.

Our tribe is composed of about 5,200 members, and during the termination era, because there was no land, nowhere to live, our members scattered, but most recently about 75 percent of our members have returned to Oregon and the majority right around the Grand Ronde area.

Our task was very difficult. We had no housing, no place for our members to return. Our Reservation Land Bill said that we wanted to establish a homeland for our people. We wanted to have an economic process for us, and that we also wanted to provide health and human services, education to our members.

So that is the background for our tribe. So when gaming came into being, we certainly wanted to move forward and to establish our own gaming. With the policies within the State of Oregon, which was one tribe on reservation land for one casino, we moved forward and invested and went out on a huge limb to secure funds to start our gaming facility.

So what I want to do now is to comment on the second discussion. We participated in several of the hearings that have been held. Grand Ronde agrees with the draft bill requirement that restored lands for gaming be lands where the tribe has its primary geography, social, and historical nexus to the land.

We also agree that concurrence of nearby Indian tribes should be required before restored lands are acquired in trust for gaming purposes.

The bill talks about consultation with state and local governments. We believe that state and local governments should be consulted on a government-to-government basis. On the issue of state concurrence, it should be left to each tribe. Each state to decide which elected body or bodies, if authorized, to concur with the Secretary's decision.

Similarly, we do not think that there should be specific requirements for a county to hold referendums. Those are already a process in the BIA fee to trust process for communities to provide comments.

Alternative legislation in many ways similar to the draft legislation, Grand Ronde supports, number one, tribes should not be crossing state lines; two, tribes should build casinos within their historic and ancestral lands; and three, should obtain the

concurrence of other tribes that have historic and ancestral ties to those lands.

I thank you for this opportunity to provide this testimony for you today, and for your willingness to listen.

[The prepared statement of Ms. Kennedy follows:]

Statement of Cheryle A. Kennedy, Tribal Council Chairwoman, Confederated Tribes of the Grand Ronde Community of Oregon

On behalf of the Confederated Tribes of the Grand Ronde Community of Oregon ("Grand Ronde" or "Tribe"), I respectfully submit the following comments on Chairman Richard Pombo's revised draft bill to restrict off-reservation gaming ("revised draft bill"). I also thank the distinguished members of the Committee on Resources for providing us the opportunity to submit testimony as part of this hearing on Chairman Pombo's proposed legislation. Please make these comments part of the official hearing record.

Addressing off-reservation gaming is an extremely important issue to the Confederated Tribes of Grand Ronde and, I believe, all the people of the State of Oregon. In general, we have three main concerns: (1) an explosion of off-reservation casinos undermines the policy foundation of IGRA—self-sufficiency and economic opportunity—that has done so much good for all of Indian country, (2) an explosion of off-reservation casinos threatens continued public support for existing Indian gaming in Oregon and across the nation, and (3) each approval of another off-reservation casino sets a bad precedent that will forever change the nature and character of both the Indian gaming industry and the surrounding communities in which we live.

Mr. Chairman, these are not just my opinions or the opinions of Grand Ronde. Numerous public opinion polls taken in Oregon over the past year support my concerns about the impact of allowing more off-reservation casinos.

Over the last year, Grand Ronde has been an active participant in discussions on ways to deal with off-reservation gaming issues. Members of Grand Ronde Tribal Council and staff attended the Oversight Field Hearing on the original Discussion Draft regarding off-reservation gaming in Sacramento, California on June 6, 2005. The Tribe also spoke with Senator McCain during his visit to Oregon on October 24, 2005, and we attended a Senate Indian Affairs Committee oversight hearing on "Lands eligible for gaming pursuant to the Indian Gaming Regulatory Act" July 27, 2005. In addition, we have met with members of the Oregon and Washington Congressional Delegations both in Oregon and in Washington, D.C. to discuss our concerns. Tribal staff has met with and discussed off-reservation gaming issues with staff of the Committee on Resources and Senate Indian Affairs Committee.

Grand Ronde understands the concern over the growing number of tribes seeking to have lands taken into trust for gaming far from existing reservations, where they have no ancestral ties, or where other tribes have strong ancestral ties. We also believe strongly in the Indian Gaming Regulatory Act (IGRA) provisions which recognize the special circumstances of restored tribes and provide that lands restored to once terminated tribes should be available for gaming just as reservation land of non-terminated tribes is available for gaming. Therefore, Grand Ronde approaches cautiously the process of amending IGRA and opposes any IGRA amendment that would limit the Tribe's ability to obtain off-reservation restored or aboriginal lands for gaming purposes.

Grand Ronde History

Grand Ronde is one of many tribes victimized by the federal Termination policy of the 1950s. In 1954, the federal government wrongly ended its recognition of the Tribe as a government destroying our tribal economy and Indian land base. After much struggle and sacrifice, the Tribe's federal recognition was restored on November 22, 1983, and a small fraction of our pre-termination reservation land base (9,811 acres compared to our original reservation of over 60,000 acres) was returned to the Tribe in 1988. In 1994, the Department of the Interior approved a compact between the Tribe and the State of Oregon for a gaming facility on approximately 5.5 acres of restored Tribal land. This land is within the Tribe's original reservation boundary. The Tribe, through Spirit Mountain Gaming, Inc., a tribally chartered corporation wholly owned by the Tribe, operates Spirit Mountain Casino on this restored land. The casino provides much needed revenue for Tribal government programs and on-reservation employment opportunities for our Tribal members. Spirit Mountain Casino is the primary revenue source for Tribally funded government programs.

Historic Opposition to Off-Reservation Gaming

Grand Ronde has invested millions of dollars in Spirit Mountain Casino and related facilities. We did so in reliance on the State of Oregon's long-standing Indian gaming policy that limited each tribe to one on-reservation casino. A policy that Grand Ronde has consistently supported. In 1996, the Tribal Council unanimously adopted a Resolution opposing "the efforts of other tribes to have land taken into trust for gaming outside of their original reservation boundaries or nonadjacent to their current reservation." Unfortunately, Oregon's Governor has implemented a change in Oregon's policy against off-reservation gaming by approving a compact with the Warm Springs Tribe for Oregon's first off-reservation casino on land that may be taken into trust in the Columbia River Gorge far from the Warm Springs approximately 640,000 acre reservation. The Cowlitz Tribe in Washington, through a partnership with the Mohegan Tribe, is attempting to develop a large casino on lands a little more than 15 miles north of Portland, Oregon, on lands which is outside the Cowlitz Tribe's historic lands. If either of these off-reservation casinos is built it will have serious detrimental effects on Grand Ronde's on-reservation casino with potentially devastating effects on our ability to provide critical governmental services and employment opportunities for our members.

Comments on Second Discussion Draft Legislation

Grand Ronde's history and experience as a restored tribe provides a background against which it views IGRA and the revised draft bill. Grand Ronde agrees with the revised draft bill's requirement that restored lands for gaming be lands where the Indian tribe has its primary geographic, social and historical nexus to the land. This is consistent with the Tribe's historical opposition to off-reservation gaming. We also agree that concurrence of nearby Indian tribes should be required before restored lands are acquired in trust for gaming purposes.

The revised draft bill, however, adds other requirements which are detrimental to restored tribes. It fails to recognize the disadvantages restored tribes have for gaming as such tribes are often restored with little or no land base. In comparison, non-terminated tribes, such as the Warm Springs Tribe, have an advantage because they generally have large land base reservations on which to establish gaming operations.

Specifically, the revised draft bill requires (1) a Secretarial determination that the proposed gaming activity would not be detrimental to the surrounding community, (2) concurrence of both the Governor and State legislature, and (3) approval by a majority vote in a referendum by the county or parish with authority over the land that is contiguous to the lands acquired in trust for the purpose of gaming. Imposing these requirements on restored land within a restored tribe's aboriginal lands places restored tribes at a disadvantage to non-terminated tribes who do not have such onerous requirements.

Grand Ronde believes that state and local governments should be consulted on a government-to-government basis, but state and local governments should not have veto power over tribal development on restored lands. In addition, requiring concurrence of both the Governor and State legislature is inappropriate. On the issue of state concurrence, it should be left to each state to decide what elected body or bodies is authorized to concur with the Secretary's decision.

Adding a requirement of county or parish approval by referendum is inappropriate. This requirement adds a significant burden to county governments, many of which may not have a referendum process or the resources to hold referendum elections. In many cases, multiple referendums would be required because more than one county or parish is contiguous to the tribe's land. The fact is that under current law and practice, local governments can have significant input into the process of taking lands into trust. In practically all cases where land is taken into trust for gaming, the Bureau must prepare an environmental impact statement which affords opportunities for input by local governments. Tribes and local governments regularly enter into intergovernmental agreements for the provision of basic services, such as water, sewer, fire, and police. Grand Ronde has worked closely with its local water association and sanitary district to improve these critical systems not only to Tribal properties by to all members of the local community. Local Grand Ronde community fire and police services receive grant funding from revenues generated by Spirit Mountain Casino.

The revised draft bill provides under Sec. 2 "Statutory Construction" that the amendment is to apply prospectively and that compacts and other agreements that govern gaming on Indian lands in effect on the date of the enactment of the Act shall not be affected by the amendments made to the Act. This language is ambiguous. The term "other agreements" is not defined and may be interpreted to encompass a multitude of negotiated agreements. At a minimum this provision should be

clarified to provide that Indian lands must be held in trust for the purpose of gaming at the time of the amendment.

Suggested Alternative Legislation

Grand Ronde appreciates the Committee's effort to address the important issues surrounding off-reservation gaming. We look forward to working with you and the other members of the Committee to address the issue of off-reservation gaming in a manner that is sensitive to the unique situation of restored tribes. Grand Ronde has provided the Oregon Congressional delegation with proposed legislation to address some of these same concerns. Our proposed legislation adds the following new requirements for taking lands into trust under the two-part determination, land settlement, initial reservation of newly acknowledged tribe and restored lands exceptions:

(1) the Secretary determines that the lands are in the State where the tribe resides or had its primary jurisdiction;
(2) the Secretary determines that the tribe as ancestral or historic ties to the lands; and
(3) the Secretary consults with and obtains the concurrence of other tribes that have an ancestral or historic tie to the lands.

A copy of this proposed legislation is attached to this written testimony as Attachment A. We believe, Grand Ronde's proposed amendment directly addresses the underlying issue of tribes seeking to acquire land in trust for gaming that is far from their reservation, where they have no ancestral or historic ties and where other tribes may have ancestral or historic ties. These additional requirements will help curb the growing trend or fear of "reservation shopping".

Conclusion

Gaming issues in Indian Country are important to sustaining the economy and welfare of Grand Ronde, our Reservation and our members. We appreciate the opportunity to provide you with our comments and proposed amendments. Please do not hesitate to call me with any questions at (503) 879-2353. Your staff should also feel free to call our Tribal Attorney, Rob Greene, at (503) 879-2270 with any questions.

ATTACHMENT A:

CONFEDERATED TRIBES OF GRAND RONDE
PROPOSED AMENDMENT TO RESTRICT OFF-RESERVATION GAMING

25 U.S.C. § 2719

Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or
(2) the Indian tribe has no reservation on October 17, 1988, and—
  (A) such lands are located in Oklahoma and—
    (i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or
    (ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or
  (B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when—
  (A) lands are taken into trust
    (i) following a determination by the Secretary, after consultation with the Indian tribe and appropriate State and local officials that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(ii) as part of a settlement of a land claim; or
(iii) as part of the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process; or
(iv) the restoration of lands for an Indian tribe that is restored to Federal recognition; and
(B) prior to taking lands into trust
(i) the Secretary determines that the lands are in the State where the Indian tribe resides or has its primary jurisdiction; and
(ii) the Secretary determines that the Indian tribe has ancestral or historic ties to the lands; and
(iii) the Secretary consults with and obtains the concurrence of other Indian tribes that have an ancestral or historic tie to the lands.
(2) Subsection (a) of this section shall not apply to—
(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or
(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.
(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.
(c) Authority of Secretary not affected
Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.
(d) Application of Title 26
(1) The provisions of Title 26 (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such title) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.
(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

The CHAIRMAN. Thank you. Chairman Barnett.

STATEMENT OF CHAIRMAN JOHN BARNETT, COWLITZ INDIAN TRIBE, WASHINGTON

Mr. BARNETT. Chairman Pombo, Ranking Member Rahall, and respected members of this committee, I thank you for the opportunity to testify this morning.

For over 25 years I have been traveling to speak to Congress on behalf of my tribe—more than 50 trips—always on my own dime, and always focused on righting the historical wrongs that have been committed against my people. My position as an elected leader of my tribe came with a small salary, but I have always felt that our scarce tribal funds should be used to meet the desperate needs

of my people, not the elected leaders. Because of this, every time I receive a check I write a check back to my tribe to return those funds.

Mr. Chairman, I want to begin this morning by thanking you for the hearing. Your draft legislation and the hearing you hold today provide a useful dialogue on reservation shopping, and they serve to educate the public. I appreciate your consultation of Indian tribes and others in this important issue.

Mr. Chairman, let me tell you about the Cowlitz people. We lost our status as a federally recognized tribe because we refused to sign a treaty. We petitioned for recognition in 1975 before the Federal acknowledgment process was established in the regulation.

It took us almost a third of my life for Interior to make a decision and the tribe emerged penniless from that day struggling through this process.

Since the administrative process has been in existence, the Department has recognized only 15 tribes. To the best of our knowledge, only six tribes that emerged from Interior's process are landless today, including the Cowlitz and our good friends of the Snoqualmie Tribe also of Washington State.

No challenge has been greater for us than the process of acquiring land and establishing a reservation for my people. For this reason, I very much appreciate having this opportunity to tell you about our history and about the current obstacles we face.

We currently find ourselves with no reservation. We are shut out from the only form of economic development that has been proven to be successful, Indian gaming. We face daunting obstacles through self-governance and self-sufficiency precisely because we are landless and poor. We now face the difficult task of getting land into trust. The land-into-trust process is expensive and lengthy.

For our proposed acquisition, preparation of our environment review alone will cost more than a million dollars. Studies like these squeeze limited resources from being used for tribal health care, education, and other much needed services.

The parcel we intend to use for gambling is located within the service area established for us by the Indian Health Service and by HUD. That parcel of land is also within an area of the Cowlitz tribe historically used and occupied, and is centrally located within an area where our current members work and live.

It is a sad day when established gaming interests who make millions every year use those profits to oppose legitimate efforts like ours rather than using those funds as envisioned by IGRA, to provide services and create new economic opportunities for their communities.

A significant portion of tribal sovereignty was sacrificed through the passage of IGRA, and I fear that sometimes now they are trying to weaken or sovereignty even further by denying us from exercising any rights under IGRA.

Mr. Chairman, I know that the Committee will act with due care and deliberation before it decides whether to alter IGRA's exceptions. Tribes like mine need your help the most. We are simply trying to find a piece of land to call our own on which we can rebuild our tribal government, promote or sovereignty and self-determination, and create economic opportunities for our people.

Mr. Chairman, I respectfully submit that any changes to IGRA's exceptions for tribes like mine should take into account our dire circumstances. We ask only for the same opportunities of those tribes that were lucky enough to be federally recognized and have a land base when IGRA was enacted.

In closing, I would like to recognize Mark Brown who is with us today from the Mohegan Tribe. The Mohegan Tribe completed Interior's recognition process 10 years before we did, and today they are working with us to reinvest in Indian country. We hope that our partnership will show that Indian tribes can and will reach out to help each other. I hope that the Mohegan's example will encourage other successful tribes to help those who are less fortunate rather than focusing their substantial resources on protecting their existing markets.

Mr. Chairman, I thank you again for the opportunity to provide this testimony. We offer our continuing assistance to the Committee as it considers how to address the issue of reservation shopping. Thank you.

[The prepared statement of Mr. Barnett follows:]

Statement of The Honorable John R. Barnett, Chairman, The Cowlitz Indian Tribe of Washington

Chairman Pombo, Ranking Member Rahall, and respected members of this Committee, I thank you for the opportunity to testify this morning on this most important matter.

For over 25 years I have been traveling to speak to Congress on behalf of my Tribe—more than fifty trips—always on my own dime, and always focused on righting the historical wrongs that have been committed against my people. My position as an elected leader of my Tribe came with a small salary, but I've always felt that our scarce tribal funds should be used to meet the desperate needs of my people—not its elected leaders. Because of this, every time I receive a check I write a check back to my Tribe to return these tribal funds.

Mr. Chairman, I want to begin this morning by expressing my personal gratitude to you for your leadership on this controversial issue. The draft legislation that you have circulated and the hearing you host today serve two fundamentally important purposes—facilitating a much-needed dialogue on the issue of "reservation shopping" and educating the public on this complex issue. I sincerely appreciate your consultation with Indian tribes and others on this issue and your efforts to craft meaningful legislation to address public policy concerns inherent in the "reservation shopping" debate.

I have worked my whole life to restore the Federal recognition of my Tribe. Our struggle for federal recognition was about righting a historic wrong, it was about self-determination and respect, and it was about ensuring that the coming generations of Cowlitz people have a brighter future. Now I have one last goal, one last promise to my people—to regain a homeland and ensure that the Cowlitz people have the same rights and economic opportunities that other sovereign tribes enjoy—maybe then they will let me retire.

These days, the media frenzy over "reservation shopping" has escalated to a point where some are losing sight of the very real benefits Indian communities receive from Indian gaming. We must remember that revenues from Indian gaming make health care available to a population that lags far behind the rest of America in every major health category, that gaming revenues provide our future leaders with educational opportunities that earlier generations could only dream of, and that those revenues provide desperately needed housing and daily care services for our elders who have sacrificed so much to ensure our survival today. For the first time in American history, gaming revenues are providing Indian country with a real opportunity to be self-sufficient.

Earlier this year I testified before the Senate Committee on Indian Affairs about the burdens imposed on us by the Department of the Interior's Federal Acknowledgment Process (FAP). I know you understand all too well the problems with the current recognition system. It took us 25 years to go through that process—a quarter of a century of my lifetime. I also testified about the challenges we face as a newly

recognized tribe. No challenge has been greater for us than the process of acquiring land and establishing a reservation for our people. For this reason, I very much appreciate having this opportunity to tell you about our history and about the current obstacles we face.

As you know, newly recognized tribes like the Cowlitz emerge from the Federal Acknowledgment Process without a federally protected land base and without a reservation. We are poor and in desperate need of the United States' active assistance. We face daunting obstacles to self-governance and self-sufficiency precisely because we are landless and poor. Without a land base, we are unable to provide housing to our members, unable to build health clinics, unable to participate in federal programs that are tied to being "on or near a reservation," [1] and, perhaps most importantly, unable to conduct the economic development necessary to generate the revenue a tribe must have to provide governmental, health and housing services to its members.

We urge you, Mr. Chairman, to ensure that there be a fair and equitable mechanism to put newly recognized tribes on a level playing field with tribes that were lucky enough to have had a reservation on October 17, 1988.

The Initial Reservation and Restored Lands Exceptions

As you know, the Indian Gaming Regulatory Act prohibits the conduct of Indian gaming on off-reservation lands acquired in trust after October 17, 1988. Congress understood that in certain limited circumstances it would be wholly inequitable to apply this prohibition to tribes that were unrecognized and had no trust land in 1988. One such circumstance is for a tribe recognized through the Department of the Interior's Federal Acknowledgment Process to game on its "initial reservation." See 25 U.S.C. § 2719(b)(1)(B)(ii).

I think it needs to be made clear that there are relatively few restored and FAP-recognized tribes. The Department of the Interior recently explained that since the enactment of IGRA seventeen years ago, it has approved only twelve gaming acquisitions for restored tribes, and in the almost 27 years that the administrative process has been in existence, the Department has recognized only 15 tribes. To the best of our knowledge, there are only six FAP-recognized tribes that are landless today, including the Cowlitz and our good friends of the Snoqualmie Tribe, also of Washington State. Emerging from that process with federal recognition is not only rare, but it takes a better portion of one's lifetime to receive a decision from Interior.

Even though there are so few landless restored and FAP-recognized tribes, once recognized we face the almost insurmountable task of getting land in trust. Our tribal right to property—a federally protected land base that nearly every other federally-recognized tribe enjoys—is particularly difficult to exercise where we want to use the land for economic development involving gaming. Because we are a recently recognized tribe without a reservation, by definition, any land identified for trust acquisition is treated by Interior as an "off-reservation" acquisition. That means we have to comply with Interior's more rigorous "off-reservation" fee-to-trust regulations. As a result, landless newly recognized tribes must complete a wide variety of expensive, time-consuming studies, data preparation, and other work relating to the fee-to-trust process with no financial assistance and very little technical assistance from the federal government. Most notably, if we plan to use the land for gaming, NEPA requires us to find the money to pay for an exhaustive environmental review—in most cases, like ours, this means the preparation of an Environmental Impact Statement (EIS). For the Cowlitz, preparation of the EIS alone will cost much more than $1 million. It should come as no surprise then that newly recognized tribes are hard pressed to generate the funds needed to pay for these things and statutes like NEPA squeeze what limited resources we have from being used for tribal health care, education and other much needed services.

Of course, any land that a landless tribe acquires will, if taken into trust by Interior, come off the local tax rolls and be withdrawn from local jurisdiction. As you can imagine, this rarely makes the newly recognized tribe popular with the local community. Further, if, as in our case, the newly recognized tribe acquires land in a local community that generally supports gaming, already there is likely another tribal or non-Indian gaming establishment there that will fight the newly recognized tribe to the death in order to protect its profits. Conversely, if the newly recognized

[1] Examples of federal programs that are tied to having a reservation land base include the Indian Business Development Program, 25 U.S.C. §§ 1521 et seq., 25 C.F.R. Part 286; the Employment Assistance Program, 25 C.F.R. Part 26; and the Vocational Training Program, 25 C.F.R. Part 27. Further, because Interior's fee-to-trust regulations impose more burdensome requirements for "off-reservation" acquisitions, future acquisitions that are not contiguous to parcels proclaimed as the Tribe's reservation will also be deemed to be "off-reservation."

tribe identifies land where there is no nearby existing gaming facility, it's probably because the local community is disinterested in—or possibly even hostile to—hosting a gaming facility. Again, this is not a way to gain popularity in the tribe's local community. It is little wonder that newly recognized FAP tribes find themselves in the middle of public debates and controversies—controversies often fueled and well-funded by other gaming interests trying to protect their own turf and profits. We are concerned about imposing a requirement for affirmative concurrence of local and tribal governments before land could be acquired in trust for gaming for a newly recognized, landless FAP or restored tribe. The financial, political and social costs of such concurrences may be devastating to poor tribes. We submit that any new legislation should protect our ability to acquire a reservation land base through the existing statutory structure that tribes before us have been allowed to utilize.

The Cowlitz Tribe's Efforts to Obtain Land

Let me tell you about the parcel we have acquired. Our parcel is located squarely within the service area established for us by the federal Indian Health Service and by HUD's Office of Public and Indian Housing. That parcel of land is also squarely within an area to which the Cowlitz Tribe has strong historical connections. The parcel is a mere two miles from a tribal village occupied historically by the Cowlitz people and only fourteen miles south of the boundary drawn by the ICC that delineated the area used and occupied exclusively by the Cowlitz.[2] It is one mile southeast of the Lewis River, where the Cowlitz Tribe historically lived, hunted, gathered and fished, and there are a multitude of other historical connections to the surrounding area recognized by the ICC and the federal government that are too numerous to mention here. These lands are some of the very lands that we lost as a result of the federal government's wrongful actions so many years ago. Given these circumstances, the Cowlitz's efforts to re-acquire this land in trust can hardly be considered "reservation shopping."

It has been particularly painful for us to be the subject of a misinformation campaign launched by non-Indian and Indian gaming interests maligning our connections to this land simply to protect their monopoly on gaming in southwestern Washington. Their mischaracterization of our ties to this land is ironic given that we became landless precisely because we refused to move from our traditional lands to a reservation in another Tribe's territory when Governor Isaac Stevens came to secure a land cession treaty from us in 1855. Despite the fact that we did not cede our lands and no reservation was established for us, President Lincoln opened our lands to white settlement by Executive Order in 1863. As non-Indians settled our traditional lands, we became entirely landless and scattered throughout southwest Washington. As a consequence of our landless status, the Department of the Interior eventually came to view us as unrecognized.

Even more ironic, we brought suit before the Indian Claims Commission in 1946 to obtain compensation for our lost lands. The ICC issued an order in 1969 finding that we had never been paid for the lands taken from us and that we were entitled to compensation. The Tribe insisted that any settlement legislation implementing the ICC judgment must set aside some of the money for land acquisition, but for over thirty years the Department of the Interior opposed the draft settlement legislation on the grounds that unrecognized tribes could not acquire tribal lands and that all the money had to be distributed on a per capita basis. Because we refused to take payment for our lost lands until some of that money was set aside for land acquisition, we did not obtain legislation authorizing the payment of our ICC damages award that included a provision setting aside settlement money for land acquisition until just last year.

In short, the Cowlitz Tribe lost both its land base and its federal recognition because it refused to move from its home territory, the same territory in which we now seek to put land into trust. The irony is that if we had agreed to a reservation outside our historical area, we would not have suffered from a century-and-a-half of non-recognition and landlessness. And we almost certainly would not be suffering now from the disingenuous and inflammatory attacks of our opponents.

It is a sad day indeed when some established gaming tribes who make millions every year are using those profits to oppose legitimate efforts like ours rather than using those funds as envisioned by IGRA to provide services and create new economic opportunities for their communities. These tribes use their substantial resources to oppose a tribe with nothing—all with the intent of depriving us of our

[2] The Cowlitz shared occupancy in the area in which the parcel is located with a Chinookan group that unfortunately was entirely destroyed by European disease and encroachment by non-Indian settlers. See Simon Plamondon v. United States, 21 Ind. Cl. Comm. 143, 171 (I.C.C. 1969).

sovereign right to economic development under IGRA. Congress sacrificed a significant portion of tribal sovereignty through the passage of IGRA and some established gaming tribes now are trying to weaken our sovereignty even further by denying us from exercising any rights under IGRA.

We have heard much in the press about the issue of "reservation shopping" as it relates to tribes in California. Quite frankly, we don't know enough about what is going on in California to draw a conclusion about whether tribes are "reservation shopping" or whether this catch phrase is just being used by wealthy tribes seeking to block any competition. We do believe, however, that FAP tribes should not be sacrificed as part of this public policy debate.

Working With Indian Country

Many speculate that unscrupulous developers are driving "reservation shopping." We have been very fortunate in that we have found a partner in Indian country to help get us on our feet. While we entertained offers from a number of top-tier development companies, we are proud to be working with and learning from the Mohegan Tribe of Connecticut. In 1994, the Mohegan Tribe also successfully emerged from the Federal Acknowledgment Process as a newly recognized, landless tribe. Today the Mohegan Tribe is reinvesting in Indian country, helping their Cowlitz cousins from across the country. We are grateful for the opportunity to work with the Mohegan Tribe, and we hope that this partnership will demonstrate that tribes can use gaming development to achieve good things for Indian people. The Mohegan Tribe has shown that Indian tribes can and will reach out to help each other and will succeed if given half a chance.

Improvements That Should be Made

We know that you share our view, Mr. Chairman, that the United States has an affirmative and solemn obligation to our Indian Nations. We respectfully offer a couple of suggestions that could be made to the existing initial reservation exception and the draft legislation circulated for comment.

First, the draft legislation could build upon the current exception for FAP tribes by clarifying that the first parcel of land taken into trust for a FAP tribe automatically becomes that Tribe's initial reservation. We believe that this clarification reflects Congress' intent in creating the exception in the first place, but Interior appears to have concluded otherwise. Such a clarification would ensure that FAP tribes are not subjected to yet another expensive, time-consuming process.

Second, the draft legislation provides for nearby tribes to exercise a veto over gaming facilities established by FAP tribes. We believe that tribes with existing gaming facilities should not be able to veto a gaming facility located within a restored or recently recognized Tribe's area in which it has strong historical and modern connections simply because the other tribe established a facility first. Moreover, such a veto is unnecessary. The Department of the Interior already considers the views of tribes within a 50-mile radius of a proposed off-reservation trust land acquisition. Similarly, we are concerned about an additional requirement of state legislative concurrence in that it adds an additional hurdle for tribes already struggling though the process.

Third, at a minimum the draft legislation should grandfather and preserve the rights of tribes that have petitioned for or received federal recognition. Tribes that have petitioned or emerged from the process should be subject to the current process because, in cases like ours, the petition was filed well before the modern advent of Indian gaming and the passage of IGRA.

Finally, Section 2 of the draft legislation should be revised to clarify that any federal decisions issued regarding the eligibility of Indian lands for gaming remain in effect and that those lands shall not be effected by the amendments made by this draft legislation. This revision would serve to protect tribes that have invested significant resources under the current process and have received the approval of the federal government that such lands are eligible for gaming if they are taken into trust.

Conclusion

We understand that there may have been abuses in the way fee-to-trust applications and the Section 20 exceptions have been handled by a few tribes, and certainly there are situations in which developers and lobbyists have tried to manipulate the system in order to maximize their business opportunities. That is not happening here. I know that this honorable body will agree that the misdeeds of a few should not become the basis for wholesale revisions to IGRA that fail to take into account the unique histories and modern circumstances of individual tribes.

I know Mr. Chairman that this Committee will act with due care and deliberation before altering the balance of federal, state and tribal interests created by the

Section 20 exceptions. A rush to embrace any one-size-fits-all solution that is meant to address the actions of a very few tribes is likely to cause harm to the very tribes who most need your help—tribes like mine that are simply trying to find a piece of land to call our own, on which we can rebuild our tribal government, promote our sovereignty and self-determination, and create economic opportunities for our people.

The Cowlitz Tribe thanks you Mr. Chairman for your leadership on this issue and for the opportunity to provide this testimony. We offer our continuing assistance to the Committee as it considers how to address the issue of "reservation shopping."

The CHAIRMAN. Thank you. I appreciate the testimony of all the panel.

Chairman Stevens, in your testimony you talk about local input into the decisionmaking process, and I would like to ask you a couple of questions about that.

In the areas that we are talking about here, we are not talking about a local community having veto authority or regulatory authority over trust lands. We are talking about land that is not currently in trust, and having the local community have input into those lands.

That is very different than having the local community have the ability to go in and tell an tribe what they can do on their current trust lands, and do you not acknowledge the difference between land that is not currently in trust and land that is in trust, and the difference that exists under current law in those situations?

Mr. STEVENS. I do, sir, but I understood it to be that there is potential that those local communities would have veto in that process for those tribes to regain their status.

The CHAIRMAN. It is not about regaining their status. It is about taking new lands into trust for the purposes of gaming within an existing community, and those lands are not in trust currently, and in the draft bill we are not giving a local community the ability to tell the tribe what they can or cannot do on trust lands. It is on land that is not currently in trust.

Mr. STEVENS. I stand corrected, Chairman Pombo. I think that where I come from is where these tribes have, you know, in the past been terminated, and lost their land. So I come from more of a historical standpoint. I apologize for that if I inferred otherwise.

I think that it is a clear record in Indian country that our tribes, the gaming tribes have worked closely with surrounding municipalities and we are very proud of that record throughout this whole country. But I guess I misunderstood it to be a veto on their part.

The CHAIRMAN. And just to make it perfectly clear, what you just said in that what has historically happened is absolutely true. For the most part tribes have had a very good working relationship with the local communities and have actively participated in the local communities. It has only been within the last few years, and when we have had this—had a severe increase in the number of off-reservation proposals that it has become an issue. Prior to that it was very different than what we are experiencing right now.

I also want to ask you about—throughout the country, in Indian country, there are a number of reservations that have in-holdings or non-tribal lands within their reservation. Do you not believe that on those lands that the tribes ought to have input into what happens on those lands?

Mr. STEVENS. Can I yield to Mark. I am not sure if I understand the question.

The CHAIRMAN. Yes. Just identify yourself for the record, please.

Mr. VAN NORMAN. Chairman Pombo, Mark Van Norman, Executive Director of the National Indian Gaming Association.

We do believe that tribes ought to have sovereign authority throughout their reservations. Those reservations were set apart by treaty, statute, or executive order as a permanent homeland for tribes. When the title to the land changes from time to time, tribes ought to have further existing authority.

On the question of local government approval of tribal land acquisitions, we feel that the state can adequately represent the local governments because the state is the sovereign, and the local governments subdivisions, and they can work within the state.

We have our own tribal subdivisions, but our tribal governments speak on behalf of all of our districts, and we feel that to preserve government-to-government relations that it is worthwhile to work at the Federal government level primarily, but in this area there has been a precedent for working with state governments.

The CHAIRMAN. I believe that because of the situation that exists currently, and what we are trying to deal with you do have to have some increased local government participation, and I would not in this draft, nor would I as a general rule agree that local governments should have veto authority over anything that is on land that is in trust. I do believe that that would be a bad precedent to set.

What I have proposed in this draft deals with land that is not currently in trust, and is very different than what we currently have.

My time has expired. I am going to recognize Mr. Udall.

Mr. TOM UDALL. Thank you, Mr. Chairman.

Chairman Stevens, several tribes have stated that IGRA is not broken, and seem to believe that a variety of procedural safeguards exist to protect the interests of both tribes and non-Indian communities.

In your opinion, are any updates needed to accommodate the evolving role of Indian gaming, or do you feel that IGRA should remain untouched?

Mr. STEVENS. It is definitely the position of the National Indian Gaming Association and our member tribes that it should remain untouched. We do have, however, as I stated in my testimony, Congressman, that we feel like the Interior's regulation process will help clarify a lot of those concerns.

Mr. TOM UDALL. Chairman Stevens, I think one of the witnesses said this, and this may be in your testimony also earlier with regard to IGRA itself infringing on Native American sovereignty and the sovereignty of tribes.

Could you outline a little bit what the history has been there?

Mr. STEVENS. I am going to yield to Mark on that, Congressman.

Mr. TOM UDALL. Sure, that is fine. That is fine.

Mr. VAN NORMAN. Thank you, Congressman Udall.

We feel that there is a Federal government-to-government relationship. That is in the constitution. It is in treaties. Normally

tribal governments do not have to deal directly with state governments under any Federal statute.

The Indian Gaming Regulatory Act was an exception to that, and so to that extent, to the extent that we have to have a compact with the states prior to engaging in Class 3 gaming, that is a compromise on Indian sovereignty, and tribes have worked very diligently to build good relations with states.

And I would just like to say in regard to local governments that the Section 20 process, the two-part determination by the Secretary has never moved forward without local government support. So we feel that as a practical matter further local government authority is not necessary.

Mr. TOM UDALL. And is it not true that the history here prior to IGRA in 1988, the Supreme Court ruled in Cabazon, did it not, with regard to gaming?

Mr. VAN NORMAN. Yes.

Mr. TOM UDALL. And what did that case establish in terms of sovereignty and what the tribes could do and could not do?

Mr. VAN NORMAN. The Cabazon case established that Indian tribes are governments. They retain their sovereign authority. Part of the sovereign authority, part of the intention of the reservation is that tribes will have a viable economy, and tribes have authority to use Indian gaming as part of their inherent sovereignty to promote economic development and to generate funds to pay for a central government services, and that is what the Supreme Court recognized.

Mr. TOM UDALL. And then IGRA followed on that afterwards to require that in order to engage in Class 2 and Class 3 you had to have a compact between the state and the tribe; is that correct?

Mr. VAN NORMAN. In regard to Class 3 gaming, there has to be a compact with the state, and in regard to Class 2, tribes work directly with the National Indian Gaming Commission, but that was a compromise on the Cabazon case, and it was an in-road on Indian sovereignty, but tribes have worked very diligently to develop good relationships with the states, and we now have 26 states that have compacts with tribes.

Mr. TOM UDALL. Chairman Stevens, considering that only three tribes have successfully moved forward under the current Section 20 procedure, perhaps we are trying to resolve a problem that does not exist.

Do you believe that the reservation shopping crisis is a misconception? And if so, what do you believe is the best route for tribes to address the situation.

Mr. STEVENS. No, Congressman, I believe that there is an issue there, and that is why we stand before you today. I think that the tribes have come together on four very well attended meetings to deal with these kinds of issues. But we do believe that they can be handled within the current process.

I think that, you know, Chairman Pombo makes a good point regarding the concerns of local communities, and I think that that—I want to acknowledge that that has been discussed in our hearings. But at the same time I want to just make sure it is very clear that on a very high percentage we continue to work very positively

with the communities around our gaming communities throughout this country.

Mr. TOM UDALL. Thank you very much, and I yield back.

The CHAIRMAN. Mr. Gibbons.

Mr. GIBBONS. Thank you very much, Mr. Chairman, and to our guests and panelists, welcome to the Committee. We are glad to have you, and this is a very important issue for a lot of people, not just the Indian tribes and of course throughout America.

As we know under IGRA, IGRA prohibits or bars gaming on newly acquired lands unless it is approved by the Secretary and, of course, the Governor. But it also requires consultation within the—with the Indian tribe and appropriate local officials. BIA has applied a 10-mile radius to that area of influence.

When you consider the impact of vehicle traffic, water usage, police, fire, anything on that, do you believe that that impact radius should be larger than 10 miles to look at the influence or the impact of some of these large tribal casinos?

Any large business has a huge impact on communities. Do you believe that that 10-mile radius is arbitrary in its dimension, and would you support a larger sphere of influence in consultation with local communities?

Mr. STEVENS. I really do not—I have not really been able to think that through other than to say that I believe that our tribes have taken a much more bigger, a larger viewpoint when it comes to analyzing those types of impacts, and I think that they take it upon themselves to go far beyond those kinds of impacts, beyond that 10-mile radius.

Mr. GIBBONS. Well, then, let me ask this question because we are always dealing with the concept of sovereign immunity within the Indian tribes.

The Chairman asked a very poignant question about the influence of any activity within the jurisdiction of say a reservation, and in-holding by non-Indian ownership. You said that you would have—agree that there should be consideration given to the tribe for any activity on non-reservation land that is in-holding on that tribal reservation.

Therefore, your sovereignty applies to whatever they want to do on their lands. Should you not consider the sovereignty of these local communities then within which this new land is acquired?

Mr. STEVENS. Congressman, I think I tried to answer that question. Maybe if I could ask Mark to maybe be more specific about that.

Mr. VAN NORMAN. Well, Congressman, I think——

Mr. GIBBONS. It is philosophical. It is not——

Mr. VAN NORMAN. It is philosophical. I think that there is a distinction with reservations, and with Federal reservations when they are established they continue unless they are disestablished, and so those boundaries of the reservation are there. So even though there may be fee lands, they remain within the reservations, and we believe that is important.

Mr. GIBBONS. All right, now let me bring this back to that very point. You are acquiring new land within a jurisdiction of a non-Indian governmental area; for example, a city, a community, a

county that is not Indian. So you are in-holding then within their area of influence.

Should not the same kind of consideration be given to their sovereign rights as concerned about your sovereign rights when there is an in-holding on the tribal reservation?

Mr. VAN NORMAN. From our point of view, there is a lot of consultation provided for already. The Secretary before making a determination, a Federal determination, must consult with state and local officials and nearby tribes. So there is a consultation process for the Secretary to take those interests into account.

As a practical matter, the Secretary has never moved forward where there was not support of the local government. As a legal matter, we believe that the other sovereign, that it is appropriate for tribal governments to deal with is the state sovereign, and that local governments are actually subdivisions and subordinate to the state governments.

So already from our point of view the Indian Gaming Regulatory Act takes this away from our direct Federal government-to-government dealings, and we are concerned that a local government requirement would take us a step down from the state government.

Mr. GIBBONS. Well, then, in your analysis one would include the area of consideration to be the surrounding state rather than the surrounding community. So perhaps we should expand the area of influence to the boundaries of the state if we are going to deal with state government under your analysis.

Mr. VAN NORMAN. Well, the state officials are already dealt with.

Mr. GIBBONS. But I am talking about the area of influence, detrimental influence which is required under IGRA.

Mr. VAN NORMAN. Well, that does seem to be—you know, could be hundreds of miles and it would seem as a practical matter to be excessive.

Mr. GIBBONS. Thank you, Mr. Chairman.

Mr. VAN NORMAN. Thank you, sir.

The CHAIRMAN. Mr. Kind.

Mr. KIND. Thank you, Mr. Chairman. Mr. Chairman, I want to thank you for holding yet another hearing on this draft proposal, and naturally some of us are still coming up to speed on it, but I think as we do move forward and I appreciate the witnesses' testimony here today, and look forward to working with you as we proceed; that we do try to keep foremost in mind the historical constitutional rights that are embodied, recognizing tribal sovereignty in this country, and where the negotiations need to take place.

I think the second draft of the Chairman's mark here is a bit of an erosion in regards to the approval process as tribes move forward in acquiring new lands, and it is one of the concerns I have, and I think we need to think through that more on a philosophical basis, but recognizing that constitutional right that grants tribal sovereignty.

But there are two other issues in particular. One is reading the draft, it looks like it is going to make it virtually impossible for any tribe to acquire new land for an activity across state border. Is that how you read the second draft of this, Mark?

If there is not a connection to the actual location within the state, then is it going to make it very difficult for a tribe to acquire land across states?

Mr. VAN NORMAN. The way we read the draft the intention is to stop tribes from crossing states, and we do express a concern, that historical factors should be taken into account because tribes were moved out of the aboriginal areas many times. It was Federal territories at that time, but there have been instances where the United States violated Federal law in removing tribes.

Mr. KIND. Well, I guess that is a general question to the panel is, are there legitimate geographic, social or historical considerations why a tribe might want to acquire lands for activities across state border? Chairman Stevens?

Mr. STEVENS. Sorry. Could you repeat that question, please?

Mr. KIND. Would there be a situation where there is a legitimate case that can be made based on geography or social reasons or in an historical connection of why a tribe would want to acquire lands in a different state?

Mr. STEVENS. I apologize, Congressman. I want to ask Mr. Van Norman to respond to that one.

Mr. KIND. Sure.

Mr. VAN NORMAN. Well, Congressman, we feel clearly there are these historical factors, and especially where the United States has violated Federal law to remove the tribes from their original homes, that naturally there is a desire for tribes to reestablish some lands where they were located from time immemorial, and we think that a prohibition does not address these historical factors.

Mr. KIND. Such as in the Nineteenth Century removal policy.

Mr. VAN NORMAN. Such as the Nineteenth Century removal policy which, you know, if it were undertaken today I think would be called ethnic cleansing.

Mr. KIND. Right. And I appreciate the Chairman's distinction between not giving local government veto power over land already in trust versus land not in trust yet, but nevertheless this would establish veto power at multiple levels. It is a five-step approval process moving beyond the normal consultation that currently takes place under Section 20 by the Department of the Interior, the Secretary.

The way I read it is not only does this latest draft require the Secretary's approval, it must get approval of the government, state legislature, the local government and also neighboring tribe, each one of which could exercise their veto in order to stop any acquisition of land.

Is that a fair and accurate reading of the latest draft that we have before us?

Mr. STEVENS. Yes, sir.

Mr. KIND. Now, Chairman Stevens, I think others have made reference to the fact that the Department of Interior is moving forward on reforms for Section 20, and that process is taking place.

Do you feel that the Department of Interior is heading in the right direction in order to address many of the legitimate concerns that I feel the Chairman and others have which is giving rise to this legislation? Do you think the Department of Interior is capable of handling those concerns?

Mr. STEVENS. We feel that that is the case. We stated that in our testimony, and we have asked this committee to give that process a review as it moves forward.

Mr. KIND. All right. Well, again, I think there are some very new and dramatic changes with the latest draft proposal that we will have to try to work into further consultation, and perhaps future hearings.

Mr. Chairman, just a quick question for you. Will we have an opportunity to call some of the Department of Interior officials before us in order to find out what work they have doing in regards to Section 20 changes, and get a sense from them what direction they are heading in?

The CHAIRMAN. I am sure before we move forward with the final bill that we will have the opportunity to have the Department come down and give us their opinion on the bill as well as what they have been doing.

Mr. KIND. Right. Well, thank you again, Mr. Chairman, for today's hearing. I want to thank the witnesses and look forward to working with them.

The CHAIRMAN. Thank you. Mr. Walden.

Mr. WALDEN. Thank you very much, Mr. Chairman. I appreciate the diligence with which you have brought this bill forward and your willingness to work with various members and tribes to figure out a good and balanced solution to the issues that are out there.

Mr. Suppah, I would like to start with you if I might, and I appreciate your testimony and our discussions on this issue.

What sort of criteria might you support in terms of sideboards on this type of legislation?

Mr. SUPPAH. We would be in support of the existing regulations as they stand today, and also if there was any amendments of any kind, then we would be supportive of in-state and aboriginal territories, and a side compact with the state.

Mr. WALDEN. Now I know that others have suggested sideboards that would say, I believe it is ancestral and historical boundaries as kind of where they could reach out to. What effect would that have on your situation if that were the case?

Mr. SUPPAH. Mr. Walden, for another tribe that has not clearly established that aboriginal tie or aboriginal title, it would jeopardize our situation to the point to where say like the 1967 Indian Lands Claims Commission and their decision for Warm Springs that clearly laid out where we were pre-treaty, and today.

Mr. WALDEN. In the proposal you put forward is within the boundaries of your ceded lands; is that correct?

Mr. SUPPAH. Yes, it is. It is clearly within the claims commission area as defined in that decision.

Mr. WALDEN. And does anyone else—any other tribe have—within that claims commission process, do they have ceded status in that same area?

Mr. SUPPAH. That was not decided. No other tribe had pursued an Indian land claims claim, and the area was—the decision was that that was clearly in Warm Springs' area.

Mr. WALDEN. I see. Now, obviously, it is no secret, at least three of you on the panel there is some level of conflict among you regarding various proposals. I am curious, Chairman Suppah, what

has the Warm Springs' view been on other proposals for off-reservation facilities or new gaming facilities being established in the northwest? Have you opposed those?

Mr. SUPPAH. Representative Walden, Warms Springs' position is a matter of record, that we choose to be neutral in other tribes' endeavors for attainment and achievement of economic diversity and success, and we see no need to divert or change from that.

Mr. WALDEN. OK. Maybe the other two could respond to northwest. Chairman Kennedy, what is your view on that concept of self-determination by these other tribes on this issue?

Ms. KENNEDY. We firmly support the sovereignty of other tribes. They have a right to pursue securing resources for their members. We believe that that is an inherent part of sovereignty, and we do respect that.

Mr. WALDEN. But have you all not opposed what the Warm Springs has proposed, and what is your view on the Cowlitz's proposal as well?

Ms. KENNEDY. We have opposed off-reservation gaming, and that is part of our belief. I did want to make one other comment about lands and ancestral ties.

We have gone on record saying we support in-state. We know that and recognize that the reality is that it is a very large hurdle to overcome, especially for us. Some of our treaties were signed in Washington where our people were. But we recognize that today things change and just as this proposed draft revision is coming forward, that it is a great possibility that the changes will occur and that amendments will happen.

So as things change, of course, any leader, including everyone in this room, has to stay with that thinking in mind.

Mr. WALDEN. All right. I know my time has expired. Obviously as a footnote aside from this issue, looking at other issues, it has always troubled me in government when somebody has followed a process that has been there, and in place, and spent a lot money to follow the rules and all, that it never seems fair that somebody comes along and then changes the rules in the middle of the midstream. And so it is just a concern I would have in this, and I know we have talked in other issues as well.

Thank you all. I appreciate your testimony.

The CHAIRMAN. Let me tell the gentleman I am aware of that issue, and I am sympathetic to it. That has been an issue that you have raised with me in the past as have a couple of other members, and I am sympathetic to that. And I think as we move forward with the draft bill, we may have an opportunity to address that issue.

Ms. Herseth.

Ms. HERSETH. I have no questions, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman, for holding this hearing. I want to thank the witnesses as well. I want to direct my questions in kind of a different direction notwithstanding the proposed legislation before us, and listened to the comment of the gentleman from Oregon about changing the rules in the middle of the process.

I do not subscribe to that either, but I would like to direct my question to the Chairman from the San Manuel Band from California, and from those other Indian tribes that are involved in gaming facilities.

As was mentioned earlier, we have about 28 states that have compacts of Class 2 and Class 3 gaming. In California, that encompasses 108 sovereign recognized nations under the BIA, of which there are 52 that have active gaming facilities. These statistics are a little old, but they were done in 2003. At that time we had 62 that had compacts.

My question to you is in describing California situation over the last 15 years and having been a—before this job, I had been a member of the state legislature, so I have been involved and observed how gaming has transitioned itself in California over the last 15 years. If I were to ask you what the policy is in California, how would you describe it as it relates to the 108 sovereign nations that are recognized, the 62 in 2003, I think it is 64 now, but have compacts? How would you describe the policy in California?

Mr. MARQUEZ. I think simply I could just state that policy in California in the Governor's office is basically to raise revenue for the State of California. That is——

Mr. COSTA. I would submit to you that we have had different policies. I mean, we had a policy under Governor Wilson, and then we had a policy under Governor Davis, and now we have a policy under Governor Schwarzenegger, and every policy I think is best described with each Governor as "Let us make deal time."

Mr. MARQUEZ. True, and I was going to kind of roll it back into the Governor Schwarzenegger days, and the Governor Davis days, and obviously there were some days where there was no discussion between the State of California or the Governor and the tribes, which basically gave rise to what is being known as the Prop. 5 days and the Prop 1A days.

So the policy in California at the beginning was very—as we can bother to say—standoffish. The policy was not formed to allow the games within—on the reservations, I should say, at that time. But under Governor Davis that changed, and there was a more open dialogue between the tribes and the Governor at that time, and we believe those compacts really fit into the mold of what IGRA was created for.

Then recently, as you just stated, the Governor's policy is more or less about more local control, more unionization, more capital for the State of California, heavier fees, and that has become just simply through progression, and as we all know as policy develops, the new norm in California.

Mr. COSTA. It seems to me what is lacking in this discussion as we look at the Chairman's bill, and that I would like to see occur, and I concur with the earlier statement that was made by the gaming representative, that the states are the sovereign entity that I think the sovereign nations ought to be negotiating with in terms of the contacts. It is logical. It makes more sense as opposed to the local government.

But the fact is that I do not think we really have a policy in California, nor can I determine that we really have a policy in place among the 28 states that have Class 2 and Class 3 gaming, and

it just seems to me that one of the things that we ought to require is that every state, based upon their own circumstances and individual needs, develop with the Governor and its legislature what gaming policy should be in the future.

I mean, in California, we have approximately 46 sovereign nations that have the ability to apply for proposed gaming. In 2003, we had a number of them that—23 that had proposals in there, and some not even on their native lands. I mean, we will get into the place down in California where we are having franchise shopping, and how is that fair to the existing Indian reservations that have in fact complied with the existing framework and located their facilities on their native lands?

Mr. MARQUEZ. Well, I think it is safe to say in California in specific that the Proposition 1A that was passed, it was very well stated during that campaign that such activity, off-reservation activity would not transpire. And as you just pointed out, here we are today dealing with that type of phenomenon in California, especially in our situation where we have a tribe from the Northern California/Oregon border seeking a reservation on ancestral lands some 700 miles away. That in my mind just reeks of some problems that we need to address, not to mention the tribe from San Diego coming up about 150 miles away to basically create a reservation on our ancestral lands. That is a huge issue and it is counter to the public policy that was passed by a majority of the people in California when Prop. 1A was passed.

Mr. COSTA. Well, it just seems to me, and my time has expired, Mr. Chairman, and I would like to have the balance for the purpose of submitting further questions, but this is an area that we need to have further discussion. What is lacking in California, and I suspect in other states as well is the requirement that the states really determine how they are going to move forward with any new proposed gaming, and the requirements under any newly proposed gaming facilities certainly is different from what previous sovereign nations had to comply with under previous Governors.

It just seems to me that we would be a lot better off if in fact there was a clear understanding of how the states would move forward and determine that policy with the Secretary of Interior.

The CHAIRMAN. Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Thanks for holding this hearing.

I just want to clarify and sort of explore a little bit the point made by Representative Walden to Chairman Suppah. It is my understanding on this most recent draft that your current proposed application for Cascade Locks would not be eligible to go forward? Is that your reading of this draft of the bill if I understand it? Chairman, yes.

Mr. SUPPAH. Would you please repeat the question, Mr. DeFazio?

Mr. DEFAZIO. Sure. You have, as have been mentioned, a pending—your pending in the process with the Department of Interior regarding the potential for taking lands into trust, having a compact and putting a casino at the Cascade Locks site.

The question is would this legislation, if adopted, preclude the completion of that process in this form, if it was adopted in this form?

Mr. SUPPAH. Yes, it would. Because as Representative Walden had explained, it is kind of like changing the—moving the goal post just about when you are there. We have worked through a model process to get to where we are today. We have expended a lot of money. With any kind of changes like this, maybe just to take an example, Oregon has a law which authorizes the Governor to sign compacts on behalf of the State of Oregon.

Now, if, for instance, they changed that and drafted legislation that would give more veto authority to more different places, then surely one of them is going to veto our project. So we are definitely concerned about that.

Mr. DEFAZIO. And, in your reading of this new proposed draft, would your other site where you have historic lands in Hood River, would that be made ineligible or be subject to the new process as well in the same way?

Mr. SUPPAH. In that case, that land is already in trust. It is pre-1988. It is eligible for a casino, and if the Confederated Tribes of Warm Springs chooses to pursue that, then that would be one of our fallback alternatives.

Mr. DEFAZIO. OK.

Mr. SUPPAH. But I think that as we lay out in compact and our participated agreements with say Cascade Locks and Hood River, we choose to not only consult with these—within the applicable law, and adhere to that, and respect the City of Hood River's objection to that, so I mean that would—that is not out of the scope of consideration for Warm Springs.

Mr. DEFAZIO. Do any of the other witnesses have comments on how this draft would affect a pending application like this? I assume there may be others across the country that I am not aware of, and whether or not you believe that should be accommodated or whether you think the draft is adequate in that area. Any of the other witnesses want to get into that?

Ms. KENNEDY. Well, my only comment about whether or not the process would stop or hamper what is happening, I believe that the area as defined is unclear, and does need to be fleshed out more than it is right now. We are not real clear on what implication it may or may not have.

Mr. DEFAZIO. OK. Anybody else?

OK. Well, thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman.

Mr. Marquez, do you think that reservations should have the right to tax the mineral deposits on their tribal lands?

Mr. MARQUEZ. The taxation with mineral rights as the government?

Mr. PEARCE. Sure. Historical on the minerals that are extracted from there?

Mr. MARQUEZ. Yes, sir.

Mr. PEARCE. And taxation on businesses——

Mr. MARQUEZ. Yes, sir.

Mr. PEARCE.—that operate on the reservation?

Mr. Stevens, what about there is a growing trend among some states to use their resources and their location to go on to business to compete with private businesses. For instance, along interstates

many times the land is an easement from the state, and so states are now going into the truck stop business, which is convenient. The competition has got to be back away from the highway.

What would you feel like—what would be your opinion of states were to operate and open up say along an interstate, a Native American tribe with a fueling station, service station, truck stop, what if the state came in on state land right next to you and began to operate. Would you think you have a right to say anything or bring up a point about that?

Mr. STEVENS. I do not know if I understand the question. I think that——

Mr. PEARCE. Well, if someone is going to come in, for instance, say Mescalero Tribe is in our district, and they have a reservation that extends right up to the town of Ruidoso, and they have a large truck stop.

What if we move them to an interstate highway, which they are not, but if they were, and a state used its size and largess to go in and create a competing fuel stop right next door, would you want to have input into the decision for them to locate right there and provide a completing place?

Mr. STEVENS. You know, I think the likelihood of that is——

Mr. PEARCE. No, I am just asking a hypothetical question because all the questions we are asking today is about off-reservation gambling are still hypothetical, so we have to talk in hypotheticals.

Would you or would you not——

Mr. STEVENS. I am going to ask Mr. Van Norman to respond to that.

Mr. VAN NORMAN. You know, I think very likely the tribes would want to have some kind of——

Mr. PEARCE. Sure, you would want to be consulted.

Mr. VAN NORMAN.—input, but I also think that it is fairly clear that we would not have many Federal law right to veto the use of state land outside the reservation.

Mr. PEARCE. But you would like to be consulted. So what would that consultation—I mean, if they would just listen to you and still went ahead with disregard for you, would that have an effect? And I will not make you answer that because I think it would have an effect.

Now, then, when I go to page 4 of your testimony, Mr. Stevens, you say that—you are repeating the Section 20 process, "The tribal government should thoroughly consult with state and local officials."

Now, the local officials, you have been willing to acknowledge that state officials have some sovereignty but you kind of push the local officials away from the process and say, well, they should be subject to the state.

And what does this consultation in your mind mean? What if you are going to move a casino into an off-reservation site, and it is going to severely impact, it is going to have a large impact, not severe, but a large impact on a local community, do you not think that there should be something, some right to consult and maybe even some right in the decisionmaking process because that is what is at stake here?

Mr. STEVENS. I think that there is and we have had extensive dialogue in all of our relationships with those local——

Mr. PEARCE. Through dialogue. But what if the local community says we do not want it, what happens? What happens if the local community say we do not want it, and you all think that you should have it?

Mr. STEVENS. Well, I think that we would deal with that through the state compacting process.

Mr. PEARCE. When we are talking, Mr. Stevens, about off-reservation gambling, if a site is set up that—again I will look at my district. About 300 miles away from the tribe that is making the request and the site is set up for a tribal casino to operate, what would be the National Indian Gaming Association's perception about opening that spot up to some competing casinos? That is, if we are going to open it up, that all tribes should have a right to come in and open a casino there next to each other and compete. What would your opinion of that be?

Mr. STEVENS. In what location are you speaking to?

Mr. PEARCE. In any location across the country, just any location where we are going to acquire land off-reservation for gaming, what is the association's position going to be if we open that up to competing tribes to offer the best service there in that one spot?

Mr. STEVENS. I believe that is why we continue to advocate for the regulation process through the Section 20 through the Interior.

Mr. PEARCE. I see.

Mr. STEVENS. The Department develops those regulations, and I think that it obviously has to have a historical element.

Mr. PEARCE. OK. I just have one more question, Mr. Chairman. I see my time is gone. But Section 7, when we are talking about to—with regard to newly recognized, restored and landless tribes, now you may have a different perception of history than I have, but throughout all of history we have seen groups of people going in and take land away, and move. And so your statement says that those landless tribes should reacquire lands in the aboriginal or historic land areas but avoid any infringement on aboriginal land rights of nearby tribes.

What do we do when one tribe says, you know, you are on the spot that we had, and you took it from us, what do we do in those—because I think we will want to get into a lot of this as we go into the landless tribe question and the acquiring of public land, and it is going to get right down to the Indian gaming because at some point there is going to be great competition among those people without casinos to get into the business of casinos because they are literally producing billions of dollars of net cash-flow. So it is a question that I know that we are going to see.

Do you have an opinion about when there is a dispute with one landless tribe saying that tribe has got the land we used to have?

Mr. STEVENS. Again, I reiterate through that process, that that will be handled through that process.

Mr. PEARCE. Thank you, Mr. Chairman. Those are my questions.

The CHAIRMAN. Mr. Inslee.

Mr. INSLEE. Thank you. I am sorry I was not able to be here at the beginning. Welcome, Chairman Barnett. We appreciate you coming all the way out. Hope you enjoyed the airline food.

I just want to go across the panel if I can and just ask a simple question, whether IGRA needs to be reopened in general. You may have addressed this already, but I would just like to know everyone's perspective on that.

Mr. VAN NORMAN. Congressman, it is the position of the National Indian Gaming Association and the National Congress of American Indians by unanimous resolution that we are advocating that the Act not be open; that the process be handled through the current law.

Mr. INSLEE. If we can go down the row if that is polite.

Mr. SUPPAH. Thank you. We are in concurrence with that statement.

Mr. MARQUEZ. I guess I will break the string here. I think, as we said back in July of 2004, and again on the Senate side, that the intents of the Indian Gaming Regulatory Act never contemplated the activity that we are doing with our ancestral lands in our back yards when you have tribes seeking to create reservations from many miles away.

In my mind, we have yet to see activity that would help address this issue, and we believe, and again we understand fully that the mantra has always been do not open IGRA. But we contend that IGRA did not contemplate this activity. The soul, the spirit and the intent of IGRA did not contemplate this activity, and I cannot say it over and over again, but I will. And we cannot ask Congress to help us, and then turn around and say, oh, by the way, do not undo IGRA.

Ms. KENNEDY. We do support the opening IGRA. Initially we said no, but based on all of the unfoldings that are happening across Indian country, we do support it.

Mr. BARNETT. As you recall, Mr. Chairman, I have to say, you know, that we are in a probably unique situation of not signing the treaty, and we are landless. The exemptions in IGRA for restored lands and initial reservation are the only opportunities we have to establish ourselves.

We certainly are recognized but have no land. And you know, to me it is a matter of equality. I do not think the situation is broken at all, but I think it needs maybe to be revised. I think reservation shopping needs to be addressed a lot more forcefully so that it does not, for instance, take in a tribe that wants to jump—like the gentleman said here—300 miles away and put in a casino. I mean, that is not the purpose of IGRA, I do not think.

But the purpose should be to have equality for all tribes involved here whether you signed a treaty or not, and you know, we would ask this committee to think about that when you do come up with some type of changes to streamline and modify the process. Thank you.

Mr. INSLEE. There is discussion in the draft about inter-tribal agreements, and I just—this is an open question to anyone who would like to respond. Do not tribes already have the sovereign authority to enter into inter-tribal agreements? And how would this be changed by this draft? If anyone wants to tackle that.

Mr. VAN NORMAN. Congressman, I would like to respond to that. I think it raises a legal question. And the situation as we believe that tribes do have the authority and a right to cooperate. We do

have a situation with a couple of our member tribes where they are trying to cooperate, and they are running into a bureaucratic hold up, and we think that, you know, the National Indian Gaming Commission and the Department of Interior should cooperate to resolve that issue because inter-tribal cooperation is a very positive thing.

We also believe that there would be an opportunity, if they cannot do that, to have a separate legislation to provide for the inter-tribal cooperation.

Mr. INSLEE. I have a general question about getting in the market for gaming. There is probably no clear answer to this, but could you give us the feeling about the market of gaming? Is it saturated? Is it only half to what it will be in 10 years? Is there any sense that it is becoming saturated in some places? Can you give us any assessment of that, to the best you can? Anyone who has an answer, I am welcome to any insights.

Mr. MARQUEZ. I think you are asking the $20 billion question about saturation. I think, especially in California, there is no way of telling what that saturation point is going to be.

California is a little different because we are capped at a certain number of machines, but the market will bear what the market will bear, and to say it is going to saturate, we simply do not know. We can turn to Las Vegas and look at the operations in Las Vegas, and truly see that they have not yet hit their saturation point.

I think gambling or gaming is a proliferation across this country, and we will see more and more of it, especially with New York and Pennsylvania coming online in their state gaming. So I think, especially in California, we have a long way to go before we start talking about saturation points.

Mr. INSLEE. Any other thoughts?

Mr. STEVENS. If I could, Congressman, I think that we continue to grow responsibly, I think that sometimes they use the term "explosion", and I do not think that is the case in Indian country. I think that, you know, as long as, you know, we look at the statistics and the American public supports our industry, and I think it will grow progressively, but I do not see a point for saturation in the near future, as long as we are careful and do a good job, which the Indian country is very committed to doing.

Mr. INSLEE. Great. And thank you and thanks to the industry for the Tulleeha Boys and Girls Club, one of the boys and girls club on a reservation. Thank you.

The CHAIRMAN. I want to thank our panel of witnesses. I am going to excuse you at this point. There may be further questions that members of the Committee have, but they will be submitted to you in writing. If you can answer those in writing so that they can be included in the hearing record. Thank you very much for your testimony and for answering the questions.

Mr. VAN NORMAN. Thank you, Mr. Chairman.

The CHAIRMAN. To call up our second panel of witnesses, Senator Steven Rauschenberger; Senator Mary Kay Papen; Supervisor Duane Kromm; and Supervisor Dianne Jacob.

If I could have the second panel stand, and is customary on the Committee, we swear in all of our witnesses at our hearing, so if you would stand and raise your right hand.

[Witnesses sworn.]

The CHAIRMAN. Let the record show that they all indicated in the affirmative.

Welcome to the Committee. As with the previous panel, your entire written statements will be included in the record. I would appreciate it if you would limit your oral testimony to the five minutes. The lights in front of you will indicate when your five minutes has expired.

Senator, is it Rauschenberger? OK. We will then begin with you.

STATEMENT OF SENATOR STEVEN J. RAUSCHENBERGER, ILLINOIS STATE SENATE, NATIONAL CONFERENCE OF STATE LEGISLATURES

Mr. RAUSCHENBERGER. Thank you. I will leave my written testimony for you to kind of review. Let me just say a couple of brief things and then be available for questions.

Number one, I would like to commend the Chairman and the Committee. I think it is a very, very thoughtful effort to take up the fundamental question of who represents a state. When we are looking in particular at establishment of non-reservation tribal gaming, the idea that a Governor who in many ways is a temporal leader of the state would be the consulted person by the Department of the Interior rather than the legislature, which represents the people in general assembly in the states I think an error in the original drafting of IGRA, as you guys refer to it.

So the idea of expanding that and requiring that the legislature be consulted, as we see Governors pass through difficult economic cycles, and we have heard some discussion about the questions in California. Governors, as I say, you know, represent temporary heads of states, where legislatures represent the people in Congress. So I think it is a very, very thoughtful improvement in the act.

Recognizing that gaming is not only growing, it is growing in controversy across the states. In many states like Illinois also have state legalized licensed gaming, in those cases the State of Illinois is free as a sovereign state to decide to discontinue gaming in the future, expand gaming in the future, do as it regulates.

In the case of non-reservation tribal gaming, if it were to be introduced in Illinois without consultation of the general assembly, that would be a perpetual right for that sovereign tribe to continue gaming regardless of what state regulation is.

So again, I just think it is very thoughtful to kind of think through the relationships, that now that you have seen some of the earlier facts of IGRA, now that you are seeing, I think, some of the intents, influences of an industry that sees a lot of potential in places and would kind of like to work around the edges of sovereign general assemblies.

So I appreciate being here and the opportunity to tell you I think in engaging and thinking about adding the general assemblies, the legislatures of the 50 states to the process, that is exceptionally good public policy, and thank you for giving me the opportunity to speak.

[The prepared statement of Mr. Rauschenberger follows:]

Statement of The Honorable Steven J. Rauschenberger, State Senator, State of Illinois

Good morning. I wish to thank Chairman Pombo and Ranking Member Rahall for inviting me here today to testify on the proposed amendment language to the Indian Gaming Regulatory Act, or IGRA. I am here in my individual capacity as an Illinois Senator, and am not testifying in my capacity as the President of the National Conference of State Legislatures, which has not adopted a formal position on this matter.

Current law, IGRA section 2719 (b)(1), provides one of several exceptions to the prohibition of Indian gaming on lands acquired in trust by the Secretary of the Interior. The (b)(1) exception states that Indian gaming can occur on land taken into trust where the Secretary of the Interior, after consultation with appropriate state and local officials, including officials of nearby Indian tribes determines that gaming would be in the best interest of that tribe. However, this determination must either follow a Governor's agreeing to the gaming proposal, or the lands on which the casino is to be located are taken into trust as part of a settlement of a land claim, are part of the initial reservation of an Indian tribe acknowledged by the Secretary under the federal acknowledgment process, or are the restoration of lands for an Indian tribe that is restored to federal recognition. Under the current process, the Secretary and the Governor may jointly decide whether a casino is or is not appropriate despite the opinions of state legislators who may not even be consulted. IGRA requires the Secretary to consult with "state officials" which may not be a state legislature. There is no mandatory requirement that the views of state legislators have any weight whatsoever in this determination. This current process is not an open and transparent one, but rather one that occurs behind closed doors without the benefit of public hearings and state legislative input.

By contrast, the proposal before you this morning seeks to open up the process of Indian gaming approval by requiring not only the Governor of state in which the casino will be located to give his or her approval, but also requires the state legislature, counties and neighboring tribes to concur with the Secretary's decision on the appropriateness of the casino. I have no opinion on whether counties or neighboring tribes should be involved in this process, that decision is best left to county and tribal officials; however, I am very supportive of the inclusion of the state legislature in the process of determining whether a casino should be placed in my state, particularly in the instance where a non-resident tribe seeks permission to open a casino. In Illinois, four non-resident tribes have sought to do this in the last ten years. No Governor of Illinois has ever agreed to this type of proposal. However, there is an ever-present uncertainty with respect to how a particular governor would entertain these proposals. I should also note that state legislators are oftentimes much more accessible to the tribes and the general public than are governors, so the opportunity to have all concerns addressed with a proposed casino would be greater through the state legislative process.

Including the state legislature in the decision as to whether or not to permit Indian casinos is extremely important to me for several reasons. First, our republican system of government, or representative democracy, vests the authority and responsibility to create sound public policy with the elected representative body, or state legislature. The governor, as the executive branch of state government, serves to implement the public policy decisions of the state legislature. It is through the state legislative process that state laws evolve and shape the overall direction a state takes on any given issue.

Second, requiring the casino proposal to go through the state legislature eliminates "closed door" negotiations regarding the appropriateness of and the details concerning the placement and operation of Indian casinos. Some of the issues surrounding Indian gaming that have been negotiated out in the state/tribal compact process between the Governor and the tribe, but are actually ripe for legislative examination and consideration are revenue sharing, law enforcement and fire protection costs.

Third, under the proposed bill, those tribes seeking to engage in gaming will have to present their proposal to the legislature in a public forum. The legislators will be able to explore and pose questions about the details of the proposed casino through the legislative hearing process. This last point in and of itself is very, very important to me as a state legislator. If an Indian casino was being considered in my state, I would want to explore the benefits and detriments of the project with relevant experts before deciding whether the project was right for Illinois. I would also want the general public to have an opportunity to attend an open hearing so they too would be aware of the proposal and its potential impact on local communities and the state. The bottom line is that this process should be an open and

transparent one, and should include the opinions of state elected officials who will be dealing with the economic and social impacts of a casino. In addition, many states regulate gaming either by way of their constitutions or by state statute. Permitting state legislative input into this issue insures that state legislative intent is respected and upheld. I thank you for your time this morning, and I am happy to answer any questions you may have.

The CHAIRMAN. Thank you. Senator Papen.

STATEMENT OF SENATOR MARY KAY PAPEN, NEW MEXICO STATE SENATE

Ms. PAPEN. Mr. Chairman, Members of the Committee, thank you for inviting me to testify before you today on an important issue of fairness and the rights of duly elected state officials.

I am here to testify today in support of Chairman Pombo's second discussion draft of legislation regarding off-reservation Indian gaming, and his intent to increase state and local input in the two-part determination process.

I am a Democrat State Senator from southern New Mexico, and I have served in the state legislature for five years. Let me say at the onset that I support Indian gaming. Indian gaming generates tens of millions of dollars annually for the New Mexico Treasury. It has created jobs in casinos both on the reservation and off the reservation in supporting industries. It generates revenue for Native American governments that has been used to finance infrastructure and education, health care, and public safety programs on Indian reservations in New Mexico.

I also support non-Indian gaming in New Mexico. For the purpose of my testimony today, I am not including machine gaming at fraternal clubs when I refer to non-Indian gaming in New Mexico.

The horse racing industry and gaming machines at the tracks likewise generates tens of millions of dollars in revenue to the state, and it too has created jobs both at the tracks and in the supporting industries.

The businessmen and women who operate New Mexico's tracks are good corporate citizens, donating generously of their time and money to worthy community causes.

The Indian gaming and non-Indian gaming industries are good industries in New Mexico, providing jobs, entertainment and revenue to state and tribal governments and worthy causes. The Indian and non-Indian gaming industries co-exist in New Mexico in a delicate balance that includes and recognizes and respects Native American sovereignty, fair competition among business, and good business practices and regulation.

It is true there are many different, important differences between Indian gaming and non-Indian gaming and the two are treated differently. Indian casinos in New Mexico offer gaming machines, table gaming, and can operate an unlimited number of gaming machines and are self-regulated.

Racetracks are not allowed to offer table games, are limited in the number of machines they can operate, are limited in the times they can operate, and are connected to a central monitoring system which is overseen by the New Mexico Gaming Control Board.

Racetracks pay a gaming tax of 26 percent on the net win from gaming machines, which is more than three times the revenue-

sharing rate that Indian casinos pay on the net win from gaming machines. They additionally pay 20 percent of the net win to the Horsemen's purse fund, and one-quarter of one percent to gaming addiction funds.

Part of this delicate balance is the understanding that Indian gaming will be conducted on Indian lands for the benefit of Indian tribes, and non-Indian gaming will be conducted at racetracks whose opening and sidings is regulated by the state. The possibility of an Indian tribe or Pueblo opening a casino off-reservation as if it were on the reservation threatens to upset this delicate balance by undermining its foundation of fairness. Simply put, it is unfair to allow an Indian tribe or Pueblo to compete with another business by opening casino that can offer more gaming machines, that can offer more table games, and shares eight percent of its net win with the state on its gaming machines only, they pay nothing on their table games compared to the 26 percent the racetracks pay.

That is not fair and it is not good for the State of New Mexico.

In the area of southern New Mexico that I represent, Jemez Pueblo and their non-Native American casino developer are proposing to construct a casino in the town of Anthony, which borders Texas. The proposed casino would be within just a few miles of an existing racetrack. Jemez Pueblo is located northwest of Albuquerque, approximately 300 miles from the proposed casino and their non-Native American developer partner lives approximately 360 miles from the proposed casino.

The Pueblo and its non-Native American casino developer are saying that it is not economically feasible to build a casino on its reservation. They may or may not be right, but rest assured that this Jemez Pueblo proposal is highly controversial in my state. In fact, the largest Indian casino in New Mexico, Sandia Pueblo, has recently come out publicly opposing the Jemez Pueblo proposal and the president of the only Indian casino in southern New Mexico, the Mescalero Apache Tribe, voiced serious concerns and questions regarding the Jemez proposal in the recent public meeting. Our attorney general also opposes the Jemez proposal.

The more important issue is whether Congress intended, when it enacted the Indian Gaming Regulatory Act, to allow Native Americas in concert with non-Native Americans to compete with existing gaming establishment, both Native American and non-Native American, on more favorable terms and conditions.

I suggest that was not Congress's intent. I believe Congress did not intend to allow non-Native Americans to open and operate any casinos on private land simply by shopping around for a tribe willing to co-venture. The situation I describe with the Jemez Pueblo is one of the most blatant examples of reservation shopping that exists today.

I believe Congress wisely enacted IGRA to provide the tribes with the opportunity to raise revenue and to achieve economic success.

It would be appropriate and fair and completely within IGRA's intent to prohibit Indian tribes that have Indian land from offering Indian gaming outside their reservations. At a minimum, IGRA should be amended to require that the approval of the state—not

just the Governor—be required before an Indian casino opens outside the tribe's reservation.

Additionally, requiring passage by county referendum allows the citizens most impacted by off-reservation casinos to have a voice. Just as IGRA allows each state to determine what constitutes the state's approval of Indian gaming compacts, so too should IGRA allow each state to determine the extent of off-reservation Indian gaming it wishes to approve, and not leave that decision solely to the Governor.

For these reasons, I support the Chairman's bill and appreciate his efforts and the efforts of his colleagues to bring some reasonableness to this situation. I do believe that any changes to IGRA should include any application that is currently pending before the Department of the Interior and has not been acted upon by the Secretary of the Interior.

This is an important issue and one that can be resolved fairly. Indian gaming and non-Indian gaming establishments should be allowed to compete and co-exist, but they should be allowed to do both fairly. Governors and legislatures should decide the extent and nature of off-reservation gaming within individual states—is my time up?

The CHAIRMAN. Yes.

Ms. PAPEN. Oh, I apologize.

The CHAIRMAN. I am not the one ringing the bell. We just got called to vote. Your time has expired, but I did not push the button.

Ms. PAPEN. Thank you, Mr. Chairman.

[The prepared statement of Ms. Papen follows:]

Statement of The Honorable Mary Kay Papen, Senator, New Mexico State Senate, District 38

Mr. Chairman, members of the committee, thank you for inviting me to testify before you today on an important issue of fairness and the rights of duly elected state officials.

I am here to testify today in support of Chairman Pombo's Second Discussion Draft of Legislation Regarding Off-Reservation Indian Gaming and his intent to increase state and local input in the two-part determination process. I am a Democrat State Senator from southern New Mexico and have served in the state legislature for five years.

Let me say at the outset that I support Indian gaming. Indian gaming generates tens of millions of dollars annually for the New Mexico treasury. It has created jobs in casinos, both on the reservation and off the reservation in supporting industries. It generates revenue for Native American governments that has been used to finance infrastructure and fund education, health care and public safety programs on Indian reservations in New Mexico.

I also support non-Indian gaming in New Mexico. (For the purposes of my testimony today, I am not including machine gaming at fraternal clubs when I refer to non-Indian gaming in New Mexico.) The horse racing industry and gaming machines at the tracks likewise generates tens of millions of dollars in revenue for the state and it, too, has created jobs both at the tracks and in the supporting industries. The businessmen and women who operate New Mexico's tracks are good corporate citizens, donating generously of their time and money to worthy community causes.

The Indian gaming and non-Indian gaming industries are good industries in New Mexico, providing jobs, entertainment and revenue to state and tribal governments and worthy causes. The Indian and non-Indian gaming industries coexist in New Mexico in a delicate balance that includes, recognizes and respects Native American sovereignty, fair competition among businesses, and good business practices and regulation. It is true that there are important differences between Indian gaming and non-Indian gaming and the two are treated differently.

Indian casinos in New Mexico offer gaming machines, table gaming and can operate an unlimited number of gaming machines and are self regulated. Racetracks are not allowed to offer table games, are limited in the number of machines they can operate, are limited in the times they can operate and are connected to a central monitoring system which is overseen by the New Mexico Gaming Control Board. Racetracks pay a gaming tax of 26% on the net win from gaming machines which is more than three times the revenue sharing rate that Indian casinos pay on the net win from gaming machines. They additionally pay 20% of the net win to the Horsemen's purse fund and one quarter of one percent to gaming addiction funds.

Part of this delicate balance is the understanding that Indian gaming will be conducted on Indian lands for the benefit Indian tribes, and non-Indian gaming will be conducted at racetracks, whose opening and siting is regulated by the state. The possibility of an Indian tribe or Pueblo opening a casino off-reservation as if it were on the reservation threatens to upset this delicate balance by undermining its foundation of fairness. Simply put, it is unfair to allow an Indian tribe or Pueblo to compete with another business by opening a casino that can offer more gaming machines, that can offer table gaming and shares 8 percent of its net win with the state on its gaming machines only they pay nothing on their table games compared to the 26 percent that the horse racetracks pays to the state.

That's just not fair and it is not good for the State of New Mexico.

In the area of southern New Mexico that I represent, Jemez Pueblo and their non-Native American casino developer are proposing to construct a casino in the town of Anthony, which borders Texas. The proposed casino would be within just a few miles of an existing racetrack. Jemez Pueblo is located northwest of Albuquerque, approximately 300 miles from its proposed casino and their non-Native American developer partner lives approximately 360 miles from the proposed casino. The Pueblo and its non-Native American casino developer argue that it is not economically feasible to build a casino on its reservation. They may or may not be right but rest assured that this Jemez Pueblo proposal is highly controversial in my state. In fact, the largest Indian casino in New Mexico, Sandia Pueblo, has recently come out publicly opposing the Jemez Pueblo proposal and the President of the only Indian casino in Southern New Mexico, the Mescalero Apache Tribe, voiced "serious concerns and questions" regarding the Jemez proposal in a recent public meeting. Our Attorney General also opposes the Jemez proposal.

The more important issue is whether Congress intended, when it enacted the Indian Gaming Regulatory Act (IGRA), to allow Native Americans in concert with non-Native Americans to compete with existing gaming establishments, both Native American and non-Native American, on more favorable terms and conditions. I'd suggest that was not Congress' intent. Congress did not intend to allow non-Native Americans to open and operate Indian casinos on private land simply by shopping around for a tribe willing to co-venture. The situation I described with the Jemez Pueblo is one of the most blatant examples of reservation shopping that exists today.

I believe Congress wisely enacted IGRA to provide tribes with an opportunity to raise revenue and achieve economic success.

It would be appropriate, fair and completely within IGRA's intent to prohibit Indian tribes that have Indian land from offering Indian gaming outside their reservations. At a minimum, IGRA should be amended to require that the approval of the "state"—not just of the governor—be required before an Indian casino opens outside of the tribe's reservation. Additionally, requiring passage by county referendum allows the citizens most impacted by an off-reservation casino to have a voice. Just as IGRA allows each state to determine what constitutes state approval of Indian gaming compacts, so too should IGRA allow each state to determine the extent of off-reservation Indian gaming it wishes to approve, and not leave that decision solely to the governor. For these reasons, I support the Chairman's bill and appreciate his efforts and the efforts of his colleagues to bring some reasonableness to this situation. I do believe that any changes to IGRA should include any application that is currently pending before the Department of Interior that has not been acted upon by the Secretary of Interior.

This is an important issue and one that can be resolved fairly. Indian gaming and non-Indian gaming establishments should be allowed to compete and coexist, but they should be allowed to do both fairly. Governors and legislatures should decide the extent and nature of off-reservation gaming within individual states jointly as state laws provide. A public policy decision of this magnitude should include all its state elected officials with real input from the states' citizens.

Mr. Chairman, members of the committee, thank you for this opportunity.

The CHAIRMAN. Well, thank you.

We have been called to a series of votes on the Floor. There are three votes. It should take about half an hour. I am going to temporarily recess the Committee and when we return we will hear from our other two witnesses, and I apologize to you for that, but I really do not have any control over that one, but thank you.

[Recess.]

The CHAIRMAN. I call the hearing back to order. I apologize to our witnesses for the delay. We were about to hear the testimony of Supervisor Kromm.

Mr. KROMM. You are ready, I take it.

The CHAIRMAN. We are ready.

Mr. KROMM. I was joking. I feel like the field goal kicker that was put on ice.

[Laughter.]

STATEMENT OF SUPERVISOR DUANE KROMM, SOLANO COUNTY BOARD OF SUPERVISORS, CALIFORNIA STATE ASSOCIATION OF COUNTIES

Mr. KROMM. On behalf of the California State Association of Counties, or CSAC, I would like to thank Chairman Pombo, Ranking Member Rahall, and the other distinguished members of the Committee on Resources for giving us this opportunity to submit testimony regarding Chairman Pombo's revised draft legislation to restrict off-reservation gaming.

I am Duane Kromm, District 3 Supervisor for Solano County, and a member of both the CSAC Indian Gaming Working Group, and the Northern California County's Tribal Matters Consortium. I am in my second term of office, and I am here today representing CSAC. But just as a brief aside, I have complimented on a couple of your staff, Chairman.

We were here, our consortium was here back in March, and met with your staff and really encouraged this committee to take this show on the road. And when we were in Sacramento earlier this year, we appreciated that. As you saw, it was just a packed house. In Sacramento, you had multiple hearings on this bill.

This is a process that I am not familiar with Federal legislation, but it strikes me as an incredibly open and engaging process, and we really appreciate that.

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

Counties are the level of government that are responsible for nearly 700 programs, and these include some of the following: county sheriffs, public health, fire protection, family support, alcohol and drug abuse rehabilitation, election and voter services, roads and bridges, welfare, probation, jails, flood control, indigent health, child and protective services. And I think all of these can potentially be impacted by Indian gaming.

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 cost of such impacts increasingly fall upon county government.

Compounding this problem is the expansion of gaming that has led some tribes and their business partners to engage in a practice that is sometimes referred to as "reservation shopping". This is 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. It is counter to the purposes of IGRA. Reservation shopping is an affront to those tribes who have worked responsibly with counties and other local governments on a government-to-government basis in compliance with the spirit and intent of IGRA as a means of achieving economic self-reliance and preserving their tribal heritage.

CSAC's approach to Indian gaming is to support cooperative government-to-government relations with gaming tribes who follow the provision of IGRA and to seek a mechanism that allows local governments to work with tribes to mitigate any off-reservation impacts from proposed casinos.

Examples of our approach are numerous in California where comprehensive agreements between tribes and counties each addressing the unique concerns of the tribe and county have been negotiated in the past few years.

I want to quickly mention the model for negotiation between local governments and tribes provided by the state tribal compacts negotiated by the Schwarzenegger Administration.

The results of this model has been improved government-to-government relationships, and the successful incorporation of major gaming facilities in counties and communities.

Now some specific comments on the draft legislation.

First, the issue of majority vote in affected counties. Chairman Pombo has wisely addressed the concept of local control through the mechanism of a countywide majority vote. This represents a significant step in the right direction. However, it needs to be coupled with a mechanism to allow county and affected city governments to address and mitigate for the impact of casinos on affected communities, and engage with tribes on these issues.

One possible solution is the California model of baseball style arbitration. This could be used as one means to address the local mitigation and tribal interest while still providing for a local community vote.

Second, to the issue of consolidation of gaming among tribes. In regards to consolidation of gaming among tribes, CSAC is amenable to the concept. Because of our support for subjecting any tribal casino proposal to the statutory lands-into-trust process, and input from the affected community, we would hope that your bill would continue to preclude the congregation of casinos on land that was taken into trust in a manner that does not meet this test.

Additionally, one plan has been properly taken into trust. It is our opinion that the draft bill's countywide advisory vote provision should be applied whenever an inviting tribe has extended an offer to consolidate to another tribe or tribes.

Last, if the affected county's residents vote in the affirmative, the invited tribe or tribes should also be subject to a mechanism

requiring the tribes and the affected local governments to meet and confer to achieve a mutually acceptable resolution for impact mitigation.

In conclusion, the Chairman's bill represents a significant contribution to the resolution of some of the biggest issues created by IGRA and its implementation, particularly off-reservation casino proposals. CSAC believes that with necessary and appropriate revisions, such as allowing counties a voice on matters that impact the communities they serve, the Chairman's draft legislation would further the original goals of IGRA, and will also help to minimize abuses that have proven to be detrimental to those tribes in full compliance with all applicable Federal laws.

In our written testimony, we touch on issues such as historical ties for taking lands into trust, and changes uses for trust lands, and we would welcome further discussion on these important issues as the draft legislation evolves.

Thank you very much for allowing CSAC to participate in this important hearing.

[The prepared statement of Mr. Kromm follows:]

Statement of Duane Kromm, Supervisor, Solano County, and Member, Indian Gaming Working Group, California State Association of Counties

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 revised draft legislation to restrict off-Reservation gaming. I am Duane Kromm, District Three Supervisor for Solano County and a member of both the CSAC Indian Gaming Working Group and the Northern California Counties Tribal Matters Consortium.

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	elections & voter services
jails	public health
roads & bridges	indigent health
flood control	fire protection
welfare	family support
probation	child & adult protective services
alcohol & drug abuse rehabilitation	

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 coun-

ties 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 the willingness of individual tribes 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 counties were less than 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 Rumsey Band of Wintun Indians to ensure adequate services in the area where the casino is operating. In addition, Yolo County has entered into agreements with the tribe to address the impacts created by tribal 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, Placer, and Colusa Counties 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. 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 gaming facility and 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. Since that time, 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 original 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 proven 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.[1] As local communities cannot tax Indian operations, or the related hotel and other services that would ordinarily be a source of local government income, the negative impact of such facilities can even be greater. This is one reason that CSAC sought amendments to California Tribal-State Compacts to ensure that the off-reservation environmental and social impacts of gaming were fully mitigated and that gaming tribes paid their fair share for county services.

In 2003, CSAC took a "snapshot" of local impacts by examining information provided by eight of the then twenty-six counties (the only counties that had conducted an analysis of local government fiscal impacts) where Indian gaming facilities operated.[2] 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

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[1] 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).

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

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 ensure that the needs of the community are met and that any legitimate tribal gaming proposal is ultimately successful and accepted. Local approval and mechanisms that create opportunities for negotiation are 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 the impacts pf 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, as described in previous pages, 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-Tribal Compacts negotiated by the Schwarzenegger Administration, counties and other local governments have been provided an appropriate opportunity to work with gaming tribes to address off-reservation impacts. The result has been improved government-to-government relationships between tribes and county governments and the smooth incorporation of major gaming facilities into counties and communities.

Also in the vein of improved relationships, CSAC recently worked with several tribes to stage a day-long forum on "Government-to-Government Relationships: A Forum on Indian Gaming," which was very well attended and featured topics such as negotiating memorandums of understanding, implementing public safety protocols, and additional opportunities for tribes and local governments to work collaboratively. This and other recent events demonstrate that, contrary to possible fears of tribal 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 supports Chairman Pombo's efforts to address the practice of "reservation shopping," but is concerned that the second version of the draft legislation does not take into account the jurisdiction, expertise, and interests of county governments in situations where tribes choose to consolidate gaming operations.

Majority Vote in Affected Counties

While the gaming consolidation idea outlined in the second draft of the legislation is amenable to county governments, the concept of "a majority vote in a county or parish referendum," while fulfilling the letter of "local control" regarding proposed gaming facilities, represents merely a positive or negative vote on the project while providing no mechanism to address the impacts of such casinos. As mentioned above, the recent Schwarzenegger Compacts in California provide just such a mechanism by requiring tribes and counties to negotiate and develop plans for reasonable mitigation of impacts from gaming facilities. Further, the Schwarzenegger Compacts enforce "baseball style" arbitration in the event that counties and tribes are unable to reach a compromise, which also encourages both parties to work together.

While a countywide vote of the people is an important component in the process of any proposed gaming facilities, CSAC is concerned that it does not create a sufficient impetus to cause affected counties and tribes to meet and confer to achieve a mutually acceptable resolution for impact mitigation. Through analysis of these issues, CSAC has learned that such an impetus only occurs when both a county and a tribe have something to gain from such a resolution-driven process, and something to lose if they do not participate in such a process, either at all or in good faith.

We strongly urge Chairman Pombo to include a mechanism in the draft legislation that requires local governments and all tribes, including invited tribes, to negotiate mitigation agreements to ensure that the interests of tribes, local governments, and affected communities are adequately met.

Newly Recognized, Restored, and 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.

Consolidation of Gaming Among Tribes

CSAC does not oppose the concept of gaming consolidation among tribes, and supports the language reaffirming the fact that all Indian gaming operations must take place only on lands deemed suitable for such operations in accordance with IGRA. 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:

- Consolidated gaming operations must be limited to a tribe's trust lands, and tribes should not be permitted to merge their separate trust lands.
- In states where such agreements between tribes are implemented, Indian gaming should not be permitted 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.
- In application of Section (b)(1)(E), the countywide advisory vote should be applied whenever an inviting tribe has extended an offer to consolidate to another tribe or tribes.
- If the affected county's residents vote in the affirmative, the invited tribe(s) should also be subject to a mechanism requiring the tribes and affected local governments to meet and confer to achieve a mutually acceptable resolution for impact mitigation.
- The location of such gaming facilities should take into account the impact that the operations 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

In previous testimony, CSAC has requested that language be added to the draft language 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. The second revised version does include such language, and we are grateful to the Chairman for considering our concerns in this area.

Conclusion:

CSAC presents this written testimony to assist the Chairman and Committee Members in their efforts to amend the IGRA and address the increasing practice of "reservation shopping." In California, the Chairman's bill—with necessary and appropriate revisions—must 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 extremely limited and dependent on the willingness of individual tribes to mitigate such 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 draft legislation should seek to create a mechanism and increased opportunities for these governments to work together. Such a mechanism would further the original goals of the IGRA while also helping to minimize the abuses of the IGRA that have proven to be detrimental to those tribes in full compliance with all applicable federal laws.

We wish to thank Chairman Pombo and members of the Committee for their consideration and acknowledgment of the impact of this important issue on the counties of California. We look forward to continue working together to ensure the best possible outcome for all tribes, local governments, and communities.

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[3] 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 would 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 would pay to the local jurisdiction the Tribe's fair share of appropriate costs for local

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[3] 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.

government services. These services include, but are not limited to, water, sewer, fire inspection and protection, rescue/ambulance, food inspection, health and social services, law enforcement, roads, transit, flood control, and other public infrastructure. Means of reimbursement for these services include, but are not limited to, payments equivalent to property tax, sales tax, transient occupancy tax, benefit assessments, appropriate fees for services, development fees, and other similar types of costs typically paid by non-Indian businesses.

5. The Indian Gaming Special Distribution Fund, created by section 5 of the Tribal-State Compact will not be the exclusive source of mitigation, but will ensure that counties are guaranteed funds to mitigate off-reservation impacts caused by tribal gaming.
6. To fully implement the principles announced in this document and other existing principles in the Tribal-State compact, Tribes would 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

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.

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.

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.

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[4]. CSAC opposes any federal or state limitation on the ability of tribes, counties and other local governments to reach mutually acceptable and enforceable agreements.

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.

CSAC supports federal legislation to provide that lands are not to be placed into trust and removed from the land use jurisdiction of local governments without the consent of the State and the affected county.

CSAC opposes the practice commonly referred to as "reservation shopping" where a tribe seeks to place land into trust outside its aboriginal territory over the objection of the affected county.

CSAC 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.

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

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

172	Tribes in California with current Compacts, Request for Compacts, or Petitioning for Federal Recognition, or unknown status
108	Tribes in California that have Federal Recognition
62	Tribal-State Compacts in California
52	Compacted Tribes that have active gaming facilities
10	Compacted Tribes that are non-gaming
44	Counties with Indian Tribes in gaming, non-gaming, petitioning for federal recognition, or proposed gaming
25	Counties with active gaming in their communities
33	Counties with active and proposed gaming
53	Total number of fully operational casinos in California
23	Total number of proposed casinos

The CHAIRMAN. Thank you. Supervisor Jacob.

STATEMENT OF SUPERVISOR DIANNE JACOB, SAN DIEGO COUNTY BOARD OF SUPERVISORS

Ms. JACOB. Thank you, Mr. Chairman, and Member of the Committee. I appreciate the opportunity to be here this afternoon, and providing some testimony to you.

I am Dianne Jacob. I am a member of the San Diego County Board of Supervisors, which is in California. I want to focus my comments today specifically on those provisions of the draft authorizing the consolidation of two or more tribes' gaming activities within the existing boundaries of one of the tribe's reservation. It is a concept that I wholeheartedly support.

San Diego County is home to more Indian reservations than any county in the United States, at 18. Currently, nine tribes in our county operate casinos. These casinos range from a small 30-slot arcade to large casino resorts, some with golf courses, multi-story hotels, shopping centers, live theaters and fine restaurants. The tribes gaming has become a powerful tool for social change. It has helped tribal members break free from decades of poverty and government neglect, and on some reservations gaming has completely eliminated unemployment and enabled tribal members to become self-sufficient.

For the community, it provides jobs, attracts tourists and adds fuel to our local economy. Each year gaming tribes give millions of dollars in charitable contributions to organizations throughout the region. These benefits, however, are not without a price.

The kind of development that accompanies Indian gaming has profoundly affected people in nearby communities, and it has had a substantial impact on county government, from increased traffic to increased demands on law enforcement, to decreased groundwater supplies, to changes in community character, the unintended consequences of casino development are huge.

Like a majority of San Diegans, I support the right of tribes to game, and while I believe that reservations are sovereign nations, I know they are not islands. At the moment a handful of new casino projects are in the works for San Diego County. This is the story of two tribes and how the County of San Diego, working in partnership with the Viejas Band of Kumeyaay Indians, the Ewiiaapaayp Band of Kumeyaay Indians in the State of California, all parties working together have developed a powerful new tool to lessen the impact of one future casino. That too is casino consolidation.

This is a new concept that respects gaming rights and tribe sovereignty. I believe it also has the potential to protect communities from the unbridled proliferation of Indian casinos. Without exception, all of the Indian reservations in San Diego County are located in rural, unincorporated communities, and people who live in these areas are accustomed to a slower, more peaceful, quiet way of life than in the urban areas. Residents cherish their uninterrupted view of San Diego County's scenic back country and they deeply value their open space.

Such is the case in Alpine, a community I am proud to represent. Alpine is a small town of about 14,000 people, located 30 miles east of downtown San Diego. The community's business district is located just south of a major freeway, Interstate 8.

Since 1991, the Viejas Band of Kumeyaay Indians has operated a casino on the tribe's 1,600 acre reservation located just north of Interstate 8 in Alpine. While most other reservations in San Diego County are only accessible by remote two-lane rural roads, the

Viejas Reservation is accessible by Interstate 8, and a very short stretch of a county-maintained two-lane road.

The reservation has an existing waste water treatment facility and water distribution and storage facilities. About 20 miles northeast of Alpine, far off Interstate 8, in the remote Laguna Mountains lies the reservation of the Ewiiaapaayp Band of Kumeyaay Indians.

The 4,100 acre reservation has no public utilities, no telephone service, no radio service, limited electricity, no treatment system for waste water or solid waste, and groundwater is their only water source. More than 98 percent of the Ewiiaapaayp Reservation is rocky ridges and steep hillsides. Access to the reservation is via a 12-mile narrow, winding, steeply graded, and poorly maintained dirt road.

That geography was bad news for the Ewiiaapaayp who in 1999 signed a gaming compact with the State of California, and wanted to experience the same economic success that gaming was bringing to Viejas and other tribes. But the Ewiiaapaayp Reservation would not accommodate a large casino project.

So the Ewiiaapaayp tried another avenue. That avenue was a 10 acre parcel, a little more than one mile west of the Viejas Casino. Twenty years ago those 10 acres were placed in Federal trust in the Ewiiaapaayp name. The parcel was and still is the home of the Southern Indian Health Clinic, a facility that serves seven tribes, including Viejas.

The tribe viewed the health clinic land as its best hope for the site of a future casino. For six years, the Ewiiaapaayp tried and tried to get Federal approval to build a casino on clinic land. At one point the tribe purchased land on the south side of Interstate 8, hoping to relocate the clinic. At another point the tribe hoped to move the clinic to the rear of the 10 acre parcel, and build the casino in the front.

For the Viejas and Ewiiaapaayp tribes, it was a bitter and protracted legal battle that pitted tribe against tribe. Viejas opposed the Ewiiaapaayp proposal at every turn, and so did I, along with others.

For the community of Alpine and San Diego County government, the uncertainty was unnerving. What might the access road be like to a second large casino just one mile west of Viejas? What about fire protection, emergency medical services, and added crime? Would it be possible to adequately mitigate all of the impacts, and who would pay?

These questions and others are the same questions San Diego County grapples with time and time again when it comes to the development of an Indian casino.

Current gaming compacts negotiated by California Governor Arnold Schwarzenegger require enforceable agreements between tribes wishing to build casinos and local government. These agreements do provide for mitigation measures and county government has a seat at the table.

Still the gaming compacts do not change the sheer number of casinos that could be built in various rural communities. That is why casino consolidation in the form of an unprecedented prototype involving Viejas and Ewiiaapaayp is so important.

The two tribes, the Governor and the county have all found a way to turn conflict into compromise by proposing to co-locate a Ewiiaapaayp gaming facility on the Viejas Reservation.

Here is what happens if approved. The Ewiiaapaayp will gain an economic opportunity the tribe otherwise might not have. Viejas will receive a portion of the facility's revenue. Litigation between the two tribes will at last be put to rest. The proposal would require a new compact, and that compact would give the county a seat at the table. County government will have the opportunity to work with the tribes to identify significant off-reservation impacts, and adequate mitigation measures will be provided. That is good news for the people of Alpine and beyond.

Best of all, the proposal is voluntary. None of the parties are forced to act. What was an adversarial situation that sparked fear and conflict becomes a project representing communication, cooperation, and compromise.

Members of the Committee, by supporting this legislation which would allow casino consolidation on the Viejas Reservation, you allow us to solve our own problem with a solution that we ourselves have developed locally.

I also believe it will send a message to tribes in San Diego County and across the Nation that there is another option. Casino consolidation can be viewed as a viable alternative to the layers of conflict that frequently accompany Indian casino proposals.

I urge your support for this portion of this draft proposal, and I thank you again for the opportunity to speak.

[The prepared statement of Ms. Jacob follows:]

Statement of The Honorable Dianne Jacob, Member, San Diego County Board of Supervisors

Mr. Chairman, Mr. Rahall, and members of the committee, I thank you for this opportunity to comment on the Second Draft of Legislation Regarding Off-Reservation Indian Gaming.

I am Dianne Jacob, a member of the San Diego County Board of Supervisors.

I will focus my comments today specifically on those provisions of the draft authorizing the consolidation of two or more tribes' gaming activities within the existing boundaries of one of the tribes' reservation. It is a concept I wholeheartedly support.

San Diego County is home to more Indian reservations than any county in the United States at 18. We have been called the "Indian Gaming Capitol of the Nation."

We have the greatest number of Indian tribes with gaming compacts with the State of California at 14.

Currently, nine tribes in our County operate casinos.

These casinos range from a small 30-slot arcade to large casino resorts, some with golf courses, multi-story hotels, shopping centers, live theaters and fine restaurants.

Together, these nine gaming tribes employ about 13,000 workers and have annual gross revenue estimated at $1.5 billion dollars.

For tribes, gaming has become a powerful tool for social change. It's helped tribal members break free from decades of poverty and government neglect. On some reservations, gaming has completely eliminated unemployment and enabled tribal members to become self-sufficient.

For the community, it provides jobs, attracts tourists and adds fuel to our local economy. Each year, gaming tribes give millions of dollars in charitable contributions to organizations throughout the region.

These benefits, however, are not without a price.

The kind of development that accompanies Indian gaming has profoundly affected people in nearby communities. And, it's had a substantial impact on County government.

From increased traffic to increased demands on law enforcement, to decreased groundwater supplies to changes in community character, the unintended consequences of casino development are huge.

Like a majority of San Diegans I support the right of tribes to game. And while I believe that reservations are sovereign nations, I know they are not islands.

At the moment, a handful of new casino projects are in the works for San Diego County.

This is the story of two tribes and how the County of San Diego working in partnership with the Viejas Band of Kumeyaay Indians, the Ewiiaapaayp Band of Kumeyaay Indians and the State of California—all parties together—developed a powerful new tool to lessen the impact of one future casino.

That tool—Casino Consolidation—is one I first discussed publicly in my 2004 State of the County Address.

Casino Consolidation is a new concept that respects gaming rights and tribal sovereignty.

I believe it also has the potential to protect communities from the unbridled proliferation of Indian casinos.

Without exception, all of the Indian reservations in San Diego County are located in rural, unincorporated communities. People who live in these areas are accustomed to a slower, more peaceful, quieter way of life than in urban areas. Residents cherish their uninterrupted views of San Diego County's scenic Backcountry and they deeply value their open space.

Such is the case in Alpine, a community I am proud to represent. Alpine is small town of about 14,000 people located 30 miles east of downtown San Diego. The community's business district is located just south of a major freeway, Interstate 8.

Since 1991, the Viejas Band of Kumeyaay Indians has operated a casino on the tribe's 1,600 acre reservation located just north of Interstate 8 in Alpine.

While most other reservations in San Diego County are only accessible by remote, two-lane rural roads, the Viejas reservation is accessible by Interstate 8 and a very short stretch of a County-maintained two-lane road. The reservation has an existing wastewater treatment facility and water distribution and storage facilities.

Over the years, the tribe has fostered a good relationship with the Alpine community and is a frequent sponsor and host of community events. The tribe enjoys, what I would characterize as, an "excellent" working relationship with San Diego County government. Both governments have partnered to bring needed firefighting resources to the area, promote tourism in eastern San Diego County as well as improve the access road to the casino.

About 20 miles northeast of Alpine, far off Interstate 8, in the remote Laguna Mountains lies the reservation of the Ewiiaapaayp Band of Kumeyaay Indians.

The 4,100 acre reservation has no public utilities, no telephone service, no radio service, limited electricity, no treatment system for wastewater or solid waste, and groundwater is the only water source.

More than 98 percent of the Ewiiaapaayp reservation is rocky ridges and steep hillsides. Access to the reservation is via a 12-mile, narrow, winding, steeply-graded and poorly-maintained dirt road.

That geography was bad news for the Ewiiaapaayp who, in 1999, signed a gaming compact with the State of California and wanted to experience the same economic success that gaming was bringing to Viejas and other tribes.

But, the Ewiiaapaayp reservation would not accommodate a large casino project.

So, the Ewiiaapaayp tried another avenue.

That avenue was a 10-acre parcel a little more than one mile west of the Viejas casino. Twenty years ago, those 10-acres were placed in federal trust in the Ewiiaapaayp name. The parcel was, and still is, the home of the Southern Indian Health Clinic, a facility that serves seven tribes, including Viejas.

The Tribe viewed the health clinic land as its best hope for the site of a future casino.

For six years, the Ewiiaapaayp tried and tried to get federal approval to build a casino on clinic land.

At one point, the tribe purchased land on the South side of the Interstate 8, hoping to relocate the clinic. At another point, the tribe hoped to move the clinic to the rear of the 10 acre parcel and build the casino in the front.

For the Viejas and Ewiiaapaayp tribes, it was a bitter and protracted legal battle that pitted tribe against tribe. Viejas opposed the Ewiiaapaayp proposal at every turn. And so did I, along with others.

For the community of Alpine and San Diego County government, the uncertainly was unnerving. What might road access be like to a second large casino just one mile west of Viejas? What about fire protection, emergency medical services and

added crime? Would it be possible to adequately mitigate all of the impacts and who would pay?

These questions and others are the same questions San Diego County grapples with time and time again when it comes to the development of an Indian casino.

In the early '90s, Viejas and two other tribes built the very first casinos in our County. This was long before the passage of Proposition 5 in 1998 which authorized the type of tribal gaming allowed on reservations today.

Current gaming compacts negotiated by California Governor Arnold Schwarzenegger require enforceable agreements between tribes wishing to build casinos and local government. These agreements do provide for mitigation measures and County government has a seat at the table.

Still, the gaming compacts don't change the sheer number of casinos that could be built in various rural communities.

That's why Casino Consolidation—in the form of the unprecedented prototype involving Viejas and Ewiiaapaayp—is so important.

The two tribes, the Governor and the County have all found a way to turn conflict into compromise by proposing to co-locate a Ewiiaapaayp gaming facility on the Viejas reservation.

Here is what happens if it is approved:

The Ewiiaapaayp will gain an economic opportunity the tribe otherwise might not have.

Viejas will receive a portion of the facility's revenue.

Litigation between the two tribes will at last be put to rest.

The proposal would require a new compact and that compact would give the County a seat at the table. County government will have the opportunity to work with the tribes to identify significant off reservation impacts and adequate mitigation measures would be provided. That is good news for the people of Alpine and beyond.

Best of all, the proposal is voluntary. None of the parties are forced to act.

What was an adversarial situation that sparked fear and conflict becomes a project representing communication, cooperation and compromise.

Members of the committee, by supporting this legislation which would allow Casino Consolidation on the Viejas reservation, you allow us to solve our own problem with a solution that we, ourselves, have developed locally.

The joint venture between Viejas and Ewiiaapaayp is not the only place in San Diego County, or throughout the nation, where Casino Consolidation might be utilized.

As we speak, an Indian tribe is threatening to break ground on a giant 30-story gaming tower on four acres of tribal land in a tiny, rural community in eastern San Diego County.

The town's main arterial route is a small, dangerous country road. The increased traffic, crime, fire protection and destruction of the quiet rural way of life are all subjects of concern. The State says the project threatens the vitality of a next-door ecological preserve which is part of the National Wildlife Refuge in southeastern San Diego County.

Ninety-seven percent of the community is opposed to this project along with Governor Schwarzenegger and a host of federal, state and local officials.

Why then are tribal members pursuing a 30-story tower instead of investigating casino consolidation? This is the subject of much head-scratching.

If this legislation moves forward, I believe, it will send a message to tribes in San Diego County and across the nation that there is another option.

Casino Consolidation can be viewed as a viable alternative to the layers of conflict that frequently accompany Indian casino proposals.

It is my sincere belief that Casino Consolidation can stem the scattering of large and mismatched intensive commercial developments throughout San Diego County's rural, picturesque backcountry.

I urge your support.

Thank you for the opportunity to speak today.

The CHAIRMAN. Thank you. I thank all the panel for their testimony. I understand that the Senator had to leave, had a plane to catch, and I apologize about the delay.

Supervisor Jacob, I am very familiar with the issue with the Viejas and the consolidation there, and believe that that is one of the solutions.

Do you see that provision in the draft legislation being able to be used more frequently in your area

Ms. JACOB. I do not know if the word is "frequently". I know there are other opportunities where there has been large opposition. One case in particular that I have indicated in my written testimony that has the opposition of two Governors, former and the current Governor, legislatures, local officials, 97 percent of the community do not want it. It is the four acre, tiniest so-called reservation in the country. And this would be an opportunity for a situation like that to take advantage of the casino consolidation.

There may be others in the county that I am not aware of, but I think once again, it is a good compromise and it could establish a model, not just as our county, but for the nation.

The CHAIRMAN. I know throughout the State of California there are a number of cases that are similar to what the Viejas were going through, and one of the reasons why that provision was left in the draft was I believe that working cooperatively that it does solve a lot of those issues and a lot of those problems that local communities have.

I do commend San Diego County for the work that they put into reaching a compromise on that particular issue because it was an issue that had been hanging out there for a number of years, and had caused a number of bad blood and bad feelings amongst the tribes themselves and others, and I know that you guys were very active in that, and I congratulate you and appreciate the work that you have put into that.

Unfortunately, without the underlying legislation going through, I am not sure how long it is going to take to get to a conclusion on that, but I believe that the underlying legislation does get us there

Ms. JACOB. Thank you, Mr. Chairman, for your support, and anything that can be done to expedite this portion would be greatly appreciated by the two tribes and the state and the county.

The CHAIRMAN. Supervisor Kromm, in your testimony you voice concern over the majority vote that is called for in the county or parish, and I would like to have you explain a little bit more about why you have a concern about that provision.

Mr. KROMM. Well, we support the idea of the majority vote, but what we are concerned about is it does not quite go far enough. I think where there has been successful negotiations it has been the government-to-government negotiations, and I guess it depends on timing.

If an issue goes too early to the ballot, I think it could be something like what we have seen in California with the various statewide propositions under Indian gaming, all of which have generated these massive amounts of campaign spending, and the last one failed, the prior ones passed. And if it is just based on the PR-type campaign, I think we could easily miss the substantive discussion that has to happen at the local level.

So whether the negotiations, the government-to-government negotiations happen before a vote, and then that goes out to the ballot, or after the vote, at some point though I think there has to be—it has to be clear that the government-to-government negotiations have to be done.

So it is not in opposition to the vote, it is an addition to a vote of the people.

The CHAIRMAN. So what you are telling me is that you want to make sure that any negotiated agreement between the county or the city is completed before there is a vote on it?

Mr. KROMM. Probably. This one, I think, I think it will probably take some heads thinking about it for awhile for what is the best way to do the timing, but I think if there were a early vote that would indicate popular support or popular opposition, I mean, I guess that could say, well, do not bother doing the negotiations if there is not support. If there is overwhelming support, that might also push the negotiations to a point where the tribe could say to the local governments, well, there is overwhelming support. We do not need to negotiate with you, or we only need to negotiate a little bit.

So at this point I kind of tend to think that the negotiations need to commence before the voting commences.

The CHAIRMAN. Would it not also make sense that certain restrictions be put on what can be negotiated?

Mr. KROMM. Sure.

The CHAIRMAN. I do not want a situation developing where a local community or a county can extort more out of a tribe than what they would if it was a private developer going in.

Mr. KROMM. Right. Yes, I mention in my testimony the baseball style arbitration process, and one of the things that occurred to me is that I guess it is potential that you get into negotiations, you are far apart, and rather than have an arbitrator decide perhaps that could even go to the ballot. Here is what the local government is proposing, here is what the Indian tribe is proposing, and that would probably presume that one of the two wins.

The CHAIRMAN. In the current situation and the current law allowing the Governor to negotiate the compact, I have noticed in recent years that that empowers the Governor to the point where they can extort what I believe is a high fee out of the tribe, a tax out of the tribe that goes beyond what I believe is reasonable in some cases, and also puts the tribe in a position of negotiating its own sovereignty, and I think we have to be careful about putting too much in terms of that veto authority in the hands of local government. But I do think that they have their issues that should be addressed.

Mr. KROMM. We agree. And I think what you are trying to do is wrestle your way through that as you are going through the process of these multiple drafts of the bill. Yes, we obviously have folks back here in Washington that I am sure your staff works with, and I think working through those details probably takes—let us put three or four or five ideas on the table and see where they go, and try to figure out how to get to the right spot where both sides are comfortable.

The CHAIRMAN. Yes.

Mr. KROMM. But what I am hearing is that you have respect for what our concerns are, but you do not want to overly empower either side. That makes perfect sense.

The CHAIRMAN. It has to be a fair and honest negotiation.

Mr. KROMM. Sure.

The CHAIRMAN. And I do not want any changes in law to empower anyone to the point where they have the ability to dictate all the terms, and that is one thing we have to be careful of as we move forward with this.

But I appreciate your testimony. I think that local governments' input into this has been extremely helpful in us moving forward.

Mr. KROMM. Thank you.

The CHAIRMAN. I recognize Mr. Udall.

Mr. TOM UDALL. Thank you, Mr. Chairman. I appreciate the testimony of the witnesses here.

Senator Papen, I was wondering if an idea has been explored to resolve the issues that confront your community at the local level, and I am one that believes in local solutions. As you know, eight percent of the net win is shared from these gaming tribes with the State of New Mexico, and I think that total—you would be probably closer in terms of the actual number, but 24 million or something in that range of yearly revenue to the State of New Mexico.

Several other states have shared revenue with non-gaming tribes. I think Arizona is one that has done that. Has there been any thought in New Mexico about sharing some of that revenue with the non-gaming tribes to put a lid on the gaming? Is that a serious proposal?

I know that it was discussed during the period where I was state attorney general out there. I wonder what your thought is on that.

Ms. PAPEN. Mr. Chairman, and Congressman Udall, I am not aware of that being part of a solution to the problem at this point in time. Certainly I think that if the Native Americans want to do some of the sharing with tribes that do not have gaming, I think that that is something for them to negotiate.

But also let me make it clear that the Native American casinos only provide eight percent of the proceeds from the machines. None of the proceeds from table games are included. That all goes back to the tribes with no revenue sharing.

Mr. TOM UDALL. Yes, and the sharing that I am talking about, the State and the State Legislature and the Governor would have to be involved with that because I am talking about the money that is part of the eight percent, as you say, off the machines that goes to the State of New Mexico, 24 million or whatever it is. It is a significant sum.

The State would take the position that some of that revenue should go to non-gaming tribes as has been done, I think, in Arizona, and maybe other states. But you are not aware of that idea being explored at all?

Ms. PAPEN. No, I am not aware of that, but I think it is certainly a viable idea.

Mr. TOM UDALL. Senator Papen, I know the community down there is divided in terms of support and opposition for this proposal that is circulating. I believe that—you heard me put in earlier the resolution from the county commission. I believe the vote was three to two; three in support and two in opposition there.

Could you give us a view, a balanced view of the opposition and support in your community for this proposal that is out there?

Ms. PAPEN. Well, I will try, Mr. Chairman and Congressman. I think that with a three/two vote, that is certainly not strong opposition. I think you have a sort of balance that is going on there.

Also, out of our 10 local Dona Ana County State Representatives, six of us have written a letter to Secretary Norton requesting her to not grant this. So you have the county commission on the one side saying three to two, and then you go on the other side and you have six to four that is happening.

So I think it is—I think you have some strong support from the community of Anthony, which is about 7,000 people who live there. I think they are looking for some more jobs and better jobs. The group that wants to put this in has had some job fairs down there which the Albuquerque Journal has called politicking, and not really looking for people who want jobs because it has not been even approved, and it would be several years before it would probably be up and running, but sort of getting a list of people who have come to the job fairs and putting that down as support for the casino. I think it is support for jobs, not a support for the casino.

And so I think the communities, I think a lot of the religious communities are opposing this. Certainly a lot of the people with the tracts, a lot of my farmers, I have a lot of farmers in my district who raise alfalfa, and depend a livelihood on this, as well as a lot of the horse farms have come in, tremendous horse farms we have all over our valley, and they have been there and have certainly a vested interest in the property there and making their livelihood.

Also, $40 million worth of promises were done out of the revenue sharing from this venture to give to the county before they made this vote to support it. So if you have $40 million sitting on the table as part of revenue sharing, I think that you have to look at this maybe with a little bit different—maybe a jaundiced eye.

And so I do support Anthony. I do support having jobs. I think we need them. I think we need to look at it, but I think when we have a tribe like the Perimongos from Tortugas, which are not a federally recognized tribe, but do have ancestral ties to this land, as well as our own Mescalero Apaches, who have walked there, Geronimo, and all of the things there. They have ancestral ties to this land. The Jemez have no ancestral ties to this land.

And so I think that this is the wrong thing to do, and I know people have—at least I know the groups say, well, I am supporting this because my daughter has race horses. That is strictly a hobby for them. They have a Toyota agency, they support their own lives, they support their horses and they very rarely win. So it is not about that. It is about what is fair.

Mr. TOM UDALL. Senator Papen, thank you very much for that summary down there of what is going on.

I have had people tell me that there have been polls in Anthony or the surrounding community on this. Have there been any in terms of the support of the public? Have you seen any public polls done by the papers or any of the research institutes at the university or anything like that in terms of supporting the proposal or opposition to the proposal?

Ms. PAPEN. Mr. Chairman, Congressman Udall, I believe they have done some polls down in Anthony where they have done the

job fairs, and this sort of thing. They do have some support for that. And I go down almost to Anthony—come around and surround Anthony, so I have nine Colonas in my district, and people who live in Colonas, of course, are looking for jobs. So I think there have been some polls that show certainly support for it.

I do not—to my knowledge, there has not been a countywide poll that has been done that shows support for this endeavor. I think it is more a localized support in the community of Anthony where it will be, maybe Anthony Barino area where it would be put, and it is right—you know, it is right on the Texas line, so that whole issue of—I think some of the Anthony—Anthony itself is divided in two communities. Half of the community is in Texas and half of it is in New Mexico. So I think the people who live in Anthony on Texas and New Mexico side, there is opposition, and strong opposition in Anthony. I think there is certainly some support for it happening in Anthony.

Mr. TOM UDALL. Thank you, Senator Papen. And Mr. Chairman, I very much appreciate your letting me run over a little bit. I also appreciate the testimony of the California supervisors, and I do not have anything further.

The CHAIRMAN. I want to thank this panel for your testimony and for your answers to the questions. There may be further questions though that Committee members have, and those will be submitted to you in writing. If you could answer those in writing so that they could be included as part of the hearing record, it would be appreciated.

I know that this is a tough issue to deal with, and it is something that this committee has looked at over the past several months, and we will continue to move forward.

I believe that having an open process where you try to listen to everybody and try to include that in the legislation is the right way for legislation to be drafted, and that is what we are attempting to do with this legislation. So I appreciate all of the witnesses that we had today, all of the comments.

If there are further comments that people have that did not have the ability to testify today, those can be submitted in writing and they will be included as part of the hearing record.

If there is no further business before the Committee, the Committee stands adjourned.

[Whereupon, at 1:15 p.m., the Committee was adjourned.]

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