DRAFT LEGISLATION TO AMEND THE INDIAN GAMING REGULATORY ACT TO RESTRICT OFF-RESERVATION GAMING.

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

Thursday, March 17, 2005

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OVERSIGHT HEARING ON DRAFT LEGISLATION TO AMEND THE INDIAN GAMING REGULATORY ACT TO RESTRICT OFF-RESERVATION GAMING, AND FOR OTHER PURPOSES.

Thursday, March 17, 2005
U.S. House of Representatives
Committee on Resources
Washington, D.C.

The Committee met, pursuant to notice, at 2:05 p.m., in Room 1324, Longworth House Office Building, Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Radanovich, Gibbons, Walden, Hayworth, Pearce, Nunes, Brown, Kildee, Faleomavaega, Pallone, Christensen, Kind, Tom Udall, Costa, Miller, DeFazio, and Herseth.

STATEMENT OF THE HON. RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. The Committee on Resources will come to order.

The Committee is meeting today to hear testimony on off-reservation Indian gaming and more specifically on a discussion draft bill I wrote to address this issue.

Under Rule 4(g) of the Committee Rules, any oral opening statements at the hearings are limited to the Chairman and the 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.

The Indian Gaming Regulatory Act (IGRA) prohibits gaming on off-reservation trust lands acquired after October 17, 1988. A number of exceptions were made, but it was thought that off-reservation gaming would be rare. So far, only a handful have been approved. However, there is a growing number of tribes claiming one of the several exceptions to the off-reservation gaming ban. The locations of the proposed casinos are most often chosen for their favorable markets as opposed to any ancestral connection to the land. In some cases, the proposed sites are within the aboriginal territory of other tribes. This seems to turn the notion of Indian gaming as a sovereign government revenue tool on its head. This

is a troubling development to a number of tribal leaders I have consulted with in the last 2 years. It is also a source of distress for city and county officials who have been contacting their Representatives in Congress with increasing frequency to seek help.

The draft bill I have authored is meant to protect the integrity of Indian gaming. It prohibits Indian gaming outside a tribe's reservation except in certain Indian economic development zones, which are subject to approval from State and local governments and from the affected tribal governments. The purpose of the zones is to consolidate gaming where it is welcome by all affected governments and to offer an alternative to tribes that are stuck in bad locations.

By distributing a discussion draft bill, I want to emphasize that it is a work in progress. It introduces new concepts, and I welcome input in what will be a deliberative process of crafting a bill that Congress can pass and that will put the off-reservation controversies to rest.

With that in mind, I want to hear from today's witnesses about the severity of the problems posed by off-reservation casinos and what they think of the discussion draft. I would like to at this time recognize Mr. Miller.

[The prepared statement of Mr. Pombo follows:]

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

The Indian Gaming Regulatory Act prohibits gaming on off-reservation trust lands acquired after October 17, 1988. A number of exceptions were made, but it was thought that off-reservation gaming would be rare. So far, only a handful have been approved.

However, there is a growing number of tribes claiming one of the several exceptions to the off-reservation gaming ban. The locations of the proposed casinos are most often chosen for their favorable markets as opposed to any ancestral connection to the land.

In some cases, the proposed sites are within the aboriginal territory of other tribes. This seems to turn the notion of Indian gaming as a sovereign government revenue tool on its head.

This is a troubling development to a number of tribal leaders I have consulted with the last two years. It's also a source of distress for city and county officials, who have been contacting their Representatives in Congress with increasing frequency to seek help.

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The purpose of the zones is to consolidate gaming where it is welcomed by all affected governments, and to offer an alternative to tribes that are stuck in bad locations.

By distributing a discussion draft bill, I want to emphasize that it's a work in progress. It introduces new concepts, and I welcome input in what will be a deliberative process of crafting a bill the Congress can pass and that will put the off-reservation controversies to rest.

With that in mind, I want to hear from today's witnesses about the severity of the problems posed by off-reservation casinos, and what they think of the discussion draft.

STATEMENT OF THE HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MILLER. Thank you, Mr. Chairman, and I want to begin by commending you for making this effort, and I appreciate your

emphasis on the fact that this is a discussion draft, and I think it has wisely been presented as that because, clearly, this will help us formalize those discussions. There have been ongoing discussions all across this country on this very subject and the best way and manner to handle the questions of remote reservations, landless tribes, and off-reservation gaming, and then, of course, all of the questions of competition, local impact, community impact, and who should have a say and who should not have a say in these decisions.

As we all know on this committee, because of past treatment and policies by the Federal Government, we find Indian tribes and bands in very varied situations with respect to their standing before the Government. And we have used a number of different means by which to provide for recognition of those tribes, to provide for a land base for those tribes. Many of those tribes which had a rather significant land base at one time, that land base was terminated or for other reasons was dissipated wrongfully and without much control by those tribes, and now they are trying to reconstruct that land base, trying to provide housing, trying to provide economic opportunity for their tribes.

That has raised the question, obviously, within IGRA, and I would say for the most part IGRA probably is working about as it was intended. And it does, however, continue to raise the questions of whether or not either on-reservation or off-reservation gaming would be viable or not. And I think it is certainly worth our attention to understand that.

I also think that there is a fair amount of this that is being—certainly in our State that is causing this activity, there is a significant number of private parties now that have engaged with various tribes, hoping to be able to promote their restoration of lands or development of the land base, either off-reservation or a land base for the first time, restored lands, if you will, and then trying to use that as an economic lever to locate an Indian casino at various locations—there is no end to the locations suggested—in California.

A lot of that I think is promotion that is beyond the realities of the law. People are suggesting that if you have the land base and you can go to an area that it is almost automatic you are going to get a casino. That is not very likely. There have only been three tribes, I think, that have made it through the IGRA process for that purpose. But hope does spring eternal both in the eyes of the investors and in the eyes of the tribes who are trying to find a way to provide for that economic development of their lands and of their people.

So I think this is an important discussion. I think it is a very difficult one. I think the bill raises almost as many issues as it seeks to answer. I have some concerns. At some point, I would hope that the hearings would invite individuals that have been working very hard on maintaining, and the concern over the erosion of, sovereignty as to exactly how many people get to make decisions with these sovereign nations and override these sovereign nations. That may or may not be an issue that the Indian nations are concerned about, but I think it is certainly raised in this legislation.

I also would raise the question of, as you anticipate in this legislation, the designation of these areas. What is that process? Is that a Federal action? Is that an action that requires serious review before it can take place? And which entities would it be that would have a veto over that? It is quite conceivable that by the time you have satisfied all the parties, there would be no revenues left for the Indian tribes. If they ever did get the casino, there would be so many people with their hand out.

So I look forward to hearing from the witnesses in the panels that you have assembled today. Unfortunately, I am going to have to leave at 2:30 for a leadership meeting. I have read some of the testimony that has been submitted, and I will read the rest of the testimony, and thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

I would like to introduce our first panel of witnesses representing several elected officials. They are Richard Forster, Chairman of the Amador County Board of Supervisors; Lori Jaimes, Chairperson of the Greenville Rancheria; Kevin Leecy, Chairman of the Bois Forte Tribe; and Jean Quan, Council Member of the City of Oakland.

I would like to take a minute to remind all of today's witnesses that under Committee Rules oral statements are limited to 5 minutes. Your entire statement will appear in the record. If I could have all of you rise and raise your right hand.

[Witnesses sworn.]

The CHAIRMAN. Let the record reflect that they all answered in the affirmative. Welcome to the Committee. Thank you very much for being here, and we are going to start with Mr. Forster.

STATEMENT OF RICHARD FORSTER, CHAIRMAN, AMADOR COUNTY BOARD OF SUPERVISORS

Mr. FORSTER. Thank you. Chairman Pombo and distinguished members of the House Resources Committee, my name is Richard Forster, and I am the Chairman of the Amador County Board of Supervisors. Chairman Pombo, first I would like to thank you for providing the opportunity to address this very important issue of off-reservation Native American gaming and the direct ramifications this activity is having on our small, rural county.

In addition to representing Amador County, I have been asked by the California State Association of Counties, which represents all 58 counties, to address their recently adopted policy that is consistent with the intent of your draft bill. Their policy statement reads: "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 plans to present detailed written testimony to the Committee within the week.

Through my testimony today, I will attempt to provide you an understanding of the impact of Indian casinos on Amador County. Chairman Pombo, we believe our circumstances support your initiative to provide local government with the ability to have significant input in the approval process of Federal Indian gaming on land that otherwise would be within its jurisdiction. Amador County and CSAC view your draft legislation as a serious effort to

balance local and State concerns regarding reservation shopping with the economic development needs of tribes.

Amador County is a rural county of approximately 35,000 people located on the western slope of the Sierra Nevada, roughly midway between Sacramento and Lake Tahoe. There are three separate federally recognized Bands of Miwok Indians that are either operating or seeking to operate casinos within the county.

Currently, two separate tribes are proposing to open large Indian gaming facilities within 12 miles of each other and the existing Jackson Rancheria casino. The county is very concerned about the harmful impacts of multiple casinos on the quality of life for our small, rural community. The following is a brief summary of the status of the proposed casinos and information on the position of the county.

The Jackson Rancheria Band of Mi-Wuk Indians opened the Jackson Rancheria casino in 1997 and has entered into a local partnership through which it pays the local governments for services delivered to the casino property. The county has worked to build a positive working relationship with the Jackson Rancheria Band in the past on various issues of mutual interest and anticipates a continuation of this good working relationship. We appreciate the efforts of Tribal Chairperson Margaret Dalton and the Tribal Council in fostering a mutually beneficial partnership with the county.

The Ione Band of Miwok Indians has notified the Secretary of the Interior of its intent to have non-tribal lands placed in Federal trust for the purpose of constructing a casino, hotel, and other facilities on the trust acquisition property. This land is within and partially adjacent to the City of Plymouth.

The county opposes the Band's proposal to acquire the Plymouth site for the stated purpose of constructing and operating a casino. Of the 227 acres proposed to be acquired for the casino project, 11 acres are within the city and 216 acres are adjacent to the city and in the unincorporated areas of Amador County. It is anticipated that the amount of traffic will vastly increase on narrow State routes, city roads, and county roads and escalate the danger to public safety. In addition, the project fails to identify a long-term drinking water supply and an adequate wastewater treatment and disposal facility for the casino.

The City of Plymouth entered into a Municipal Services Agreement with the Ione Band for delivery of municipal services. The county challenged that Municipal Services Agreement and won that lawsuit, which the city is now appealing.

Chairman Pombo, your draft legislation would provide precisely the kind of protection and participation which a rural county such as ours desperately needs. The Ione Band's project is wrong for the area, as witnessed by the abject opposition to the proposal from virtually every local entity in the county, including the local school district, and the others are identified in my testimony. The scope of local opposition to this project is virtually unparalleled in our county.

We view the Plymouth casino proposal to place another casino in our small, rural county—in the absence of local support—as the wrong project at the wrong place.

Regarding the third tribal project of the most immediate concern, the Buena Vista Rancheria of Me-Wuk Indians, they are proposing a massive casino development project within the boundaries of the former Rancheria. As the map I have with me today shows, the land is a narrow strip which is only 578 feet wide and one mile long—and they should be able to project that. Moreover, the Rancheria is in an isolated rural location served exclusively by narrow county roads. At this time, the site does not have the required water or wastewater disposal services, and the county has not been advised as to how these problems would be resolved.

The county opposes the placement of a casino on this site because the rules and regulations in place at the Federal level do not support the approval of this action.

The land is not in trust. In fact, the Department of the Interior rejected a trust application for the Rancheria in 1996 and confirmed only a year ago that the land is still in fee and not in trust ownership.

Chairman Pombo, we again would like to thank you for offering us the opportunity to testify today, and we appreciate your concern over our local issues and allowing us to have our impact heard.

[The prepared statement of Mr. Forster follows:]

Statement of Richard Forster, Chairman,
Amador County Board of Supervisors, California

Chairman Pombo, Ranking Member Rahall and Members of the House Resources Committee, my name is Richard Forster, and I am the Chairman of the Amador County Board of Supervisors. Chairman Pombo, first I would like to thank you for providing the opportunity to address the very important issue of off-reservation Native American gaming, and the direct ramifications this activity is having on our small, rural county.

In addition to representing Amador County, I have been asked by the California State Association of Counties (CSAC) to submit the following statement as part of my testimony:

> "Our statewide Association in California the California State Association of Counties has been at the forefront of the Indian Gaming issue attempting to ensure that county boards of supervisors have the tools to protect their affected communities from the impacts of Indian Gaming—rural and urban alike.
>
> "Policy was recently adopted by the CSAC board representing all 58 counties that is consistent with the intent of your draft bill. CSAC's policy specifically addresses the issue of 'reservation shopping' and states that:
>
> "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."
>
> "Upon initial review, CSAC is very pleased to note that your draft bill supports this position and recognizes the important role of local government. CSAC plans to present detailed written testimony to the Committee within the week."

Through my testimony today, I will attempt to provide you with an understanding of the impact of Indian casinos on Amador County. Chairman Pombo, we believe our circumstances support your initiative to provide local government with the ability to have significant input in the approval process of federal Indian gaming on land that otherwise would be within its jurisdiction. Amador County and CSAC view your draft legislation as a serious effort to balance local and state concerns regarding "reservation shopping" with the economic development needs of tribes.

Amador County

Amador County is a rural county of approximately 35,000 people located on the western slope of the Sierra Nevada, roughly midway between Sacramento and Lake Tahoe. There are three separate, federally recognized Bands of Miwok Indians that are either operating or seeking to operate casinos within the County.

Currently, two separate tribes are proposing to open large Indian gaming facilities within 12 miles of each other and the existing Jackson Rancheria casino. The County is very concerned about the harmful impacts of multiple casinos on the quality of life for our small, rural community. The following is a brief summary of the status of the proposed casinos and information on the position of the County.

Jackson Rancheria Band of Mi-Wuk Indians

The Jackson Rancheria Band of Mi-Wuk Indians opened the Jackson Rancheria casino in 1997 and has worked positively with the County to mitigate off-reservation impacts attributed to casino activities.

This tribe has entered into a local partnership through which it pays the local governments for services delivered to the casino property and to address various local concerns, including environmental impacts. The County has worked to build a positive working relationship with the Jackson Rancheria Band in the past on various issues of mutual interest and anticipates a continuation of this good working relationship. We appreciate the efforts of Tribal Chairperson Margaret Dalton and the Tribal Council in fostering a mutually beneficial partnership with the County.

Ione Band of Miwok Indians

The Ione Band of Miwok Indians (Ione Band) has notified the Secretary of the Interior of its intent to have non-tribal lands placed in federal trust for the purpose of constructing a casino, hotel and other facilities on the trust acquisition property. This land is within and partially adjacent to the City of Plymouth.

The County opposes the Band's proposal to acquire the Plymouth site for the stated purpose of constructing and operating a casino. Of the 227 acres proposed to be acquired for the casino project, eleven acres are within the City and 216 acres are adjacent to the City and in the unincorporated area of Amador County. It is unquestioned that the proposed casino project will have significant adverse impacts on the County and City. It is anticipated that the amount of traffic will vastly increase on narrow state routes, city streets and county roads and escalate the danger to public safety. In addition, the project fails to identify a long-term drinking water supply and an adequate wastewater treatment and disposal facility for the casino.

The City of Plymouth entered into a Municipal Services Agreement (MSA) with the Ione Band for delivery of municipal services to the casino. The County filed and won a lawsuit to invalidate the MSA and require the City to perform the environmental analysis and review as required by the California Environmental Quality Act. The City is appealing this decision.

Chairman Pombo, your draft legislation would provide precisely the kind of protection and participation which a rural county such as ours desperately needs. The Ione Band's project is wrong for the area, as witnessed by the abject opposition to the proposal from the following local government entities and organizations: City of Jackson, City of Ione, City of Sutter Creek, City of Amador City, Amador Air District, Foothill Conservancy, Amador Chamber of Commerce, Amador Winemakers Association, the Amador County Farm Bureau and the Amador School District. The scope of local opposition to this project is virtually unparalleled in our county.

We view the Plymouth casino proposal to place another casino in our small, rural county—in the absence of local support—as the wrong project at the wrong place. There are serious issues of public safety associated with it, including the site's proximity to residential areas and at least one school. In addition, an archaeological study of the site conducted in 2000 produced no evidence of any Indian occupancy of the land at any time, clearly suggesting "reservation shopping" in the purest sense of the term.

Buena Vista Rancheria of Me-Wuk Indians

The tribe occupying this restored Rancheria is proposing a massive casino development project within the boundaries of the former Rancheria. As the map I have with me today shows, the land is a narrow strip which is only 578 feet wide and one mile long and is unsuited for a major building project, yet the tribe proposes a casino and related buildings of approximately 500,000 square feet. Moreover, the Rancheria is in an isolated rural location served exclusively by narrow country roads. At this time, the site does not have access to the required water and wastewater disposal services and the County has not been advised as to how these kinds of problems would be addressed.

The County opposes the placement of a casino on this site because the rules and regulations in place at the federal level do not support the approval of this action.

The land is not in trust. In fact, the Department of the Interior rejected a trust application for the Rancheria in 1996 and confirmed only a year ago that the land still is in fee—and not trust—ownership. I have copies of correspondence from the

Department of the Interior documenting these facts and would respectfully ask that they be submitted for the record.

The history of this tribe is reason enough for serious scrutiny on the development of the Rancheria site. For years, the tribe claimed only three adult members, until the Department of Interior determined that none of the three qualified for membership at the Buena Vista Rancheria. Instead, the Department found that a fourth person living in Sacramento was the only known person eligible for membership in the Rancheria tribe. Today, she is the Tribal Chair of the Band and is advocating for a project that she had opposed prior to Interior's membership determination.

The tribe has a Gaming Compact which was executed by the previous three-person governing body. The Secretary recently approved a Compact Amendment which would allow a Super Casino with more than 2,000 gaming machines and 80 gaming tables. In addition, the tribe is seeking from the National Indian Gaming Commission (NIGC) a determination that the Rancheria land qualifies as an Indian "reservation" under IGRA.

We believe that the land does not so qualify and have presented comprehensive statements to both Interior and the NIGC without receiving any response in return. Relevant to this discussion is the fact that the NIGC receives and processes tribal requests for land determinations without advising the local governments that the requests even exist. We learned of the Buena Vista request by accident and were able to submit our position, although there is no reason to believe that our statements were even read let alone considered because of no acknowledgment from the NIGC. I suspect that many local governments missed the NIGC review altogether because there is no requirement for local notice.

This is a bad project for the immediate area, it is a bad project for the County and it is bad precedent for Indian gaming in general. It is the kind of project that your legislation was drafted to address. The case for greater local input and participation in the decision-making process, as called for in your draft legislation, is clearly evident in this instance.

Conclusion

The development of an Indian casino raises legitimate concerns about the impact upon existing land use patterns, the environment, clean water and air, species and habitat protection, traffic congestion, public safety and the overall quality of life. Locating three large Indian casinos within a 12 mile radius of each other in a small rural county is not good public policy and most certainly would be detrimental to the surrounding communities.

Amador County hopes that by discussing this difficult situation we face along with numerous other counties and municipalities nationwide, that this will move Congress and the Department of Interior to consider new policies. These changes must reflect the need for tribes to have a verified historical connection to the site of a proposed casino and recognize that local government should have a significant voice in the process.

The problems created by the shortcomings of the Indian Gaming Regulatory Act are real, and they increase month by month as a result of creative proposals from lawyers representing tribes seeking off-reservation casinos in places never contemplated by Congress in 1988 when the IGRA was written.

Chairman Pombo, Amador County and the California State Association of Counties believe your draft legislation is a thoughtful and creative approach to resolving some of the continuing problems faced by local governments, while also providing a vehicle for tribes to legitimately pursue their gaming opportunities. Thank you for the opportunity to present a local government perspective on this difficult issue. I would be happy to answer any questions that you may have regarding this testimony.

[Responses to questions submitted for the record by Mr. Forster follow:]

Response to questions submitted for the record by Richard Forster, Chairman, Amador County Board of Supervisors, California

From Chairman Pombo:

1. *Under the Section 20 two-part determination in IGRA, the governor of a state is cast in the role of representing and protecting the interests of both the state government, and the local governments that exercise jurisdiction in the area proposed for casino gaming. However, as state governors increasingly look to tribal casinos to provide large amounts of revenue sharing to supplement the state budget, it has been argued that governors are now in a position where their fiduciary interest in securing a tribal revenue stream for state government conflicts with their duty to represent the interests of local communities in the two part determination process.*

   - With the potential of this large financial incentive to a state for a governor to overlook the concerns of local communities, can it be said that local communities can still be adequately represented solely by the governor's participation in the two part determination process?

AMADOR COUNTY ANSWER: The Governor represents the interests of the State generally, whether those interests are fiscal or otherwise. For example, Governor Schwarzenegger believes that Indian gaming is appropriate for rural areas but not urban areas. Amador County believes that adverse impacts from Indian gaming, both environmental and financial, are the worst in rural areas. The Governor cannot and indeed does not purport to represent Amador County's interests which are rural, not urban, interests and are specific to the County.

   - Or does this potential conflict of interest presented to governors suggest that IGRA should be modified to give affected local communities a formal role in concurring with the Secretary's two-part determination findings?

AMADOR COUNTY ANSWER: The California Constitution and generations of American law makers have decided that local governments can more efficiently and equitably make local land use choices for their entities than a state office or officer. The siting of Indian casinos serves no national agenda, as, for example, military bases or federal office complexes do. Indian casinos are more like subdivisions which local entities have better skills to plan for and to accommodate. Amador County does not see a conflict of interest issue but rather that Amador County is most affected by the siting of Indian casinos in the County and its elected officials needs to have some power to protect its citizens.

2. *Under established principles of tribal sovereignty, local communities do not have a say in decisions involving tribal land that is already held in trust by the federal government. However, off-reservation gaming proposals involve taking land into trust that is currently held in fee and is often not even closely located to trust lands.*

   - Is it a fundamental right of tribes to have land taken into trust on their behalf at any location within the United States they so desire, irrespective of the distance to their current reservation or any connection to ancestral or native lands?

AMADOR COUNTY ANSWER: Clearly not. The purpose of IGRA is to provide income to tribes where they have ancestral land and where those tribes' members live. Fundamental rights are Constitutionally based; this topic is statutorily based.

   - If not, what limitations should apply on where a tribe can or cannot have lands taken into trust on their behalf?

AMADOR COUNTY ANSWER: Under no circumstances should land be taken into trust for gaming. Land may be taken into trust for non-commercial uses, or commercial uses serving tribal residences.

   - Should a higher standard of review apply when the off-reservation lands in question will be used for purposes of gaming?

AMADOR COUNTY ANSWER: It simply should not be allowed because it converts tribes into casino operators apart from their ancestral land and heritage.

   - Should this standard include active participation and a requirement for concurrence from local governments, even though they are generally otherwise prohibited from having a say on matters concerning Indian lands?

AMADOR COUNTY ANSWER: Yes.

3. *Tribes have long fought to protect their ancestral lands from the unwanted incursions of outsiders, both Indian and non-Indian alike.*

   - If a tribe is seeking to have land taken into trust in an area that is not within the ancestral lands of that tribe, should other tribes whose ancestral lands encompass the site have the ability to object to the land going into trust?

AMADOR COUNTY ANSWER: Existing tribes should be able to object because cross-siting of tribes' land for gaming is destructive of the sovereignty of the original tribe.

- The ability to veto the land going into trust?

AMADOR COUNTY ANSWER: Yes, to protect the existing tribes' own sovereignty.

- How can the term "ancestral lands" be defined as precisely as possible so it is clear to all observers, Indian and non-Indian alike, which lands are ancestral to any given tribe?

AMADOR COUNTY ANSWER: The tribes' members and their ancestors must have lived there. That standard is different from evidence of their traveling in the general area in a nomadic culture or the location of artifacts or casual burial grounds there.

4. Should a cap be placed on any revenue sharing with state governments from an off-reservation gaming facility?

AMADOR COUNTY ANSWER: The cap should equal state income and sales taxes lost to the state. A more important issue is that revenue sharing equal to property and sales taxes that would accrue if the facility was non-Indian should be paid to the affected local entity together with funds to mitigate public costs stemming from the facility's impacts on local entities.

- If so, what should the cap percentage be?

AMADOR COUNTY'S ANSWER: Just enough to equal lost sales and property tax and financial costs from the facilities.

5. Should a tribe be able to ask for or accept a casino operation as a substitute, either in whole or in part, of a cash payment to settle a land claim?

AMADOR COUNTY ANSWER: No. Casino operations have impacts beyond money.

- If a casino is acceptable as a settlement, should tribes whose ancestral lands encompass the location where the casino would be located be consulted before the settlement is finalized?

AMADOR COUNTY ANSWER: Yes, because of their sovereign status.

- Should they be allowed veto power over such a casino-based settlement as a tool to protect their ancestral lands?

AMADOR COUNTY ANSWER: Yes, because of their sovereign status.

6. While there have been only three incidences since IGRA was enacted of off-reservation land being placed into trust for gaming purposes, there are currently dozens such projects either in the proposed stage or being reviewed by the BIA.

- What impact do you think all of these proposals have on public support for Indian gaming?

AMADOR COUNTY ANSWER: Such off-reservation siting has substituted "live and let live" for hostility toward all Indian gaming.

- Do you believe that the vagaries of current law regarding off reservation gaming encourage the proliferation of proposals for off-reservation gaming?

AMADOR COUNTY ANSWER: Without doubt.

- Do you believe that clarifying the law on off-reservation gaming, and placing greater restrictions on when off-reservation gaming is allowed, will reduce the number of proposals for off-reservation gaming?

AMADOR COUNTY ANSWER: That depends on the restrictions.

- Will such changes serve to weed out proposals for off-reservation gaming of dubious merits?

AMADOR COUNTY ANSWER: Amador County believes that ALL off-reservation gaming is "of dubious merit". All off-reservation gaming is contrary to the goals of IGRA and should not be allowed.

7. Do you believe that the original intent of IGRA was to allow Indian gaming to be conducted at any location within the United States that a tribe is able to purchase and have placed into trust?

AMADOR COUNTY ANSWER: No.

- Or was the original intent of IGRA to foster economic development on Indian lands held at the date of enactment?

AMADOR COUNTY ANSWER: Yes.

8. *In Minnesota, the governor is entering into an agreement with three tribes to operate an urban casino under the auspices of the Minnesota State Lottery. As currently constructed, IGRA would not apply to this proposal. Is there any other statute authorizing or requiring the Secretary of Interior to ensure tribal interests are protected in such gaming proposal as this where at least one of the parties is a tribal government or tribal government business enterprise? Should there be?*
   - Does this agreement violate the terms of any tribal-state compact in Minnesota?
   - What would be the impacts to tribes around the country if other governors entered into similar agreements with tribes in their states?
   - In such a deal as proposed in Minnesota, what is the level of federal scrutiny of outside investors, management agreements, and vendor contracts?
   - Are the tribes entering into this deal capable of determining whether or not they will benefit from it? Are they capable of knowing whether or not developers, casino management companies, and the state government might be taking advantage of them?

AMADOR COUNTY ANSWER: The County has no knowledge of the facts of the Minnesota situation.

From Congressman Gibbons:

1. *This Committee has held hearings on legislation that would allow a tribe to go hundreds of miles off their reservation and open a casino in the ancestral lands of another Tribe.*
   - Do you have any specific suggestions on how Congress should proceed in this regards?

AMADOR COUNTY ANSWER: Congress should require the home Tribe's and the local entity's approval.
   - Also, with over 300 tribes seeking recognition and presumably gaming, please comment on the impact that a policy permitting "reservation shopping" and "off-reservation gaming" will have on communities across the country.

AMADOR COUNTY ANSWER: California rural areas will be adversely impacted extremely severely, given the California policy of allowing Indian gaming in rural, but not urban, areas. Rural entities cannot cope with the traffic, safety, law enforcement, and environmental issues brought about by non-reservation casinos.

2. *A few years ago, during the Proposition 5 campaign that allowed full-scale Indian gaming in California, the tribes ran television ads stating they wanted to do gaming just on their reservation lands. Now in California, there are several tribes that are trying to conduct off-reservation gaming.*
   - If a tribe has a reservation and/or a traditional service area, why should any tribe be permitted to establish gaming off-reservation, distant from its reservation?

AMADOR COUNTY ANSWER: It should not be so permitted; to do so removes the policy underpinnings of tribal gaming as originally allowed by Congress.
   - Also, please comment on the fact that other tribes are opposed to tribes seeking "off-reservation" gaming.

AMADOR COUNTY ANSWER: The County has no comment.

3. *When tribes seek to enter already established gaming areas, doesn't that create an unlevel playing field since tribes are not subject to state regulations; are not subject to the restrictions placed on other gaming establishments; do pay not state taxes; etc.?*

AMADOR COUNTY ANSWER: As to competition between Indian Class III gaming facilities and non-casino gaming, the answer is clearly yes, leading to an anti-competitive tilt in favor of Indian gaming facilities.

4. *What criteria should be used by the Department of the Interior in it's determination of land-into-trust?*

AMADOR COUNTY ANSWER: The land must first qualify as a true Indian homeland for that tribe.
   - Should there be a requirement of substantial historical connection between the tribe and the parcel to be taken into trust? Why/why not?

AMADOR COUNTY ANSWER: The historical connection should be current. If it isn't, the standard is open to abuse, inconsistent decisions, and removes Indian gaming from its policy roots, of helping tribes living on reservations to help themselves.
   - How recent should the historical connection be? 100 years? 200 years?
   - What about distance from the tribe's current service area? 10 miles? 20 miles? 70 miles?

AMADOR COUNTY ANSWER: The siting of a gaming facility should be only at the locus of the tribe's physical existence, its reservation.

- Do you believe that the farther away the casino site is, the less likely tribal members will be able to take advantage of employment opportunities with a casino? [Alternatively, if the tribal members move near the casino to get jobs, then will the traditional community/service area be disrupted?]

AMADOR COUNTY ANSWER: Yes and yes.

5. If landless, shouldn't land-into-trust be restricted to the area where the tribe is located? Where they live, need jobs, need health care and services?

AMADOR COUNTY ANSWER: Yes, for all the policy reasons set forth above.

6. If some tribes are permitted to select the "best gaming" locations, wouldn't all tribes want to do that?

AMADOR COUNTY ANSWER: Yes, and it removes the crucial philosophical nexus between Indian gaming and self improvement as a tribe (if the facility is unrelated spatially to the tribe).

- What about tribes that played by the rules and have their casino on their reservation land, even though it may not be the best gaming location?

AMADOR COUNTY ANSWER: Tribes who game on their ancestral reservations would not be able to compete evenly with those non-reservation gaming tribes who can shop for locations, hurting the efficacy of ancestral reservations.

7. Please comment on how the federal campaign contribution laws apply to tribes and the fact that tribes are exempt from overall donor limits and can give directly from their treasuries. No other organization is similarly situated.

AMADOR COUNTY ANSWER: The disparate treatment of any group is not in the interest of the body politic.

8. Please comment on the increasing trend of tribes now crossing state lines away from their reservation to establish gaming.

AMADOR COUNTY ANSWER: It is a policy that will undermine reservation gaming and reservations themselves.

- Please comment on the situation in CO where the Cheyenne-Arapaho of Oklahoma are seeking land in CO to establish gaming. In that situation, the tribe is claiming 27 million acres even though their land claims were definitively and legally settled in the 1960s. Their action is designed to force the Governor to agree to a smaller parcel near the Denver Airport for gaming.

AMADOR COUNTY ANSWER: The United States Supreme Court has addressed the issue of extinguished reservations in City of Sherrill v. Oneida Indian Nation 2005 U.S. Lexis 2927 (2005): Reservations, once extinguished, remain extinguished even when subsequently purchased by the tribe on the open market.

The CHAIRMAN. Thank you.

Ms. Jaimes?

STATEMENT OF LORI JAIMES, CHAIRWOMAN, GREENVILLE RANCHERIA OF MAIDU INDIANS, ACCOMPANIED BY DERRIL B. JORDAN, ESQ.

Ms. JAIMES. Thank you, Mr. Chairperson and members of the Committee. We thank you for this opportunity to offer testimony regarding the issue of off-reservation gaming. My name is Lori Jaimes, and I am the Chairperson of Greenville Rancheria, and I am accompanied by my attorney, Derril Jordan.

The Greenville Rancheria began as an Indian school and BIA agency in the 1890s. The school and the agency served Maidu Wintoons and other Indians and their children from an area that included Plumas, Tehama, Lassen, Butte, Yuba, Sutter, and Shasta counties. The Rancheria was terminated in 1966 under the Rancheria Act, and it was restored in 1983 under the Tillie Hardwick case. Since that time, we have been building and working to rebuild our tribal government and restore a tribal land base. Of the original 275 acres, only about 1.8 acres are owned in trust by tribal

members, and the tribe owns 8 acres within the Rancheria in fee. Most of the remaining acreage is owned by non-Indians, and the land within the Rancheria is generally unfit for economic development.

Our tribe is currently attempting to acquire land in trust in Red Bluff to establish a tribal gaming facility. As a restored tribe, we have become very knowledgeable about the restored land exception. There has been shamefully little discussion of this issue that is based on a thorough understanding of the law. I hope my testimony will bring some light to the debate.

There are four exceptions to Section 20's general prohibition against gaming on off-reservation lands. As we demonstrate in our written statement, each of these means for acquiring off-reservation land are governed by procedural and substantive safeguards that protect the legitimate interests of both other tribes and non-Indian communities.

Because restored tribes are generally landless, the first step necessary to engage in gaming is to have lands acquired in trust by the Secretary under the regulations at 25 C.F.R. Part 151. Under these regulations, the Secretary must consider, one, the tribe's need for the land; two, the impact on the State and local government of removing the land from the tax rolls; and, three, the judicial problems and potential conflicts of land use that may arise if the land is taken into trust.

For off-reservation acquisition, the Secretary must also consider the distance of the land from the tribe's reservation, and the applicant tribe must also submit a business plan showing the anticipated economic benefits to the tribe. The State and local government with jurisdiction over the land receive notice of the proposed acquisition from the BIA, and they are afforded an opportunity to provide comments.

Judicial review of the Secretary's decision is available and can be overturned if it is found to be arbitrary and capricious. In addition, the Federal courts, Interior, and the NIGC all require a tribe to show historic and contemporary ties to the land in order for it to qualify as restored land. I note that our tribe has historic and contemporary ties to the Red Bluff area. We offer the following comments with regard to the discussion draft:

First, it would require the Secretary to determine that the lands to be acquired in trust for a restored tribe are lands within the State where the Indian tribe has its primary geographic, social, and historical nexus to the land. As we have demonstrated, Interior and the NIGC already require that a tribe have historic and contemporary ties to land in order for that land to be considered restored.

Proposed new Section 20(b)(1)(B)(ii) requires the Secretary to determine that the proposed gaming activity is in the best interest of the tribe and its members, and that it would not be detrimental to the surrounding community. We object to this provision because we do not think that the Secretary knows what is in our best interest.

Second, the Secretary must already consider the impacts on the State and local government and the expected benefits to the tribe under the Part 151 process.

Finally, we believe that proposed new Section 20(b)(1)(B)(iii) is completely inappropriate because it requires the approval of the State as well as every unit of local government that has jurisdiction over the land or that is contiguous to it. Restored tribes are generally landless and seeking their first and likely only chance to avail themselves of the benefits of governmental gaming under IGRA. States and local governments simply should not have veto power over Indian self-determination and economic development.

It is not lost on the Greenville Rancheria that a number of the most vocal critics of off-reservation gaming are Indian tribes with some of the most lucrative casinos in the United States. We applaud their success, but we cannot help but wonder why they do not support the right of their sister tribes to achieve the same goals they have reached.

In conclusion, it is our belief that IGRA does not need to be amended with regard to off-reservation gaming because there is no genuine crisis in this area. Those who most loudly call for amendment do so either because they do not understand the process or because they want a guaranteed result in their favor and are not content to let the process established by Congress and implemented by the courts, Interior, and the NIGC work.

Thank you for the opportunity to testify.

[The prepared statement of Ms. Jaimes follows:]

Statement of Lori Jaimes, Chairwoman,
Greenville Rancheria of Maidu Indians

Mr. Chairman and Members of the House Resources Committee, thank you for the opportunity to offer testimony on behalf of the Greenville Rancheria of Maidu Indians regarding the issue of off-reservation gaming, and to comment on the draft bill that you have circulated for comment.

There has been much said about this issue, by both tribes seeking to protect their economic turf and non-Indian communities seeking to block tribal economic development, but there has been shamefully little dialogue on this issue that is based on a thorough understanding of the law. Most of what has been said on the subject has come in the form of deliberate misinformation designed to give the appearance of a crisis where none actually exists. As a restored tribe that is virtually landless and seeking to acquire land through the restored land exception to section 20 of the Indian Gaming Regulatory Act (IGRA), we have a keen interest in this subject. I hope my testimony will cast some rational light on a debate that has been for too long conducted on the basis of misinformation, fear and greed.

As you know, there are four exceptions to section 20's general prohibition against gaming on off-reservation lands acquired after October 17, 1988, the date IGRA was signed into law. They are: (1) the two-part determination under section 20(b)(1)(A); (2) the settlement of a land claim under section 20(b)(1)(B)(i); (3) the initial reservation of a tribe recognized by the Secretary pursuant to 25 C.F.R. Part 83, under section 20(b)(1)(B)(ii); and (4) the restoration of lands to a tribe that was restored to federal recognition, pursuant to section 20(b)(1)(B)(iii). As we demonstrate below, each of these means for acquiring off-reservation land for gaming purposes has both procedural and substantive safeguards built into them to protect the legitimate interests of both other tribes and non-Indian communities.

THE TWO-PART DETERMINATION

With regard to the two-part determination under section 20(b)(1)(A), off-reservation land cannot be acquired in trust for either Class II or Class III gaming purposes unless the governor of the state in which the land is located concurs in the decision of the Secretary of the Interior that gaming on the off-reservation land proposed for acquisition is (1) in the best interest of the tribe, and (2) not detrimental to the surrounding community. In reaching this two-part determination, the Secretary must consult with state and local officials, as well as officials from other

nearby Indian tribes.[1] Assuming that the Secretary reaches the conclusion that gaming on the proposed site will not be detrimental to the surrounding community, there is simply no chance that off-reservation gaming will be approved under section 20(b)(1)(A) if the governor does not concur with the Secretary's finding, and it is extremely unlikely that the governor will concur if the local community is opposed.

Furthermore, section 20 of IGRA does not establish any standard for the governor's concurrence, and a governor is free to withhold concurrence for any reason or no reason. See Lac Courte Oreilles Band of Lake Superior Chippewas v. United States, 367 F.3d 650, 656 and 662 (7th Cir. 2004) (land cannot be acquired for gaming purposes under section 20(b)(1)(A) unless and until a governor responds to the Secretary's request for a concurrence, and the governor can willfully ignore such request); Confederate Bands of Siletz Indians v. United States, 841 F. Supp. 1479, 1486 (D.C. Oregon), affirmed on other grounds 110. F.3d 688, 697 (9th Cir. 1997), certiorari denied 522 U.S. 1027 (1997)("[t]he Governor, by doing nothing, can defeat the DOI's determination in favor of granting a tribe's application for an exception to § 2719(a).") There is virtually no chance that gaming will occur under this exception if the local community and the governor of the respective state do not both support the Tribe's application.

Nearby Indian tribes are also consulted as part of the two-part determination process. Although IGRA was not intended to protect tribes from competition from other tribes, Sokaogon Chippewa Community v. Babbitt, 214 F.3d 941, 947 (7th Cir. 2000), it would be appropriate for Interior to consider credible information that the proposed new gaming will have a crippling impact on existing tribal gaming operations. Section 20 (b)(1)(A) adequately provides fo the protection of the legitimate interests of existing gaming operations.

THE SETTLEMENT OF A LAND CLAIM

The settlement of a land claim under section 20(b)(1)(B)(i) generally requires the approval of Congress pursuant to 25 U.S.C. § 177[2], so no gaming can occur under this exception unless Congress has approved the acquisition of the land in the legislation that settles the tribe's land claim. The need for the enactment of legislation by Congress provides a chance for everyone to be heard, including the state through its delegation,[3] and the community involved through its Senators and Congressional representative. Congress has a full opportunity to weigh the pros and cons of a particular land claim settlement and the propriety of gaming on land acquired through the settlement. This is an eminently fair and balanced process, and leaves little room for complaint outside of the "sour grapes" whining of those who didn't get their way.

THE INITIAL RESERVATION OF A NEWLY RECOGNIZED TRIBE

Tribes recently recognized by the Secretary pursuant to 25 C.F.R. Part 83 are generally landless at the time of recognition. In order to engage in gaming, a newly recognized tribe will have to have lands acquired in trust for it by the Secretary of the Interior pursuant to section 5 of the Indian Reorganization Act (IRA)(25 U.S.C. § 465), and 25 C.F.R. Part 151. Under the Part 151 regulations, the Secretary must consider the following factors:

(1) the applicant tribe's need for the land (25 C.F.R. § 151.10(b);

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[1] Two-part determinations are generally accompanied by application to acquire the land in trust under 25 C.F.R. Part 151, which process is explained in greater detail in the next section. Whether or not accompanied by such an application, a two-part determination application will require compliance with the National Environmental Policy Act (NEPA), which provides the state, local governments, and other persons and groups in the area to comment on the proposed acquisition.

[2] Section 177 provides in pertinent part that:

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of $1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty.

[3] Because most land claims under 25 U.S.C. § 177 involve illegal purchases of tribal land by state governments, most land claim settlements are achieved by Congressional ratification of an agreement between the state and the tribe whose lands were illegal purchased. Therefore, it is at least highly unlikely that a land claim settlement bill can be passed over the objections of state.

(2) the impact on the state and local governments of removing the land from the tax rolls (25 C.F.R. § 151.10 (e)); and
(3) jurisdictional problems and potential conflicts of land use that may arise if the land is taken into trust (25 C.F.R. § 151.10 (f).

For off-reservation acquisitions,[4] the Secretary must also consider the distance of the land from tribe's reservation under § 151.11 (b), and the applicant tribe must also submit a business plan showing the anticipated economic benefits to the tribe as required by § 151.11 (c).

The state and the local government with jurisdiction over the land proposed for trust acquisition receive notice of the proposed acquisition from the Bureau of Indian Affairs (BIA), and they are afforded an opportunity to provide comments to the BI A. 25 C.F.R. § 151.10. Compliance with NEPA is also required. 25 C.F.R. § 151.10(h). Finally, judicial review of the Secretary's decision regarding a specific trust acquisition is available under the Administrative Procedures Act (APA), and the Secretary's decision can be overturned by a court if it is found to be arbitrary and capricious, an abuse of discretion, or not in accordance with law. 5 U.S.C. § 706.

If land is successfully acquired in trust for a newly recognized tribe, the next step is for the Secretary to issue a proclamation proclaiming the land to be a reservation under 25 U.S.C. § 467. The acquisition in trust and the reservation proclamation together qualify the land as the tribe's initial reservation. A newly recognized tribe may avoid the general prohibition of section 20 of IGRA only with regard to those trust lands that are the subject of the Secretary's first reservation proclamation—the tribe's "initial reservation." (See memoranda dated December 13, 2000, from the Acting Associate Solicitor for Indian Affairs to the Regional Director of the BIA's Midwest Regional Office about the designation of lands as the initial reservation for the Huron Potawatomi Band in Michigan ("Huron Potawatomi Memorandum"). Moreover, Interior generally requires a tribe to show that it has historic and contemporary ties to land before it will designate land as the initial reservation of a newly recognized tribe. See the Huron Potawatomi Memorandum.

In short, there is a lengthy process for the acquisition of trust land and the declaration of that land as initial reservation that affords the state and impacted local government(s) and land owners an opportunity for input. Interior has established a substantive standard that requires that the tribe have both historic and contemporary ties to the land in order for it to be declared as the tribe's initial reservation. Finally, the Secretary's decision is reviewable in the federal courts. Once again, we have a fair and balanced process with both procedural and substantive safeguards.

THE RESTORATION OF LAND TO A TRIBE THAT IS RESTORED TO FEDERAL RECOGNITION

Restored tribes are also likely to be landless because their land was distributed in fee to tribal members at the time of termination, or sold to non-Indians, or both. Much of the land that was distributed to members was lost through tax sales and by other means. That is certainly what happened to the Greenville Rancheria, as well as to many of the other Rancherias terminated under the California Rancheria Act. 72 Stat. 69 (1958).

Like a newly recognized tribe, in order to engage in gaming, a restored tribe will have to have lands acquired in trust for it by the Secretary under section 5 of the IRA and the regulations at 25 C.F.R. Part 151, including the notice and comment procedures, and the consideration of the substantive regulatory criteria regarding taxes, land use, and jurisdictional conflicts.

As to the determination of whether the land proposed for acquisition can be considered restored, the federal courts require a tribe to show historic and contemporary ties to the land in order for it to qualify as land restored to a tribe that has been restored to federal recognition. See Grand Traverse Band v. United States, 198 F. Supp. 2d 920, 929-30 (W.D. Mich. 2002); Grand Traverse Band v. United States, 46 F. Supp. 2d 689, 698 (W.D. Mich. 1999); and Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt, 116 F. Supp. 2d 155 (D.D.C. 2000). Interior also requires the showing of such a nexus. (See Memorandum of December 5, 2001 from the Associate Solicitor-Indian Affairs to the Assistant Secretary-Indian Affairs regarding the Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians.) The National Indian Gaming Commission (NIGC) is no exception. (See the August 31, 2001 letter from Kevin K. Washburn, NIGC General Counsel to Judge Hillman of the Federal District for the Western District of Michigan regarding the Grand Traverse Band's Turtle Creek Casino; the August 5, 2002 decision of the NIGC regarding the Rohnerville Rancheria; the March 14, 2003, decision of the NIGC regarding the Mechoopda Indian Tribe of the Chico Rancheria; and the September 10, 2004

[4] All trust land acquisitions for a landless tribe are, by definition, off-reservation acquisitions.

decision of the NIGC regarding the Wyandotte Nation. (The Interior and NIGC opinions are available at www.nigc.gov./resources/Indian Land Determinations.) Once again, both procedural and substantive safeguards prevent the abuse of the exception designed to allow restored tribes to avail themselves of the intended benefits of tribal governmental gaming under IGRA.

COMMENTS ON DISCUSSION DRAFT

We offer the following comments with regard to the Discussion Draft, which would amend section 20(b)(1) in several important ways significant to restored and newly recognized tribes. First, it would require the Secretary to determine that the lands to be acquired in trust "are lands within the state where the Indian tribe has its primary geographic, social, and historical nexus to the land." As demonstrated above, Interior and the NIGC already require that a tribe have historic and contemporary ties to land in order for that land to either be designated as a newly recognized tribe's initial reservation, or considered restored lands to a restored tribe.

Proposed new section 20(b)(1)(B)(ii) requires the Secretary to determine that the proposed gaming activity is in the best interest of the tribe and its members, and that it would not be detrimental to the surrounding community. We object to this new subsection on several grounds. First, we do not think that the Secretary of the Interior is in a better position than our Tribal Council to determine what is in the best interests of our Tribe or our members. Second, both of these considerations are already addressed through the Secretary's consideration of the tribe's application to have the land acquired in trust under 25 C.F.R. Part 151. The factors the Secretary considers under 25 C.F.R. §§ 151.10(e) & (f) already require the Secretary to consider impacts on the state and local government, and 25 C.F.R. § 151.11(c) already requires the Secretary to consider the expected benefits to the tribe.

Finally, we believe that proposed new section 20(b)(1)(B)(iii) is completely inappropriate because it requires the approval of the state as well as every unit of general purpose local government that has jurisdiction over the land or that is contiguous to it. Remember that restored and newly recognized tribes are generally landless and seeking their first and likely only chance to avail themselves of the benefits of governmental gaming under IGRA. As discussed above, a restored or newly acknowledged tribe must show that it has historic and contemporary ties to the land it wishes to acquire for gaming purposes. States and local governments simply should not have veto power over Indian self-determination and economic development. The enactment of such a provision would constitute a major abandonment of the United States' historic trust responsibility to protect tribal self-government from encroachments by state and local governments.

With regard to the Indian Economic Opportunity Zones proposed in the new section 20(e), we do not understand the purpose of proposed sections (e)(2)(B)(i) and (ii). The former restricts the practical ability of a tribe to choose another tribe as its manager because it limits the management fee to ten (10) percent. This seems to us an unfair limitation on potential tribal managers given that non-tribal managers can receive up to forty (40) percent of net revenues as a management fee. Section (e)(2)(B)(i) means that a tribe that needs an investment partner will have to do business with a non-Indian investor. We can see no reason to restrict the economic choices of tribes needing management or investment assistance, or of tribes who may choose to invest their wealth to help other tribes.

Also, we can see no purpose in limiting eligibility to tribes that have no ownership interest in another tribal gaming facility. It should not be assumed that because a tribe already has a casino, it is rolling in money. Most tribal casinos are modest and do not generate enough revenues to enable tribal governments to meet more than a century of unmet needs. The opportunity to participate in gaming in an Indian Economic Opportunity Zone may afford a tribe an opportunity to supplement the modest income it receives from its reservation-based casino to help it to better serve the tribal community.

Finally, proposed new Section (e)(3)(D) is completely objectionable. There is no reason that tribes within 200 miles of the Proposed Zone should have to approve. Market sizes differ from one region of the country to another depending, in part, upon factors such as population density and per capita income. Moreover, IGRA should not insulate tribes from ordinary economic competition from other tribes.

CONCLUSION

Each of the four exceptions to section 20's general prohibition against gaming on off-reservation lands is subject to procedural safeguards and substantive standards that prevent abuse of the process of qualifying for the right to conduct off-reservation gaming. There is no crisis in this area. Granted, a number of tribes are seeking to qualify for one or more of the exceptions, but all that is required is that

the process for each such application be given a chance to work. We believe very strongly that tribes should be good, responsible neighbors and work with state and local governments to improve the quality of life for everyone, Indian and non-Indian alike. Nonetheless, non-Indian communities simply cannot be given veto power over the self-determination and economic development efforts of federally recognized Indian tribes, especially landless tribes that presently have no reservation.

It is not lost on the Greenville Rancheria that some of the most vocal critics of off-reservation gaming are Indian tribes with many of the most lucrative casinos in the United States. We applaud their wealth and success, and look to them as examples of how successful Indian economic development can be. Nonetheless, upon hearing their complaints, we cannot help but wonder why they do not support the right of their sister tribes to achieve the same goals that they have worked so long and hard to reach. We, too, want to rebuild our land base and provide health care and decent housing to our families and elders. We have the same desire to restore our language and renew our culture. The concern they express about backlash from non-Indian communities strikes us as hypocritical, not to mention shortsighted. Federal Indian policy should not be dictated by non-Indian communities, and we find it cruelly ironic that some tribal governments are suggesting that the fears and prejudices of non-Indian communities should dictate the economic development opportunities available to landless tribes. We think they would not be so eager to be dictated to themselves by the state or local governments, but some how they believe that the interests of non-Indians should trump the ability of other tribes to pursue what they have. Have they become so rich and powerful that they have forgotten what it means to be Indian?

In conclusion, it is our belief that IGRA does not need to be amended with regard to off-reservation gaming because there is no genuine problem or crisis in this area. Those who most loudly call for amendment do so either because they do not understand the process, or because they want a guaranteed result in their favor and are not content to let the process established by Congress and implemented by the courts, Interior, and the NIGC work.

[Responses to questions submitted for the record by Lori Jaimes, Chairperson, Greenville Rancheria follow:]

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Re: Response to Follow-up Questions from March 17, 2005 Hearing

Dear Chairman Pombo:

I want first to take the opportunity to thank you for offering me the opportunity to testify at the March 17 hearing on off-reservation gaming. This is a very important issue to all tribes, especially landless tribes like the Greenville Rancheria, and we look forward to working with the Committee as it deals with this issue.

I wish to reiterate a point I made in my testimony to the Committee. Our tribe was illegally terminated under the Rancheria Act, 72 Stat. 619, and restored by the decision in Hardwick v. United States. No. C-79-1710-SW, Stipulation for Entry of Judgment (Decemberl5, 1983). We are a landless tribe seeking to take land into trust pursuant to the restored land exception set forth in section 20 (b)(l)(B)(iii) of the Indian Gaming Regulatory Act (IGRA). As I pointed out in my written testimony, and as discussed below in the answer to your question 2, the restored land exception is quite different from the two-part determination process under section 20 (b)(l)(A). These two exceptions to section 20's general prohibition against gaming on lands acquired after the date of IGRA's enactment serve different legislative purposes and should not be confused with each other or lumped together. In general, the two-part determination process is intended for tribes that had reservations or trust lands as of the date of IGRA's enactment, whereas the restored tribe exception is intended to benefit restored tribes that are landless due to termination. The acquisition of land for gaming purposes by restored tribes should not be at the mercy of states and local governments. To give those governments veto power over the land acquisition efforts of restored tribes would serve only to continue the injustice they faced when they were terminated. Also, empowering state and local govern-

ments in this way would only increase their leverage in demanding large payments from restored tribes and this would be counterproductive to your goal of protecting tribal gaming revenues so that they primarily benefit the tribes as intended by IGRA.

Our response to your questions and those of Representative Gibbons are attached to this letter. Please do not hesitate to contact me if we can provide further information to the Committee.

VERY TRULY YOURS,

LORI JAIMES, CHAIRPERSON, GREENVILLE RANCHERIA

Attachment

RESPONSE TO QUESTIONS FROM CHAIRMAN POMBO

Question 1

We do not agree that there is a wide-spread problem of state governors ignoring the concerns of local governments. As question 3 acknowledges, only three two-part determinations have been approved since the enactment of IGRA almost 16 1/2 years ago. It is difficult to discern from these statistics any hard evidence that state governors have abandoned local communities in the context of the two-part determination process.

Furthermore, a governor's lack of sensitivity to the concerns of local communities is a political problem best addressed through the political process. Governors need the votes of state citizens to win reelection or to help ensure the election of a successor from their political party. Local communities are represented in the state legislature by both state senators and house or assembly members, and the governor needs the support of these state legislators to pass budgets and enact the governor's programs and initiatives. Conversely, with Indians being such a distinct minority in every state in the United States, governors generally have little to fear at the ballot box by siding with non-Indian communities in disputes or disagreements between those communities and Indian tribes. In short, governors have every incentive to be sensitive to the concerns of local communities and their governments.

Governors are generally called on to determine the best interests and balance the needs of the state as a whole in almost everything they do. It is no different when they are called on to decide whether to concur in a favorable two-part determination rendered by the Secretary of the Interior ("Secretary"). In short, we think that the present system balances the rights of tribes, and state and local governments about as well as can be expected given the age-old conflict between Indian tribes on one hand and state and local governments on the other.

Question 2

We do not think that it is a fundamental right of tribes to have land taken into trust on their behalf at any location within the United States they so desire, irrespective of the distance to their current reservation or any connection to ancestral or native lands, and no knowledgeable observer of Indian affairs can truthfully say that the Department of Interior ("Interior") is acquiring land in trust on behalf of tribes "at any location within the United States." Granted some tribal proposals are without merit, but the law should not be changed to bar consideration of legitimate proposals in order to deal with extreme cases. The present rules and standards are well equipped to deal with these cases if the process is given an opportunity to work.

The regulations at 25 C.F. R. Part 151 impose meaningful standards with regard to trust land acquisitions. Under those regulations, the Secretary must consider the following factors:

(1) the applicant tribe's need for the land (25 C.F.R. § 151.10(b);
(2) the impact on the state and local governments of removing the land from the tax rolls (25 C.F.R. § 151.10 (e)); and
(3) jurisdictional problems and potential conflicts of land use that may arise if the land is taken into trust (25 C.F.R. § 151.10 (f)).

For off-reservation acquisitions, pursuant to § 151.11 (b), as the distance from the tribe's reservation increases, the Secretary gives greater scrutiny to the tribe's justification of anticipated benefits from the acquisition, and greater weight is given to the concerns of state and local governments with regard to factors covered by

§§ 151.10 (e) and (f).[1] These regulatory requirements virtually ensure that no tribe will ever be able to take land into trust far from its reservation, especially if state or local government is opposed.

The Greenville Rancheria does support limits on off-reservation gaming, and under the current system, there are standards that prevent tribes from taking land into trust anywhere they desire. As I pointed out in my written testimony to the Committee, the federal courts, Interior, and the National Indian Gaming Commission (NIGC) all require a tribe to show historic and contemporary ties to land in order for it to qualify pursuant to section 20 (b)(1)(B)(iii) as land restored to a tribe that has been restored to federal recognition. See Grand Traverse Band v. United States, 198 F. Supp. 2d 920, 929-30 (W.D. Mich. 2002); Grand Traverse Band v. United States, 46 F. Supp. 2d 689, 698 (W.D. Mich. 1999); and Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt, 116 F. Supp. 2d 155 (D.D.C. 2000). See also Memorandum of December 5, 2001 from the Associate Solicitor-Indian Affairs to the Assistant Secretary-Indian Affairs regarding the Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians.); August 31, 2001 letter from Kevin K. Washburn, NIGC General Counsel to Judge Hillman of the Federal District for the Western District of Michigan regarding the Grand Traverse Band's Turtle Creek Casino; the August 5, 2002 decision of the NIGC regarding the Rohnerville Rancheria; the March 14, 2003, decision of the NIGC regarding the Mechoopda Indian Tribe of the Chico Rancheria; and the September 10, 2004 decision of the NIGC regarding the Wyandotte Nation. (The Interior and NIGC opinions are available at www.nigc.gov./resources/Indian Land Determinations.)

As also discussed in my written testimony, Interior requires a tribe that was acknowledged pursuant to the regulations at 25 C.F.R. Part 83, to show that it has historic and contemporary ties to land before Interior will designate land as the initial reservation of such tribe pursuant to section 20 (b)(1)(B)(ii).'' (See memoranda dated December 13, 2000, from the Acting Associate Solicitor for Indian Affairs to the Regional Director of the BIA's Midwest Regional Office about the designation of lands as the initial reservation for the Huron Potawatomi Band in Michigan and June 23, 2003 from the Acting Associate Solicitor for Indian Affairs to the Regional Director of the BIA's Midwest Regional Office about the designation of lands as the initial reservation for the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan.)

What is of concern to the Greenville Rancheria, and other landless tribes that we have communicated with, is that it appears that the Committee—not to mention other tribes and the media—is lumping all off-reservation gaming into one category, failing to distinguish between two-part determinations under section 20 (b)(1)(A) from the applications of landless tribes under sections 20 (b)(1)(B)(ii) and (iii). The Greenville Rancheria does not categorically oppose tribes seeking off-reservation gaming operations through the two-part determination of section 20 (b)(1)(A); we are confident that most are meritorious, and realize that some are completely lacking in merit. Nevertheless, two-part determinations, no matter how meritorious, should not be confused with applications on the bases of sections 20 (b)(1)(B)(ii) and (iii).

In City of Roseville v. Norton, 348 F.3d 1020, 1030 (D.C. Cir. 2003) the Court of Appeals held that ''the exceptions in IGRA § 20(b)(1)(B) serve purposes of their own, ensuring that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones.'' The Court also recognized that § 20(b)(1)(B)(ii) ''provides a parallel exception for the 'initial reservation of an Indian Tribe acknowledged by the Secretary,'" and noted the parallel placement of the two exceptions in the statute, as well as the analogous situation in which restored and acknowledged tribes find themselves'' (which is to say landless). City of Roseville at 1030-31. The Court also emphasized ''the role that IGRA's exceptions in § 20(b)(1)(B) play in the statutory scheme, namely to confer a benefit onto tribes that were landless when IGRA was enacted.'' City of Roseville at 1032.

The court makes clear that the purpose of the exceptions contained in section 20 (b)(1)(B)(ii) and (iii) is to provide tribes that were landless at the time of IGRA's enactment a chance to share in the economic development opportunities of tribal governmental gaming without having to comply with the two-part determination provision of section 20(b)(1)(A). The two-part determination was intended for tribes that had land at the time of IGRA's enactment, and therefore an opportunity to game on existing tribal lands without being subject to the two-part determination

[1] All trust land acquisitions for a landless tribe are, by definition, off-reservation acquisitions. We assume that, for landless tribes, the Secretary considers the distance of the land proposed for acquisition from the tribe's service area.

and the governor's veto power.[2] The distinction between two-part determinations under section 20 (b)(1)(A) and applications for landless tribes under sections 20 (b)(1)(B)(ii) and (iii) was valid in 1988, it is still valid in 2005, and it should not be discarded by Congress.

In summary, the Greenville Rancheria believes that the regulations at 25 C.F.R. Part 151, the two-part determination process[3], including the governor's veto authority and the requirement that restored and acknowledged tribes show both historical and contemporary ties to the land, all work to ensure that tribes are not able to take land into trust for gaming purposes anywhere they may desire. Local communities are consulted through the Part 151 process and the two-part determination process.[4] If a restored or acknowledged tribe can show sufficient ties to the land, neither states or local communities should have veto power over trust acquisitions; to permit such a veto power would be an abdication of the United States' trust responsibility to these landless tribes.

Question 3

Like question 2, this question lumps all off-reservation proposals together, failing to distinguish between two-part determinations and applications by restored or acknowledged tribes. It also fails to recognize that the courts, Interior, and the NIGC all require a restored or acknowledged tribe to show that it has historical and contemporary ties to the land it wishes to acquire for gaming purposes. Whether a tribe seeks to enter into the aboriginal territory of another, existing tribe in the context of a two-part determination is a relevant factor for consideration by Interior, and Interior should consult with the indigenous tribe to determine what, if any, economic impact the proposed casino will have on it.

Keep in mind that tribal aboriginal territories often changed as tribes moved into other areas. For example, in Strong v. United States, 518 F.2d 556, 565-66 cert. denied 423 U.S. 1015 (1975), the Court of Claims recognized the establishment of aboriginal title for two tribes for use starting in the mid-1700s. The Strong court affirmed the Indian Claims Commission's ("Commission") finding of aboriginal title for the Delaware and Shawnee Tribes in two small portions of Royce Area 11 in Ohio. 31 Ind. Cl. Comm. 89, 121-23 (1973). The Delaware owned their tract from 1742 to 1781, and the Shawnee tract was "continuously used and occupied . . . from the late 1730's until they were forced to abandon these lands in the late 1770's." 31 Ind. Cl. Comm. at 122-23. The fact that the Delaware and Shawnee tribes did not establish their uses in Ohio's Royce Area 11 until the mid 1700s demonstrates that they moved there from other areas.

Some areas were also shared by several tribes. As a general rule, when a tribe attempts to claim aboriginal title to a piece of land, it must prove that it exclusively used and occupied at least portions of the land in question "to the exclusion of other Indian groups." United States v. Pueblo of San Ildefonso, 513 F.2d 1383, 1394 (Ct. Cl. 1975). However, this general rule on exclusive use is subject to several exceptions, including the joint and amicable use exception, under which "two or more tribes or groups might inhabit an area in "joint and amicable" possession without erasing the "exclusive" nature of their use and occupancy." Pueblo of San Ildefonso, 513 F.2d at 1394 (affirming the Commission's holding that the Pueblos of San Felipe and Santo Domingo held "joint aboriginal title" from at least 1770 to June 13, 1902 to approximately 8,600 acres of land). The court has acknowledged on several other occasions that two or more tribes or groups might inhabit a region in joint and amicable possession without destroying the "exclusive" nature of their use and occupancy, and without defeating Indian title. Turtle Mountain Band of Chippewa Indians v. United States, 203 Ct. Cl. 426, 442 (1974); Iowa Tribe of the Iowa Reservation in Kansas and Nebraska v. United States, 195 Ct. Cl. 365, 370 (1971), cert. denied, 404 U.S. 1017 (1972); Confederated Tribes of the Warm Springs Reservation of Oregon v. United States, 177 Ct. Cl. 184, 194 n 6 (1966) Sac and Fox Tribe of Indians v. United States, 161 Ct. Cl. 189 n 11, cert. denied, 375 U.S. 921 (1963).

In addition to the changing and sharing of territories, some tribes were preciseness out by wars, disease, enslavement, and other depredations. In other words, not every inch of the United States is covered by the aboriginal territory of an existing tribe (whether or not federally recognized). Also, many tribes were removed from

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[2] As the court points out, bills considered in earlier Congresses contained a prohibition against gaming on lands acquired after enactment, but they did not contain the exceptions set forth in Section 20(b)(1)(B). City of Roseville at 1029 (noting that "neither H.R. 1920 nor its Senate counterpart contained the "restoration of land" exception").

[3] Two-part determination applications are usually accompanied by Part 151 applications.

[4] Compliance with the National Environmental Policy Act is also required for Part 151 applications and two-part determinations, and this process also provides an opportunity for community input.

their aboriginal territory to other parts of the United States. How should such tribes be treated, whether they seek to establish an off-reservation gaming site or to protest the establishment of one by another tribe?

Finally, because of the depredations committed against the Indians of California, and due to the dislocations that resulted, the use of the concept of aboriginal territory or even "ancestral lands" can be very misleading. Not much was known about California's native peoples before the onslaught of Euro-American settlement. Because of the rapid and extreme devastation experienced by Indian communities due to the gold rush, early twentieth century ethnographers had to use what is referred to as "salvage ethnography" to try to piece together the social, cultural, and political fabric of native life before the invasion of their territory by the gold rushers and those who followed. As a result, it is simply not possible to establish aboriginal territory in California with the same level of preciseness that may be achievable in other areas of the United States.

What's more, because of the dislocation of Indian communities in California, many current- day tribes are made up of people of more than one tribal heritage. Our own tribe is made up of people of Mountain and Conkow Maidu heritage, as well as people of Wintun ancestry. Further, because they were illegally dispossessed of our homelands, our ancestors were no longer able to sustain themselves through the traditional means of hunting, fishing, and gathering, so they were forced to neighboring areas in order to find work as a means to survive. Our ties to these areas date back to the early to mid 1850s, well in excess of the time the Indian Claims Commission determined is sufficient for a tribe to establish aboriginal territory. See United States v. Seminole Indians, 180 Ct. Cl. 375, 387 (1967) (refusing to set fifty years as the minimum number of years for establishing aboriginal title in all cases); The Alabama-Coushatta Tribe of Texas v. United States, 1996 U.S. Claims LEXIS 128 (1996) (concluding that the Tribe had sufficiently domesticated the land supporting its village sites and the immediate vicinity for a period of 30 years, satisfying the long time requirement); Confederated Tribes of Warm Springs Res. v. United States, 177 Ct. Cl. 184, 194 (1966) (quoting Sac and Fox Tribe of Indians of Oklahoma v. United States, 315 F.2d 896, 905, cert. denied, 375 U.S. 921 (1963)) ("The time requirement [of the aboriginal title doctrine], as a general rule, cannot be fixed at a specific number of years").

In summary, questions regarding the definition of aboriginal (or ancestral) territory, and the weight to be given such territory in two-part determinations, require a collaborative effort between Indian country and the Committee. The Greenville Rancheria is willing to cooperate in such an effort.

Question 4

A cap should be placed on all revenue sharing with state governments—whether from on- or off-reservation gaming. First, revenue sharing should not be permitted unless annual tribal net revenues reach a certain level: for example $5 or $10 million. The percentage paid on revenues exceeding the exempt amount should be capped at about ten percent, and should be permissible only in exchange for substantial economic benefit, such as the exclusive right to offer certain gaming activities.

Question 5

If the United States and the various states are unable to afford the necessary financial commitment that will enable the settlement of a land claim, some other form of consideration must be identified in order to permit a settlement that is fair to the tribal claimant and that leads to the quieting of titles in the claim area. The right to operate a casino is a significant right that can constitute valuable consideration and support the extinguishment of a tribe's land claim.

Because land claims under 25 U.S.C. § 177 generally involve illegal purchases or takings of tribal land by state governments, the settlement of a land claim brought under 25 U.S.C. § 177[5] generally requires an agreement between the state and the

[5] Section 177 provides in pertinent part that:

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of $1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the

tribal claimant, and the tribal/state settlement agreement must be approved by Congress.[6] The need for the enactment of legislation by Congress provides a chance for everyone to be heard—including the state, local communities, the claimant tribe, and other tribes that might be impacted—directly by Congress and through their respective delegations. Gaming under section 20(b)(1)(B)(i) can not take place without a tribal/state settlement and without an act of Congress. In short, Congress has a full opportunity to weigh the pros and cons of a particular land claim settlement and the propriety of gaming on land acquired through the settlement.

Question 6

Indian tribal sovereignty generally, and Indian gaming in particular, are unpopular in the eyes of much of the public. That this has long been so demonstrated by cases such as Cherokee Nation v. Georgia, 30 U.S. 1 (1831), and Worcester v. Georgia, 31 U.S. 515 (1832). Since the Supreme Court decided these cases early in our Nation's history, it and other federal courts have decided literally hundreds of cases wherein states and local governments have attempted to: (1) tax tribal lands and the incomes of reservation Indians; (2) regulate the use of reservation and trust lands; (3) curtail the exercise of hunting and fishing rights; and (4) regulate and adjudicate the internal relations of Indian tribes; and (5) challenge almost every exercise of tribal self-government. If Indian tribal government did only those things that enjoyed wide spread public support, we would have to give up our sovereignty and right to self-government. So, the level of public support enjoyed by Indian tribes cannot be the sole or primary guide to how we exercise our sovereignty, nor should it be such to our trustee, the United States, whether acting through Congress, the executive branch, or the federal courts, when protecting our sovereignty and powers of self-government.

More than anything, what encourages the proliferation of off-reservation gaming proposals is the number of landless tribes and the severe poverty throughout Indian country. We do believe that steps can be taken that will make the process of acquiring land for off-reservation gaming purposes more transparent, and additional transparency may in turn reduce the number of such proposals by eliminating those that lack serious merit. We do not think that greater restrictions are necessary because we believe that the standards addressed in Question 2, and the gubernatorial veto power of the two-part determination process, provide sufficient protection. We believe that Interior should adopt regulations that make clear the Secretary's decision-making process, and the factors considered, under the two-part determination. Likewise, Interior should adopt a regulation that sets forth the standards and procedures for determining whether land qualifies as restored to a restored tribe or the initial reservation of an acknowledged tribe.

We understand the desire for certainty because we would like to have certainty with regard to our own proposal. Anyone knowledgeable about the legal history of Indian affairs in our country realizes that, while Indian tribes have much in common, they all have their own unique histories and experiences in dealing with the

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Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty.

[6] For example see the following:

Rhode Island Indian Claims Settlement (25 U.S.C. §§ 1701 et seq.) (Acknowledging that the Settlement Agreement executed between parties to the lawsuits and others interested in the settlement of Indian land claims within Rhode Island requires implementing legislation by Congress and the legislature of Rhode Island) See § 1701(d).

Florida Indian (Miccosukee) Land Claims Settlement (25 U.S.C. §§ 1741 et seq.) (Acknowledging that agreements executed between Florida and the Miccosukee Indian Tribe for the purposes of resolving tribal land claims and settling lawsuits involving land claims require implementing legislation by Congress and the Legislature of Florida) See § 1741(4).

Connecticut Indian Land Claims Settlement (25 U.S.C. §§ 1751 et seq.) (Recognizing that the parties to the lawsuit and others interested in the settlement of Indian land claims within Connecticut have reached an agreement which requires implementing legislation by Congress and the Legislature of Connecticut) See § 1751(d).

Massachusetts Indian Land Claims Settlement (25 U.S.C. §§ 1771 et seq.) (Acknowledging that the parties to the lawsuit and others interested in settlement of Indian land claims within Massachusetts executed a Settlement Agreement that, to become effective, requires implementing legislation by Congress and the General Court of Massachusetts) See § 1771(4).

Florida Indian (Seminole) Land Claims Settlement (25 U.S.C. §§ 1772) (Acknowledging that the State, the district, and the tribe have executed agreements for the purposes of resolving tribal land claims and settling the lawsuit that require implementing legislation by Congress and the Legislature of Florida) See § 1772(4)(B).

Mohegan Nation (Connecticut) Land Claims Settlement (25 U.S.C. §§ 1775 et seq.) (Recognizing that, in order to implement the agreements between Connecticut and the Mohegan Tribe, executed for settlement of the action referred to in this Subchapter, it is necessary for the Congress to enact legislation) See § 1775(a)(8).

onslaught of American expansion. A "one-size-fits all" approach to the issue of off-reservation gaming is bound to be grossly unfair to most tribes still struggling to climb out of poverty and despair and to become self-sufficient. What is needed is a fair, flexible, and transparent process, and we believe that this can be done through regulations. Congress should encourage Interior to engage in negotiated rule makings on this subject. The Greenville Rancheria will be a willing participant in such an endeavor.

Question 7

Like questions 2 and 3, this question appears to lump all off-reservation proposals together and fails to appreciate the distinction between two-part determination applications under section 20(b)(i)(A) and applications for restored and acknowledged tribes under section 20(b)(1)(B)(ii) and (iii). For tribes with existing reservations or trust lands as of the date IGRA was signed into law, the primary intent was to foster economic development on those existing lands. Nonetheless, as the two-part determination process demonstrates, Congress did anticipate some level of off-reservation gaming by tribes with existing reservations.

With regard to landless tribes, the answer to this question is emphatically and categorically no: Congress did not intend IGRA to promote economic development on existing lands because restored and acknowledged tribes generally had no land base at the time of IGRA's enactment. We remind the Committee once again of the decision in City of Roseville wherein the Court of Appeals held that "the exceptions in IGRA § 20(b)(1)(B) serve purposes of their own, ensuring that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones." City of Roseville at 1030. As the Court further emphasized, "the role that IGRA's exceptions in § 20(b)(1)(B) "play in the statutory scheme, namely to confer a benefit onto tribes that were landless when IGRA was enacted." City of Roseville at 1032. We implore the Committee not to lose sight of the distinctions between various off-reservation gaming proposals and the purpose of the exceptions under section 20(b)(1)(B).

Question 8

Because the Greenville Rancheria is not fully informed about the facts and law regarding the efforts of the governor of Minnesota to enter into an agreement with tribes to conduct gaming in an urban area under the auspices of the Minnesota State Lottery, we cannot comment on the particulars of that venture. We are not aware of any federal statute that requires the Secretary to ensure that tribal interests are protected in a venture such as the one you describe, and to our knowledge, there would be no federal scrutiny of the outside investors, management contracts, or vendors. We cannot think of any reason that Congress should enact a statute requiring such oversight or scrutiny because, when a tribe ventures off of its reservation or trust land, it subjects itself to the non-discriminatory laws of the state. See Mescalero v. Jones, 411 U.S. 145 (1973). In this context, a tribe's right to self-government free from the interference of state and local governments is not implicated, and that is when tribes most need the protection of the United States as trustee. Furthermore, we do not think that federal bureaucrats, no matter how competent and well-meaning, can determine what is in the best interest of a tribe. Tribes need to be able to develop business experience and acumen, and that comes through making your own decisions.

Tribes do have the right to conduct businesses of any kind off their reservations and trust lands and subject themselves to state law in the process. While this is not the preferred model for the Greenville Rancheria, we understand that other tribes have this right. The proliferation of tribally owned gaming establishments operating under state law is not, to the best of our knowledge, prevalent or widespread. We would hope that tribes would rely on their sovereignty to conduct governmental gaming on tribal lands pursuant to IGRA rather than under state law. On the other hand, it is difficult to conceive of how tribes can be legally prevented from engaging in the kinds of businesses that others can engage in under state law without denying tribes due process and the equal protection of the law.

RESPONSE TO QUESTIONS FROM CONGRESSMAN GIBBONS

Question 1

The fact that Congress is considering legislation indicates that the cases referred to in the question are land claims. Land claim settlements should be evaluated on a case-by-case basis, with particular attention paid to the merits of the case, the compensation being offered by the state and the United States, the ties of the claimant tribe to the state and the specific area, and whether other existing tribes have

ties to the area. As discussed in the answer to question 5 from Chairman Pombo, land claim settlements generally require agreements with the state, which generally must be approved by the state and legislature. Hearings before both the state legislature and Congress help to ensure that all affected parties, including other tribes, are heard from. Most significantly, Congress, after hearing from all these parties, has the final say on whether and where gaming will be permitted under such a settlement.

The term "reservation shopping" is a pejorative and inaccurate term. As addressed in my written testimony for the March 17 hearing, and as discussed above, IGRA, through section 20 (b)(1)(A), does anticipate that there will be some off-reservation gaming, and through section 20 (b)(1)(B), Congress intended to "confer a benefit onto tribes that were landless when IGRA was enacted" by allowing them to game on lands acquired after the date of IGRA's enactment without complying with the two-part determination process. This was due to Congress' concern "that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones." Restored and acknowledged tribes are simply availing themselves of a right that Congress conferred on them.

As discussed in answer to question 2 from Chairman Pombo, the courts, Interior, and the NIGC require that a restored or acknowledged tribe demonstrate that it has historic and contemporary ties to an area before the land can be considered restored to a restored tribe or the initial reservation of an acknowledged tribe. It is not the fault of restored tribes that they were terminated by Congress, nor is it the fault of tribes acknowledged under 25 C.F.R. Part 83 that they were unrecognized by the United States for so long. The trust land acquisition process under 25 C.F.R. Part 151 and the compacting process each encourage, if not practically mandate, that tribes seeking to acquire off-reservation land for gaming purposes negotiate with state and local governments to address their reasonable and legitimate concerns.

Question 2

Landless tribes in California, the Greenville Rancheria, were not engaging in gaming before or during the Proposition 5 campaign, and we played no role in the campaign and made no promises to anyone. The tribes that were gaming in 1998 and conducted the Proposition 5 campaign had no right to speak for landless California tribes, and they certainly were not in a position to bargain away our rights under IGRA. As we've have already shown, section 20 (b)(1)(B)(iii) of IGRA provides for the right of restored tribes to game on lands acquired after the date of IGRA's enactment if the land qualifies as restored land.

With regard to opposition to off-reservation gaming by some tribes, we note that, in some cases, the opposition may be legitimate. In many cases, however, the concern is based on economic considerations only, though usually clothed in other terms. We believe that the current process for trust land acquisitions provides an adequate means for tribes to register their opposition, and the basis of it, to acquisitions by other tribes. Interior, and if necessary, the federal courts, are fully capable of sorting out the legitimate objections from those based merely on a desire for economic protection from competition, which seems to us grossly unfair and decidedly un-American.

Question 3

The question reflects a common misunderstanding regarding the regulation of Indian gaming. The answer lies within the legislative history to IGRA at S. Rpt. 100-446 on S. 555, "Indian Gaming Regulatory Act," Aug. 3, 1988 ("Senate Report") and IGRA itself. IGRA resulted from years of complicated discussions and negotiations between tribes, states, the gaming industry, the administration, and the Congress to establish a system for the regulation of gaming on Indian land. Senate Report, at 1-2. Recognizing the need to balance the competing policy interests and adjust the jurisdictional framework for the regulation of gaming, IGRA requires for any class III gaming that tribes and states enter into compacts to address the jurisdictional and regulatory issues.

As an initial matter, a review of IGRA's provisions is necessary. Class III gaming activities are lawful on Indian lands only if such activities are (1) authorized by an ordinance or resolution; (2) located in a state that permits such gaming for any purpose by any person, organization, or entity ;[7] and (3) conducted in conformance with a tribal-state compact. 25 U.S.C. § 2710(d)(1). Therefore, on the very face of the law, tribal gaming can be conducted only in a state that otherwise permits gaming.

[7] This is one of the key components of the law. In other words, if a state does not criminally prohibit the conduct of all gaming in the state, tribes are authorized by IGRA to conduct such gaming. Senate Report, at 6 and 9.

Furthermore, the "unlevel playing field" argument fails because tribal gaming is subject to state regulation through the compacting process.

In addition, IGRA is the state and tribal compromise for the concerns identified in this question. The Senate Report recognized the well-established principle of federal Indian law as set forth in the United States Constitution and federal statutes, and in decisions of the United States Supreme Court that, absent Congressional authorization, states do not have jurisdiction and cannot apply their laws on Indian lands. Senate Report, at 5. Tribes were sovereign entities when they entered into treaties with the federal government, and today they retain any rights under that sovereignty that have not been expressly relinquished. The Senate Report notes that IGRA was drafted to preserve the tribes' sovereignty, not to create new sovereign rights. Senate Report, at 5.

The compacting process was a means by which tribal and state governments could obtain their individual governmental objectives while working together to develop a regulatory and jurisdictional framework that would further the uniform application of the laws regulating gaming. Senate Report, at 6. The compacting process seemed to Congress to be the best way to balance the strong concerns of the states that their gaming laws be followed on Indian land and the tribes' opposition to state jurisdiction over their lands. The Senate Report noted that, since there was no federal nor tribal regulatory system for the regulation of gaming on Indian land, the logical choice was to use the existing state laws, although pointing out that use of the state laws did not involve submission to jurisdiction. While the compacting process was intended to allow states a regulatory role with regard to class III gaming, it was never intended to exclude a tribe from gaming in order to protect state licensed gaming enterprises from engaging in competition with tribes. Senate Report, at 13, or vice versa.

It has always been the law that tribes and their lands are exempt from state taxation. In Mescalero Apache Tribe v. Jones, 411 U.S. at 148, the Court explained the import of its decision in a companion case, McClanahan v. Arizona Tax Comm'n, 411 U.S. 164 (1973) (holding that states are without jurisdiction to tax income earned on an Indian reservation by a Indian resident of the reservation), declaring that states are without authority, absent consent by Congress, to tax Indian reservation lands or Indian income from activities occurring within the boundaries of a reservation. Moreover, tribes are restricted in their use of gaming revenues, unlike their commercial counterparts. Net revenues from any tribal gaming must be used (1) to fund tribal government operations or programs; (2) to provide for the general welfare of the Indian tribe and its members; (3) to promote tribal economic development; (4) to donate to charitable organizations; or (5) to help fund operations of local government agencies. 25 U.S.C. § 2710(b)(2)(B).

Question 4

We have discussed the criteria used by the Secretary in review trust land applications under 25 C.F.R. Part 151 in our answer to Chairman Pombo's question 2. As explained there, as the distance between the land proposed for acquisition and the tribe's reservation (or service area) increases, the Secretary gives greater scrutiny to the tribe's justification of anticipated benefits from the acquisition, and greater weight is given to the concerns of state and local governments with regard to factors covered by §§ 151.10 (e) and (f). Also as discussed in answer to Chairman Pombo question 2, it is generally required that a tribe demonstrate both contemporary and historic ties to land before the land can be considered restored to a restored tribe or the initial reservation of an acknowledged tribe.

The last part of this question assumes that a significant number of tribal members live on or near a reservation. While this is true for some tribes, it is generally not the case for landless tribes, and it certainly is not true for the Greenville Rancheria. The majority of our members do not live in Plumas County, the county in which the Rancheria is located. Instead, and as a direct result of the Tribe's illegal termination, more members live in the Red Bluff area of Tehama County and in the Shasta County towns of Redding, Shasta Lake City, and Anderson, than live in Plumas County. The simple fact is that a tribe may enable more members to take advantage of casino jobs by locating a casino at some distance from its current reservation or trust lands.

Moreover, the revenues from off-reservation casinos can be invested in other forms of economic development to create jobs on the reservation or in the service area. Also, those revenues can be invested in the form of services to tribal members who live on or near the tribe's reservation or within its service area, which in turn can improve the quality of life of those members. The investment of tribal revenues in services to members also creates more jobs. In short, the investment of revenues from off-reservation casinos can greatly improve the quality of life of members living

on or near reservations or trust lands, or in tribal service areas. As to the possible disruptive affects that off-reservation casinos may have on tribal communities, the affects of federal policies embodied in the General Allotment Act and the various termination statutes that Congress has enacted over the years have had a far more disruptive impact on tribal communities that an off-reservation casino will ever have. And in many cases, the revenues from an off-reservation casino may be one of the few means by which a tribe can effectively address those ill affects by allowing the tribe to rebuild its land base to provide its tribal members a contiguous homeland and place to renew their culture and traditions of self-government.

Question 5

As I have already discussed above, restored and acknowledged tribes must show that they have both contemporary and historical ties to the land they wish to acquire for gaming purposes. The requirement of contemporary ties generally ensures that at least some tribal members live in the area of the land proposed for trust acquisition. However, this question is based on a faulty premise: that the members of landless tribes live in a fairly confined area. Particularly for landless tribes, and due directly and inescapably to their landless status, the members of such tribes generally live in dispersed communities. With regard to the Greenville Rancheria, more of our adult members live in the Red Bluff area of Tehama County and the Shasta County communities of Anderson, Shasta Lake, and Redding, than live in Plumas County. Twenty-nine adult members live in Red Bluff and the Shasta County communities, and only twenty-one live in Plumas. The remainder of the Tribe's 96 adult members live in other California counties and other states.

Question 6

I refer again to my written testimony and to answers provided above. The two-part determination process provides the governor of the state with veto power over off-reservation acquisitions under section 20 (b)(1)(A). The regulations at 25 C.F.R. Part 151 require additional scrutiny for off-reservation applications, and, as the distance between the reservation or service area increases, greater weight is given to the objections of local communities. With regard to the exceptions under section 20 (b)(1)(B)(ii) and (iii) for acknowledged and restored tribes, respectively, both contemporary and historical ties to the land are required. With regard to land claim settlements, they require an agreement with the state and an act of Congress. All of these factors work together to ensure that tribes are not able to acquire land any where they want at any time they want.

As to tribes "playing by the rules," keep in mind that most of the tribes currently gaming in California—including those who purportedly made promises they had no authority to make in the Proposition 5 campaign—were gaming for years before they had class III compacts.

Question 7

It is only recently that tribes have been able financially to make campaign contributions, and very few tribes can afford to do that. Even fewer tribes can afford to take advantage of the exception you refer to, and therefore have no occasion to know of its existence. The Greenville Rancheria certainly cannot afford to make campaign contributions, and given the long unmet needs of our tribal membership and the modest revenues we hoped to earn through our proposed gaming operation, I doubt that we will be considering campaign contributions anytime in the near future. Given the level of poverty in most tribal communities, and the lack of adequate health care, dilapidated schools, impassable roads, and substandard housing, there is scant hard evidence that tribal governments have achieved an unfair advantage in gaining access to those who hold the reins of power (and appropriations) in Washington, D.C. To the contrary, as the ongoing scandal involving Jack Abramoff demonstrates, tribes have been taken advantage of in this arena.

Question 8

I refer to the first paragraph of the answer to question 6. All of these factors combine to make it extremely difficult for tribes to cross state lines for gaming purposes. Such proposals are subject to intensive review and the strictest level of scrutiny.

We are not familiar with the details of the proposal of the Cheyenne Arapaho Tribes, but I refer to the answer to Chairman Pombo's question 5. If, as the question suggests, the Tribes' land claim was already settled, the claim is not valid, and there will be no basis for an agreement between the Tribes and the state, and there will be no occasion for Congress to enact legislation approving such a settlement agreement. Similarly, regardless of whether the claim was settled in the 1960s, if it is otherwise without merit, it cannot provide the basis for a settlement that results in the Tribes acquiring land for gaming purposes in Colorado.

The CHAIRMAN. Thank you. And it is Ms. Jaimes? OK. I apologize for mispronouncing it originally.

Ms. JAIMES. OK.

The CHAIRMAN. Mr. Leecy?

STATEMENT OF KEVIN LEECY, CHAIRMAN, BOIS FORTE RESERVATION

Mr. LEECY. Good afternoon, Mr. Chairman and honorable committee members. I wish to extend my appreciation to the Chairman for providing me with the opportunity to testify before you today. I respectfully ask that the Chairman accept my written testimony and make it a part of the record of this hearing.

Mr. Chairman, it is my understanding that the Indian Gaming Regulatory Act of 1988 had as its fundamental purpose the protection of tribal government gaming to create, develop, and promote on-reservation economies. Congress intended it to strengthen tribal self-government. Congress wanted to ensure, and properly so, that the tribal governments were the primary beneficiaries of the gaming revenues, that the tribal governments would retain the sole proprietary interest in the gaming enterprises, and that the tribal governments would be the primary regulatory authority over the gaming activities.

The ever-increasing proposals to create off-reservation gaming threaten to undermine the fundamental purposes of the Indian Gaming Regulatory Act. In my home State of Minnesota, for example, such proposals are being used to divide tribes and to extort money from tribes with successful and modest gaming operations.

The Bois Forte Band of Chippewa is located in northeastern Minnesota. It is approximately 250 miles from the Twin Cities of Minneapolis and St. Paul. We have an on-reservation population of 1,000 and have engaged in gaming since 1986. We offer both Class II and Class III activities in a facility that was built in 1988 and has approximately 25,000 feet of gaming space.

We are geographically isolated and depend on our gaming to fund a large portion of the operations of our government and its programs. We do not provide per capita distributions to our enrolled members. Due to our geographic isolation, we have come to understand the limitations of our market. Most of our casino customers come from within 90 miles of the reservation. However, we also depend heavily on transient guest traffic, which accounts for approximately 80 percent of our resort occupancy.

We believe that we are maximizing our opportunities within the nature of our market and have added some amenities, including a marina and golf course, which we opened last year. We have been engaged in providing gaming for over 16 years, and we feel that the statewide gaming market has matured. Apart from all of our location disadvantages, we have, nonetheless, created a successful business that provides an important source of jobs and revenue for the operation of our tribal government. The non-Indian community surrounding us also benefits from our gaming. Over the years, we have been welcomed into our rightful place as partners among the other governments in the State.

Over the years, we have observed from a distance the various proposals promoting off-reservation gaming by Indian tribes. These

have included the earliest proposals involving tribes seeking off-reservation locations to enhance their opportunities, private developers seeking both historic tribes or federally recognized tribes willing to relocate to off-reservation locations, and now States who are pitching off-reservation locations. The latter two are linked by a common objective—how do we raid the tribal treasury.

Most recently, the Governor of Minnesota, having failed to bully the tribes into submitting to his demands for revenue sharing, has now set on a new course. He is seeking to divide the tribes on the issue of gaming by embracing an off-reservation gaming proposal that had been languishing in the State legislature for the last 2 years. This proposal was picked up by the White Earth and Red Lake Bands of Chippewa. This year the Leech Lake Chippewa also joined the proposal. The proposed Minnesota legislation establishes a metro area casino operated jointly by the tribes with a new twist. The new wrinkle is that the activities will be authorized solely under State law, in disregard of the Indian Gaming Regulatory Act.

This is not the first time that such a venture has been proposed. The Minnesota proposal not only seeks to avoid any connection to the Indian Gaming Regulatory Act, but it also operates to actually exclude tribes from participating in an off-reservation gaming facility. The written legislation creates a State-administered means test to determine eligibility for tribal participation as follows:

To be eligible to participate in the tribal entity, the tribal government must demonstrate to the director of the State lottery that the revenues available to the tribal government from currently available revenue sources are insufficient to adequately meet the basic needs of tribal members.

In conclusion, Mr. Chairman, I share this information with you so that you will understand the never-ending permutations our tribes have encountered since gaming began. We oppose off-reservation gaming that results in the division of tribes, does not include a review of impacts of existing tribes and their on-reservation economies. We oppose the continued approval of revenue-sharing arrangements with tribes for any reason as illegal and inconsistent with the purpose of Indian gaming.

Thank you.

[The prepared statement of Mr. Leecy follows:]

Statement of Kevin Leecy, Chairman,
Bois Forte Band of Chippewa Indians of Minnesota

Good afternoon Mr. Chairman and The Honorable Committee members. I wish to extend my appreciation to the Chairman for providing me with the opportunity to testify before you today. I respectfully ask that the Chairman accept my written testimony and make it a part of the record of this Hearing.

Mr. Chairman, it is my understanding that the Indian Gaming Regulatory Act of 1988 (IGRA) 25 USC §§2701 et seq. had as its fundamental purpose the protection of Tribal government gaming to create, develop and promote on-reservation economies. Congress intended would strengthen tribal self-government. Congress wanted to ensure, and properly so, that the Tribal governments were the primary beneficiaries of the gaming revenues, that the Tribal governments would retain the sole proprietary interest in the gaming enterprises, and that the Tribal governments would be the primary regulatory authority over the gaming activities.

The ever-increasing proposals to create off-reservation gaming threaten to undermine the fundamental purposes of the IGRA. In my home State of Minnesota, for example, such proposals are being used to divide tribes and to extort money from tribes with successful gaming operations. I would like to explain to the committee what is happening in my state.

Mr. Chairman, the eleven federally recognized tribes located in Minnesota were the first to complete negotiations under the IGRA when in 1989 the Tribes and the State of Minnesota entered into a Class III Compact authorizing and regulating the use of video games of chance. Subsequent to the conclusion of the 89 Compacts the Lower Sioux Indian Community requested that the State of Minnesota negotiate a second Class III Compact that would authorize and regulate the play of blackjack. The State of Minnesota refused arguing that the play of blackjack was not within the scope of gaming authorized under state law. The Lower Sioux Indian Community, with the support of the other ten Tribal governments, sued the State in federal court pursuant to the IGRA asserting that the states refusal to negotiate blackjack was per se bad faith and that Minnesota law clearly supported the Tribes request. The matter was ultimately resolved by a consent judgment in federal court in the favor of the Tribe. As a result of that judgment, the State agreed to negotiate and the eleven tribal governments entered into Compacts authorizing and regulating the play of blackjack in 1991.

I wish to point out several important facts involving the negotiation of these Class III Compacts. First, while negotiating the 89 Compact it was imperative for the tribes to achieve several objectives. That there were to be no artificial restrictions placed on the video gaming activities under the Compact. The State sought restrictions in the form of limits on the number of machines, limits on the hours of operation and limits on the age of players to name a few. Second, the Tribal governments understood that they would need to make substantial investments in their infrastructures to take complete advantage of the Class III Compact. Neither the federal government nor the state government would finance this development and the Tribes knew that they would need to turn to the marketplace for the financing. What the Tribal governments wanted to avoid was the high priced financing offered by individuals and groups who preyed upon the Tribes in the ten years prior to the adoption of the IGRA. Third, the Tribal governments wanted to enforce the principle that the Tribes were to be the primary regulators of these activities. Fourth, the Tribal governments wanted to ensure that the Tribes were to be the primary beneficiaries of the revenues from these activities. The Tribes fought hard to avoid state imposition of taxes on the activities and the IGRA clearly states such a prohibition. Lastly, the Tribal governments had been operating gaming on its reservations since the late 70's and knew very well the positive impacts that gaming revenue had on their governments, and on their communities both on and near the reservation.

In order to maximize the opportunities presented by the IGRA, the Tribes sought and received Class III Video Compacts that had no term and came without the artificial restrictions proposed by the State. The State received in return the ability to participate in oversight of the regulatory aspects of the Compact and the ability to track the movements of machines within the State. The State also received assurances that facilities in which the activities would take place will be safe and that procedures would be implemented to protect the public from unscrupulous operators. Also important to the State was the fact that all of these activities would take place on-reservation which would impact the decision on the part of the State's citizens whether or not to engage in the gaming. Bluntly, that tribal gaming would not be that accessible. The State also understood the positive impacts of the gaming activity including the reduction of unemployment in those reservation areas for Indians and non-Indians, the development of the infrastructures necessary to serve the gaming facilities, the use of gaming revenues to support and establish programs and services to tribal members such as housing, medical clinics, dental services, public safety, courts and education to name a few. The State also knew that these monies would be spent in areas that are often the hardest hit in the downturns of the State's economy. Given the status of the State's economy in the early 90's it was also seen as an economic stimulus for these rural communities.

The negotiation of the blackjack Compact of 91 introduced the idea of reimbursing the State for its expenses incurred in the carrying out of certain oversight duties under both Compacts. It also reflected the Tribe's acceptance of a limitation of its right to request the negotiation of Compacts for other activities in light of the federal courts' broad recognition of the extent of activities that were authorized under state law. In return for this foregoing of the right to request Compacts on additional activities the Tribes reserved such right if the State were to explicitly authorize any expansion of gaming in the future. To this day, the Tribes continue to limit their activities to the two authorized activities, video games, and blackjack. The State however did authorize an expansion when five years ago the State allowed private for-profit horse track operators to open a card club. Last year that card club earned in excess of 29 million dollars. The private for-profit operators of the track do not pay any state taxes on the card room income.

Since 1991 the Tribes have invested well over 200 million dollars into building their gaming facilities and supporting facilities and other amenities. They have also spent millions on each of their reservations building structures that support Tribal communities. The tribes in the face of diminishing federal and state grant support did all this. They have established on-reservation economies where none existed before and they are reaching out to their neighbors. They have become the new economic engines within their communities.

We have also seen over the last ten years proposal after proposal to expand gaming in the State. In the last three years we have seen two, and this year three tribes are promoting off-reservation gaming proposals under state law. These proposals did not go anywhere until this past year when the current Governor decided that he wanted revenue sharing from the Tribes and the Tribes did not capitulate.

The Governor's approach was to meet with the tribal leaders in early January of 04 and inform them of his new policy to expand gaming in the state unless the Tribes would revenue share. He gave the Tribal leaders a couple of days to mull over his request and when the Tribal leaders politely responded to his demand he responded by informing the public and the Tribal leaders in his State of the State address that he wanted the Tribes gaming money and if he did not get it he would expand gaming in Minnesota.

OFF-RESERVATION GAMING IS BAD PUBLIC POLICY

The Bois Forte Band of Chippewa is located in Northeastern Minnesota. (Attachment 1) It is approximately 230 miles from the Twin Cities of Minneapolis and Saint Paul. We have an on-reservation population of 1000. We are part of the Minnesota Chippewa Tribe, which was established in 1934 as an umbrella organization representing five other Chippewa Bands in northern Minnesota. We have engaged in gaming since 1986. We offer both Class II and Class III activities in a facility that was built in 1988 and has approximately 25,000 feet of gaming space. We are geographically isolated and depend on our gaming to fund a large part of the operations of our government and its programs. We do not provide per capita distributions to our enrolled members. Due to our geographic isolation, we have come to understand the limitations of our market. Most of our customers come from within 90 miles of the reservation. It has become very important to be conservative in our decision-making when it comes to our gaming enterprise. We however believe that we are maximizing our opportunities within the nature of our market and have added some amenities, including a marina and golf course, which we opened last year. A segment of our market includes people from the Twin Cities of Minneapolis and Saint Paul. We have been engaged in providing gaming for over 16 years and we feel that the statewide market for gaming has matured. Apart from all of our location disadvantages, we have nonetheless created a successful business that provides an important source of jobs and revenue for the operation of our tribal government. The non-Indian community surrounding us also benefits from our gaming. Over the years, we have been welcomed into our rightful place as a government among the other governments in our state.

Over the years, we have observed from a distance the various proposals promoting off-reservation gaming by Indian tribes. These have included the earliest proposals involving tribes seeking off reservation locations to enhance their opportunities, private developers seeking both historic tribes or federally recognized tribes willing to re-locate to off-reservation locations and now, States who are pitching off-reservation locations. The latter two are linked by a common objective—how do we raid the tribal treasury.

Most recently, the Governor of Minnesota, having failed to bully the tribes into submitting to his demands for revenue sharing, has now set on a new course. He is seeking to divide the tribes on the issue of gaming by embracing an off-reservation gaming proposal that had been languishing in the state legislature for the last two years. This proposal originated within the urban Indian community and was picked up by the White Earth and Red Lake Bands of Chippewa. This year the Leech Lake Chippewa have also joined the proposal. The proposed Minnesota legislation HF 1817 establishes a metro area casino operated jointly by the tribes with a new twist. The new wrinkle is that the activities will be authorized solely under State law.

This is not the first time that such a venture has been proposed. The Minnesota Governor's Chie aide, Dan McElroy had actually pitched this as the Kansas Model in early discussions with the tribes in Minnesota. The point is that the States are now shopping tribes much as the private gaming developers have shopped tribes to entice them into these off-reservation projects. As we know from experience the end result will be simply another example of tribes being separated from their resources.

It is our concern that this is not an isolated incident. The original demands for Minnesota tribal revenue began with the Governor suggesting that he wanted a "better deal for Minnesotans" claiming that the tribes had not contributed anything to the state irrespective of the 15,000 direct jobs created by Minnesota tribal gaming and the over 80 million dollars a year that flows into state coffers from non-Indian employees. In reference to the terms of the existing Compacts, he said that they were old and not consistent with current realities. He claimed that the tribes held a monopoly over gaming within the state and there must be competition. His idea of competition was to enrich the private for-profit owners of the local horse track by giving them gaming machines and creating a racino. The state legislature gave the local track a card club five years ago and to this day exempts the revenues from corporate taxes. The private operation thus made a cool 29 million dollars last year without providing any direct benefit to the State.

The Governor demanded that the tribes fork over 25% of their revenues. "Why?" he was asked. His answer was, "That is what Connecticut and California get and I want the same". He justified his demand by suggesting that Minnesota produces the third largest gaming revenues behind Connecticut and California when in fact it is the region, which includes Michigan, Wisconsin, Iowa, Nebraska, North and South Dakota, and Wyoming that is the third largest among the National Indian Gaming Commission regions.

Finally, he pushed the Kansas Model as the one that he prefers and asked the tribes to consider the Kansas model. We looked at the Kansas Model and we were not impressed with what we found. The Kansas Model is an off-reservation proposal in which two of the resident tribes have agreed to participate in a facility that will be located in Kansas City. The facility will be operated by an entity the majority of which may be non-tribal. This proposal will require revenue sharing with the state and local governments. If the tribes close their existing facilities the state will make payments to the counties where these facilities were located in order to ease the burden created by the loss of jobs and other impacts related to the closure. Interestingly the Model does not include funding to make up for the loss of revenues that the two remaining resident non-participating tribes may incur. However, under the Model the State of Kansas takes care of the horse tracks by authorizing the distribution of 600 machines to each of three tracks in the state. The State takes care to make the tracks whole and than some. The one redeeming feature of this Model is that it at least anticipates federal review under the IGRA § 2719. The Minnesota proposal does not anticipate any federal review.

If the Kansas model and others similar to it are subjected to IGRA standards, they will not pass federal muster for several reasons: the tribes do not retain the sole propriety interest in the gaming, the tribes are not the primary regulators of the activities, and the tribes are not the primary beneficiaries of the revenues raised by the gaming activities.

The Minnesota proposal not only seeks to avoid any connection to the IGRA, but it also operates to actually exclude tribes from participating in an off-reservation gaming facility. The legislation creates a State-administered means test to determine eligibility for tribal participation as follows:

> "(2) to be eligible to participate in the tribal entity (operating entity), the tribal government must demonstrate to the director (of the State Lottery) that the revenues available to the tribal government from currently available revenue sources are insufficient to adequately meet the basic needs of tribal members including, but not limited to, housing, medical care, education, or other governmental services to members;"

The Minnesota proposal creates an alleged "partnership" between the participating tribes and the state that can only be described as a one sided deal where the tribes assume all the liability and risk in financing and operating the enterprise while the State takes its 200 million dollar license fee and one third of the revenues off of the top. The State Lottery Director and the Director of Public Safety can make decisions that will become operating expense costs to the participating Tribes with respect to regulatory functions, some of the more expensive operating activities in a casino, without tribal review. The Tribe is required to waive its immunity with respect to disputes between the parties and these disputes will be heard within the State's administrative law process. If a State official decides the Tribes have violated any of their responsibilities, he sends the matter to the State Lottery Director who can penalize the tribes or end the partnership. The State will also control the licensing process and State decisions made with respect to licensing are not reviewable.

I am not a lawyer but this "partnership" as currently proposed is so one sided that it cannot be viewed as a legitimate contract. The problem is that this overreaching is not something new to tribal governments. In the early days of tribal

gaming, it was common to find contracts that tribes executed with management groups that were as unfair as the Minnesota proposal. It was common for the tribe to pay the manager anywhere from 60-90% of the revenue of the gaming activities. There were instances where this manager would also be leasing gaming devices to the tribe with the lease fee also being as much as 30% of the machine take, on top of the management fee. The IGRA stopped this by putting in place the NIGC management contract review process and established ceilings on the fees and the term of management agreements. The Minnesota "partnership" will be exempt from any such oversight or regulation.

Mr. Chairman and Committee members, I share this information with you so that you will understand the never-ending permutations that tribes have encountered since gaming began that are designed to separate tribes from their revenue. This understanding will be valuable as you consider policy issues relating to off-reservation gaming. The Minnesota proposal is not home grown or isolated to Minnesota. It is the product of deliberate actions that have evolved from the early deals in Connecticut to Wisconsin to California to Kansas and now to Minnesota. It has been advocated by State officials in spite of the clear prohibition against state taxation of tribal gaming activities found in the IGRA, a prohibition that the BIA and the NIGC seem to ignore. It is apparent that states have now declared an open season on tribal gaming revenues. The Minnesota proposal represents yet another evolution of the strategy to circumvent the protections established in the IGRA. The worst part is that it attacks tribes' on-reservation developments and economies. The Bois Forte Band is not the only tribe concerned by this development in Minnesota. The Chairman of the Fond du Lac Band of Chippewa issued a news release (attachment 2) after the Governor held a press conference announcing the "partnership" a couple of weeks ago and in the release the Chairman declares to the Governor that "Fond du Lac (is) not for sale at any price". The Bois Forte Band and seven other tribes in Minnesota share the sentiment of the Fond du Lac Chair that indeed our Sovereignty is not for sale.

We understand that this hearing is the first of several the Committee intends to hold. Although we do not have specific recommendations for amending the Bill to address the concerns that we raise today we hope to provide those recommendations after further consultations with the other tribes in Minnesota. I thank the Chair and the Committee members for this opportunity to appear and testify on this very important subject.

[Attachments to Mr. Leecy's statement follow:]

ATTACHMENT 2

Fond du Lac Band Reservation
Business Committee
1720 Big Lake Road
Cloquet, MN 55720
Phone: (218) 879-4593
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News Release: March 4, 2005

FOND DU LAC BAND NOT FOR SALE AT ANY PRICE

FOND DU LAC RESERVATION (CLOQUET, MN)—The Fond du Lac Band of Lake Superior Chippewa has become aware through news reports that Governor Pawlenty has succeeded in dividing the Tribes in Minnesota with his false promises and insincere concerns over the well-being of the Tribes.

The Governor will announce his "partnership" with the Red Lake, White Earth, and Leech Lake Bands of Chippewa. It is also reported that he will leave the door open for other tribes to join the "partnership." Following is the response of Fond du Lac Chairman Peter Defoe:

"Mr. Governor, the Fond du Lac Band is NOT FOR SALE AT ANY PRICE.

The Fond du Lac Band fought hard for federal legislation to protect gaming for the purpose of developing our on-reservation economy. Your proposal to expand gaming by offering an off-reservation casino will adversely impact our reservation economy, and the reservation economies of other northern and rural Tribes. You claim that the basis for presenting the proposal is to help the state budget and those "poor" tribes who have not seen the same benefits that the Indian Gaming Regulatory Act (IGRA) has bestowed upon tribes located closer to large populations. Governor, the IGRA was never intended to guarantee equity to all tribes.

There are over 520 federally recognized tribes in this country and only 270 of those tribes engage in gaming at some level. Your rhetoric characterizing the partner tribes as representing 85% of the Indian population in Minnesota is justification for your proposal, yet you fail to share with the public that only 1/4 to 1/2 of their tribal members actually live on their reservations. Further, you have argued that these tribes are without economic opportunities. The Tribes indeed have needs that should be met with some assistance from the State, but your cynical plan would provide this assistance by harming the on-reservation economies of the remaining Tribes in the State.

The unmet needs that exist on those three reservations did not develop in the past year. Their needs existed while you served in the Minnesota House of Representatives for a decade (1993-2003); their needs existed while you campaigned for Office of Governor; and their needs have existed while you have occupied the Office of Governor. Yet, it is only in the past year that you have seen the opportunity to use their unfortunate status as the smoke screen to help your wealthy friends who own the Canterbury racetrack. This is a poor excuse to hurt the rural economies that have benefited both Tribes and the non-Indian communities surrounding the reservations.

The government treaty negotiators used alcohol, the U.S. Army used blankets infected with small pox, and now you attack our economies, all in an effort to coerce tribal government to bend to your demands.

We reject your immoral plans.

[Responses to questions submitted for the record by Mr. Leecy follow:]

Response to questions submitted for the record by Chairman Kevin W. Leecy, Bois Forte Reservation

From Chairman Pombo:

1. Under the Section 20 two-part determination in IGRA, the governor of a state is cast in the role of representing and protecting the interests of both the state government, and the local governments that exercise jurisdiction in the area proposed for casino gaming. However, as state governors increasingly look to tribal casinos to provide large amounts of revenue sharing to supplement the state budget, it has been argued that governors are now in a position where their fiduciary interest in securing a tribal revenue stream for state government conflicts

with their duty to represent the interests of local communities in the two part determination process.

- With the potential of this large financial incentive to a state for a governor to overlook the concerns of local communities, can it be said that local communities can still be adequately represented solely by the governor's participation in the two part determination process?
- Or does this potential conflict of interest presented to governors suggest that IGRA should be modified to give affected local communities a formal role in concurring with the Secretary's two-part determination findings?

ANSWER

Because the Governor has made expansion of gaming part of his political agenda he has lost his ability to remain open to the concerns of both local communities and non-participating tribes. The danger is especially acute when the expansion of gaming is ostensibly to operate under the auspices of state law and that same law limits tribal participation by imposing a means test.

2. Under established principles of tribal sovereignty, local communities do not have a say in decisions involving tribal land that is already held in trust by the federal government. However, off-reservation gaming proposals involve taking land into trust that is currently held in fee and is often not even closely located to trust lands.

- Is it a fundamental right of tribes to have land taken into trust on their behalf at any location within the United States they so desire, irrespective of the distance to their current reservation or any connection to ancestral or native lands?

ANSWER

It is our view that it is a fundamental right of tribes to have land taken into trust on their behalf, but not at any location in the United States. However, there may be some exceptions. For example, in Minnesota the reservation of the Prairie Island Indian Community is located within 600 yards of a nuclear power plant. It would be our view that in the event of a nuclear accident that renders their reservation uninhabitable they should be provided new land and they should be allowed to operate gaming on those lands.

- If not, what limitations should apply on where a tribe can or cannot have lands taken into trust on their behalf?

ANSWER

The land in question should have a historical, cultural, or geographical connection to the petitioning tribe. The process should include a requirement that the Secretary consider the impact of granting such a petition on existing tribal governments, and require consultation with affected tribes.

- Should a higher standard of review apply when the off-reservation lands in question will be used for purposes of gaming?

ANSWER

The current standard is acceptable.

- Should this standard include active participation and a requirement for concurrence from local governments, even though they are generally otherwise prohibited from having a say on matters concerning Indian lands?

ANSWER

We disagree with a requirement of local concurrence.

3. Tribes have long fought to protect their ancestral lands from the unwanted incursions of outsiders, both Indian and non-Indian alike.

- If a tribe is seeking to have land taken into trust in an area that is not within the ancestral lands of that tribe, should other tribes whose ancestral lands encompass the site have the ability to object to the land going into trust?

ANSWER

Yes, those tribes must be consulted and allowed to participate in the review of the petitioning tribe's request and supporting documents. The petitioning tribe must have the burden of demonstrating need for the request. Although "need" can be a relative term, perhaps it could be found to exist if the petitioning tribe clearly demonstrates that the benefits to all affected tribes outweigh the detriments to those tribes.

- The ability to veto the land going into trust?

ANSWER

No

- How can the term "ancestral lands" be defined as precisely as possible so it is clear to all observers, Indian and non-Indian alike, which lands are ancestral to any given tribe?

ANSWER

Those lands to which a tribe had attained recognized title. For example, if a tribe sought and received relief in the Indian Claims Commission (or its successor) with respect to land, it had to establish standing to bring the claim. That could be *prima facie* evidence of recognized title.

4. Should a cap be placed on any revenue sharing with state governments from an off-reservation gaming facility?

ANSWER

It is our legal position that "revenue sharing" is a state tax on the revenues generated by the gaming facility and as such prohibited by the IGRA. The only expenditure authorized by the IGRA is to pay for services rendered or expenses actually incurred by a state or local government and related to the gaming activities. Revenue hungry states also use the word "fee" to disguise what is clearly a tax, and that is all the more reason to limit the availability of tribal revenues to payment for services rendered. It is a violation of the IGRA for the BIA to approve revenue-sharing arrangements and subjects the federal government to claims of breach of the trust responsibility owed the tribes by the federal government.

- If so, what should the cap percentage be?

5. Should a tribe be able to ask for or accept a casino operation as a substitute, either in whole or in part, of a cash payment to settle a land claim?

ANSWER

Yes, we would support the sovereign right of a tribe to make that determination.

- If a casino is acceptable as a settlement, should tribes whose ancestral lands encompass the location where the casino would be located be consulted before the settlement is finalized?

ANSWER

Yes, we support a requirement of consultation with impacted tribes.

- Should they be allowed veto power over such a casino-based settlement as a tool to protect their ancestral lands?

ANSWER

No, but the decision to authorize this acquisition must include a socio-economic impact analysis of the sort conducted under NEPA.

6. While there have been only three incidences since IGRA was enacted of off-reservation land being placed into trust for gaming purposes, there are currently dozens such projects either in the proposed stage or being reviewed by the BIA.

- What impact do you think all of these proposals have on public support for Indian gaming?

ANSWER

It is our position that off-reservation proposals are inconsistent with what we consider the centerpiece of IGRA: the development, promotion, and protection of on-reservation economies. These proposals open tribal gaming to criticism from a public that has supported on-reservation gaming as beneficial to both tribes and the local communities.

- Do you believe that the vagaries of current law regarding off reservation gaming encourage the proliferation of proposals for off-reservation gaming?

ANSWER

First, for the most part non-Indian interests (both private and governmental) drive these off-reservation proposals and subordinate tribal interests to the interests of others. Second, the vagaries have created a cottage industry of con artists who whisper promises of extraordinary gain to tribal governments and naive but greedy investors if the off-reservation project should become reality. The pattern that follows is an effort of several years which results in promises unfulfilled, a drain on financial resources and then the whisperers move on to their next victim. Left in their wake is the unraveling of long term tribe to tribe relationships and harm

to relationships between tribes and state and local governments. Tribal political good will is exhausted and tribal and investor financial resources are lost.

- Do you believe that clarifying the law on off-reservation gaming, and placing greater restrictions on when off-reservation gaming is allowed, will reduce the number of proposals for off-reservation gaming?

ANSWER

Yes, and going even further, we believe that only the outright elimination of off-reservation gaming acquisitions will eliminate the wanton waste of tribal resources.

- Will such changes serve to weed out proposals for off-reservation gaming of dubious merits?

ANSWER

Each proposal for off-reservation gaming is touted as having impeccable merits. The catch is that if it is not politically acceptable, it is a waste of time and tribal financial resources to chase the dream. Eliminating the option will save resources.

7. Do you believe that the original intent of IGRA was to allow Indian gaming to be conducted at any location within the United States that a tribe is able to purchase and have placed into trust?

ANSWER

No. It is our belief that the original intent of the legislation was to develop on-reservation economies. The existence of the off-reservation acquisition language was to provide relief in extreme cases of need. However that need must always be documented, and in all cases the socio-economic impact on other tribes must be considered prior to authorizing the acquisition.

- Or was the original intent of IGRA to foster economic development on Indian lands held at the date of enactment?

ANSWER

See, preceding answer.

8. In Minnesota, the governor is entering into an agreement with three tribes to operate an urban casino under the auspices of the Minnesota State Lottery. As currently constructed, IGRA would not apply to this proposal. Is there any other statute authorizing or requiring the Secretary of Interior to ensure tribal interests are protected in such gaming proposal as this where at least one of the parties is a tribal government or tribal government business enterprise? Should there be?

ANSWER

There is no other statute that would require or authorize the Secretary to become involved in a scheme that does not involve Indian trust lands or Indian gaming as contemplated by the IGRA. There should be a mechanism by which the Secretary would protect tribes from predatory influences-much like the management contract review requirements of IGRA. However, it must be carefully crafted to ensure that bureaucratic delays and intransigence do not threaten all Indian business ventures.

- Does this agreement violate the terms of any tribal-state compact in Minnesota?

ANSWER

No, but the Governor's current proposal to expand gaming by authorizing a new full-fledged casino in the Twin Cities market and by creating a racino (slot machines) at the Canterbury track will mean that the waiver agreed to by the tribes in the Blackjack compacts (not to request negotiations on other Class III gaming) is dissolved. The result of that is to open the door for tribal expansion to offer full-fledged casinos.

Furthermore, it is our view that the action by the Minnesota Governor violates the spirit of the promise of no-expansion of gaming, which was a foundation principle in the Blackjack compact.

- What would be the impacts to tribes around the country if other governors entered into similar agreements with tribes in their states?

ANSWER

The Governor in Minnesota is using his threat to expand gaming in response to the Tribes' refusal to cave in to his demand that the tribes pay the state of Minnesota 350 million dollars. This so-called "revenue sharing" proposal is nothing more than an illegal tax. Another part of his plan is to divide the tribes by offering the metro casino to any tribes that meet his definition of "needy". Finally, he has proposed that the casino be located a few miles down the road from an existing tribal casino. That tactic caused two of the three tribes to abandon the proposal, yet the Governor persists.

The catch is that the participating tribes must pay a 200 million dollar fee to the state up front, build the facility without state financial participation and split the future revenues of the facility with the state with the state receiving 66 per cent of the adjusted gross revenues and the tribes splitting 33 percent. In addition, the tribes from its share would also be required to pay 2% all adjusted gross revenues to the local government hosting the facility and .5% to the Commissioner of human services for problem gambling. The state "generously" capped this revenue commitment at 2.5 million dollars.

The participating tribes will be required by lenders to engage a management group, which will further cut into the tribal revenues. The state agreement will not have any of the protections offered by the IGRA that will restrict the management group to a fee ceiling, a guaranteed monthly payment, or a limited term. This agreement would never pass muster in a review by the NIGC. The agreement is as bad as, if not worse than, those seen in the industry in the early 80's.

The impact of this type of agreement, (if successful) will be that other states will have another strategy to access tribal gaming revenue and undermine tribal gaming under IGRA.

- In such a deal as proposed in Minnesota, what is the level of federal scrutiny of outside investors, management agreements, and vendor contracts?

ANSWER

NONE

- Are the tribes entering into this deal capable of determining whether they will benefit from it? Are they capable of knowing whether developers, casino management companies, and the state government might be taking advantage of them?

ANSWER

Based on the testimony of tribal members opposed to the Governor's proposal, it is our understanding that the tribes have been kept in the dark about the details of the financial arrangements. They have no information on the impact of the state's operational and regulatory decision-making authority that the state reserved to itself in the agreement. The state can make decisions that increase operational costs that the participating tribes will have the obligation to pay but not have the authority to control.

In the Governor's proposal the tribes must assume financial responsibility for all of the development which will cost the participating tribes over 500 million dollars plus operational costs. The state assumes no financial responsibility, yet receives 200 million dollars for a license fee up front and then takes 66% of the revenue. This is unconscionable. The irony is that the only tribes eligible to participate are those that the State deems to be "needy" and it is those tribes which will be saddled with massive debt and risk.

From Congressman Gibbons:

1. This Committee has held hearings on legislation that would allow a tribe to go hundreds of miles off their reservation and open a casino in the ancestral lands of another Tribe.
   - Do you have any specific suggestions on how Congress should proceed in this regards?

ANSWER

Congress should create standards that place the burden on the requesting tribe to demonstrate why granting such a request is necessary. If there are existing tribal governments that may be affected, those governments

should be given a veto over the request and that veto should apply whether the authority is sought under either federal law or state law.

- Also, with over 300 tribes seeking recognition and presumably gaming, please comment on the impact that a policy permitting "reservation shopping" and "off-reservation gaming" will have on communities across the country.

ANSWER

The impact can be managed only if there is participation provided to the existing tribes which may be impacted by such action.

2. A few years ago, during the Proposition 5 campaign that allowed full-scale Indian gaming in California, the tribes ran television ads stating they wanted to do gaming just on their reservation lands. Now in California, there are several tribes that are trying to conduct off-reservation gaming.
   - If a tribe has a reservation and/or a traditional service area, why should any tribe is permitted to establish gaming off-reservation, distant from its reservation?

ANSWER

They should not be able to do so if the sole purpose is to gain an economic advantage created by the move and that advantage creates a disadvantage to existing tribal governments.

- Also, please comment on the fact that other tribes are opposed to tribes seeking "off-reservation" gaming.

ANSWER

It is our understanding that the centerpiece of the IGRA was to establish, promote, and support on-reservation economies. The tribes seeking off-reservation gaming for the sole purpose of creating some economic advantage that results in harm to on-reservation economies are acting inconsistently with that purpose.

In Minnesota the Governor seeks to impose his definition of fairness on the tribes by luring tribes from remote locations to participate in the establishment of a metro area casino. His fair deal will take advantage of the participating tribes by taking the bulk of the revenues and leaving the tribes with all of the debt. It is his position that IGRA created an unfair playing field that he must now correct. This is insincere and cynical because his purpose for creating such a plan is to exact revenge on the tribes for refusing to cave into his demands for an annual tax of 350 million dollars.

3. When tribes seek to enter already established gaming areas, doesn't that create an unlevel playing field since tribes are not subject to state regulations; are not subject to the restrictions placed on other gaming establishments; do pay not state taxes; etc.?

ANSWER

When tribal governments are able to recover from 200 years of community deficits then we can have a discussion about a "level" playing field. When Indian people attain the same levels of quality of life as enjoyed by the majority culture then we can talk about "even" playing fields. When Indian people no longer occupy the bottom of every list whether it is health, mental health, access to medical care, education, housing or economics then we can start to talk about a "level" playing field.

4. What criteria should be used by the Department of the Interior in it's determination of land-into-trust?

ANSWER

The existing standards are sufficient. The problem is in the application. The problem is the bureaucracy.

- Should there be a requirement of substantial historical connection between the tribe and the parcel to be taken into trust? Why/why not?
- How recent should the historical connection be? 100 years? 200 years?
- What about distance from the tribe's current service area? 10 miles? 20 miles? 70 miles?
- Do you believe that the farther away the casino site is, the less likely tribal members will be able to take advantage of employment opportunities with a casino? [Alternatively, if the tribal members move near the casino to get jobs, then will the traditional community/service area be disrupted?]

ANSWER

There should be a historical nexus between a tribe seeking trust status and the location of the land, but the requirement of a substantial connection to a particular parcel may be impossible to prove. A historical nexus is necessary because otherwise it would create a chaotic scramble of all tribes seeking the prime locations. Using a current service area is too artificial. Tribes often circumscribe their service areas because of insufficient funds to serve an expanded are.

Yes, the creation of an urban casino will disrupt the traditional area. The success of Bois Forte's on-reservation casino and related resort development has created housing demand as members move back to the reservation. Those same opportunities will not be available at a distant, urban casino.

5. If landless, shouldn't land-into-trust be restricted to the area where the tribe is located? Where they live, need jobs, need health care and services?

ANSWER

Yes.

6. If some tribes are permitted to select the "best gaming" locations, wouldn't all tribes want to do that?
   - What about tribes that played by the rules and have their casino on their reservation land, even though it may not be the best gaming location?

ANSWER

The Bois Forte Reservation is one of the most remote in Minnesota. In light of this fact, we have carefully managed our gaming enterprises to maximize our opportunity by fully understanding our market. We are successful given our location. Our expectation was never to accept the concept that "if we build it they will come". We kept our expectations realistic, we did not overbuild, and we have expanded based on sound analysis. We have resisted the notion that instead of bringing the customers to our casino we should take our casino to a more populous area.

This is where we live. This is the land that was reserved by the wisdom of our ancestors and we are committed to providing our members the best opportunities we can right here on our reservation.

We have always understood that gaming was never intended to guarantee that all tribes would achieve the same level of financial success. It was intended only as a tool to be used by each tribe as they determined.

It is unfair to claim that those tribes who have had the benefit of location to large populated areas must share their wealth with other tribes, and it is important to note that Minnesota's most successful tribes have in fact shared their wealth with others.

7. Please comment on how the federal campaign contribution laws apply to tribes and the fact that tribes are exempt from overall donor limits and can give directly from their treasuries. No other organization is similarly situated.

ANSWER

It is inappropriate to refer to tribal governments as "organizations". Our governments existed at a time when the United States was nothing more than an "organization". The existing federal campaign laws appropriately recognize tribes as sovereign governments.

8. Please comment on the increasing trend of tribes now crossing state lines away from their reservation to establish gaming.
   - Please comment on the situation in CO where the Cheyenne-Arapaho of Oklahoma are seeking land in CO to establish gaming. In that situation, the tribe is claiming 27 million acres even though their land claims were definitively and legally settled in the 1960s. Their action is designed to force the Governor to agree to a smaller parcel near the Denver Airport for gaming.

ANSWER

See Response to 2 & 3.

The CHAIRMAN. Thank you.

Ms. Quan?

STATEMENT OF JEAN QUAN, COUNCIL MEMBER, CITY OF OAKLAND, CALIFORNIA

Ms. QUAN. Thank you. It is nice to see the Congress people here, Ranking Member Miller also, so thank you, Mr. Pombo and members of the Committee for allowing us to speak today. And I really appreciate you taking up what's become a very difficult and very divisive issue in California.

California in our area, in the East Bay, is now facing—and I'm not going to read my statement. It's in your record. I'm going to emphasize a few points. We're facing within a 30-mile area of the East Bay five Indian casinos right now. And they're introducing more in jurisdictions on city councils and many of the political, I think, situations in the East Bay may change because of this.

I represent an area in Oakland that ranges from CEO mansions in Oakland Hills to the Mormon Temple to neighborhoods where 60 percent of the kids who enter kindergarten don't speak English. I probably represent one of the most economically diverse districts in my city and maybe in California.

I authored the resolution against Indian casinos, the one that's proposed at the Oakland Airport, with a lot of support from people from every neighborhood. I'm speaking today on behalf of that situation. Chairman Pombo, we did not have an opportunity to study your whole bill, but we strongly support the provision in it that requires the approval of the local jurisdiction.

What we found under the Koi Nation situation is, we think, the ultimate case of reservation or casino shopping. Their argument is that even though they were not the native tribe that they had trade and hunting in that region. Under that argument, anyone in northern California could suddenly have a casino moved into its neighborhood, and under the situation here, whether or not the local government approves of it.

I'm speaking today on behalf of the East Bay Regional Park District, the mayors of Berkeley, Alameda, and our neighboring city to the south, San Leandro.

What we have in Oakland is a situation where we feel that the Bureau of Indian Affairs or potentially the Federal Government is substituting basically their power over our power of our mayor, our planning commission, our council, and our port authority.

The site that we're talking about is the Martin Luther King Shoreline Park area. This is the last marsh in the East Bay. It is on the Pacific Migratory Flyway. It is over 1,000 acres of restored fragile land, which houses several threatened and endangered species. It's on title land. It has deed and land use restrictions, including a Federal decree, consent decree, about environmental issues. It is next to the airport. It's not a great site. Apparently you can't fish off the shore now thanks to the security measures that the Federal Government's required, but you could gamble and you could put up a seven-story hotel which would be in the path of some of our flight ways at the Oakland Airport. And, again, I understand that if this becomes tribal land that we won't have anything to say about that.

So I want to address three issues. From the very beginning, we have problems with the way and—the controversial and questionable way in which the tribe was recognized. I have this document,

and we've made copies for you, an internal memo from the department that's been in our papers recently, which basically has the staff of the BIA saying that the approval of this did not meet your regulations and was perhaps illegal.

So the tribal rights and how the city got into this situation was done in a way—and, Chairman Pombo, we would ask you to investigate that, because, frankly, as the Chair of the Finance Committee in a city that's going to cut $30 million, I'd prefer not to spend money on lawyers to fight this over the next 10 years. The reason we would be willing to fight for this is that we've looked at the impact of urban casinos and we see that suicides, bankruptcies, abuse of minors, domestic violence, bankruptcies, and the recent Thompson study of the Lytton Tribe shows that maybe as much as $100 million from our local economy would be taken out of our area, and that most of the studies show, particularly in an urban area, that the people who will come to gamble in urban casinos live within 30 to 50 miles. East Oakland is a very poor community. The poorer you are and the less educated you are, the more likely you are to gamble. I grew up in Oakland. I talk about being a Chinese American, and grew up with legends, because of the Chinese Exclusion Act, of Chinese grandfathers who never made it back to China and never sent money back home because of gambling. So I do have a prejudice here. But it really victimizes mostly—particularly slot machines, which only return 25 percent of the money back to the people who gamble, really victimizes the poor the most. So we feel very strongly about it.

Second, we believe that the process by which it was prepared, the environmental impact statement and the NEPA process is flawed. If this land is land that is environmentally not safe, we've regraded it for commercial but not for habitation. Why is the BIA spending the money on this process and forcing me as an elected official to spend the money on this process?

The bottom line here is that there may be communities—and I respect them—that may want casinos, but the basic question here is the issue of local control. This is a community where not only our city is united and opposed to it, but our neighboring cities and the county supervisors and our regional park district, and a site that is terribly, terribly flawed. But I suspect that we will all spend hundreds of thousands of dollars fighting this because of a decision that was made which did not meet your regulations, did not meet your rules, and may be illegal.

So I would ask the Committee to please help us in this situation. Thank you.

[The prepared statement of Ms. Quan follows:]

Statement of Jean Quan, Council Member,
City of Oakland, California

Good afternoon Chairman Pombo, Ranking Member Rahall and Members of the Committee. My name is Jean Quan and I am a Council Member in the City of Oakland, California representing the citizens of the 4th Council District. Thank you for inviting me to appear and testify at this oversight hearing. On behalf of my colleagues and our citizens, I extend my deep appreciation for your willingness to address these difficult issues.

Currently, California is experiencing a proliferation of Indian gambling proposals with at least five being proposed for urban areas in the eastern San Francisco/Oakland Bay Area, including one in the City of Oakland. Investigations by the

media, criminal and civil authorities, and the committees of Congress are exposing questionable practices related to federal recognition of Indian tribes and the preemption of state and local jurisdiction over our communities by federal officials taking land into trust for casino development. My testimony focuses on what is happening to us and to our community, but I believe our concerns are shared by many other communities throughout the United States.

The City of Oakland opposes any legalized gambling establishment within its municipal borders. The City made that decision after concluding that casino development creates unacceptable risks with severe, detrimental impacts on our densely populated urban community. Those impacts include increased crime, personal bankruptcy, blight, homelessness, domestic violence, child abuse, prostitution, suicide, fraud and traffic congestion. I have submitted with my testimony a copy of the Oakland City Council's resolution expressing those views. Moreover, almost every surrounding jurisdiction—the Cities of Alameda, San Leandro, and Berkeley, the Alameda County Board of Supervisors and the East Bay Regional Park District—opposes the proposed casino-hotel project. Under ordinary circumstances, that would be the end of the matter. However, aggressive tribal gaming developers and their lobbyists are trying to circumvent the right of Oakland and other Bay Area citizens to govern ourselves by appealing to federal officials in Washington. Those officials claim the authority to recognize Indian tribes and substitute federal and tribal jurisdiction for state and local jurisdiction over land within our city. The casino advocates would have the Secretary become the de facto Mayor and City Council of Oakland, and the arbiter of our community standards.

The following is some background on the situation in Oakland. In 2004, the Lower Lake Rancheria (also known as the Koi Nation) and the Department of the Interior began the process to locate a large-scale casino-hotel development in the City of Oakland on a 35-acre parking lot adjacent to the Oakland International Airport and Martin Luther King Shoreline Park. The Martin Luther King Shoreline Park encompasses 1,220 acres of land, associated tidal marshes, seasonal wetlands and a shoreline trail. It is part of the Pacific Migratory Flyway, is home to several threatened and endangered wildlife species and has 250,000 -300,000 visitors annually.

The proposed casino site is within our Port of Oakland's jurisdiction and is subject to several deed and land use restrictions, as well as a Federal Court consent decree addressing environmental issues on the site. City of Oakland has concluded that the site may not be developed for human habitation under any land use criteria, including single or multiple housing. There is a covenant on the title to the proposed site that requires that notice of hazardous substances be placed in any lease or purchase agreement for the property. The City has investigated and classified this property at considerable expense and with the health and welfare of its citizens as the primacy consideration. Now the Interior Department and the Tribe are forcing us to reinvent the wheel in a costly and time consuming process.

The Tribe is "landless", according to the federal government, and has been since the federal government sold off its land in Lake County in 1956. We cannot understand what would lead the federal Indian trustee to consider taking land into trust for Indians that is unfit for habitation. Consider also the health risk to the tens of thousands of hotel and casino patrons who would visit the site. Moreover, consider the safety and national security risks of locating a large, seven story intensive development immediately adjacent to the Oakland International Airport. Because of the environmentally sensitive nature of the adjacent Martin Luther King Jr. Shoreline Park, intense development on the site was intended to be limited. Few uses could be more intensive than a major casino/hotel operating twenty-four hours a day, seven days a week.

From the beginning, the Koi Nation's proposal was controversial and contained questionable aspects. First, consider the status of the Tribe itself. We urge the Committee to inquire into whether the 2000 recognition of the Tribe by the prior administration was procedurally or legally correct. The following facts suggest that the Committee should do so. By the Act of March 29, 1956 (Public Law 84-443), the United States converted the sold 140 acres of tribal trust land in Lake County, California (150 miles from Oakland) and, and deeded the remainder in fee simple to an Indian and his spouse who were reportedly the only inhabitants of the land at that time. Nearly a half century later, the Assistant Secretary for Indian Affairs purported to reaffirm the federal status of the Tribe. According to published reports, the Assistant Secretary took that action without processing the matter pursuant to the federal acknowledgment regulations (25 CFR Part 83), and over the strenuous objections of Bureau of Indian Affairs staff experts in charge of implementing the regulations. News reports indicate that the objections were based on legal concerns that the facts related to the Tribe did not justify reinstatement of federal status. (His participation in the legally questionable circumstances under which the Tribe

was recognized, further cloud this because the former Assistant Secretary is now a lobbyist for the Tribe's casino project).

Second, we also request the Committee to look into the propriety of what appears to be an ambiguous and misleading use of the National Environmental Policy Act and trust land acquisition procedures by the Department of the Interior to further Indian gaming development in Oakland. The published Notice (69 Fed. Reg. 68970, November 26, 2004) of the Secretary's intention to prepare an Environmental Impact Statement states only that it is for the purpose of determining the impacts of building a hotel and Indian casino project on the Oakland site. It does not advise the public that the land first has to be taken into trust and that there are significant issues and procedures associated with trust land acquisition that are separate and apart from casino and hotel development. See 25 CFR Part 151. In the parlance of Secretary Norton's cooperative conservation policy, the notice did not properly "communicate" to the public, and so the public cannot have an informed "consultation" with the Secretary about the proposed action.

Third, the Koi Nation's proposal is the ultimate case of "location shopping." The Koi Nation is from Lake County, more than 150 miles from Alameda County where the proposed site is located. And yet, the Tribe is asking for land in Oakland to be placed into trust on the Tribe's behalf.

No one can look at this situation and not see that something is wrong. We request that the Committee ask the Secretary to:

1) withdraw the original notice of intent to prepare an environmental impact statement;
2) terminate the existing NEPA process; and
3) investigate the propriety of prior administration's action to recognize the Tribe the Tribe's federal status has been completed.

Finally, we ask you to support the fundamental concept of local control. Please enact legislation that would prohibit any gaming development on land acquired in trust for an Indian tribe if the state, or any local governments in which the land is located or to which it is adjacent do not consent.

Thank you for your attention to our concerns.

[Responses to questions submitted for the record by Ms. Quan follow:]

Response to questions submitted for the record by Jean Quan, Councilmember, City of Oakland, California

I want to thank you and the committee for the opportunity to testify before you on March 17th. I want to thank you Chairman Pombo for taking the leadership in examining this complex issue of increasing public concern. Many important issues were discussed and I and my East Bay colleagues from the cities of Oakland, Alameda, Berkeley, and San Leandro, the County of Alameda, and the East Bay Regional Park District look forward to working with the Chairman and the Committee on addressing local concerns with tribal gaming in urban areas.

I specifically appreciate the opportunity to discuss the situation in Oakland with the Koi Nation and other potential tribes. I hope that the Committee and the Chairman will pursue some of the legal concerns raised regarding the Koi Nation's recognition and lack of historical connection to Oakland.

Please find my personal responses to the questions submitted to the speakers of March 17th. While the Oakland City Council has formally opposed the Koi Nation proposal, our scheduling and sunshine requirements did not allow time for formal review of these questions or responses.

Question 1: Conflicts of Interest Between State and Local Government (Pombo)

- The political struggle around the massive state deficit in California has been marked by many fights over revenues, pitting local interests against the state government. Indian casino revenues were a substantial part of the Governor's plan to balance the budget; it appears those revenues will fall far short of his projections. While we would hope that the Governor would be able to look beyond the financial resources offered by tribes and consider local communities input and concern on any gaming proposal, we cannot guarantee that this will occur. This is particularly true in a state as large and diverse as California. It cannot be said that local communities can be adequately represented solely by the Governor's participation in the two part determination test.

- Local communities should be part of the formal process. This should include communities that are directly impacted by a gaming proposal and communities within a certain radius of a gaming proposal.
- I cannot stress too much, how important it is, that local governments have input early on in the process. IGRA should be amended to allow local affected communities a role in the process. It is clear that even if the Koi Nation had been a local tribe and we were not opposed to a casino, we as local elected officials would never have planned a casino on a site that: 1) that will increase traffic congestion on the major bay freeway and airport access road; 2) that violates airport height restrictions and imposes increased security issues; 3) next to the last East Bay marshlands and home to endangered bird species; 4) on land that is restricted in development because of former industrial use and clean-up issues.

Question 2: Off Reservation Gaming and Tribal Sovereignty (Pombo)

- The United States has an historical obligation to promote tribal economic development. However, I would hope that the federal government would promote comprehensive economic opportunities beyond tribal gaming and that these efforts not come at the expense of other citizens. I do not believe tribes should not have a right to have land taken into trust at any location within the United States irrespective of the distance to their current reservation or any connection to ancestral or native lands, especially where those lands are to be used exclusively for gaming purposes.
- In California rural tribes which invested substantial resources to establish casinos on their reservations, now find their economic development threatened by urban casinos.
- Tribes should have a connection to the land before it can be taken into trust on their behalf and/or strong local support for taking the land into trust. The intended use of the land should also be considered and off reservation land should not be taken into trust solely for gaming purposes. For example, off reservation land that could only be used for gaming and not for housing, social programs or other economic development opportunities should not be taken into trust unless there is local support.
- I believe a higher standard of review should apply when the off-reservation lands will be used for gaming because of the social and economic impact on local communities, especially in urban areas. Land taken into trust solely for gaming purposes should be evaluated at a higher standard since it is not intended to be used for tribal housing, tribal social service programs or other economic development opportunities.
- Off reservation gaming should not be permitted without concurrence from local governments. Local governments should be actively involved in any proposal for off reservation gaming and should be contacted early on in the process. Tribes seeking off reservation gaming in a community should be required to contact and work with that community before proceeding through the NEPA or fee-to-trust process. There should be a threshold of support established before the formal BIA process for taking land into trust begins. If not, then local communities are forced to expend enormous amounts of monetary resources on projects that never had a chance of moving forward. This is an unfunded mandate on local governments and an unfair burden on communities with already limited resources. Requiring that proposals meet a certain threshold before beginning the formal process ensures that only strong gaming proposals move forward and protects local communities from unfunded mandates.

Question 3: Protection of Ancestral Lands (Pombo)

Again, I would urge the committee to examine how the Koi Nation received recognition and consider that if it did not meet the Department of Interior standards as recently published memos indicate, that the Oakland application be halted.

It is not for local communities to dictate how inter-tribal disputes or concerns are resolved; however, local communities in urban areas are concerned that multiple tribes will attempt to locate in their jurisdictions. There are five active attempts to place casinos within 30 miles of Oakland.

Urban areas are more appealing for gaming proposals given the large concentration of potential customers. Local communities have very real concerns that there will be an unfair concentration of gaming facilities in urban areas, which would have a significant impact on crime, prostitution, addictive gambling, bankruptcies, suicides, domestic violence and child abuse. Many studies show that lower income, less educated residents are more like to gamble. In urban communities this may compound existing social problems. Any change to inter-tribal ability to dictate the

location of lands taken into trust should carefully evaluate the possibility for over concentration of gaming facility in urban areas and the impact to urban communities.

Question 4: State Revenue Caps (Pombo)

I do not believe I would support revenue caps on revenue sharing agreement with either state governments or local communities from off-reservation gaming facilities. Different facilities might have different impacts on the local communities. In fact, off reservation gaming facilities should be required to enter into revenue sharing agreements with the affected local communities. Local communities receive most of the impact from gaming facilities and those impacts must be mitigated as part of any gaming facility approval.

At least one study by a noted authority concludes that the detrimental effects of locating a casino in a densely populated urban area can never be fully mitigated. This study estimates that over $100 million will be drained from the local economy as the result of state taxes, royalties, and payments to outside investors. (See William S. Thompson, A Casino for San Pablo: A Losing Proposition attached). Mitigation could be either in the form of a revenue sharing agreement, off-site improvements and/or a municipal services agreement. Whatever the form of mitigation, it must be required so that local communities are not unfairly impacted when gaming facilities locate in their jurisdiction.

Question 5: Casinos for Land & Sovereignty (Pombo)

This question involves very specific tribal issues and it is not for local government to dictate how land claims should be settled and what say other tribes should have over that settlement. However, in line with the second question, only providing a tribe with a casino operation may conflict with the United States obligation to assist tribes in becoming economically self sufficient. Gaming is just one of many economic development opportunities available to tribes. If a tribe is only granted a casino operation it may harm the tribe in the long run should that operation fail. It is clear to me after visiting casinos around the state, some operations are more prosperous than others and it is unclear how equally revenues are shared amongst tribe members. It seems preferable that any land taken into trust should be useable for a multitude of economic development, housing or social service opportunities.

Question 6: Increasing Off Reservations Proposals (Pombo)

- In Northern Bay Area of California there are at least 5 current off-reservation gaming proposals. Previously, Oakland received a number of other proposals for off reservation casinos to be located in this city. The sheer number of off-reservation gaming proposals is creating a backlash against Indian gaming. When California approved Indian gaming it did not envision off-reservation gaming or multiple gaming facilities in urban areas. Indian gaming is growing exponentially in California which only very recently since the passage of Proposition 5 in 1998 allowed Class III gaming in California.

  There are now two state propositions gathering signatures to put a moratorium on casinos. The spring assembly of the Association of Bay Area Governments will focus on casinos; while not taking a position, this focus reflects the growing concern of all local governments.
- IGRA in its current form does encourage the proliferation of proposals for off-reservation gaming.
- If more stringent standards are placed on off-reservation gaming, it should reduce the number of such proposals.
- If off-reservation gaming is more difficult to obtain, dubious proposals, like the Koi Nation's proposal in Oakland, should disappear. As discussed above this is an important point because of the economic strain these dubious proposals place on local communities. Local communities are forced to analyze every gaming proposal even those that are questionable. This places an unfunded mandate on local communities. If the standard for seeking off reservation gaming is made more stringent, some of these proposals should disappear thereby reducing some of the burden on local communities.

  Even with stricter standards for off reservation gaming, however, a threshold test should exist for any gaming proposal before the formal fee to trust or NEPA process is started. Because of the Koi Nation controversy, we believe the committee should also review the processes by which the Bureau of Indian Affairs recognizes landless tribes.
- Proposition 5 allowed for revenue sharing between tribes with casinos and those without. I think this might be the right direction. However, I have been told that the Koi, reported a tribe with 56 members most who are minors, receives

approximately $1 million per year but they still want to place a casino outside of their historical area and in our city even though all local governments are opposed.

Question 7—IGRA Intent

As a local official, I do not pretend to have an historical understanding of the act. My reading indicates IGRA was intended to foster tribal economic development. I do not believe that Congress foresaw the current rapid proliferation of proposals hundreds of miles away from historical tribal lands and in at least two cases across state lines and across the country. Any broad interpretation of IGRA that allows gaming on any land taken into trust, either before or after its enactment is wrong and the law should be clarified. Indian gaming should only be allowed on lands in trust at the date IGRA was enacted and on lands taken into trust where local communities support such a use of the property.

Question 8—Minnesota (Pombo)

This question involves issues in Minnesota and is not within my purview. I did find with interest that there seems to be the same conflict between tribes who have invested in resorts/ casinos on traditional lands and new proposed urban casinos.

Congressman Gibbons' Questions

Question 1—Reservation Shopping (Gibbons)

My comments under #6 above apply. With 300 tribes seeking recognition, who could use the current provision to put a casino anywhere, then no urban area in the nation would be unaffected. Same comments as above regarding threshold and unfair impacts on local communities both socially and economically.

Question 2—California, Proposition 5, and the Backlash (Gibbons)

- Same as above with discussion of backlash against Indian gaming and unfair impacts on local communities. See comments on #2 & #6.
- Off reservation gaming not only has the potential to impact urban communities more significantly, but also impacts rural tribes that complied with IGRA and the intent of Proposition 5 and constructed gaming facilities on their reservation lands. Those rural tribes should not be unfairly punished by tribes seeking off-reservation gaming. Proposition 5 also established a pool of resources for other California tribes that were not involved in Indian gaming. This pool was intended to ensure that tribes with ancestral lands in areas not conducive to Indian gaming were not penalized by not being able to conduct Indian gaming. Those tribes should not now be able to seek Indian gaming outside their ancestral lands in urban areas that have the potential for higher revenues.
- Also, a distinction should be made between economic development and gaming. There should be a different standard with respect to economic development from gaming and economic development from other sources. Gaming has very particular and very serious social and economic impacts. As a result, gaming should be treated differently than other economic development opportunities.

Question 3—Unlevel Playing Field (Gibbons)

Yes, we agree that tribes entering into already established gaming areas create an unlevel playing field because they are not subject to state regulations and local regulations

Question 4—Criteria for the Department of the Interior Determination of Land-into-trust (Gibbons)

- Tribes should be required to have a substantial historical connection to the land taken into trust. This would eliminate dubious proposals and help ensures that urban areas are not unfairly impacted from Indian gaming. Without some requirement for a connection, every tribe will try to locate in an urban area with a high concentration of customers and those local communities will suffer tremendously from the high social and economic impacts of Indian gaming.
- The historical connection should be significant and within a tribe's service area

Question 5—Land Characteristics (Gibbons)

Same as #2 above. Landless tribes should have land taken into trust that can be used for more than just Indian gaming. For example the proposed site for the Koi Nation casino might violate federal guidelines for housing, parks, schools or other social programs or needs because of contamination or conflicts with federal environmental and safety laws, it should not be taken into trust.

Question 6—Impact of Reservation Shopping on other Tribes (Gibbons)

Same as answer #2 above with regard to the shared revenue pool. In California many rural tribes located in areas with limited economic opportunities have invested heavily in facilities. They played by the Prop 5 rules and many are opposed to urban casinos.

Question 7—Unlimited Political Donations & Influence (Gibbons)

The ability of tribes to contribute to political campaigns and influence federal, state and local politics is a great concern. Many of the television ads and mailers in recent state elections of all kinds were financed by Indian gaming interests. The League of Women Voters is now looking into the issue in our state. In Oakland, polls are being conducted by the Koi nation and its investors on the popularity of various elected city officials. In another California community, the elected officials have changed over at least three times since Indian gaming was proposed. The ability of tribes to "buy" their way by backing elected officials that support their proposals is a very real concern and may add to a backlash.

Question 8 Crossing State Lines (Gibbons)

California has numerous tribes seeking recognition and the ability to conduct gaming. Because of the large number of potential California tribes, the issues of tribes crossing state lines to come to California is not one that I am familiar with and cannot comment on.

Additional Response For Representative Kildee:

I want to repeat that I have followed your work in defense of public education with great respect for many years as a former school board member and chair of the California Urban Schools Association and National School Board Association Council of Urban Boards of Education Chair. I have thought long about your questions about local control versus the federal role to protect the rights of Native Americans.

I believe that the federal government has the right to defend basic rights under the constitution and to prevail if local laws violate those rights. I think this issue is not equivalent to the civil rights battles of the recent past:

- In the case of reservation shopping, there is no historic tie to the land. I do not believe there is a fundamental right to have a casino anywhere off reservations in face of legitimate local opposition. I believe with our rich national resources we must be able to help Native American tribes find economic development without negatively affecting urban areas.
- I represent a city which has no ethnic majority; some say we are a majority minority with significant numbers of Black, Asian, Latino and white groups. Many of our residents are poor and working class people. According to studies on gambling and casinos they will be disproportionately negatively impacted by an urban casino.

Giving the right to an equal education and the right to vote, did not harm other groups and indeed contributed to the long term good of all Americans. Urban casinos have to possibility of having a disproportionate impact on the poor and in California specific minority groups are targeted by the gambling interests.

I know the committee has a difficult job before you. Thank you for this opportunity, please do not hesitate to contact me if I can be of further assistance.

NOTE: The attachment submitted for the record by Ms. Quan has been retained in the Committee's official files.

The CHAIRMAN. Thank you. I thank all of the panel for their testimony. As you have heard, we have just been called to a series of votes, so instead of beginning the questioning right now, I'm going to recess the Committee temporarily and let the members go vote. It will probably be about a 30-minute recess, and I apologize to you, but we have no control over when they call votes. But I would encourage the members to return as soon as they can after the final vote so that we can continue with the hearing.

We will stand in recess.

[Recess.]

The CHAIRMAN. The hearing will come back to order. To begin with, I want to apologize to our panel for the delay. It took a lot

longer to get through the votes than I originally anticipated, and I apologize to you for that.

Ms. Jaimes, I think I wanted to begin with you, if I could. And if you could clarify for me, in the draft legislation there are a number of different provisions. How do you anticipate that that would affect—if it were adopted the way it is written, how do you anticipate that would affect you? Because I am not exactly sure how it would, and that is one of the reasons why we put this out in a draft form, was to get that kind of feedback. How do you anticipate that would affect you in your tribe?

Ms. JAIMES. May I ask that I can have our attorney respond? I'd like our attorney to respond.

The CHAIRMAN. That is fine, but I have to swear you in.

[Witness sworn.]

The CHAIRMAN. Let the record show he answered in the affirmative. Please identify yourself for the record.

Mr. JORDAN. Thank you, Mr. Chairman. My name is Derril Jordan. I'm an attorney for the Greenville Rancheria.

As Chairperson Jaimes testified earlier, the tribe is proceeding as a restored tribe, and under the draft legislation, as I understand it, restored tribes would be subjected to now a new requirement that the Secretary would have to determine that the gaming for the tribe would be in the best interest of the tribe and not detrimental to the local community. That would be a new standard that restored tribes would have to go through. And most pertinently, it would subject the tribe's application to essentially veto by either the State or local government, and that is not currently the case for restored tribes.

The CHAIRMAN. Under current law, the State—you don't have to enter into a compact with the State currently?

Mr. JORDAN. We have to enter into a compact to conduct Class III gaming.

The CHAIRMAN. Does the State not have a veto power right now if the Governor chooses not to enter into a compact?

Mr. JORDAN. There really are two different processes there. One is approval of a compact. The other one is the taking land into trust. If a tribe acquires land in trust in the State, under the law the Governor doesn't technically have a choice not to enter into a compact with them. And as you know, in California, Proposition 1A was passed where the Governor—you know, where the State does enter into compacts, and I believe that that proposition waives the State's immunity so the tribe would be able to utilize the good-faith lawsuit provision in IGRA to bring suit against the Governor if the Governor chose not to enter into a compact.

But the compacting process and the land into trust process are really two distinct purposes or two distinct processes, but, on the other hand, though, your point is a good one in the sense that we're talking about, you know, unwanted gaming being foisted on the tribe. There is a compacting process that is required. And if a tribe does not have ties to an area, does not have ties to the State, then the Governor is in a better position to resist entering into a compact. But they are two distinct processes, though.

The CHAIRMAN. As far as taking land into trust, the way the draft is written, it doesn't change taking land into trust. It does impact the gaming.

Mr. JORDAN. Well, actually that would be a point that would need to be clarified. I think that's—

The CHAIRMAN. At least that is the way I intended it when I wrote it.

Mr. JORDAN. I'm not sure how the Department of Interior would understand it. But probably what they—and I'm guessing here, to some degree. Probably what they would—what they do now for a two-part determination that is subject to that two-part test, the Interior usually bifurcates the process. They do the two-part determination, and if the Governor concurs in it, then they do the land into trust process. My guess is they would probably do the same here; if the Governor did not concur, then that land would not be taken into trust, at least not for gaming purposes.

The CHAIRMAN. The other issue is the tribe currently has land in trust.

Mr. JORDAN. No, it does not. It owns some small amount of fee lands, but Greenville Rancheria does not own any lands in trust, or the United States does not own any lands in trust for the Greenville Rancheria.

The CHAIRMAN. I misunderstood the testimony then, because I believed that she said they had. We will have to go back.

Mr. JORDAN. 1.8 acres of land within the Rancheria boundaries is owned in trust on behalf of individual members of the tribe.

The CHAIRMAN. Does the tribe exercise jurisdiction over that 1.8 acres?

Mr. JORDAN. Yes, it has jurisdiction. Yes, the boundaries of the Rancheria were restored. The lands within it are Indian country. The tribe can exercise jurisdiction over the Rancheria, over that 1.8 acres, and the tribe does own 8 acres in fee within the boundary. But they're not owned in trust.

The CHAIRMAN. OK. On the 1.8 acres, what prevents them from establishing a gaming facility on that 1.8 acres?

Mr. JORDAN. It's owned by individual members of the tribe. It's not—it's owned in trust by the United States for individual members of the tribe, not the tribe itself.

The CHAIRMAN. OK. Mr. Jordan, I am going to have additional questions for you that I am going to give you in writing because I want to make sure I understand exactly what situation you are in, that the tribe is in, and how the draft legislation would affect them. So I am going to have further questions for you because I want to make sure I understand it, because the purpose of this was not to take away an economic opportunity away from anybody. But we do need to have some kind of control over how this is all happening right now, and I am sure you can understand that. But I do need to understand exactly what situation this particular tribe is in and how this would affect them.

Mr. JORDAN. We would be happy to answer your questions, Mr. Chairman.

The CHAIRMAN. Mr. Forster, again, to you I would ask: How do you anticipate the draft legislation affecting Amador County in the operations that are currently there?

Mr. FORSTER. I believe, Mr. Chairman, that clearly if we can have something that will control the ability of tribes to do the reservation shopping, you'll have less of an impact on the counties. We can talk about the residual effects of a casino all day long. Our problem lies with does the tribe—does any tribe when it comes in have the ability to game lawfully? And if we can have language in a piece of legislation that will prohibit this reservation shopping and look at a tribe's ability to game by either previous occupancy or some tie-in to the land, but in many cases there are no ancestral ties. So if your legislation would put an end to that reservation shopping, it would help the case in small counties like ours so that we don't end up in an adversarial position.

The CHAIRMAN. Now, on sovereign lands, the tribe has the ability to conduct gaming, and that is not—currently in law, that is not up to local government to have the ability to affect that. I know that in most cases the tribe will enter into agreements with the local city or county and work out whatever their impacts are, and for the most part that has been a fairly successful process. Where this has begun to change is when we have had others that have stepped in to different areas, and that is where it has raised concerns with people.

Currently—or let me back up. On the draft, what it would do in the case of someone coming in is it would give the local community the opportunity to work with them in order to have some kind of an agreement if it was not land that had historically been put in trust. And that is really what you are looking for.

Mr. FORSTER. We are looking, one, to stop the reservation shopping, but, two, yes, that's why I represent also CSAC and the 58 California counties today, by looking for local concurrence and local governments to have some representation, the ability to go in and have some process where they can have input into it regarding the effects that a casino will have on their county. Now, primarily you know now that our only avenue is with the Governor to have that local input. That's happened with us on the Plymouth casino that's being proposed by the Ione Band. Unfortunately, the situation with the Buena Vista Rancheria happened so fast that the community wasn't allowed the time to gear up. And once the San Pablo casino was pulled out of the five cases that were presented, the other four passed unanimously when the urban legislators came back and voted for that.

Our issue with the Buena Vista site and the local community has geared up now is the placement of a casino there is—to allow Class III gaming is not legal, and the local community should have some input into that, and I am talking about our local governments, but also the local people that live in the community. You should have some say-so, and also look at the laws on that site. Are they allowed to game? On the Buena Vista Rancheria site, they are not a reservation. They are not in trust status. We feel strongly those two things absent take away their right to have a Class III gaming establishment there. But also the ability in your legislation as proposed to have the local input means a great deal to our small communities as well, and I am not going to leave out the urban counties because each of us have problems that are different depending on what the county is, where the county is located.

The CHAIRMAN. All right. Thank you. My time has expired.

Mr. Kildee?

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

I would like to submit a statement for the record also and then ask a couple questions.

The CHAIRMAN. Without objection.

[The prepared statement of Mr. Kildee follows:]

Statement of The Honorable Dale E. Kildee, a Representative in Congress from the State of Michigan

Mr. Chairman, last year this committee held two hearings in which I raised concerns about attempts by two tribes in my own State of Michigan to gain Congressional approval to operate off reservation gaming facilities on land several hundred miles away from their existing reservation where they have no historical ties.

I believe that these attempts undermine the Indian Gaming Regulatory Act and avoid the current administrative process for approving the use of land for off-reservations gaming purposes for land acquired after October 17, 1988.

The draft proposal would amend that administrative process set forth in the IGRA and would authorize off-reservation gaming in limited circumstances through the establishment of zones. While I appreciate the unique circumstances of certain landless tribes seeking opportunities to operate gaming facilities, I remain reluctant to open up IGRA to attack by our colleagues who want to harm Indian gaming.

With that said, however, Mr. Chairman, I commend you for taking on this issue and I look forward to working with you.

Thank you.

Mr. KILDEE. Thank you very much.

You know, I do worry about opening up IGRA because there are many people out in the Congress and around the country who are not that fond of Indian gaming, even though the Cabazon decision guaranteed that under the treaties and under the Constitution of the United States. So I am always a little worried about putting a bill out amending IGRA because once it goes out on the Floor, unless you get a really tight, closed rule, it becomes the property of the House and they can amend it in many, many different ways.

I would like to submit this statement for the record and ask a couple questions. First of all, I would like to ask a question of Mr. Forster. The Federal trust responsibility to the tribes does protect the tribes, and that is why the trust responsibility came in. As a matter of fact, the trust responsibility came into being to a great extent to protect tribes from State government, the Carolinas and Georgia, John Marshall's decision. And the trust responsibility and the U.S. Constitution recognizes really the only other units of government, Article I, Section 8, Congress shall have the power to regulate commerce with foreign nations, the several States, and the Indian tribes. It does not in the Constitution as such recognize the creatures of the State, and villages and townships and cities and counties are really creatures of the State, and they are arranged in various ways in different States, called various things, parishes in Louisiana.

Presently, IGRA requires only the approval of the State Governor under Section 20. Why should local units of government that are really these creatures of the State have authority over tribes' acquiring land after October 17, 1988? Why should we give that to a local unit of government when the trust responsibility is to protect the tribes and one local unit of government could, in effect, veto any action on behalf of that tribe?

Mr. FORSTER. I believe in our system of government you're looking for checks and balances. I think we're missing some of those checks and balances in the process right now, and I think you've seen that with some of the abuses of some tribes that were granted recognition and the ability to game. If you don't have those checks and balances in place and part of that we're looking for, extend that to the counties and to the States so that they have that ability to at least have their input in place and so you have a full set of information before the recognition is granted. At this time we do see abuses in the process, and we're not arguing against tribes that had the ability to legally game. What we are arguing against is if the process is there, if the laws are in place, there should be a series of checks and balances to protect not only the rights of the Indian community but the rights of the local governments.

Mr. KILDEE. But even under Section 20, we still deal directly with the States under present law. You know, during the civil rights movement, some States for a while—they didn't get away with it long—kept saying, well, it is not us, it is not the State of—this State or that State that are discriminating against African Americans, it is the school board, it is the county government, it is the city government. But the Supreme Court said you cannot hide behind that. It is the State. The Constitution recognizes only the State, and those other units of government are only creatures of the State. And I think that is a basic principle of law, and I think when we deal differently with local units of government, I think we have to deal with it very, very carefully because of the U.S. Constitution's relationship to the 50 States.

Mr. FORSTER. I believe just to answer that, it depends who you deal with, one, who is the Governor of your State. We do have a Governor of California now that is very responsive to the local communities' interests. As I stated in my written testimony today, on the Federal level and their recognition of us and the ability for them to discuss issues, Amador County has not been contacted by IGRA, even dealing with the NIGC, they receive requests for land determination, and the county is never talked to in respect to how we feel about those requests.

The Secretary of Interior never talked to the county when the compact for the Buena Vista Rancheria went to her. She approved that via inaction.

Mr. KILDEE. Let me ask, if I may have time, just one question to Ms. Jaimes. You have clearly laid out your opposition to sections within the discussion draft regarding the proposed Section 20(b)(1)(B)(iii). What is the greatest danger in providing veto power to local government from your point of view? What is the greatest danger, do you feel, in providing veto power to local governments?

Ms. JAIMES. The greatest danger that our tribe would feel that it may have the greatest impact would be the decisions on our economic development.

Mr. KILDEE. Is there a possibility where you might have—and I will finish with this, Mr. Chairman. I am sorry. Maybe Mr. Forster, too, could join in this. If you have two units of government that would encompass the area that would be set aside, couldn't one unit of government then, in effect, override the other and veto the plan?

Mr. FORSTER. Once again, you're talking about the checks and balances. If the system is followed correctly, if the laws are followed correctly, then even the local entity I don't believe is going to override the ability of the gaming to occur, because you have the law set in place. At this time over and over again we can give cases where basically the back-door process is being followed. And let's face it, the monies flowing so well in the process now, you have $18 billion nationwide, $4 billion in California. It's a big player's game. And entities such as Amador County where I'm from, we don't have that kind of checkbook to fight these issues. It's getting more and more difficult.

Mr. KILDEE. Thank you, Mr. Chairman.

Ms. QUAN. Congressman, if the Chairman would allow me to respond?

The CHAIRMAN. Yes.

Ms. QUAN. Congressman Kildee, I've had a lot of respect for your work in education and your support of civil rights in education as a former school board member. What I think at least we're seeing in the Oakland case, and I think many cities are saying, is that, exactly right, everyone must be within the law. In the case of the decision—because it is a huge loophole, it does allow the possibility of reservation shopping, we need to make sure that the Federal Government follows its own rules and regulations. And if I were to answer Congressman Pombo's issue about how I'd like to see if local control is involved or has at least some say, that the decision be made up front. I mean, we may win the denial of the NEPA process because of the environmental concerns, because of the impact on traffic, because of the impact on security, et cetera, et cetera. But there needs to be a way that there is a threshold before we are forced in that process, because our city and the cities around us will spend probably several million dollars fighting you in this process or just doing our part to reply in that process in terms of the impact on the environment, the impact on transportation, the impact on our community in terms of social services.

And, quite frankly, a half a million dollars would fund an after-school program in every one of my middle-school programs. So I'd like it to be defined. If you are going to put local input, to define when the threshold is, and not make it after a 2-year EIR or a long, long, long scoping process involving lots of lawyers on all sides.

Mr. KILDEE. Thank you very much.

Thank you, Mr. Chairman, for your indulgence.

The CHAIRMAN. Mr. Pearce?

Mr. PEARCE. Thank you, Mr. Chairman. Most of my questions would go to Ms. Jaimes.

Page 3 of your testimony—and this is just an observation. Page 3 of your testimony says that Section 20 of IGRA does not establish any standard for Governor's concurrence and a Governor is free to withhold concurrence for any reason or no reason. And I would just point out that the opposite is also true, that there is no standard and a Governor then can give concurrence for any reason or no reason. And as the stakes grow higher and higher in this game, it opens the door larger for bad reasons to be used for either concurrence or non-concurrence.

On page 6, you make a fairly direct statement that State and local governments simply should not have veto power over Indian self-determination and economic development. Can I ask, other than Indian gaming, what is your tribe doing to establish self-determination and economic development? In other words, I think the basis of the statement is that somehow the State can keep you from doing anything that would improve yourself economically. But I am thinking that the State really has only input as it affects Indian gaming. It does not really stop you from going into any number of businesses.

So my question is: What other businesses are you approaching other than gaming?

Ms. JAIMES. Well, currently the tribe has not looked at any other type of economic development this huge. The dollars that the tribe has currently to work with to establish any type of development is small and that it's created to meet our needs as well. The only development we have is a small trailer park that we've invested in, and it will help us create housing to meet our needs and also bring in some amount of revenue. And that's only because of the revenue sharing that's been created in California.

Mr. PEARCE. OK. How many tribal members do you have?

Ms. JAIMES. We have 96 voting members.

Mr. PEARCE. Ninety-six. Ms. Jaimes, there are several—the spectrum of discussion here is quite large on those tribes that might not have access to gaming right now, and so my question is: You all are a landless tribe that are trying to get land to open a casino. Would you oppose any restrictions for non-landless tribes to expand into off-reservation gaming? In other words, you are a landless tribe trying to get land for gaming, but there are tribes with land that are trying to get off-reservation properties to open casinos somewhere else. Would you oppose that, oppose those tribes doing that, or would you think that to want to regulate that is satisfactory?

Ms. JAIMES. That's a difficult question. I couldn't answer it.

Mr. PEARCE. If Mr. Jordan wants to address that question, I would consider his answer.

Mr. JORDAN. It is a difficult question. We think that through the two-part determination process, the 20(b)(1)(A) process as it exists now that requires the Governor's concurrence, we believe that there are sufficient limitations on the ability of tribes to take land into trust who already have gaming in other places. We realize that other tribes, you know, who feel like, you know, tribes are moving into their area disagree with that.

You know, there could be some improvement to that process, but we also respect the right of other tribes to expand their economic development. Not every tribe that has a casino somewhere is necessarily making a lot of money, and they may need to be able to move to a better market to have economic development. They shouldn't be foreclosed from that, but there should be a process for that, and perhaps the Section 20 process could be improved.

Mr. PEARCE. Thank you. Let me just get one more question in, and that is my last one.

Ms. Jaimes, on page 8 of your testimony, you said that, "Federal Indian policy should not be dictated by non-Indian communities,

and we find it cruelly ironic that some tribal governments are suggesting that fears and prejudices of non-Indian communities should dictate the economic development opportunities available to landless tribes.''

Now, the last question that I will ask, and then this question merged together, that we have got a situation in my district where a tribe outside my district 300 miles away wants to come down and acquire land near one of my communities and open a casino, and the local community has reservations about that.

Would you really declare that to be a prejudicial position of a non-Indian community and find that cruelly ironic that they would say that a tribe 300 miles away should not be allowed to come and open a casino near their community? And that really is the question, so I will leave the answer to you.

Ms. JAIMES. Could you repeat that question?

Mr. PEARCE. Yes. I am sorry. Is it really prejudicial for a non-Indian community in the southern end of our State to really take exception to a northern tribe that wants to come 300 miles away and open a casino on grounds that they want to pick up these non-tribal grounds just for the purposes of opening a casino? Your testimony says that that should not be allowed, that non-Indians really shouldn't have a say, and even then gets quite critical of the non-Indian communities that would want to voice a position on that. Are you really that stringent in your opposition to input from non-Indian communities?

Ms. JAIMES. No and yes, and we can only rely on that everything is dealt with on a case-by-case issue.

Mr. PEARCE. OK, but it is the non-Indian who is objecting to it, and your testimony seems to indicate that you think that to be prejudicial and ill-placed.

Thank you, Mr. Chairman. I appreciate the indulgence.

The CHAIRMAN. Mr. Pallone?

Mr. PALLONE. Thank you, Mr. Chairman. I just wanted to associate myself with Mr. Kildee's remarks, and also point out that, you know, one of the concerns I have here today and why I think it is so important for us to proceed with such caution is because I am very concerned about infringement on tribal sovereignty. In other words, if you look at IGRA, which I guess was a reaction to the Cabazon decision, as Mr. Kildee mentioned, even the requirement that the Governor give consent could be perceived as an infringement on tribal sovereignty. And so if we go further and now require, you know, consent of local communities, you know, the question is how far are we going to go in terms of our infringement on tribal sovereignty? I mean, historically—and I think for good reason—the notion is that a tribe is a nation and they have a nation-to-nation relationship with the Federal Government. So the Federal Government deals with them, but, you know, the States and the localities really shouldn't have that much of a say.

So I am just very concerned that if we change IGRA significantly and allow significant local input, you know, it does go against the very grain of what the notion is of tribal sovereignty.

The other thing is that you cannot really take away the context of historic discrimination against Native Americans, as, you know, we have discriminated against many minorities in this country.

And I think that to the extent that the Federal Government becomes the arbitrator, there is less likely to be discrimination historically than there is if, you know, there is input from local communities or even the State, because if you look at the history of discrimination, it tends to be greater at the local level.

And then the last thing that bothers me is this whole notion, which I think to some extent is out there, that, you know, the tribes are all rich and they have got all this money and, you know, the communities don't. I mean, oftentimes it is the opposite. We had hearings before this committee on the whole issue of tribal recognition, and many of the tribes have a very difficult time gaining recognition because they don't have the money to even go through the process. And I don't think we should assume that tribes are rich and communities are poor. Oftentimes it is the opposite. It may not be the case here with, you know, those who are sitting before the panel, but it is often the case. So we can't—we have to be very careful.

The other thing I have to say is a lot of my concern comes from the fact that I think the issue of off-reservation gaming is being overblown in the media, and Congress is sort of reacting to that. You know, I guess the last time we had a hearing on this, we had Ernie Stevens testify, who is the—I guess he is the President or Chairman of NIGA, and he said—you know, he pointed out there were only three tribes that have successfully navigated the Section 20 two-part process. And so I don't really think that, you know, this is a problem, that we are facing a huge problem here.

I just have two questions. One is of Mr. Forster. You know, in the current law, you know, under this two-part determination of Section 20 of IGRA, it does say that there is local input. It actually says in the language, in the statute, that the Secretary, after consultation with the Indian tribe and appropriate State and local officials, determines that a gaming establishment on newly acquired lands would be in the best interest of the tribe.

So I don't really understand given that only three tribes of many applicants have ever successfully navigated this two-part process, why are you so concerned that there isn't local input now? It seems to me there is, and it hasn't been that easy to go through the current law. I mean, you guys keep talking about the law, the law. Well, that is the law, and only three tribes have ever been able to go through the process. What are you so worried about? Why isn't there local input now?

Mr. FORSTER. One, our big issue is that when we are done with this process, if we have two more tribes allowed to game and if it is not done lawfully, we are going to have three tribes within 12 miles of each other in a county that has 34,000 people.

Speaking on the side of the law, the compact that was issued by the State went to the Federal level, went to the Secretary of the Interior without any comments from the county that was approved by her via no action. So we don't feel we had any say-so in that process. We were not consulted, and we are not consulted by NIGC on the issues of land determination. We accidentally found out on an issue that it was being run through them and so issued comments. We do not feel that we are being afforded the opportunity to get our input in at the Federal level.

Mr. PALLONE. But what I am asking you is it is not as if you did not have the opportunity to express your opinion. It is just you feel that it did not go your way. I mean, you know, I guess what I am trying to say, you know, we are talking about major changes here that impact the entire nation. And, I mean, I understand that maybe it did not go the way you wanted, but, I mean, it does not mean that the current process does not provide for the local input. It is just that maybe it was not—you know, it was not—the decision was not what you wanted.

Mr. FORSTER. Sir, in the process, there is virtually no acknowledgment of a county's input when it does come in. So how do we know that the input of the county was even taken into account in the process? At this time we do not because there is no acknowledgment that comes back to us.

Mr. PALLONE. Well, I mean, maybe—I am just trying to say that it seems to me there is a difference between saying there is no input and saying that you do not like the way the decision went. The law provides for the input. The law provides the opportunity for you to express your opinion. Oftentimes, we do not like the way the decision goes. It does not mean that the input was not there. It is required under the law.

Mr. FORSTER. But on our other two tribes that are trying to put casinos in right now, the law is pretty clear, and to us it doesn't seem like it's being followed, because one tribe is a landless tribe and trying to put a casino on a piece of property with no ancestral ties; the other tribe, the Buena Vista Tribe, is trying to put a casino on a site that is Indian land, but it does not have trust designation and it doesn't have any other designation to make it legally possible for them to have Class III gaming.

So we are looking at the Federal laws, and then we are looking at those being overridden. It would be nice once in a while to be acknowledged and hear what are the reasonings for your decisions. And we don't get that at the Federal level.

Mr. PALLONE. Thank you.

Ms. QUAN. And I have to say the Oakland situation is exactly the same. You have environmental and other Federal laws that if you put a casino there that you're going to be ignoring. And, again, the tribe is in the same situation as the other Congressman raised. They had a Rancheria. It was 150 miles away. The Aloney, who actually may have some Bay Area roots and ties to do that, aren't even—I think they're only being involved in one of the five casinos that's going to be within 30 miles of my city.

Mr. PALLONE. But you seem to suggest—and I know the time is up, but you seem to suggest that the environmental laws are simply ignored. I mean, isn't there a process for the environmental laws? I do not understand.

Ms. QUAN. We are not sure. I mean, I think that looking at the conditions of the deed and the title and trust laws in California that this site should not even be considered, that I shouldn't have to—

Mr. PALLONE. You see, again, I don't want to keep arguing, but it just seems to me that you guys are addressing the fact that you do not like the decision, not that there was not a process that you had input in. You just do not feel that the decision went your way.

Ms. QUAN. No, we—there is no decision in Oakland's case, and the BIA did not follow its own rules in restoring the rights of this tribe.

Mr. FORSTER. And we are talking Federal and State—

Ms. QUAN. So if you are going to be consistent with Federal laws, then you have to be consistent.

The CHAIRMAN. The gentleman's time has expired.

Mr. Gibbons?

Mr. GIBBONS. Thank you very much, Mr. Chairman, and I want to thank you for bringing this very important hearing before this committee, and the witnesses, I want to thank them for their time, their patience, and their testimony that is helping us make a better and more informed decision on this process.

I come from the State of Nevada, which, let me say at the beginning, I am not anti-gaming. I am for gaming. I just wanted you to know that. But I guess what I would like to do is to follow on Mr. Pearce's line of questioning because I thought he was headed in the right direction, but one which let me say it perhaps a bit differently. If a tribe 300 miles away has no historical ancestral connection with another part of the land and yet travels that distance to construct or in hopes of getting land for a casino, should that distance, should that ancestral connection be considered in the granting of land for trust status? Ms. Jaimes, what would you say?

Ms. JAIMES. Well, for Greenville, all we're doing is following the process, and there's a process.

Mr. GIBBONS. Well, I understand. You are following the written process that was established under IGRA. What I am talking about is the philosophical sense, the historical connection between the tribe and the land, which is basically the foundation, the fundamental process, if you will, by which land is granted in trust for a tribe because there is some historic connection. But where there is no historic connection, do you feel it is proper to grant trust status to land for a non-historically connected tribe to that area, to that land? For any purpose, whether it is economic purpose, whether it is social, for any purpose.

Ms. JAIMES. I can't answer. Could I have our attorney respond to that?

Mr. GIBBONS. Well, I think it is just—you know, I was hoping that you as the chairperson for the tribe would be able to give us some sort of a conceptual answer for that. But perhaps the gentleman, Kevin, maybe perhaps you could answer the question. What is your thought?

Mr. JORDAN. Well, I think, if I may, the chairwoman is having a little trouble answering the question because in Greenville's situation, we do have ties to the land, and so we have not really considered situations outside of that. But, clearly, whether or not a tribe has ties to the land and whether or not there are other tribes that are in the area that do have ties to the land, those are clearly relevant considerations that ought to come into play.

Now, there may be situations where a tribe may be going 200 or 300 miles away from its reservation, but there are no other tribes there that have aboriginal territory. And if the State and local governments are in support of the tribe, I am not sure why that would be a problem.

Mr. GIBBONS. OK. So it would not bother you to have a casino established by one tribe who has a historical connection to the land to be—well, let's just say to have another tribe who does not have historical connection, who came from outside of the area, to bring and want to have its own casino right next door to yours on land that would be in competition. That would be fine with you.

Mr. JORDAN. No, I am not saying that. I am saying that is a relevant consideration. And when Interior is considering such an application, it should take into account the fact that Tribe A is moving into the area of Tribe B.

Mr. GIBBONS. I am just trying to figure out how we would address that situation, how we can formulate language which identifies the concerns and brings that into focus.

Let me just ask a question also. Proposition 5 in California that happened not too long ago was a proposition premised on the idea that tribes would not go into off-reservation gaming. Now we are seeing tribes in California that were supporting Proposition 5 asking for off-reservation gaming. Do any of you feel that that was a misrepresentation to the voters of the State of California?

Ms. QUAN. I absolutely do. The Association of Bay Area Governments is having our spring conference, and it is exactly going to be on the gaming and casinos, because many of us felt that this would be a way to help particularly our rural tribes. In fact, many of our rural tribes are now very upset, and maybe that is why they are considering zones now to come to the cities. But I have to say that if the Bay Area is going to have five on the east side and God knows how many on the other side of the Aloney recognized, it is a huge economic impact on our community. And the issue of prostitution I have been working on and the crime related to that. Those are huge social costs. It seems very unfair for those to be concentrated in urban areas because obviously the urban areas are the most lucrative areas. They are marketed to minorities, many of these casinos.

I will tell you the busloads that drive up in front of the Chinatown—

Mr. GIBBONS. Well, those are—excuse me. You know, Councilwoman, I know that those are important issues to be considered. My question was going directly to the representation in—

Ms. QUAN. I am just saying, everywhere that I go in informing this conference, that is what people—I hear from people, that they feel that they were sort of sold a bill of goods, that we were told that there would not be urban casinos, we told it would help our rural tribes, and now we suddenly have five alone within 30 miles of my county.

Mr. GIBBONS. I guess our concern here is an attempt to figure out how we best deal with any changes to the law if we are going to make them, how suggestions should come to us, and it is the purpose of eliciting the information out there.

Mr. Chairman, I have many, many more questions, but I would like to submit them for the record for our witnesses to have them answer in writing so that we may get back some information, if I may.

The CHAIRMAN. Without objection.

The CHAIRMAN. At this point I will tell our panel that I know that there are members that have been in and out today, and there are a lot of questions that they would like to ask. Those will be submitted to you in writing, if you could answer those in writing so they can be part of the hearing record.

Mr. GIBBONS. Is there a timeframe within which we will get these answers?

The CHAIRMAN. We will hold the hearing record open for 2 weeks to allow them the opportunity to respond. And that applies to the next panel as well, yes, Mr. Kildee.

Mr. Walden?

Mr. WALDEN. You know, Mr. Chairman, given the lateness of the hour and the fact you have another panel, I believe, to go, I will yield at this point and submit any questions in writing.

The CHAIRMAN. Thank you.

I am going to dismiss this panel. I want to thank you and again apologize to you for the delay in us getting back. It was not intentional and I apologize to you.

The CHAIRMAN. I would like to call up our next panel. We will hear from several tribal organizations with an interest in the issue. The witnesses are Kurt Luger, Executive Director of the Great Plains Indian Gaming Association; James T. Martin, Executive Director of the United South and Eastern Tribes, Incorporated; and Mark Van Norman, Executive Director of the National Indian Gaming Association. If you would join us at the witness table, please remain standing and I will administer the oath.

[Witnesses sworn.]

The CHAIRMAN. Thank you, gentlemen. Let the record show they all answered in the affirmative. And I know that all of you have been waiting a long time to have your opportunity to testify, and I appreciate your patience in sticking with us.

Mr. Luger, we are going to begin with you as soon as you are ready. I will remind the witnesses that we limit oral testimony to 5 minutes. Your entire written statements will be included in the record.

Mr. Luger?

STATEMENT OF J. KURT LUGER, EXECUTIVE DIRECTOR, GREAT PLAINS INDIAN GAMING ASSOCIATION

Mr. LUGER. Thank you, sir. Good afternoon, Chairman Pombo and distinguished members of the Committee. My name is Kurt Luger. I'm the Executive Director of the Great Plains Indian Gaming Association, and I represent 28 tribal nations in the States of North Dakota, South Dakota, Kansas, Nebraska, and Iowa. We have approximately a quarter of a million tribal enrolled members and 15 million acres of trust that we occupy. And at the outset I want to get to the important points of the written testimony that I have already submitted, and at the outset let me say that Indian gaming is working in the rural areas of America. Where I live, we face 50, 60, to 70 percent unemployment, and we are now generating jobs not only for their own tribal members, but for neighboring non-Indians as well. I live and work in Bismarck, North Dakota, so I will use the situation of the North Dakota tribes as a representative example.

Since the beginning of tribal gaming in North Dakota, the primary function has been to provide employment and economic development opportunities. To this end, this is an extremely important statement for us. Out in the Great Plains, Indian gaming represents jobs, not revenue, and often, especially in the media, that's the only thing that we hear about, is our struggles over the revenue. For us it's jobs. Jobs, jobs, and more jobs. And it's worked.

There are five Indian gaming facilities in the State. Together, the gaming facilities employ almost 2,000 North Dakota residents. We were the second fastest growing industry in the State of North Dakota outside of technology in the decade of the 1990s. About 70 percent of our employees are tribal members and the balance are non-Indian neighbors. And taking into account the multiplier effect of $112 million of economic activity generated by Indian gaming in North Dakota, Indian gaming generates an additional 2,000 jobs statewide. Since 1997, the combined economic impact of Indian gaming and related activity has exceeded $1 billion, even in the small State of North Dakota, which is a population of only 650,000.

The tribes of North Dakota work very hard to preserve a strong relationship with the State, and the State for its part has worked in good faith with the tribes. State officials in North Dakota know that tribal governments have many unmet needs, and it helps the whole State when tribal governments have a way to create jobs and generate essential government revenue.

The Indian tribes in North Dakota are engaged in gaming on Indian lands acquired prior to the Indian Gaming Regulatory Act. To date, there have been no off-reservation land acquisitions under the two-part secretarial process. But the Turtle Mountain Band of Chippewa has indicated that it is considering an off-reservation acquisition under the secretarial process set forth in Section 20. The other four federally recognized tribes oppose this proposal, and one of the reasons and the main reason is our existing arrangements were based upon jobs. And this is another—and several of the Committee members have touched on it. We clearly see that there are outside non-Indian developers that are a part of this story and pushing this agenda in many cases.

At the Great Plains Indian Gaming Association, we believe that under existing law it is very important for the Secretary of Interior to thoroughly consult with local governments and neighboring Indian tribes. In fact, in North Dakota, we all consider ourselves to be neighbors in the tribal community, and we believe that all tribes should be consulted concerning any Section 20 after acquired land application in North Dakota or even near the North Dakota border in Minnesota, South Dakota, or Montana. After all, we live in areas that are large geographically; our populations are small; and we often draw our customer base from a substantial distance away. The same is true in the other Great Plains States.

On behalf of the Great Plains Indian Gaming Association, I want to thank you, Chairman Pombo, and the Committee for issuing this bill in a discussion draft. To us, this is critical that working with tribal government prior to the introduction of the bill honors our tribal government-to-government relationship, and we thank you very much. We want to work with you and your process as it moves forward.

Let me start by saying that we have made important employment, economic, social, and governmental progress under IGRA, and we do not want to take a step backward. Therefore, we respectfully ask the Committee to work with us to protect IGRA and make sure that the only bill that moves forward is one developed by the Committee through the regular hearing process with the consensus of the tribal governments. We do not want to be surprised by amendments on the House or the Senate Floor or in the conference committee that are not relevant to this issue or that undercut tribal rights to conduct Indian gaming as an exercise of Indian sovereignty.

Second, let me say, as I did in July, the Secretary needs to respect the interests of neighboring Indian tribes as well as tribes seeking to engage in new gaming projects. We see this as critical. We know that your legislative process is going to take some time. Perhaps the Chairman would consider writing a letter to the Secretary asking her to fully consider the interests of neighboring tribes. The regulation process should square with the statute.

I have taken in some of the comments earlier in July, and I will repeat this. IGRA is not a panacea for Indian country. There are some tribes that are going to do better than others. There are some tribes that this opportunity may never be available to them. But on-reservation activity is what this is about. It must be a priority.

In our view, your draft bill would provide some clear rules of off-reservation gaming by eliminating the existing Section 20 process and substituting the Indian Economic Opportunity Zones. Before we take that final position on a draft bill—and timing is of the question. I haven't had a chance to consult with all 28 tribes yet. We will work with NIGA and NCAI in their task force meetings, and we will jointly host a task force meeting at our annual Great Plains Midwest meeting on May 25th. Members of the Committee and their staff will be invited to attend this event. There will be approximately 75 tribes from the Rocky Mountain region, Great Plains, and the Midwest that will be attending.

On the other hand, as some have stated, we are also concerned about the heightened role for local governments. Local governments are sub-units of States, so it should be enough for the Governor or the State legislature to act on behalf of the State. We have a strong working relationship with our State governments. We think this provision could needlessly complicate that relationship. Pardon me, but let me be blunt. It is the State's job to make sure that the interests of local governments are protected. In addition, we do not want to see any precedent for the idea that tribal governments are subordinate to local governments. We have a direct government-to-government relationship with the Federal Government, and our tribal governments carry out our own governmental functions on our land.

Finally, as someone who grew up on Standing Rock in North Dakota, let me say that our reservation was established before the State boundaries were. We need to be clear that Indian tribes who have Indian lands that overlap State boundaries, like the Standing Rock Sioux Tribe and the Sisseton Wahpeton Oyate, must be respected by both State governments where their lands are located.

This bill should not impact our tribes with lands on both sides of the border.

In conclusion, Chairman Pombo, I want to thank you. We know you are trying to take tough issues heads on. We respect that. Thusly, we respect you. We have found and have worked with you to be a man of honor, and it's a pleasure to work with you on this very difficult situation. But we also have some concern and want to move forward cautiously, with an opportunity for plenty of opportunity for all concerned parties to be heard. And we want to be sure to protect Indian sovereignty and our right to self-government on our treaty lands throughout the process. We have fought for these rights for generations, and we continue to protect our reservation homelands to this day.

In addition, in closing, as always I would like to thank the veterans of the military service of this country. Without their past contributions and their present contributions, we wouldn't enjoy the freedom that we do today here in this country. So, Pilama, thank you, Mr. Chairman. I would also additionally like to thank your staff and their expertise and sensitivity toward my contact and my tribes: Tom Brierton, Chris Fluhr, and Jim Hall. I appreciate their sincerity and their expertise, and I stand to answer any questions that would come forward.

And, additionally, back to the two questions before. I can already tell you my answer to the 300-mile question is no.

[Laughter.]

[The prepared statement of Mr. Luger follows:]

Statement of J. Kurt Luger, Executive Director, Great Plains Indian Gaming Association

Introduction

Good morning. Chairman Pombo and Members of the Committee thank you for inviting me to testify today concerning Indian gaming on off-reservation, restored, and newly acquired lands.

My name is J. Kurt Luger and I am a member of the Cheyenne River Sioux Tribe of South Dakota and my family resides on the Standing Rock Reservation near Ft. Yates, North Dakota. I serve as the Executive Director of the Great Plains Indian Gaming Association, which includes 28 Indian nations from North and South Dakota, Nebraska, Iowa, and Kansas. We work closely with both the National Indian Gaming Association and other regional Indian gaming associations, including the Minnesota Indian Gaming Association. At Great Plains Indian Gaming Association, my job is to alert our Member Tribes to the challenges that we face in Indian gaming and to provide training and technical assistance to our tribal government officials, tribal gaming commissioners, gaming management and staff.

At the outset, let me say that Indian gaming is working in rural areas of America. Indian tribes that faced 50, 60, and even 70% unemployment are now generating jobs not only for their own tribal members, but for neighboring non-Indians as well. I live and work in Bismarck, North Dakota so I will use the situation of the North Dakota Tribes as a representative example.

Indian Tribes in North Dakota

In North Dakota, 5 tribal governments operate Indian gaming facilities: the Three Affiliated Tribes of Fort Berthold—Mandan, Hidatsa, and Arikara; the Spirit Lake Sioux Tribe, the Turtle Mountain Chippewa Tribe, the Standing Rock Sioux Tribe and the Sisseton-Wahpeton Sioux Tribe. Both the Standing Rock Sioux Tribe's reservation and the Sisseton-Wahpeton Sioux Tribe's reservation straddle the border with South Dakota.

Three Affiliated Tribes. The Three Affiliated Tribes, Mandan, Hidatsa, and Arikara, operate as a unified tribal government. These Tribes have occupied the Missouri valley for hundreds and thousands of years, planted corn, squash, and beans on the fertile flood plains, and hunted buffalo and wild game. Living in

stockaded villages, the Three Affiliated Tribes were devastated by smallpox epidemics in 1792, 1836, and 1837.

Early on, the Three Affiliated Tribes established friendly relationships with the United States. They welcomed the Lewis and Clark expedition into their villages and assisted them on their journey. In 1825, the Mandan, Hidatsa, and Arikara Tribes entered into Treaties of Friendship and Trade with the United States, which states:

> Henceforth, there shall be a firm and lasting peace between the United States and the [Mandan, Hidatsa, and Arikara Tribes]". The United States—receive the [Tribes] into their friendship and under their protection.

The United States' treaty pledges of protection forms the basis for the Federal Indian trust responsibility. The traditional lands of the Mandan, Hidatsa, and Arikara encompassed an area of 12 million acres from eastern North Dakota to Montana and as far south as Nebraska and Wyoming. The Fort Laramie Treaty of 1851, congressional acts and executive orders reduced the Tribes' lands to 1,000,000 acres in western North Dakota.

In the early 1950s, the Three Affiliated Tribes were asked to undertake a tremendous sacrifice by allowing the United States to dam the Missouri River and flood their reservation. The original tribal headquarters was flooded and families were moved away from the fertile Missouri River flood plain up on to the high prairie. When Lake Sakakawea was formed by the dam, the new lake divided the reservation into three parts. The Tribes suffered an enormous loss of natural resources, including the most fertile land on the reservation, their community was divided and the small village life that many had known along the Missouri River was gone. The tribal headquarters were relocated four miles away in New Town, North Dakota. Today, the tribal population is about 10,000 with about 5,000 living on the reservation.

Spirit Lake Sioux Tribe. The Spirit Lake Sioux Tribe is composed of the Sisseton-Wahpeton and Yankton bands of the Dakota or Sioux Nation. Originally residing in Minnesota and eastern North Dakota, the Spirit Lake Sioux Reservation was established by the Treaty of 1867 with the United States. The Treaty of 1867 provides that: "The...Sioux Indians, represented in council, will continue...friendly relations with the Government and people of the United States..." The Treaty recognizes the Spirit Lake Sioux Reservation as the "permanent" reservation of the Tribe.

The Tribe has worked to develop jobs through manufacturing, providing Kevlar helmets and military vests to the Pentagon through Sioux Manufacturing Corporation, yet with a reservation population of over 6,000 people, the Tribe has struggled with 59% unemployment as the Defense Department budget was cut in the 1990s. The Spirit Lake Reservation encompasses 405 square miles north of the Sheyenne River in northeastern North Dakota.

Turtle Mountain Chippewa Tribe. The Chippewa or Ojibwe people originally inhabited the Great Lakes Region and began to hunt and trade in North Dakota in the late 18th and early 19th Centuries. Historically, the Chippewa and the Dakota fought wars with each other, but they settled their differences through the Treaty of Sweet Corn in 1858.

In 1882, Congress set aside a 32 mile tract in Northeastern North Dakota for the Turtle Mountain Band of Chippewa 11 miles from the Canadian border. With the passing of the great buffalo herds, the Chippewa turned to agriculture and ranching, and faced many difficulties due to encroachment by settlers. Today, almost 20,000 tribal members live on the 6 x 12 mile Turtle Mountain reservation, and Belcourt, North Dakota has become the 5th largest city in the state.

Standing Rock Sioux Tribe. The Standing Rock Sioux Tribe is composed of Sitting Bull's Band, the Hunkpapa, and the Yanktonai, with some Black Foot Sioux on the South Dakota side. In the Fort Laramie Treaty of 1868, the United States pledged that: "The Government of the United States desires peace and its honor is hereby pledged to keep it." The Treaty also provides that the Great Sioux Reservation was to serve as the "permanent home" of the Sioux Nation.

Yet, in 1876, General Custer and the 7th Cavalry came out to Sioux country to force the Sioux tribes on to diminished reservations. In 1889, the Federal Government once again called on the Sioux Nation to cede millions more acres of reservation lands, and the Standing Rock Sioux Reservation was established by the Act of March 2, 1889. Sitting Bull had opposed the land cession and in 1890, he was murdered by BIA police acting in concert with the U.S. Cavalry.

The Standing Rock Sioux Reservation is composed of 2.3 million acres of land lying across the North and South Dakota border in the central area of the State. Like the Three Affiliated Tribes, the Standing Rock Sioux Tribe was asked to make a substantial sacrifice for flood control and ceded almost 56,000 acres of the best reservation land for Lake Sakakawea. Tribal members were removed from their

traditional homes along the Missouri River flood plain and relocated well up above the river. Today, the population of resident tribal members is almost 10,000.

Sisseton-Wahpeton Sioux Tribe. Located in Southeastern North Dakota and Northeastern South Dakota, the Sisseton-Wahpeton Sioux Tribe has a total enrollment of over 10,000 tribal members and a resident population of about 5,000 tribal members. The Tribe was originally located in Minnesota, but pressure from white settlers pushed the Tribe westward. The Treaty of 1858 with the United States established the Sisseton-Wahpeton Sioux Reservation, which today has approximately 250,000 acres in North and South Dakota.

Indian Gaming in North Dakota

Since the beginning of tribal gaming in North Dakota, the primary function has been to provide employment and economic development opportunities. Indian gaming has also provided vital funding for tribal government infrastructure, essential services including police and fire protection, education, and water and sewer services, and tribal programs, such as health care, elderly nutrition, and child care.

There are five Indian gaming facilities in the state—Four Bears Casino & Lodge (Three Affiliated Tribes), Sky Dancer Casino & Lodge (Turtle Mountain), Spirit Lake Casino (Spirit Lake Sioux), Dakota Magic Casino (Sisseton-Wahpeton), and Prairie Knights Casino & Lodge (Standing Rock). Together, the gaming facilities employ almost 2,000 North Dakota residents. About 70% of the employees are tribal members, and the balance are our non-Indian neighbors, and taking into account the multiplier effect of the $112 million of economic activity generated by Indian gaming in North Dakota, Indian gaming generates an additional 2,000 jobs statewide. Since 1997, the combined economic impact of Indian gaming and related activity has exceeded $1 billion statewide.

Tribal-State Relations

All of the North Dakota tribes have worked to maintain positive government-to-government relationships with the State of North Dakota. Our Tribal-State compact acknowledges that:

> The Tribe and the State mutually recognize the positive economic benefits that gaming may provide to the Tribe[s] and to the region of the State adjacent to the Tribal lands, and the Tribe and the State recognize the need to insure that the health, safety and welfare of the public and the integrity of the gaming industry of the Tribe and throughout North Dakota be protected.

The Tribes in North Dakota have worked very hard to preserve a strong relationship with the State, and the State for, its part, has worked in good faith with the Tribes.

In fact, the State Attorney General is vested with authority to regulate gaming under state law and works with the tribal governments through our compacts. Attorney General Wayne Stenjhem has complimented the tribal governments on our record of strong regulation and has cooperated with the tribal regulatory agencies to apprehend and prosecute those who attempt to cheat our casinos. The Attorney General has recognized that Indian gaming has created important jobs and generated vital revenue for tribal self-government and has made it clear that he is proud that the State of North Dakota has not asked for revenue sharing. State officials in North Dakota know that tribal governments have many unmet needs and it helps the whole state, when tribal governments have a way to create jobs and generate essential governmental revenue.

After Acquired Lands

In general, the Indian Gaming Regulatory Act is intended to strengthen tribal self-government by safeguarding Indian gaming as a way to fund essential tribal government infrastructure, services and programs. The Act establishes a general policy that Indian gaming shall be conducted on trust land acquired prior to its passage in 1988. Because of the complex history of Federal takings of Indian lands, Section 20 of the Act provides several necessary exceptions:

- Lands Contiguous to Indian Reservations or Within the Last Reservation of a Tribe No Longer Has Reservation Borders;
- Lands Recovered Under Land Claims;
- Lands for Newly Recognized Tribes; and
- Lands Acquired Through Consultation with Local Governments and Neighboring Indian Tribes and a Two-Part Determination by The Secretary of the Interior with the Concurrence of the State Government.

The first three exceptions for trust land within historic reservation boundaries, trust lands under land claims, and lands for newly acquired lands fall into the category of addressing problems created by the United States' historic takings of

Indian lands and injustices. The last exception, however, is a discretionary exception that requires the development of a broad consensus that such an acquisition is in the best interests of the Tribe and not adverse to the surrounding community.

The Indian Tribes in North Dakota are engaged in gaming on Indian lands acquired prior to the Indian Gaming Regulatory Act, or in the case of the Sisseton-Wahpeton Sioux Tribe, on trust land acquired within the original boundaries of its reservation under the 1867 Treaty.

To date, there have been no off-reservation land acquisitions under the two-part Secretarial process. The Turtle Mountain Band of Chippewa has indicated that it is considering an off-reservation acquisition under the secretarial process set forth in Section 20.

Section 20 explains that the limitation on Indian gaming to lands acquired prior to 1988 shall not apply when:

> 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...concurs...

25 U.S.C. 2719(b)(1) (emphasis added).

At the Great Plains Indian Gaming Association, we believe that under existing law it is very important for the Secretary of the Interior to thoroughly consult with local governments and "neighboring" Indian tribes. In fact, in North Dakota we all consider ourselves to be "neighbors" in the tribal community, and we believe that all Tribes should be consulted concerning any Section 20 after acquired land application in North Dakota or even near the North Dakota border in Minnesota, South Dakota or Montana. After all, while we live in areas that are large geographically, our population is small and we often draw our customer base from a substantial distance away. The same is true in other Great Plains states.

Committee Proposal

On behalf of the Great Plains Indian Gaming Association, I want to thank Chairman Pombo and the Committee for issuing this bill in a discussion draft. Working with tribal government prior to the introduction of the bill honors our tribal government-to-government relationship with the Federal Government. We want to work with you as your process moves forward.

In summary, the Committee proposal would:

- Strike IGRA's existing Section 20(b) and substitute new provisions;
- A newly recognized tribe could conduct gaming on after acquired trust lands within the State where the Tribe has its primary geographic, social, and historical nexus to the land;
- A restored tribe could conduct gaming on after acquired trust land in the State where the Tribe has its primary geographic, social, and historical nexus to the land, so long as the Secretary determines that it is in the best interest of the Tribe, not detrimental to the surrounding community and the State, city, county, town, parish, village and any other local government concurs;
- The Secretary may designate two Indian Economic Opportunity Zones;
  * One on Existing Trust Land; and
  * One on Land to be Taken into Trust;
- On the Existing Trust Land, an Indian Tribe could participate in the Indian Economic Opportunity Zone provided the Secretary determines that it is in the best interest of each participating Tribe; that the State and local governments approve the project, the Tribe does not have ownership in another facility, and the "host" tribe may not receive more than 10% of the gross revenues as a management fee; and
- On the Land to Be Taken Into Trust, an Indian Tribe could participate in the Indian Economic Opportunity Zone provided the Secretary determines that it is in the best interest of each participating Tribe and lands are taken into trust for the benefit of each participating Tribe, the State and local governments approve the project; each Indian Tribe within 200 miles approves the project, and participating Tribes do not have an interest in any other facility.
- In addition, Indian tribes would be limited to conducting gaming in the State where they are primarily located, unless their reservation is along a border between states or overlaps the border.

Let me start by saying that we have made important employment, economic, social and governmental progress under IGRA, and we do not want to take a step backward. Therefore, we respectfully ask the Committee to work with us to protect IGRA and make sure that the only bill that moves forward is one developed by the

Committee through the regular hearing process with the consensus of tribal governments. We do not want to be surprised by amendments on the House or Senate Floor or in the Conference Committee that are not relevant to this issue or that undercut tribal rights to conduct Indian gaming as an exercise of Indian sovereignty.

Second, let me say, as I did in July—the Secretary needs to respect the interests of neighboring Indian tribes as well as tribes seeking to engage in new gaming projects. We know that your legislative process is going to take some time. Perhaps the Chairman would consider writing a letter to the Secretary asking her to fully consider the interests of neighboring Tribes.

In our view, your draft bill would provide some clear rules for off-reservation gaming by eliminating the existing Section 20 process and substituting the Indian Economic Opportunity Zones. Before we take a final position on the draft bill, we will work with NIGA and NCAI in their Task Force meetings and we will jointly host the Task Force meeting in Minnesota on May 25th. Yet, as a preliminary matter, let me say please respect the interests of neighboring Indian tribes in both the Existing Trust and New Lands Zones. Please require agreement for tribal governments in both provisions.

On the other hand, we are also concerned about the heightened role for local governments. Local governments are just sub-units of States, so it should be enough for the Governor or the State Legislature to act on behalf of the state. We have a strong working relationship with our state governments, we think this provision could needlessly complicate that relationship. Let me be blunt, it is the State's job to make sure that the interests of local governments are protected. In addition, we do not want to see any precedent for the idea that tribal governments are subordinate to local governments. We have a direct government-to-government relationship with the Federal Government, and our tribal governments carry out our own governmental functions on our lands.

Finally, as someone who grew up on the Standing Rock Sioux Reservation in North Dakota, let me say that our Reservation was established before there were any state boundaries. We need to be very clear that Indian tribes who have Indian lands that overlap state boundaries, like the Standing Rock and Sisseton Wahpeton Sioux Tribes, must be respected by both state governments where their lands are located. This bill should not impact our Tribes with lands on both sides of the border.

Conclusion

In conclusion, I want to thank Chairman Pombo. We know you are trying to take on tough issues heads on. We respect that. But we also have some concern and want to move forward cautiously, with an opportunity for plenty of opportunity for all concerned parties to be heard. And, we want to be sure to protect Indian sovereignty and our right to self-government on our treaty lands throughout the process. We have fought for those rights for generations and we continue to fight to protect our reservation homelands to this day.

Again, thank you for the opportunity to testify today. Pilamayayelo.

As Chairman of the Great Plains Indian Gaming Association,
I concur in Mr. Luger's testimony.

Charles Murphy, Chairman, Standing Rock Sioux Tribe

[Responses to questions submitted for the record by Mr. Luger follow:]

Response to questions submitted for the record by J. Kurt Luger, Executive Director, Great Plains Indian Gaming Association

Answers to Congressman Pombo's Questions.

Answer to Question 1.

At the Great Plains Indian Gaming Association, our Member Tribes work closely with their Governors. We count on the State Governors to speak on behalf of their state because that is what they were elected to do. Existing law reflects that reality of our Federal system.

Answer to Question 2.

The United States took millions of acres of Indian lands, much of it in violation of treaties. In the 1930s, President Roosevelt and Congress acknowledged that the theft of Indian lands had left our Indian tribes and people in poverty. The Indian Reorganization Act provided for the acquisition of lands for Indian tribes and

landless Indians. In our view, the existing regulations that provide a sliding scale are appropriate: on-reservation trust land acquisitions are easier and tribal interests weigh more and off-reservation trust land acquisitions are harder and state and local interests weigh more heavily the further from the reservation the acquisition is located. For gaming, the process is tougher and the Secretary must consult neighboring tribes as well as state and local governments and request the Governor's concurrence. When existing law is properly applied, consultative roles for local governments and neighboring Indian tribes protects their interests.

Answer to Question 3.

Tribes should seek to take land into trust in their aboriginal, ancestral or treaty areas. If a tribe goes outside its aboriginal, ancestral or treaty area, and another tribe objects to the land acquisition because it is in its own aboriginal, ancestral or treaty area, the Secretary should listen to the objections of the neighboring tribe and deny the trust application.

This is the way that existing law should work. If not, the House Resources Committee should call on the Secretary to respect the aboriginal, ancestral and treaty areas of Indian tribes—which was the intent of the Indian Reorganization Act. No amendment to the Indian Gaming Regulatory Act is needed to achieve this result.

An aboriginal land means lands a tribe has occupied from time immemorial. An ancestral land means lands a tribe has occupied after the first contact with Europeans because it had to move out of its aboriginal areas due to pressure from colonists. Treaty lands means Indian lands recognized under a treaty between the United States and an Indian tribe.

Answer to Question 4.

Revenue sharing should be prohibited. 0%. Existing revenue sharing agreements could be grandfathered in, but it is now clear that revenue sharing is basically a state tax upon tribal government and should be prohibited to restore the original intent of IGRA.

Answer to Question 5.

The Department of the Interior requires further congressional legislation to implement a land claim settlement before the settlement lands can be used for gaming. This issue can be addressed in the context of the congressional legislation implementing the settlement.

Answer to Question 6.

We recognize that anyone can propose anything. The existing system ensures that only projects with the support of the state, local governments and neighboring Indian tribes are appropriate.

We believe that the American public should take the time to educate themselves about Indian tribes because, after all, they are living on lands that our tribes donated for their residential use.

Answer to Question 7.

The original intent of IGRA was to regulate and protect Indian gaming on existing Indian lands, with new lands to be used only in limited circumstances outlined in the Act. If the Committee reminds the Secretary of that fact, there should be no problem under the law.

Answer to Question 8.

The proposed Minnesota agreement is illegal because it end runs the Indian Gaming Regulatory Act.

Answers to Congressman Gibbons' Questions.

Answer to Question 1.

The Committee should recognize that the existing regulation on Indian trust land acquisitions deals with these issues in a fair and balanced way. 25 CFR 151.

Answer to Question 2.

Landless tribes are generally directed to go to their former reservations and tribes that are restored to recognition by Congress generally have an area described where they are to reacquire lands.

It is not surprising that an Indian tribe would object to another tribe's acquisition of trust land in its aboriginal area. The Secretary should deny a trust land acquisition that infringes on another tribe's aboriginal lands.

Answer to Question 3.

History speaks for itself. The United States Army killed many of our people in order to force us on to small reservations. Then our reservation lands were stolen. If tribes get back a small portion of their former lands, it is a small measure of justice.

Answer to Question 4.

The Department of the Interior has appropriate criteria for land into trust applications under 25 CFR 151. As stated above, that regulation establishes a sliding scale where land acquisitions on-reservation are easier and off-reservation acquisitions are harder.

Answer to Question 5.

See Answer to Question 2.

Answer to Question 6.

Anyone can make any proposal, but the existing law provides only limited exceptions to the general rule that Indian tribes use existing reservation lands for gaming.

Answer to Question 7.

American Indians were denied the right to vote for so long that all Americans should be applauding the fact that we finally have a right to participate. The Federal Government did not recognize the right of American Indians to vote until 1924. Basically, our people were treated as resident aliens. For decades after the Federal law changed, state laws and constitutions prohibited reservation Indians from voting. And, county governments also prohibited our people from voting into the 1970s. Any participation by American Indians and Indian tribes is proportional to our numbers and should be encouraged.

Answer to Question 8.

As we discussed with Governor Owens, the Cheyenne-Arapaho proposal was not likely to succeed without the support of the state and local government. Thus, his opposition has more or less stopped the proposal.

The land claim settlement would have to be implemented by further congressional legislation before any lands could be used for gaming, so that prospect appears to be unlikely without the support of the people of Colorado.

The CHAIRMAN. Thank you.

Mr. Martin?

STATEMENT OF JAMES T. MARTIN, EXECUTIVE DIRECTOR, UNITED SOUTH AND EASTERN TRIBES, INC.

Mr. MARTIN. Good afternoon, Chairman Pombo, Congressman Kildee and other distinguished members of the Committee. It is a pleasure to be here this afternoon. USET has submitted written testimony, and I would like to have that entered as our official testimony for this hearing. I would also like to make some oral remarks.

My name is Tim Martin. I am the Executive Director of United South and Eastern Tribes, an intertribal organization representing 24 federally recognized Indian tribes in the East and Southeastern part of the United States.

I appear before the Committee today to discuss Chairman Pombo's proposed legislation to restrict off-reservation gaming. USET believes it is time for Congress to pass legislation to address what has become known as reservation shopping. Consequently, we thank Chairman Pombo for his leadership in bringing to the Committee's attention this issue, and we look forward to working with the Committee as we consider this corrective legislation.

Congress enacted the Indian Gaming Regulatory Act, IGRA, to promote trial economic development, tribal self-sufficiency and

strong tribal governments. The Act is doing just that. Indian gaming has been described as the only Federal Indian economic initiative that has ever worked, and that is absolutely true. Indian gaming has served as a critical economic tool to enable Indian nations to once again provide essential public services to their tribal members, reassert their trial sovereignty, promote the ultimate goal of self-determination and self-sufficiency.

Unfortunately, however, USET has been increasingly concerned with the handful of Indian tribes and wealthy non-Indian developers who are seeking to establish Indian casinos far away from their existing reservation in distant States where the tribe is not even currently located. In at least 12 States Indian tribes are seeking to move across State lines and even across multiple States to take advantage of more lucrative gaming markets. In most cases these efforts are being funded by shady developers who are underwriting the litigation expense, lobbyist fees, and in some cases buying the land that could be put in for a cut of the profits.

This kind of reservation shopping runs contrary to the intent behind IGRA and well-established Federal Indian policy. The basic idea of IGRA was to protect the governmental rights of tribes to exercise jurisdiction over their land while assuring regulatory oversight over Indian gaming. But these proposed Indian casino deals are not based upon governmental rights. In most instances the developers and tribes are using land claims or the threat of land claims to promote casinos in far off places. In these instances Indian gaming is not being used as a tool by the tribe to promote economic activities on their lands. It is being used as a tool by developers who simply need Indian tribes to make their casino deals work.

Let me give a typical scenario for how the developers normally seek to gain approval for an Indian casino on behalf of a out-of-State tribe. First the developer will extend a carrot to the State and local governments. The developer hires lobbyists who try to convince State and local officials that an Indian casino will benefit that State by creating jobs and economic development. The developer will offer the State and local communities a cut of the proceeds of the casino in exchange for State support. In most cases these offers violate IGRA's prohibition against taxing Indian casinos. But the out-of-State tribes are willing to pay these taxes because the venture does not impair the enterprises where their tribes are located. The developers also are willing to agree that the out-of-State tribes will waive most of their aspects of its tribal sovereignty. In other words, the out-of-State tribe will agree to submit to State and local jurisdiction and return to the ability to establish an Indian casino in the new State. Whatever concessions the out-of-State tribes are willing to make are fine because they don't impact that tribe because it is another State.

Unfortunately, though, where there are other tribes located in the State that the tribe is proposing to go to, where the out-of-State is seeking a casino, the offer to be submitted to the State jurisdiction pay hefty taxes on the gaming facility seeking undermines the in-State tribe's effort to defend their sovereignty. Why? Because the out-of-State tribe's offer becomes the new baseline which the State will seek concessions from the in-State tribes. The State will be

asked to the tribe, Why aren't you as reasonable as an out-of-State tribe are willing to relinquish their sovereignty in exchange for the right to operate a casino.

If the carrot approach does not work, the developer typically raises the suspect of land claims litigation as a stick to compel the State to negotiate with the tribe for a casino. In fact, there seems to be a handful of developers who have created a new business model that relies on tribes and existing or potential land claims as a means to establish lucrative casino proposals in geographically attractive locations.

So far none of the out-of-State Indian tribes have obtained the necessary approval to establish the casinos they are seeking. If even one of these deals is approved, however, the floodgate for reservation shopping will be open all across the United States. There are many tribes that assert land claims to lands formerly occupied by ancestrals or tribal members. Given that many tribes in the west previously migrated from lands in the east, it will not be difficult for them to convey some nexus to the land stipulated in the eastern part of the United States, especially in areas that are potentially lucrative casino sites.

In the meantime, the activities of these developers and out-of-State tribes create uncertainty for States and local communities and undermine the ability of in-State tribal nations to defend their homeland and sovereign rights.

Chairman Pombo's recent distributed discussion draft legislation would prohibit Indian tribes from conducting gaming on lands outside of a State in which the Indian tribe has an existing reservation unless such lands are contiguous to an existing reservation of that tribe in that State.

Although we have some technical suggestions in the approved discussion draft, we support the intent of Chairman Pombo's proposed amendment to IGRA. We applaud this committee for conducting a hearing of this important issue, and we look forward to working with Chairman Pombo and this committee to develop a common sense solution to put a end to reservation shopping.

Thank you.

[The prepared statement of Mr. Martin follows:]

Statement of James T. Martin, Executive Director, United South and Eastern Tribes, Inc.

Good afternoon Chairman Pombo, Ranking Member Rahall, and distinguished members of the Committee on Resources. My name is Tim Martin, and I am Executive Director of United South and Eastern Tribes, Inc. I am pleased to appear before the committee to discuss Chairman Pombo's proposed legislation to restrict off-reservation gaming. As you know, United South and Eastern Tribes, Inc. passed a resolution over two years ago raising concerns with the increasing activities of shady, non-Indian developers and a handful of tribes seeking to establish casinos in states where they have no reservation. Consequently, we thank Chairman Pombo for his leadership in bringing the Committee's attention to these activities, and we look forward to working with the Committee as it considers corrective legislation.

United South and Eastern Tribes, Inc. ("USET") is a non-profit, inter-tribal organization that collectively represents its member Tribes at the regional and national levels. USET represents twenty-four federally recognized Tribes.[1] Included among

[1]The members of USET are: The Chitimacha Tribe of Louisiana, the Seneca Nation of Indians, the Coushatta Tribe of Louisiana, the Eastern Band of Cherokee, the Mississippi Band of Choctaw, the Seminole Tribe of Florida, St. Regis Band of Mohawk Indians, the Miccosukee

Continued

the members of USET are some of the largest gaming tribes in the United States, such as the Mashantucket Pequots, the Mohegan Tribe, the Oneida Indian Nation, the Mississippi Band of Choctaw, the Seminole Tribe, and the Miccosoukee Tribe. We also represent tribes with more modest gaming facilities, as well as tribes that currently do not engage in gaming. To be specific, of the 24 Indian nations that comprise USET, 15 engage in Indian gaming pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA" or "the Act"). Nine tribes conduct Class III gaming pursuant to a tribal-state compact, and six tribes engage in Class II gaming.

Congress enacted the IGRA "to promote tribal economic development, tribal self-sufficiency, and strong tribal government."[2] The Act is doing just that. Indian gaming has been described as "the only federal Indian economic initiative that ever worked." That is absolutely correct. Indian gaming has served as a critical economic tool to enable Indian nations to once again be able to provide essential governmental services to their members, re-assert their sovereignty, and promote the goals of self-determination and self-sufficiency.

Prior to the advent of Indian gaming, many Indian nations, while legally recognized as sovereign governments, were not able to provide basic, governmental services to their people. They had all of the legal attributes of sovereign nations, but many did not have the practical ability to be an effective government for their members. Consequently, despite a strong and proud tradition, Indian nations were stuck in a two hundred year cycle of poverty.

Today, the proceeds of Indian gaming operations go directly into providing essential governmental services to tribal members. Our Members have used these revenues to invest in dozens of Member programs, including home ownership initiatives, tuition assistance for everything from private schools to post-doctorate work, national health insurance for tribal members, and access to top-notch health clinics. Gaming has also allowed Indian nations to take tremendous steps to reclaim their heritage.

Reclaiming a past heritage has been a priority for all USET members, and gaming proceeds have enabled Indian nations to make tremendous gains in this area. In many respects, these efforts culminated in the dedication of the National Museum of the American Indian in September 2004. I am proud to note that the three largest contributions to the building of this tremendous institution came from Indian nations that are Members of USET. [3]

Unfortunately, however, USET has been increasingly concerned with a handful of Indian tribes and wealthy non-Indian developers who are seeking to establish Indian casinos far away from their existing reservations in different states from where the tribes are currently located.

In at least twelve states, Indian tribes are seeking to move across state lines to take advantage of more lucrative gaming markets. In most cases, these efforts are being funded by shadowy developers who underwrite the litigation expenses, lobbyists fees, and even the cost of land in exchange for a cut of the profits.

This kind of "reservation shopping" runs contrary to the intent behind IGRA and well-established federal Indian policies. The basic idea of IGRA was to protect the governmental rights of tribes over their lands while assuring regulation of casino gaming. But these proposed Indian casino deals are not based on governmental rights. In most instances, the developers and tribes are using land claims or the threat of land claims to promote casinos in far-off places. In these instances, Indian gaming is not being used as a tool by tribes to promote economic activities on their lands, it is being used as a tool by developers who simply need Indian tribes to make their deals for casinos work.

Let me give you a typical scenario for how the developers normally seek to gain approval for an Indian casino on behalf of an out-of-state tribe. First, the developer will extend a "carrot" to the state and local governments. The developer hires lobbyists who try and convince state and local officials that an Indian casino will benefit the state by creating jobs and economic activity. The developer will offer the state and local communities a cut of the proceeds of the Indian casino in exchange for state support. In most cases, these offers violate IGRA's prohibition against taxing

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Tribe, the Penobscot Indian Nation, the Passamaquoddy Pleasant Point Tribe, and the Passamaquoddy Indian Township Tribe, the Houlton Band of Maliseet Indians, the Tunica-Biloxi Indians of Louisiana, the Poarch Band of Creek Indians, the Narragansett Indian Tribe, the Mashantucket Pequot Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), the Alabama-Coushatta Tribe of Texas, the Oneida Indian Nation, the Aroostook Band of Micmac Indians, the Catawba Indian Nation, the Jena Band of Choctaw Indians, the Mohegan Tribe of Connecticut, and the Cayuga Nation.

[2] 25 U.S.C. § 2701(4)

[3] Jim Adams, Leaders guide museum with humble yet historic partnership, Indian Country Today (Lakota Times), Sept. 22, 2004, at 1.

Indian casinos. But the out-of-state tribes are willing to pay a tax because these ventures do not impact the enterprises where the tribes are currently located. The developers also are willing to agree that the out-of-state tribe will waive most aspects of its sovereignty. In other words, the out-of-state tribe will agree to submit to state and local jurisdiction in return for the ability to establish an Indian casino in a new state. Whatever concessions the out-of-state tribes are willing to make are fine because they do not impact the tribes' primary reservation.

Unfortunately, when there are other tribes located in those states where out-of-state tribes are seeking a casino, the offers to submit to state jurisdiction and pay hefty taxes on their gaming facilities severely undermine the in-state tribes' continuing efforts to defend their sovereignty. Why? Because the out-of-state tribes' offers become the new baseline upon which the State will seek concessions from the in-state tribes when negotiating gaming compact renewals, tax compacts, and local community jurisdictional agreements. The State will ask the in-state tribe why it won't be as reasonable as the out-of-state tribes who are willing to relinquish their sovereignty in exchange for the right to operate a casino.

If the "carrot" approach does not work for the developer, the developer typically raises the specter of land claims litigation as a "stick" to compel the state to negotiate with the tribe for a casino. In fact, there seem to be a handful of developers who have created a new business model that relies on tribes with existing or potential land claims as a means to establish lucrative casinos in geographically attractive locations.

So far, none of the out-of-state Indian tribes has obtained the necessary approvals to establish the casinos they are seeking. If even one of these deals is approved, however, the floodgates for this kind of reservation shopping will open throughout the United States. There will be no legal rationale to prohibit other tribes from establishing casinos in far away states, and developers will seek casinos for potentially dozens of other tribes throughout the United States and even Canada. There are many tribes that assert land claims to land formerly occupied by ancestors of tribal members. Other tribes would undoubtedly be encouraged to assert such claims as a route to casino riches. Given that most tribes in the west previously migrated from lands in the east, it will not be difficult for them to contrive some nexus to lands situated in the eastern part of the United States—especially in areas that are potentially lucrative casino sites.

In the meantime, the activities of these developers and out-of-state tribes create uncertainty for states and local communities, and undermine the ability of in-state Indian nations to defend their homelands and sovereign rights.

Consequently, in early 2003, USET was the first Native American organization to adopt a resolution raising concerns with the encroachment of out-of-state tribes on lands on which they have no recognized jurisdiction. The resolution called on Congress to oppose the efforts of these so-called "out-of-state tribes" to establish casinos in different states.[4] A copy of this Resolution is attached.

This year, USET again adopted a resolution opposing reservation shopping.[5] A copy of this Resolution is attached. The Resolution includes the following admonition to Congress:

> Resolved that the USET Board of Directors calls upon the United States Congress to enact legislation that would prohibit, and oppose any legislation that would allow, individual Indian Nations or Tribes from establishing a reservation, acquiring trust land or exercising governmental jurisdiction in a state other than the state where they are currently located or at a remote location to which they have no aboriginal connection".[6]

In order that the Committee understands the extent of this kind of reservation shopping across the country, the following is a summary of what we know is happening in at least twelve different states.

Colorado

Cheyenne-Arapahoe Tribes of Oklahoma: In 2004, the consolidated Cheyenne-Arapahoe Tribes filed a 27 million acre land claim with the Department of Interior, claiming all of Denver and Colorado Springs. In exchange for dropping the claims, the Cheyenne-Arapahoe Tribes have proposed to develop a Las Vegas-style gaming facility near the Denver Airport. This proposal has met opposition from the state and federal representatives of Colorado. In late 2003, a developer sought to

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[4] Illegal Gaming by the Seneca-Cayuga Tribe of Oklahoma in the State of New York, USET, Inc. Res. No. 2003:057, Feb. 6, 2003

[5] Reservation Shopping, USET, Inc. Res. No. 2005:022, Feb. 10, 2005

[6] Id.

purchase 500 acres east of Denver, near the Denver International Airport, to create a reservation for the tribes.[7]

Georgia

Kialegee Tribal Town of Oklahoma: The tribe sought to move to Hancock County, Georgia to establish a casino and entertainment project. County officials were interested in the plan, because of extreme poverty in the county, but the previous Governor was opposed to casino gaming. The tribe also sought land in Texas and other parts of Georgia in the past.[8]

Illinois

Miami Tribe of Oklahoma: The tribe is seeking 2.6 million acres in east-central Illinois based upon a treaty from the 1800s. The tribe sued landowners in 2000, and dropped the lawsuit in 2002. The tribe has indicated it would agree to a casino in exchange for dropping the claim.[9]

Ho-Chunk Nation of Wisconsin: The tribe is seeking to build the largest casino in Illinois, which would be located in the Chicago suburb of Lynwood. There is strong opposition from the community, but the plan has been supported by Congressman Jesse Jackson, Jr. (D-IL). The proposed casino would be located approximately 296 miles from the tribe's current reservation.[10]

Prairie Band Potawatomi Nation of Kansas: The tribe has sought a gaming compact with the Governor, which prompted the State's legislature to pass legislation that would require the Governor to get approval from the General Assembly before signing a deal with any Native American tribe. The Governor vetoed the bill, but the veto was overridden and has gone into law. The tribe was seeking land outside of Chicago for a casino.[11]

Indiana

Miami Tribe of Oklahoma: The tribe is negotiating with the state to put a casino in Gary, Indiana. The tribe has negotiated with the mayor of Gary since 2002. The tribe unsuccessfully attempted to place a casino in Terre Haute, Ind. as well. The proposed casino would be located approximately 610 miles from the tribe's current reservations.[12]

Kansas

Delaware Tribe of Oklahoma: The tribe signed with a California-based developer to help secure gaming rights near Kansas City, Kansas. A land claim is pending.[13]

Miami Tribe of Oklahoma: The tribe attempted to open a casino in Kansas in 1999, but the plan was rejected by the federal government.[14]

Wyandotte Tribe of Oklahoma: The tribe expressed interest in opening a casino in Edwardsville, KS, and U.S. Congressman Dennis Moore (D-KS) introduced legislation in 2002 to allow the casino. The Governor has expressed reservations with this plan.[15]

Maryland

Delaware Nation of Oklahoma: The tribe agreed to take over land in Anne Arundel County to create a landfill, run by a local development company. The tribe expressed interest in the land for establishing a high stakes bingo parlor, and if slots are approved by the state, offering those as well.[16]

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[7] "Owens to denounce casino," The Denver Post, August 29, 2004; 'Indians' leveraged efforts for casinos reach beyond Colo.," The Denver Post, August 16, 2004

[8] "Kialegee gamble on casino bid," The Tulsa World, November 14, 1999

[9] "Johnson testifies on Hill; Bill centers on tribal land disputes," The Pantagraph, May 9, 2002

[10] "Village opposes Lynwood casino," Chicago Tribune, November 19, 2004; "Weller will battle Ho-Chunk proposal," Chicago Tribune, August 28, 2004.

[11] "Indian gaming law takes effect," The Daily Chronicle, November 20, 2004.

[12] "Tribe wins step in fight for N.Y. casino," The Daily Oklahoman, November 16, 2004; "Midwest Tribes See Big Payoffs in the East," The New York Times, March 24, 2003; "...the Oklahoma-based tribe, which has been negotiating to open a casino in northern Indiana, recently declared that the tribe has a legal claim to 100 percent of the land in [5] counties." "An obvious ploy," South Bend Tribune, July 2, 2002.

[13] "Delaware Indian tribes face long odds to win gambling effort," Newsday.com article, May 15, 2003.

[14] "Tribe aims for casino deal," The Pantagraph, Jan. 12, 2003.

[15] "Sebelius not sure she'll support tribal gambling plan," Associated Press, Jan. 25, 2003.

[16] "[Halle Cos.] has agreed to pay an Oklahoma-based Indian tribe as much as $1.4 million a year to take over the land and to apply to make it tribal property...To make its case to the [BIA], the tribe presented its history, including evidence of its ancestral ties to Maryland." "Surprising Ally Joins Landfill Quest; Thwarted Developer Would Make Indian Tribe Owner of Arundel Site," The Washington Post, November 1, 2004.

New Jersey

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: The two tribes (which are separate entities recognized by the federal government) attempted to open a casino in 1999 in Wildwood, New Jersey, but state and local officials opposed the plan. [17]

New Mexico

Fort Sill Apache Tribe of Oklahoma: The tribe is considering building a casino in southern New Mexico, and might oppose plans by an in-state tribe, the Jemez Pueblo to build in the area as well. [18]

New York

Stockbridge-Munsee Tribe of Wisconsin: This tribe has offered to settle a land claim with the state in exchange for a casino in New York. The tribe has signed with a developer to build one of the planned Indian casinos in the Catskills. A Federal court is poised to drop the tribe's land claim against the state because it is not supported by the Federal Government. After years of opposing any governmental presence in New York by an out-of-state tribe, Governor Pataki agreed to give the tribe the right to establish a Las Vegas-style facility in the Catskills. The U.S. Congress and the New York Legislature must still approve this agreement. [19]

Seneca-Cayuga Tribe of Oklahoma: The Seneca-Cayuga Tribe of Oklahoma purchased land in New York and declared its intention to build and operate an Indian gaming facility more than 1,100 miles from its reservation in Oklahoma. The Indian tribe claims that it has sovereign authority over these newly acquired lands, which if it were true, would provide the tribe with the right to engage in high-stakes bingo without obtaining approval from the federal government or the State of New York.

The Seneca-Cayuga Tribe asserts that its participation in the land claim litigation involving the Cayuga Nation and the State of New York provides it with political jurisdiction over land in New York. Governor Pataki announced a settlement agreement with the Seneca-Cayuga on November 12, 2004, allowing the tribe to establish a Las Vegas-style gaming facility in the Catskills. The U.S. Congress and the New York Legislature must still approve this agreement. [20]

Oneida Tribe of Wisconsin: This tribe is a party to a land claim suit with the Oneida Nation of New York and the Oneida of the Thames Band. On December 7, 2004, the Governor announced an agreement with the tribe that will allow them to establish a Las Vegas-style gaming facility in the Catskills in exchange for the tribe dropping their land claim. The U.S. Congress and the New York Legislature must still approve this agreement. The agreement is opposed by the Oneida Indian Nation of New York. [21]

Ohio

Eastern Shawnee Tribe of Oklahoma: The tribe is preparing a 4 million acre land claim suit and is seeking to build anywhere from five to seven casino resorts in Ohio. Additionally, Allen County (OH) commissioners turned down a proposal by the tribe to take out an option on county-owned land for a casino. The tribe has a contract to buy 150 acres in Monroe (OH) and plans to approach state officials in December or January. The tribe would need to enter into a compact with the state for the casinos. [22]

Pennsylvania

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: These two tribes declared a claim on 315 acres of land in Pennsylvania near Allentown after their plans for a casino on the New Jersey shore failed. The tribes are seeking to build a casino

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[17] Newsday.com article, "Delaware Indian tribes face long odds to win gambling effort," AP, May 15, 2003; Philly.com article, "2 Okla. tribes seek fortune in Penna." Philadelphia Inquirer, July 7, 2003

[18] "Local tribes unable to play," Las Cruces Sun-News, November 14, 2004 "[Tribal chairman] Houser said it is his hope the Fort Sill Apaches can return to New Mexico under an act of Congress that would grant land to the tribe as compensation for the U.S. government's past acts." (Source: "Okla. Apaches Seek to Build N.M. Casino," Albuquerque Journal, November 7, 2004.)

[19] "Midwest Tribes See Big Payoffs in the East," The New York Times, March 24, 2003

[20] Press Release from Office of Governor George Pataki on November 12, 2004; "Midwest Tribes See Big Payoffs in the East," The New York Times, March 24, 2003

[21] "Land deals draw various reactions," The Syracuse Post-Standard, March 12, 2005.

[22] "Indians' leveraged efforts for casinos reach beyond Colo.," The Denver Post, August 16, 2004; "Allen County, Ohio, leaders turn down offer from tribe on casino," The Lima News, November 12, 2004; "Monroe gets look at casino proposal," The Cincinnati Enquirer, November 11, 2004

in exchange for dropping their claims. Governor Rendell has so far refused to negotiate with the tribes for a casino.[23]

Texas

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: In addition to casino plans in New Jersey and Pennsylvania, these two tribes have attempted to build a travel plaza in Texas.[24]

Kialegee Tribal Town: Attempted to establish lands and gaming in Texas, but were rejected.[25]

The above-referenced activities are opposed by the majority of Indian nations, including the 24 member-nations of USET. Consequently, we strongly support Chairman Pombo's desire to address these reservation shopping activities by clarifying that Indian tribes cannot cross state lines to establish casinos in states where they are not currently located.

Chairman Pombo's recently distributed discussion draft would prohibit Indian tribes from conducting gaming on lands outside of a State in which the Indian tribe has an existing reservation, unless such lands are contiguous to an existing reservation of that Indian tribe in that State. Although we have some technical suggestions to improve the discussion draft, we support the intent behind Chairman Pombo's proposed amendment to IGRA.

Department of Interior Secretary Gale Norton recently noted that, "[t]ribes are increasingly seeking to develop gaming facilities in areas far from their reservations, focusing on selecting a location based on market potential rather than exercising governmental jurisdiction on existing Indian lands."[26] If tribes are permitted to conduct gaming in different states far away from their recognized reservations, Secretary Norton's concerns will have been fully realized. There is no precedent for these kinds of activities, and if allowed to continue, it will usher in a new era of "portable sovereignty" across the country.

We applaud the Resources Committee for conducting a hearing on this matter, and we support Chairman Pombo's efforts to develop a common-sense solution to put an end to reservation shopping for gaming purposes.

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[23] "2 Okla. tribes seek fortune in Penna.," Philadelphia Inquirer, July 7, 2003; "...two Delaware Indian tribes from Oklahoma want to reclaim 315 acres in the Lehigh Valley that they say were stolen from their Pennsylvania ancestors 200 years ago...Stephen A. Cozen, the Philadelphia lawyer representing the tribes, said the group is prepared to file a federal lawsuit to reclaim the land and pursue gaming unless they can reach an agreement with [Governor] Rendell to open a casino." (Source: "Indians seek N.E. Pennsylvania land for casino," Philly.com article, May 15, 2003.

[24] Newsday.com article, "Delaware Indian tribes face long odds to win gambling effort," Associated Press, May 15, 2003

[25] "Kialegee gamble on casino bid," The Tulsa World, November 14, 1999)

[26] Letter from Department of Interior Secretary Gale Norton to New York Governor George Pataki, Nov. 12, 2002, at 2.

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[Responses to questions submitted for the record by Mr. Martin follow:]

Response to questions submitted for the record by James T. Martin, Executive Director, United South and Eastern Tribes, Inc.

From Chairman Pombo:

1. *Under the Section 20 two-part determination in IGRA, the governor of a state is cast in the role of representing and protecting the interests of both the state government, and the local governments that exercise jurisdiction in the area proposed for casino gaming. However, as state governors increasingly look to tribal casinos to provide large amounts of revenue sharing to supplement the state budget, it has been argued that governors are now in a position where their fiduciary interest in securing a tribal revenue stream for state government conflicts with their duty to represent the interests of local communities in the two part determination process.*
   - With the potential of this large financial incentive to a state for a governor to overlook the concerns of local communities, can it be said that local communities can still be adequately represented solely by the governor's participation in the two part determination process?
   - Or does this potential conflict of interest presented to governors suggest that IGRA should be modified to give affected local communities a formal role in concurring with the Secretary's two-part determination findings?

ANSWER:

Unfortunately, State governments are increasingly turning to Indian governments' casino operations as a potential source of revenue.

Congress enacted the IGRA "to promote tribal economic development, tribal self-sufficiency, and strong tribal government."[1] Today, the proceeds of Indian gaming operations go directly into providing essential governmental services to tribal members. Our Members have used these revenues to invest in dozens of Member programs, including home ownership initiatives, tuition assistance for everything from private schools to post-doctorate work, national health insurance for tribal members, and access to top-notch health clinics. Gaming has also allowed Indian nations to take tremendous steps to reclaim their heritage. The basic idea of IGRA was to protect the governmental rights of tribes over their lands while assuring regulation of casino gaming. IGRA was meant to be an economic tool of Indian governments to strengthen their ability to provide for their people.

Unfortunately, State governments are increasingly turning to Indian governments' casino operations as a potential source of revenue. This runs contrary to IGRA, where in Section 11(d)(4), the Act prohibits a State or any of its political subdivisions from imposing any "tax, fee charge, or other assessment" upon an Indian nation lawfully engaged in gaming under the Act.

In tough budgetary times, however, some State Governors are looking for potential sources of new taxation instead of trying to tighten their belts and employ fiscal restraint. Consequently, some Governors require an Indian government to engage in significant revenue sharing with the State as a cost of doing business with the State. In some situations, when an Indian government refuses to concede its rights, the State will seek to work with tribes located in far away states or in remote locations. These tribes are typically more willing to share revenue and concede sovereign rights for a chance to engage in casino gaming.

Chairman Pombo's discussion draft would prohibit a tribe from migrating to a different state for purposes of engaging in casino gaming. This bright line prohibition would go a long way to eliminate some of the revenue sharing abuses that are occurring, as the handful of tribes that are seeking gaming in such locations are typically willing to share as much revenue as needed in exchange for a casino.

The draft also would impose additional steps for Indian nations seeking to engage in off-reservation gaming within the same state but on land that is not aboriginal. This also would help curb some of the current revenue sharing abuses.

Non-Indian communities are represented by the Governor of the State and by their federal representatives. Unlike States, Indian nations have no direct representation in Congress. Consequently, it may not be necessary to provide local, non-Indian communities with a more formal role in considering off-reservation land-into-trust proposals.

2. *Under established principles of tribal sovereignty, local communities do not have a say in decisions involving tribal land that is already held in trust by the federal government. However, off-reservation gaming proposals involve taking land into trust that is currently held in fee and is often not even closely located to trust lands.*
   - Is it a fundamental right of tribes to have land taken into trust on their behalf at any location within the United States they so desire, irrespective of the distance to their current reservation or any connection to ancestral or native lands?
   - If not, what limitations should apply on where a tribe can or cannot have lands taken into trust on their behalf?
   - Should a higher standard of review apply when the off-reservation lands in question will be used for purposes of gaming?
   - Should this standard include active participation and a requirement for concurrence from local governments, even though they are generally otherwise prohibited from having a say on matters concerning Indian lands?

ANSWER:

An Indian government does not have a fundamental right to have land taken into trust regardless of the distance to its current reservation or any connection to ancestral or native lands. Federal Indian law and policy typically has required that an Indian government have an aboriginal tie to land that is being sought to be taken into trust. The farther away proposed land is from a tribe's current reservation, typically the Department of Interior gives greater deference to the concerns of surrounding communities that could be impacted by taking the land into trust. Moreover, when a proposed land for trust application involves the aboriginal land of a different Indian government, the impacted tribe should have a significant role in the decision-making.

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[1] 25 U.S.C. § 2701(4)

The IGRA contains a higher standard of review when off-reservation lands in question will be used for purposes of gaming. USET believes, however, that Congress should enact legislation that would prohibit an Indian nation from establishing a reservation, acquiring trust land, or exercising governmental jurisdiction in a state other than the state where they are currently located or at a remote location to which they have no aboriginal connection.

3. *Tribes have long fought to protect their ancestral lands from the unwanted incursions of outsiders, both Indian and non-Indian alike.*
   - If a tribe is seeking to have land taken into trust in an area that is not within the ancestral lands of that tribe, should other tribes whose ancestral lands encompass the site have the ability to object to the land going into trust?
   - The ability to veto the land going into trust?
   - How can the term "ancestral lands" be defined as precisely as possible so it is clear to all observers, Indian and non-Indian alike, which lands are ancestral to any given tribe?

ANSWER:

As mentioned above, we do believe that the federal government should protect tribes from unwanted incursions of outsiders, both Indian and non-Indian alike. Tribes whose aboriginal land is the subject of a land-into-trust application of a different tribe should be able to veto the land from going into trust.

Chairman Pombo's Discussion Draft (dated March 9, 2005) includes language that adequately describes "ancestral lands" as lands where the tribe has its primary geographic, social, and historical nexus to the land. We can support this definition.

4. *Should a cap be placed on any revenue sharing with state governments from an off-reservation gaming facility?*
   - If so, what should the cap percentage be?

ANSWER:

On October 26, 2004, George Skibine, [title], testified before the Senate Committee on Indian Affairs, suggested that perhaps IGRA should be amended to include a hard cap on revenue sharing. He suggested that such a cap should be in the single digits. As discussed above, however, the IGRA prohibits a State government from demanding revenue sharing. In certain situations, however, the Secretary of Interior will approve revenue sharing arrangements when the Indian government receives substantial economic benefit in exchange for the revenue sharing. Typically, this economic benefit comes in the form of exclusivity tied to the operation of slot machines. Unfortunately, the Department has approved compacts, or they have been deemed approved, which contain substantial revenue sharing arrangements without substantial exclusivity for the tribe. Consequently, much of this problem could be addressed if the Department better enforced the provisions of IGRA.

5. *Should a tribe be able to ask for or accept a casino operation as a substitute, either in whole or in part, of a cash payment to settle a land claim?*
   - If a casino is acceptable as a settlement, should tribes whose ancestral lands encompass the location where the casino would be located be consulted before the settlement is finalized?
   - Should they be allowed veto power over such a casino-based settlement as a tool to protect their ancestral lands?

ANSWER:

The most important issue for an Indian nation seeking to settle its land claim is what value it will accept in exchange for foregoing litigation. Once an Indian nation determines what a settlement should be worth, there are many different means of funding the settlement. A casino is one such means but it is not the only way to fund a settlement, and it may not be in the best interest of the tribe to accept a casino in lieu of cash. In other words, if a settlement is worth $100 million, the tribe could agree to accept a cash settlement. However, a cash-strapped State may determine that it would rather provide the tribe with a business (i.e., a casino) as a substitute. In that instance, the tribe should and will engage in a lengthy economic analysis to determine whether the terms of the casino are an adequate substitute for $100 million in cash.

If a tribe whose ancestral lands encompass the location where the casino would be located, the tribe should be consulted before the settlement is finalized and be able to veto the establishment of a casino on its ancestral lands.

6. *While there have been only three incidences since IGRA was enacted of off-reservation land being placed into trust for gaming purposes, there are currently dozens such projects either in the proposed stage or being reviewed by the BIA.*
   - What impact do you think all of these proposals have on public support for Indian gaming?
   - Do you believe that the vagaries of current law regarding off reservation gaming encourage the proliferation of proposals for off-reservation gaming?
   - Do you believe that clarifying the law on off-reservation gaming, and placing greater restrictions on when off-reservation gaming is allowed, will reduce the number of proposals for off-reservation gaming?
   - Will such changes serve to weed out proposals for off-reservation gaming of dubious merits?

ANSWER:

There are only three incidences since IGRA was enacted of off-reservation land being placed into trust for gaming purposes, but there are currently dozens such projects either in the proposed stage or being reviewed by the BIA. These proposals have a negative impact on public support for Indian gaming. Wealthy, non-Indian developers take advantage of vague language in IGRA to promote off-reservation casino deals. Consequently, USET supports Congress clarifying current law to place greater restrictions on when off-reservation gaming is allowed. Specifically, Congress should enact legislation that would prohibit an Indian nation from establishing a reservation, acquiring trust land, or exercising governmental jurisdiction in a state other than the state where they are currently located or at a remote location to which they have no aboriginal connection.

7. *Do you believe that the original intent of IGRA was to allow Indian gaming to be conducted at any location within the United States that a tribe is able to purchase and have placed into trust?*
   - Or was the original intent of IGRA to foster economic development on Indian lands held at the date of enactment?

ANSWER:

Congress did not intend for IGRA to allow Indian gaming to be conducted at any location within the United States where a tribe is able to purchase and have land taken into trust. IGRA was meant to be an economic tool to foster economic develop on an Indian nation's lands where the tribe is located. IGRA was not meant to allow a tribe to conduct gaming on lands far away from the tribe's current location and in a different state than where the tribe is located.

8. *In Minnesota, the governor is entering into an agreement with three tribes to operate an urban casino under the auspices of the Minnesota State Lottery. As currently constructed, IGRA would not apply to this proposal. Is there any other statute authorizing or requiring the Secretary of Interior to ensure tribal interests are protected in such gaming proposal as this where at least one of the parties is a tribal government or tribal government business enterprise? Should there be?*
   - Does this agreement violate the terms of any tribal-state compact in Minnesota?
   - What would be the impacts to tribes around the country if other governors entered into similar agreements with tribes in their states?
   - In such a deal as proposed in Minnesota, what is the level of federal scrutiny of outside investors, management agreements, and vendor contracts?
   - Are the tribes entering into this deal capable of determining whether or not they will benefit from it? Are they capable of knowing whether or not developers, casino management companies, and the state government might be taking advantage of them?

ANSWER:

USET is not familiar with the particular circumstances in Minnesota, so it would not be appropriate to respond. However, the Secretary of Interior has broad discretion under her trust responsibilities to Indian nations to ensure that tribal interests are protected.

From Congressman Gibbons:

1. *This Committee has held hearings on legislation that would allow a tribe to go hundreds of miles off their reservation and open a casino in the ancestral lands of another Tribe.*
   - Do you have any specific suggestions on how Congress should proceed in this regards?

- Also, with over 300 tribes seeking recognition and presumably gaming, please comment on the impact that a policy permitting "reservation shopping" and "off-reservation gaming" will have on communities across the country.

ANSWER:

The United South and Eastern Tribes, Inc. supports Congress clarifying current law to place greater restrictions on when off-reservation gaming is allowed. Specifically, Congress should enact legislation that would prohibit an Indian nation from establishing a reservation, acquiring trust land, or exercising governmental jurisdiction in a state other than the state where they are currently located or at a remote location to which they have no aboriginal connection. Current "reservation shopping" activities has a detrimental impact on communities across the country.

As stated in USET's written testimony, the basic idea of IGRA was to protect the governmental rights of tribes over their lands while assuring regulation of casino gaming. But these proposed Indian casino deals are not based on governmental rights. In most instances, the developers and tribes are using land claims or the threat of land claims to promote casinos in far-off places. In these instances, Indian gaming is not being used as a tool by tribes to promote economic activities on their lands, it is being used as a tool by developers who simply need Indian tribes to make their deals for casinos work.

The activities of these non-Indian developers and out-of-state tribes seeking to establish off-reservation casinos in different states create uncertainty for states and local communities, and undermine the ability of in-state Indian nations to defend their homelands and sovereign rights.

2. *A few years ago, during the Proposition 5 campaign that allowed full-scale Indian gaming in California, the tribes ran television ads stating they wanted to do gaming just on their reservation lands. Now in California, there are several tribes that are trying to conduct off-reservation gaming.*
   - If a tribe has a reservation and/or a traditional service area, why should any tribe be permitted to establish gaming off-reservation, distant from its reservation?
   - Also, please comment on the fact that other tribes are opposed to tribes seeking "off-reservation" gaming.

ANSWER:

Congress did not intend for IGRA to allow Indian gaming to be conducted at any location within the United States where a tribe is able to purchase and have land taken into trust. IGRA was meant to be an economic tool to foster economic develop on an Indian nation's lands where the tribe is located. IGRA was not meant to allow a tribe to conduct gaming on lands far away from the tribe's current location and in a different state than where the tribe is located.

Many tribes are opposed to "off-reservation" gaming proposals because the developers promoting these deals typically agree to give up the sovereign rights of the tribes on whose behalf they are seeking casinos in order to make the deal work. This undermines the ability of other Indian nations that are not willing to eliminate their sovereign rights. In addition, in some cases, the off-reservation gaming proposals impact the aboriginal lands of other Indian nations. IN those cases, the Indian nations whose land is the subject of an off reservation gaming proposal should be consulted.

3. *When tribes seek to enter already established gaming areas, doesn't that create an unlevel playing field since tribes are not subject to state regulations; are not subject to the restrictions placed on other gaming establishments; do pay not state taxes; etc.?*

ANSWER:

Indian gaming is unlike commercial gaming because the former is used by Indian nations as an economic tool to provide governmental services for their members. In this respect, it is much like state-sponsored gaming (e.g., lotteries), where the proceeds are used to fund certain state programs. Proceeds of Indian gaming operations go directly into providing essential governmental services to tribal members. Our Members have used these revenues to invest in dozens of Member programs, including home ownership initiatives, tuition assistance for everything from private schools to post-doctorate work, national health insurance for tribal members, and access to top-notch health clinics. Gaming has also allowed Indian nations to take tremendous steps to reclaim their heritage. Consequently, it is not quite correct to compare Indian gaming to non-Indian, commercial gaming enterprises.

In addition, Indian gaming is a highly regulated industry. The regulation of Indian gaming is expressly provided for in IGRA, which starts from the premise that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands, if ... [it] is conducted in a state which does not, as a matter of criminal law and public policy, prohibit such gaming activity." In recognition of this exclusive right, Congress sought to create a regulatory framework that Indian nations could use for their gaming enterprises. This was accomplished by establishing a compacting mechanism that gives state governments significant input regarding the scope and nature of tribal casino operations, and by creating a new regulatory agency, the National Indian Gaming Commission ("NIGC").

It is through the compact negotiation process that state governments are given a meaningful voice in the manner in which gaming will be conducted in Indian country. Virtually all gaming compacts are detailed and specific, setting forth rules governing games to be played, the application of various laws, operational standards to be followed, fees and reimbursements to be paid, and the respective roles of state and tribal authorities. For example, the Oneida Indian Nation's compact with the State of New York is nearly 300 pages long and covers almost every aspect of its gaming operations. The compacting process has been immensely successful in ensuring the integrity of Indian gaming while preserving the inherent sovereign rights of Indian nations to regulate their own legal and commercial affairs.

4. *What criteria should be used by the Department of the Interior in it's determination of land-into-trust?*
   - Should there be a requirement of substantial historical connection between the tribe and the parcel to be taken into trust? Why/why not?
   - How recent should the historical connection be? 100 years? 200 years?
   - What about distance from the tribe's current service area? 10 miles? 20 miles? 70 miles?
   - Do you believe that the farther away the casino site is, the less likely tribal members will be able to take advantage of employment opportunities with a casino? [Alternatively, if the tribal members move near the casino to get jobs, then will the traditional community/service area be disrupted?]

ANSWER:

Congress should amend IGRA to create bright lines that prohibit an Indian nation from migrating into a different state for the purpose of establishing a casino. In addition, Congress should clarify that a proposal for an off-reservation casino within a state include requirements that the tribe have an aboriginal connection to the land on which the tribe seeks to game.

Chairman Pombo's Discussion Draft (dated March 9, 2005) includes language that adequately describes "ancestral lands" as lands where the tribe has its primary geographic, social, and historical nexus to the land. We can support this definition.

In addition to an absolute prohibition against an Indian tribe seeking to migrate to a different state to establish a casino, Congress should make it more difficult for a tribe to take land into trust when the proposed lands are far away from the tribe's current location and on land on which it has not aboriginal connection.

5. *If landless, shouldn't land-into-trust be restricted to the area where the tribe is located? Where they live, need jobs, need health care and services?*

ANSWER:

Yes.

6. *If some tribes are permitted to select the "best gaming" locations, wouldn't all tribes want to do that?*
   - What about tribes that played by the rules and have their casino on their reservation land, even though it may not be the best gaming location?

ANSWER:

The IGRA was not meant to allow tribes to select the "best gaming locations." IGRA was meant to be a tool for tribes where they are located. In some cases, tribes are located in geographically conducive areas for gaming. Unfortunately, some tribes are in locations that are not as conducive to gaming.

7. Please comment on how the federal campaign contribution laws apply to tribes and the fact that tribes are exempt from overall donor limits and can give directly from their treasuries. No other organization is similarly situated.

ANSWER:

Like every other entity other than the Federal Government, Indian tribes are subject to the Federal Election Campaign Act of 1971 ("FECA"). Tribes are subject to the contribution limits per candidate per election cycle. See 2 U.S.C. § 441a(a)(1). However, there is an erroneous misperception that a "loophole" exists for tribes under FECA because tribes are not subject to the current individual aggregate limits that apply to a single human being. Nowhere in FECA is there an aggregate limit for unincorporated entities, such as cooperatives, community associations, partnerships, LLPs, PACs, LLCs, and even State Governments. Thus, Tribes are treated just like other unincorporated groups.

8. Please comment on the increasing trend of tribes now crossing state lines away from their reservation to establish gaming.

- Please comment on the situation in CO where the Cheyenne-Arapaho of Oklahoma are seeking land in CO to establish gaming. In that situation, the tribe is claiming 27 million acres even though their land claims were definitively and legally settled in the 1960s. Their action is designed to force the Governor to agree to a smaller parcel near the Denver Airport for gaming.

ANSWER:

USET was the first Native American organization in the country to ask Congress to put a stop to the increasing trend of Indian tribes seeking to cross state lines in order to establish gaming. Attached is a matrix demonstrating that Indian nations are seeking to cross state lines in at least 12 different states. The Pombo discussion draft would create a bright line to prohibit such activity, and USET fully supports that prohibition.

Attachment to Questions from Committee

States in which Indian nations are seeking to migrate from other states in order to establish casino gaming operations.

Colorado

Cheyenne-Arapahoe Tribes of Oklahoma: In 2004, the consolidated Cheyenne-Arapahoe Tribes filed a 27 million acre land claim with the Department of Interior, claiming all of Denver and Colorado Springs. In exchange for dropping the claims, the Cheyenne-Arapahoe Tribes have proposed to develop a Las Vegas-style gaming facility near the Denver Airport. This proposal has met opposition from the state and federal representatives of Colorado. In late 2003, a developer sought to purchase 500 acres east of Denver, near the Denver International Airport, to create a reservation for the tribes.[1]

Georgia

Kialegee Tribal Town of Oklahoma: The tribe sought to move to Hancock County, Georgia to establish a casino and entertainment project. County officials were interested in the plan, because of extreme poverty in the county, but the previous Governor was opposed to casino gaming. The tribe also sought land in Texas and other parts of Georgia in the past.[2]

Illinois

Miami Tribe of Oklahoma: The tribe is seeking 2.6 million acres in east-central Illinois based upon a treaty from the 1800s. The tribe sued landowners in 2000, and dropped the lawsuit in 2002. The tribe has indicated it would agree to a casino in exchange for dropping the claim.[3]

Ho-Chunk Nation of Wisconsin: The tribe is seeking to build the largest casino in Illinois, which would be located in the Chicago suburb of Lynwood. There is strong opposition from the community, but the plan has been supported by Con-

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[1] "Owens to denounce casino,'" The Denver Post, August 29, 2004; "Indians' leveraged efforts for casinos reach beyond Colo.," The Denver Post, August 16, 2004

[2] "Kialegee gamble on casino bid," The Tulsa World, November 14, 1999

[3] "Johnson testifies on Hill; Bill centers on tribal land disputes," The Pantagraph, May 9, 2002

gressman Jesse Jackson, Jr. (D-IL). The proposed casino would be located approximately 296 miles from the tribe's current reservation. [4]

Prairie Band Potawatomi Nation of Kansas: The tribe has sought a gaming compact with the Governor, which prompted the State's legislature to pass legislation that would require the Governor to get approval from the General Assembly before signing a deal with any Native American tribe. The Governor vetoed the bill, but the veto was overridden and has gone into law. The tribe was seeking land outside of Chicago for a casino. [5]

Indiana

Miami Tribe of Oklahoma: The tribe is negotiating with the state to put a casino in Gary, Indiana. The tribe has negotiated with the mayor of Gary since 2002. The tribe unsuccessfully attempted to place a casino in Terre Haute, Ind. as well. The proposed casino would be located approximately 610 miles from the tribe's current reservations. [6]

Kansas

Delaware Tribe of Oklahoma: The tribe signed with a California-based developer to help secure gaming rights near Kansas City, Kansas. A land claim is pending. [7]

Miami Tribe of Oklahoma: The tribe attempted to open a casino in Kansas in 1999, but the plan was rejected by the federal government. [8]

Wyandotte Tribe of Oklahoma: The tribe expressed interest in opening a casino in Edwardsville, KS, and U.S. Congressman Dennis Moore (D-KS) introduced legislation in 2002 to allow the casino. The Governor has expressed reservations with this plan. [9]

Maryland

Delaware Nation of Oklahoma: The tribe agreed to take over land in Anne Arundel County to create a landfill, run by a local development company. The tribe expressed interest in the land for establishing a high stakes bingo parlor, and if slots are approved by the state, offering those as well. [10]

New Jersey

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: The two tribes (which are separate entities recognized by the federal government) attempted to open a casino in 1999 in Wildwood, New Jersey, but state and local officials opposed the plan. [11]

New Mexico

Fort Sill Apache Tribe of Oklahoma: The tribe is considering building a casino in southern New Mexico, and might oppose plans by an in-state tribe, the Jemez Pueblo to build in the area as well. [12]

New York

Seneca-Cayuga Tribe of Oklahoma: The Seneca-Cayuga Tribe of Oklahoma purchased land in New York and declared its intention to build and operate an Indian gaming facility more than 1,100 miles from its reservation in Oklahoma. The Indian

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[4] "Village opposes Lynwood casino," Chicago Tribune, November 19, 2004; "Weller will battle Ho-Chunk proposal," Chicago Tribune, August 28, 2004.

[5] "Indian gaming law takes effect," The Daily Chronicle, November 20, 2004.

[6] "Tribe wins step in fight for N.Y. casino," The Daily Oklahoman, November 16, 2004; "Midwest Tribes See Big Payoffs in the East," The New York Times, March 24, 2003; "...the Oklahoma-based tribe, which has been negotiating to open a casino in northern Indiana, recently declared that the tribe has a legal claim to 100 percent of the land in [5] counties." "An obvious ploy," South Bend Tribune, July 2, 2002.

[7] "Delaware Indian tribes face long odds to win gambling effort," Newsday.com article, May 15, 2003.

[8] "Tribe aims for casino deal," The Pantagraph, Jan. 12, 2003.

[9] "Sebelius not sure she'll support tribal gambling plan," Associated Press, Jan. 25, 2003.

[10] "[Halle Cos.] has agreed to pay an Oklahoma-based Indian tribe as much as $1.4 million a year to take over the land and to apply to make it tribal property...To make its case to the [BIA], the tribe presented its history, including evidence of its ancestral ties to Maryland." "Surprising Ally Joins Landfill Quest; Thwarted Developer Would Make Indian Tribe Owner of Arundel Site," The Washington Post, November 1, 2004.

[11] Newsday.com article, "Delaware Indian tribes face long odds to win gambling effort," AP, May 15, 2003; Philly.com article, "2 Okla. tribes seek fortune in Penna.," Philadelphia Inquirer, July 7, 2003

[12] "Local tribes unable to play," Las Cruces Sun-News, November 14, 2004 "[Tribal chairman] Houser said it is his hope the Fort Sill Apaches can return to New Mexico under an act of Congress that would grant land to the tribe as compensation for the U.S. government's past acts." (Source: "Okla. Apaches Seek to Build N.M. Casino," Albuquerque Journal, November 7, 2004.)

tribe claims that it has sovereign authority over these newly acquired lands, which if it were true, would provide the tribe with the right to engage in high-stakes bingo without obtaining approval from the federal government or the State of New York.

The Seneca-Cayuga Tribe asserts that its participation in the land claim litigation involving the Cayuga Nation and the State of New York provides it with political jurisdiction over land in New York. Governor Pataki announced a settlement agreement with the Seneca-Cayuga on November 12, 2004, allowing the tribe to establish a Las Vegas-style gaming facility in the Catskills. The Federal Government and the New York Legislature must still approve this agreement. [13]

Oneida Tribe of Wisconsin: This tribe is a party to a land claim suit with the Oneida Nation of New York and the Oneida of the Thames Band. On December 7, 2004, the Governor announced an agreement with the tribe that will allow them to establish a Las Vegas-style gaming facility in the Catskills in exchange for the tribe dropping their land claim. The Federal Government and the New York Legislature must still approve this agreement. The agreement is opposed by the Oneida Indian Nation of New York. [14]

Stockbridge-Munsee Tribe of Wisconsin: This tribe has offered to settle a land claim with the state in exchange for a casino in New York. The tribe has signed with a developer to build one of the three planned Indian casinos in the Catskills. Despite the fact that a Federal court is poised to drop the tribe's land claim against the state because it is not supported by the Federal Government, the Governor agreed to give the tribe the right to establish a Las Vegas-style facility in the Catskills. The Federal Government and the New York Legislature must still approve this agreement. [15]

Ohio

Eastern Shawnee Tribe of Oklahoma: The tribe is preparing a 4 million acre land claim suit and is seeking to build anywhere from five to seven casino resorts in Ohio. Additionally, Allen County (OH) commissioners turned down a proposal by the tribe to take out an option on county-owned land for a casino. The tribe has a contract to buy 150 acres in Monroe (OH) and plans to approach state officials in December or January. The tribe would need to enter into a compact with the state for the casinos. [16]

Pennsylvania

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: These two tribes declared a claim on 315 acres of land in Pennsylvania near Allentown after their plans for a casino on the New Jersey shore failed. The tribes are seeking to build a casino in exchange for dropping their claims. Governor Rendell has so far refused to negotiate with the tribes for a casino. [17]

Texas

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: In addition to casino plans in New Jersey and Pennsylvania, these two tribes have attempted to build a travel plaza in Texas. [18]

Kialegee Tribal Town: Attempted to establish lands and gaming in Texas, but were rejected. [19]

The CHAIRMAN. Thank you.
Mr. Van Norman?

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[13] Press Release from Office of Governor George Pataki on November 12, 2004; "Midwest Tribes See Big Payoffs in the East," The New York Times, March 24, 2003

[14] "Land deals draw various reactions," The Syracuse Post-Standard, March 12, 2005.

[15] "Midwest Tribes See Big Payoffs in the East," The New York Times, March 24, 2003

[16] "Indians' leveraged efforts for casinos reach beyond Colo.," The Denver Post, August 16, 2004; "Allen County, Ohio, leaders turn down offer from tribe on casino," The Lima News, November 12, 2004; "Monroe gets look at casino proposal," The Cincinnati Enquirer, November 11, 2004

[17] "2 Okla. tribes seek fortune in Penna.," Philadelphia Inquirer, July 7, 2003; "...two Delaware Indian tribes from Oklahoma want to reclaim 315 acres in the Lehigh Valley that they say were stolen from their Pennsylvania ancestors 200 years ago...Stephen A. Cozen, the Philadelphia lawyer representing the tribes, said the group is prepared to file a federal lawsuit to reclaim the land and pursue gaming unless they can reach an agreement with [Governor] Rendell to open a casino." (Source: "Indians seek N.E. Pennsylvania land for casino," Philly.com article, May 15, 2003.

[18] Newsday.com article, "Delaware Indian tribes face long odds to win gambling effort," Associated Press, May 15, 2003

[19] "Kialegee gamble on casino bid," The Tulsa World, November 14, 1999)

STATEMENT OF MARK VAN NORMAN, EXECUTIVE DIRECTOR, NATIONAL INDIAN GAMING ASSOCIATION

Mr. VAN NORMAN. Mr. Chairman and Mr. Kildee and members of the Committee, thank you for inviting the National Indian Gaming Association to testify today.

I am Mark Van Norman, Executive Director of NIGA. I am a member of the Cheyenne River Sioux Tribe from South Dakota, and I served as Director of the Office of Tribal Justice in the Department of Justice prior to coming to work for NIGA.

Chairman Stevens regrets he is not able to be here personally today due to prior commitments, but he would like to come in at a later hearing after we have had some discussions with our NIGA/NCAI Task Force on Indian Gaming. We want to thank you for bringing this issue forward in a discussion draft. We think it's important to have government to government discussions on this.

Let me start with a little background. We all know the general rule. IGRA says tribes should conduct gaming on lands held prior to 1988. But there are a number of exceptions and these exceptions account for historical mistreatment of tribes such as terminated reservations and terminated tribes. In almost 17 years under IGRA the Interior Department has acquired land in a trust for only about a dozen tribes pursuant to these exceptions. There is also an exception for land claim settlements. Only one tribe, the Seneca Nation of New York, has been able to use that provision because it requires congressional approval of the land settlement.

Section 20 of the Indian Gaming Regulatory Act also has a more general exception sometimes referred to as the two part determination process, under which a tribe may apply to the Secretary to place land in trust for gaming purposes. The two-part determination process is significant. Upon application by a tribe the Secretary must determine whether the acquisition would be in the best interest of the tribe and must consult with local governments and neighboring Indian tribes to ensure that acquisition would not be detrimental to the surrounding community. If the Secretary makes those findings, the Governor must concur in her determination in order to move forward. In also 17 years under IGRA, only three tribes have successfully navigated the Section 20 two-part process, Forest County Potawatomi, the Kalispel Tribe and Keweenaw Bay Indian Community. Four other applications under this exception have been rejected. 12 applications are pending.

The draft proposal would substantially amend Section 20. The bill would delete the two-part secretarial consultation process and nullify pending applications under Section 20(b)(1). The bill also deletes the exception for lands required by Indian tribes as part of a land claims settlement process and seems to preclude the use of those lands for gaming purposes. The bill would replace current Section 20(b)(1) by altering treatment of initial reservations of newly acknowledged, restored and currently federally recognized but landless tribes. The limitation on location of their initial reservation would be that it must be located somewhere within the State where the tribe has its primary connection. In some cases the draft would add a new requirement for State and local approval for these tribes to use their new or restored lands, but would not require new tribal approval.

The bill would also authorize the Secretary to establish two Economic Opportunity Zones in each State with Indian gaming, one on a current reservation and one off reservation. For on-reservation zones, tribes can participate if the Secretary finds such participation is in the best interest of all tribes. The host tribe receives no funds other than 10 percent of gross revenues as a management fee. The host tribe provides no financial support to any participating tribe and the State and local governments approve of the zone.

For the off-reservation zone there would be no host tribe. Land would be placed in trust for all participating tribes. The State and local governments would have to approve, and the off-reservation zone would also require approval of tribes located within 200 miles. No tribe participating in such a zone could own another gaming facility on Indian lands.

Finally, the bill would add a new section which would limit tribes to gaming on lands in the State in which the tribe is currently located. And we think it is important to be careful with that provision, to watch out for tribes that overlap the borders already, and I know that you are attuned to that.

From our point of view, any amendment to the Act is approached with caution because our tribal governments need to protect our hard-won gains in jobs, economic activity, community infrastructure and government services. So as your committee progresses with this issue, we ask that the Committee and Congress as a whole work to ensure that the integrity of IGRA is maintained. We don't want to get into other amendments or into other issues through this process.

The Indian Gaming Regulatory Act reflects a balance of Federal, State and tribal interests. As President Bush has recently affirmed, tribes have historically dealt with the Federal Government on a government-to-government basis. Under IGRA the States had a role in the compact negotiation process and the use of lands acquired after the Act for gaming purpose only because Congress developed these unique processes to accommodate tribal and State sovereign interests.

At the time of the Act's passage, many tribes objected to the State role because that role is generally denied to them by the Constitution which establishes the Federal-tribal relationship. The Supreme Court's decision in the Seminole case in 1996 further altered the balance of IGRA by permitting States to interpose an 11th Amendment defense to good faith litigation to enforce their compact requirements.

NIGA and our member tribes have traditionally requested that Congress enact a "Seminole fix" in any substantial amendment to IGRA to restore the original balance of the Act. The National Congress of American Indians has had the same position. As part of our dialog we'll ask our tribal leaders to consider that issue.

Similarly, tribal governments will need to consider any amendment to the Act that would expand the existing role of local governments. At NIGA we provide a forum for our tribal governments to come together and take a look at these important issues regarding Indian gaming, and we would like to work with the Chairman and the Committee to ensure that the draft bill is thoroughly reviewed

and considered by tribal governments before it moves forward. We will work with our member tribes to try and build on common ground, and we'll ask that all interested tribes have a full and fair opportunity to come before the Committee.

NIGA and NCAI have scheduled three task force meetings on this important subject. The first will be on March 24th here in Washington, D.C., the second April 13th at our trade show in San Diego, and a third May 25th at the Great Plains Midwest Indian Gaming Conference in Minnesota. Chairman Stevens will co-chair these meetings along with President Tex Hall of NCAI, and NIGA will develop our official position based on the bill—based on what we hear from the tribal governments through this process. Upon completion of the process we hope to come back and testify further.

We thank you for including us and for having this government-to-government dialog with tribal governments.

[The prepared statement of Mr. Stevens follows:]

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

Good Afternoon, Chairman Pombo, Congressman Rahall, and Members of the Committee. My name is Ernest L. Stevens, Jr., and I am the Chairman of the National Indian Gaming Association (NIGA). Thank you for inviting me to testify today concerning the draft discussion bill to amend the Indian Gaming Regulatory Act ("IGRA") to restrict off-reservation gaming. I regret that due to other commitments, I cannot be there with you today to testify in person, so I am submitting written testimony. NIGA is an association of 184 Indian tribes dedicated to preserving Indian sovereignty and protecting Indian gaming as a means of generating tribal government revenue, building strong tribal governments, and rebuilding our Indian communities.

In my absence, I have asked Mark Van Norman, NIGA Executive Director, to testify on behalf of our intertribal association. Mr. Van Norman is a member of the Cheyenne River Sioux Tribe and prior to serving as NIGA's Executive Director, he served as Director of the Office of Tribal Justice in the U.S. Justice Department and as Tribal Attorney for his Tribe. He will be able to provide you with an overview of how IGRA has worked historically regarding gaming on lands acquired after 1988.

Indian Tribes Are Sovereign Governments

At the outset, it is always important to recall our origins. Before Columbus, Indian tribes were independent sovereign nations. Through treaty-making, Indian tribes were brought within the framework of the United States. In the earliest Indian treaties entered into during the Revolutionary War, the United States acknowledged the status of Indian tribes as sovereigns, guaranteed our original, inherent rights to self-government, and took Indian tribes under its protection. My own tribe, the Oneida Nation, assisted General Washington and his troops with food during the cold winters at Valley Forge.

The Constitution of the United States recognizes Indian tribes as governments, together with foreign nations and the several states, in the Commerce Clause. Through the Treaty Clause, the Constitution respects Indian sovereignty by ratifying the earliest Indian treaties entered into under the Articles of Confederation and charting the course for the hundreds of treaties and agreements entered into by the United States and Indian tribes on a government-to-government basis.

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.

We thank you, Chairman Pombo and Members of the Committee, for working with tribal governments on a government-to-government basis and issuing a discussion draft of the bill on the important subject of amending the Indian Gaming Regulatory Act concerning off-reservation gaming. Tribal governments are looking forward to the opportunity to have a government-to-government dialogue on the bill before it is introduced in Congress.

Indian Gaming: The Native American Success Story

In the 18th and 19th Century, the United States destroyed traditional American Indian economies through warfare, genocide, dispossession and theft of lands. In an article entitled, "Exiles in Their Own Land (2004)," U.S. News and World Report explained that:

> The vast primeval forests that once blanketed the eastern United States were once home to millions of Indians. But starting in the 17th century, shiploads of European settlers arrived in superior numbers, bearing superior weapons. By 1830, war, genocide, and pestilence (diseases such as smallpox and measles to which the Indians had no immunity) had conspired to kill most Eastern Indians.

Throughout most of the 19th and 20th Century, our people endured poverty and social dislocation because of the destruction of traditional tribal economies. In California v. Cabazon Band of Mission Indians and Morongo Band of Mission Indians (1987), the Supreme Court acknowledged that Indian tribes in California were removed from their lush agricultural lands and seaside dwellings to rocky outcroppings at the edge of the desert. As the Court explained it, California Indians were left with reservations that "contain no natural resources which can be exploited."

Yet through these hardships, many generations of our grandmothers and grandfathers maintained our original, inherent right to tribal self-government. The Federal Government had a number of programs to promote economic development on Indian lands but few worked because of a lack of infrastructure, natural resources, and capital and remoteness from markets.

With little or no economy or tax base, tribal governments turned to Indian gaming in the late 1960s and 1970s. After several court battles, the Supreme Court agreed with the lower Federal courts: Indian gaming is crucial to tribal self-determination and self-government because it generates the general tribal government revenue needed to fund essential services. Over the ensuing decades, Indian tribes worked hard to develop Indian gaming as a means of generating tribal government revenue. Chairman Mark Macarro of the Pechanga Band of Lusieno Indians explains, "Indian gaming has enabled Tribes to begin the long march back from poverty and hopelessness towards prosperity and a better future for our people."

Today, Indian gaming is the Native American success story. Through Indian gaming in 2004, we estimate that tribal governments generated $18.5 billion in gross tribal government revenue. Naturally, tribal governments must pay substantial sums in wages and benefits—approximately $6 billion annually—as well as the cost of capital, facilities expenses, operation and maintenance, goods and services, and local service agreements before realizing net revenues.

Tribal governments use their net gaming revenues, first and foremost, to fund essential government services—education, health care, police and fire protection, water and sewer service, transportation, child and elder care—and to build basic community infrastructure, schools, hospitals, water systems, and roads.

Through the economic multiplier effect, Indian gaming generates more than 550,000 jobs. In addition, Indian gaming generates $5.5 billion in Federal revenue and $1.4 billion in Federal revenue savings through reduced welfare and unemployment payments. Tribal government gaming generates $1.8 billion in State revenue and an additional $100 million in local government revenue. And, tribal governments give generously to charitable causes—over $100 million annually.

The Indian Gaming Regulatory Act

The purposes of the Indian Gaming Regulatory Act are to promote strong tribal governments, economic development and self-sufficiency, and to establish a statutory basis to protect Indian gaming as a means of generating tribal government revenue. Through the use of the tribal-state compacting process and the exceptions to gaming on after acquired lands, IGRA was able to strike a delicate balance between the interests of the Tribes and States. Part of the original balance of state and tribal sovereign interests is reflected in Section 20 of the Act, concerning the use of lands acquired after 1988 to conduct Indian gaming.

Treatment of After Acquired Lands Pursuant to IGRA

IGRA establishes a general policy that Indian Tribes should only conduct gaming on lands held in trust by the United States prior to passage IGRA on October 17, 1988. 25 U.S.C. § 2719, with some exceptions. Congress accounted for historical circumstances such as diminished reservations, terminated Tribes, and Indian land claims, and established exceptions to provide for the use of "after acquired" lands in certain circumstances.

In addition, Congress established a process whereby Indian tribes may apply to acquire land in trust for gaming purposes to the Secretary of the Interior, and the Secretary then undertakes a consultation process with the State, local governments, and neighboring tribal governments. If the Secretary agrees that it is in the best interests of the Tribe and not adverse to the local community, the Secretary may approve the acquisition only with the concurrence of the State Governor.

Section 20 Two-Part Secretarial Consultation Process

As noted above, Section 20 of the Indian Gaming Regulatory Act provides that an Indian Tribe may apply to the Secretary to place land into trust for gaming purposes. The two-part determination process is significant. Upon application by a Tribe the Secretary of the Interior begins a review to make a determination of whether the acquisition of the land in trust for gaming purposes would be in the best interests of the Indian tribe. The Secretary must also consult with the local area government and neighboring Indian tribes to ensure that such acquisition "would not be detrimental to the surrounding community." 25 U.S.C. § 2719(b)(1)(A).

We believe it is important for the Secretary to consult with local governments and neighboring Indian Tribes because the local community and Tribes in the area have an interest in the development of new gaming venues in their area. Certainly, local governments may be impacted by additional calls on their resources. Where the process has been successful, tribal governments have negotiated agreements with local governments to defray the cost of local government services and mitigate the impacts of gaming on the local community.

Neighboring Indian Tribes may also be impacted by new gaming venues, either through a market impact or concerns about overlapping aboriginal areas. In addition, we believe that it is important for the Secretary to consider whether the applicant Tribe has aboriginal or historical ties to the land sought. (If the Tribe does not have an aboriginal or historical connection to the area where the land is located, such applications can interfere with the aboriginal rights of other Tribes). Consultation can help to identify and address such concerns. The Secretary of the Interior has a trust responsibility to the neighboring Tribes as well as to the applicant Tribe and the interests of neighboring Tribes should be given appropriate consideration.

If the Secretary makes a determination favorable to the applicant Tribe, then the process turns to the Governor of the State in which the land is located. The Governor is consulted to ensure that the overall interests the State are considered, and the process will not move forward unless the Governor concurs with the Secretary's determination. The Governor's concurrence serves as a condition precedent to the use of "after acquired" lands for Indian gaming.

To date, only three Indian Tribes have successfully navigated the Section 20 two-part process: the Forest County Potawatomi Tribe in Milwaukee, Wisconsin, in 1990; the Kalispel Tribe in Spokane, Washington, in 1997; and the Keweenaw Bay Indian Community in Marquette, Michigan, in 2000.

A number of other Indian tribes have applied to the Secretary to have land taken into trust under Section 20's two part consultation process, but several of these applications have been rejected, including applications by:

Lac Courte Oreille
Red Cliff
Mole Lake
Jena Band of Choctaw

A number of applications to take land into trust under the two part consultation process are pending, according to the Department of Interior, including applications by:

Keweenaw Bay Indian Community
Bad River Band of Chippewa
Fort Mohave Tribe
Cayuga Indian Tribe
St. Regis Band of Mohawk
Stockbridge Munsee Community
Elk Valley Rancheria
Timbasha Shoshone
Menominee Indian Tribe
Delaware Tribe of Oklahoma
Tule River
Pueblo of Jemez

Land Within Reservation Areas and Contiguous Land—2719(a)(1)

Recognizing the excessive loss of Indian lands and sporadic checker-board land-holdings due to Removal and Allotment, Congress—through IGRA—permits Tribes to conduct gaming on lands within or contiguous to existing reservations. 25 U.S.C. § 2719(a)(1). These "contiguous" land acquisitions are generally not controversial. For example, the White Earth Ojibwe reservation was heavily checker-boarded by the loss of trust lands under the Allotment Policy, and without much fanfare, the White Earth Band reacquired a 61-acre parcel of land within its existing reservation area for gaming in 1995. Other Indian tribes that have utilized this section include:

Tunica-Biloxi Tribe
Coushatta Tribe
Saginaw Chippewa
Skokomish Tribe
Suquamish Tribe
Wyandotte Tribe
Cherokee Nation
Sisseton Wahpeton Sioux Tribe
Fort Sill Apache Tribe

Land Claim Settlements

IGRA permits gaming on Indian lands reaffirmed through a land settlement. 25 U.S.C. sec. 2719(b)(1)(B)(i). Under current law, where Indian lands were wrongfully taken by the United States or a State and are restored through land settlement they, in essence, relate back in time to the original holding of the lands by the Tribe.

The Department of the Interior has required congressional approval of land claims under this section to comport with the Indian Non-Intercourse Act, 25 U.S.C. sec. 77, so the Department reports that to date no Indian tribe has utilized this section to conduct gaming on lands reacquired through a land claim settlement. The Department did recognize the right of the Seneca Nation of New York to utilize its separate congressional land settlement statute, codified at 25 U.S.C. section 1774, to place land into trust and the Secretary then acknowledged the Nation's right to conduct gaming on their lands.

Newly Acknowledged and Restored Tribes

In addition, the governmental status of a number of Tribes was wrongly terminated, either by Congress in direct acts of termination—or through wrongful Administrative termination by the Bureau of Indian Affairs and other agencies. Under current law, newly acknowledged and restored Tribes can conduct gaming on their initial reservations and restored lands.

For example, the Mohegan Tribe's land was taken into trust under the exception for the initial reservation for newly recognized tribes. 25 U.S.C. § 2719(b)(1)(B)(ii). Of course, the residents of Uncasville, Connecticut were well aware of the Tribe's historical status as a State-recognized Indian tribe and the status of their lands as a state Indian reservation.

The Grande Ronde Indian Community in Oregon was restored to recognition after termination, and in 1990, the Secretary acquired about five acres of land in trust pursuant to the exception for Tribes restored to recognition. 25 U.S.C. § 2719(b)(1)(B)(iii).

Other Indian tribes that have utilized these provisions include:
Siletz Tribe
Coquille Tribe
Klamath Tribes
Little River Band of Ottawa
Little Traverse Bay Bands
Paskenta Band of Nomlaki Indians
Pokagon Band of Potawatomie
United Auburn Indian Community
Nottawaseppi Huron Band of Potawatomi
Ponca Tribe
Little Traverse Bay Bands
Picayune Rancheria of Chukchansi Indians

Draft Bill to Amend IGRA to Restrict Off-Reservation Gaming: Summary

To amend IGRA to restrict off-reservation gaming, and for other purposes
Section 1. Restriction of off-reservation gaming.

(1) Section 20(b)(1) (25 U.S.C. §2719(b)(1)) of the Indian Gaming Regulatory Act is amended as follows:

"(b)(1) Subsection (a) (which generally prohibits gaming on lands acquired after October 17, 1988) will not apply to Indian Tribes "

(A) that are newly acknowledged (through the BAR process), if the Secretary determines that the Tribe's initial reservation is in the State of the Tribe's "primary geographic, social, and historical nexus"; or

(B) that are restored by legislation or other process, or are landless Tribes (as of the date of enactment of the bill) if "

(i) the Secretary determines that the Tribe's initial reservation is in the State of the Tribe's "primary geographic, social, and historical nexus";

(ii) the Secretary finds that gaming would be in the best interest of the Tribe and not detrimental to the surrounding community; and

(iii) the State, city, county, town, parish, village and other political subdivisions of the State with authority over lands contiguous to the proposed reservation approve.

(2) Add at the end of Section 20 (25 U.S.C. §2719) the following new subsections:

"(e)(1) the Secretary may designate '2 Indian Economic Opportunity Zones' (IEOZ) to consolidate class II and class III gaming operations in each State, where at least one Tribe has its "primary geographic, social, and historical nexus to land within that State"—as follows:

(A) The Secretary will establish one IEOZ in each State on current Indian lands as of the date of enactment;

(B) The Secretary will establish one IEOZ in each State on off-reservation lands—taken "into trust for all of the Indian tribes participating in that Indian Economic Zone.

"(e)(2) A tribe may participate in a (1)(A) on reservation IEOZ if—

(A) the Secretary determines that participation is in the best interest of each participating tribe;

(B) the tribe for which the IEOZ lands are held in trust "

(i) receives no benefit from gaming revenue of other tribes in the IEOZ, other than no more than 10% of gross revenues as a management fee to operate the facility; and

(ii) provides no other financial support to any other participating Tribe

(C) the State, city, county, town, parish, village and other political subdivisions of the State with authority over lands contiguous to the proposed reservation approves;

(D) the tribe has no other ownership interest in another gaming facility on Indian lands.

"(e)(3) A tribe may participate in a (1)(B) off-reservation IEOZ if—

(A) the Secretary determines that participation is in the best interest of each tribe;

(B) the Secretary takes the lands within the IEOZ into trust for the benefit of each participating tribe;

(C) the State, city, county, town, parish, village and other political subdivisions of the State with authority over lands contiguous to the proposed reservation approves;

(D) each tribe that has its "primary geographic, social, and historical nexus" to land within 200 miles of the IEOZ approves; and

(E) the tribe has no other ownership interest in another gaming facility on Indian lands.

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

"(f) No tribe shall conduct gaming pursuant to IGRA on lands "outside of a State in which the Indian tribe has an existing reservation as of the date of enactment of this subsection, unless such lands are contiguous to an existing reservation of that Indian tribe in that State."

Section 2. Statutory construction.

These amendments shall be applied prospectively, and gaming compacts that were in effect on the date of enactment of this amendment will not be affected.

Analysis: The Draft Bill Would Amend IGRA Section 20

The bill would replace current IGRA section 20(b)(1) (25 U.S.C. § 2719(b)(1)) by altering treatment of the initial reservations of newly acknowledged, restored, and currently federally recognized but landless Tribes.

Section 20 Two-Part Secretarial Consultation Process

The bill would delete the two-part secretarial consultation process and nullify pending applications under Section 20(b)(1).

Newly Acknowledged and Restored Tribes

The bill would treat the initial reservations of newly acknowledged Tribes differently from those of legislatively restored and landless Tribes. A newly acknowledged Tribe would simply need the Secretary to determine that its initial reservation is "within the State where the Indian tribe has its primary geographic, social, and historical nexus to the land." (Emphasis added).

Legislatively restored and landless Tribes would need this same determination that the reservation is within the State where the tribe is primarily located. These Tribes would also have to undergo an expanded two-part determination process. Under the new process, the Secretary would determine whether the gaming activity is in the best interest of the Tribe and not detrimental to the surrounding community. Then, the Tribe would have to gain the approval of "the State, city, county, town, parish, village, and other...political subdivision of the State with authority over land that is...contiguous to...the newly acquired lands (the Tribe's initial reservation). Thus, the new provisions require affirmative local government approval. Local governments are subdivisions of, and derive their authority from, the state, so in a sense this new provision has the effect of limiting authority at the state level. In addition, it is noteworthy that while current law provides for agreement by the Governor, similar to other Federal land acquisition statutes, see e.g., 16 U.S.C. sec. 715(f), the new provision references the "State," suggesting that state legislative action may be required to approve new Federal land acquisitions.

Reservation Area Lands and Contiguous Land: Landless Tribes—2719(a)(1)

This provision appears to move the treatment of landless Tribes from Section 20(a) to amended Section 20 (b), and we are not certain whether this result is intended. Under current section 20(a), landless Tribes can conduct gaming on their initial reservation established after October 17, 1988, if the initial reservation is "within the tribe's last recognized reservation within the State or States within which the tribe is presently located." However, landless Tribes would have to meet the test set forth in amended Section 20(b), which requires that the Secretary find both that the initial reservation is within the State where the Tribe is primarily located and that gaming would benefit the Tribe. In addition, the State and local community would have to approve of gaming on the Tribe's initial reservation.

This new test is both positive and negative for landless Tribes. The location of their initial reservation would no longer be limited to land "within the tribe's last recognized reservation". As noted above, the initial reservation could be located anywhere in the State. However, in order to conduct gaming on that initial reservation, the Tribe would have to gain the approval of the State and the nearby local units of government.

Land Claim Settlements

The bill deletes the exception for gaming on lands taken into trust as part of a land claim settlement and seems to preclude the use of such lands for gaming purposes.

New Provisions for "Indian Economic Opportunity Zones"

The bill would also add new subsections (e) and (f) to Section 20 of IGRA. New subsection (e) would authorize the Secretary to establish two (2) "Indian Economic Opportunity Zones" (IEOZ) in each State with Indian gaming. Subsection (e)(1)(A) authorizes the Secretary to establish an IEOZ on a current reservation, and

subsection (e)(1)(B) authorizes the Secretary to establish one IEOZ off-reservation, but within the same State.

For on-reservation IEOZs, Tribes may participate if: (1) the Secretary finds that such participation is in the best interests of all of the participating Tribes; (2) the host-Tribe receives no "funds related to the gaming activities" of other participating Tribes, other than no more than 10% of gross revenues as a management fee to operate the IEOZ facility;(3) the host-Tribe provides no financial support to any other participating Tribe; (4) the State and contiguous units of local government approve of the IEOZ; and (5) the host-Tribe does not have an ownership interest in any other gaming facility on any other Indian lands. This provision will permit a Tribe to partner/host another Tribe or Tribes within the State on a separate gaming facility on the host-Tribe's reservation. However, the bill would place limits on what the host-Tribe can do on its reservation with that facility. It would also require the State and nearby units of local government to approve of the on-reservation partnership.

For off-reservation IEOZs, there would obviously be no host Tribe. The newly acquired land would be placed into trust for the benefit of all participating Tribes. The State and contiguous units of local government would have to approve of the off-reservation IEOZ. The off-reservation zone would also require the approval of Tribes located within 200 miles of the proposed site. No Tribe participating in the off-reservation IEOZ could have an ownership interest in another gaming facility on Indian lands—including its own current reservation.

Limitation on Gaming to State of Current Reservation

Finally, the bill would add a new subsection (f) would limit Tribes to gaming on lands in the State in which it is currently located, unless the Tribe currently has contiguous land located in more than one State, such as the Navajo Nation, Standing Rock Sioux Tribe, Sisseton Wahpeton Sioux Tribe, Colorado Indian Tribes, Washoe Indian Tribe, and the Duck Valley Shoshone Paiute Tribe.

Continued Viability of IGRA Section 20(a)

The bill seems to leave intact the exceptions contained in 25 USC § 2719(a), which permit gaming on lands acquired after Oct. 17, 1988 where: (1) such lands are "within or contiguous to" reservations that existed on October 17, 1988; (2) for landless Tribes in Oklahoma (as of Oct. 17, 1988), if the lands are within the boundaries of the Tribe's former reservation, as defined by the Secretary or are contiguous to other land held in trust by the U.S. for the Tribe in Oklahoma. However, it is unclear if landless Tribes not located in Oklahoma, would be subject to the new requirements of amended Section 20(b) as discussed above.

CONCLUSION

The Indian Gaming Regulatory Act has worked well to promote "tribal economic development, self-sufficiency, and strong tribal governments," as Congress intended, and as discussed above, Indian gaming is the Native American success story—and indeed, a true American success story for the Nation as a whole, as many Native Americans begin to see the promise of the American dream of a job, home ownership, and an economic future on the horizon. Naturally, any amendment to the Act is approached with caution because tribal governments need to protect our hard won gains in jobs, economic activity, community infrastructure, and government services. Thus, as the Committee's process progresses, we ask that the Committee and Congress as a whole work to ensure that the integrity of the Act as a whole is protected.

The Indian Gaming Regulatory Act reflects a balance of Federal, state and tribal government interests. As President Bush recently affirmed, Indian tribes historically have dealt directly with the Federal Government on a government-to-government basis. Under IGRA, the States have a role in the compact negotiation process and the use of lands acquired after the Act for gaming purposes only because Congress developed unique processes for the accommodation of tribal and state sovereign interests. At the time of the Act's passage, many tribes—including the Red Lake Band of Chippewa and the Mescalero Apache Tribe who filed suit—objected to state involvement in Indian affairs because that is a role denied to them by the Constitution. The Supreme Court's 1996 decision in Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996) ("Seminole") altered the original balance of IGRA by permitting the states to interpose an Eleventh Amendment defense to litigation to enforce its "good faith" requirements, so NIGA and our Member Tribes have traditionally requested that Congress enact a "Seminole Fix" in any amendment to IGRA to restore the original balance of the Act. The National Congress of Americans Indians has had the same position. NCAI Res. ABQ-03-029. We will ask our tribal government leaders to consider that issue as we go forward. Similarly, Tribal governments will need time to consider any amendment to the Act that would expand the

existing role of state governments, so provisions requiring approval by state subdivisions for the use of Indian trust lands will be closely examined by tribal governments.

The National Indian Gaming Association provides a forum for tribal governments to come together to consider important issues concerning Indian gaming. We will work with the Chairman and the Committee to ensure that the draft bill is thoroughly reviewed and considered by tribal governments before it moves out of Committee. We will work with our Member Tribes to try to build common ground and we will work closely with the Committee and the Administration as the dialogue on the proposal progresses. We request that all concerned parties have a full and fair opportunity to be heard.

For our part, NIGA and the National Congress of American Indians will convene our NIGA/NCAI Task Force on Indian Gaming with meetings on March 24th, 2005 in Washington D.C., April 13 in San Diego, California and later, on May 25th at the Great Plain/Midwest Indian Gaming Conference in Minnesota to consider the draft bill. President Tex Hall of the National Congress of American Indians will co-chair the meetings with me, as we consider the important national issues that the bill represents. As an inter-tribal government organization, NIGA will develop an official position on the draft bill based upon the views of our elected tribal leaders through this series of Task Force meetings. Upon completion of our Joint Task Force meetings, I look forward to the opportunity to testify again before the Committee so that I may provide you with an overview of our Task Force meetings on the important topic of off-reservation gaming.

Mr. Chairman and Members of the Committee, this concludes my remarks. Once again, thank you for providing me with this opportunity to submit testimony.

[Responses to questions submitted for the record by Mr. Stevens follow:]

Response to questions submitted for the record by Ernest Stevens, Jr., Chairman, National Indian Gaming Association

On behalf of the National Indian Gaming Association and our Member Tribes, I am compelled to respond to two statements by Ms. Jean Quan, City Council, Oakland. Although Ms. Quan admitted that she is biased against gaming, the following statements demand a response:

Ms. Quan alleged that prostitution is associated with Indian gaming in California. That statement was false and defamatory. The truth is that Indian lands in California are subject to Public Law 280, which delegates to the state criminal jurisdiction over Indian lands. California criminal law prohibits prostitution and the State Attorney General has not identified prostitution as an issue on Indian lands. Further, Ms. Quan also cited a litany of other detrimental impacts allegedly related to Indian gaming to include homelessness, domestic violence, child abuse, and suicide for which there is absolutely no empirical evidence. In fact, the Harvard Project on American Indian Economic Development found a significant decrease in all these factors on lands where Indian Gaming is located.

Tribal government law enforcement, security, and surveillance ensure the integrity of Indian gaming operations and prevent crime on Indian lands often in conjunction with state and federal authorities.

Ms. Quan also alleged that tribal governments pay out only 25% of slot machine revenue as prizes. Again, the statement was false. In California, tribal governments worked with the State regulators to develop technical regulations for the operation of gaming machines and the minimum payout is 75% in some tribal jurisdictions and 80% in other tribal jurisdictions while the maximum payout is 100%. In Nevada, by comparison, state law provides that the minimum prize payout for slot machines is 70% and the maximum payout is 100%.

Finally, I note that Ms. Quan appears to have been representing only herself, and not the City Council. We believe that the Mayor and other City Council members hold more favorable views of Indian gaming.

FROM CHAIRMAN POMBO:

1. *Under the Section 20 two-part determination in IGRA, the governor of a state is cast in the role of representing and protecting the interests of both the state government, and the local governments that exercise jurisdiction in the area proposed for casino gaming. However, as state governors increasingly look to tribal casinos to provide large amounts of revenue sharing to supplement the state budget, it has been argued that governors are now in a position where their fiduciary interest in securing a tribal revenue stream for state government conflicts with their duty to represent the interests of local communities in the two part determination process.*
   - With the potential of this large financial incentive to a state for a governor to overlook the concerns of local communities, can it be said that local communities can still be adequately represented solely by the governor's participation in the two part determination process?
   - Or does this potential conflict of interest presented to governors suggest that IGRA should be modified to give affected local communities a formal role in concurring with the Secretary's two-part determination findings?

The actual implementation of the Indian Gaming Regulatory Act (IGRA) demonstrates that local interests are adequately safeguarded. Under the IGRA Section 20 two-part determination process, the Secretary must consult with state and local officials and neighboring Indian tribes to determine whether a Tribe's application to acquire off-reservation lands for gaming is in the best interests of the Tribe and not adverse to the surrounding community. Only then does the Secretary forward her decision to the Governor for concurrence.

In almost 17 years under IGRA, only three Indian tribes have acquired trust land for gaming under the Section 20 two-part determination process: Forest County Potawatomi Tribe in Milwaukee, Wisconsin; Kalispel Tribe near Spokane, Washington; and Keweenaw Bay Indian Community in Marquette, Michigan. The Office of Indian Gaming Management, Department of Interior has stated publicly that, in all likelihood, the Secretary would disapprove an application to take land into trust for off-reservation gaming under the Section 20 two-part determination if local governments within 10 miles of the land opposed the acquisition.

State Governors are elected state-wide to represent all of the people of the state and in practice, Governors are typically very respectful of legitimate local government concerns. Governments and other elected officials often must balance competing interests and generally do so in a manner consistent with their view of sound public policy—and that is why they are elected. Not surprisingly, experience suggests state governors respond to the interests of local governments and have been more conservative on Indian gaming issues than local governments.

2. *Under established principles of tribal sovereignty, local communities do not have a say in decisions involving tribal land that is already held in trust by the federal government. However, off-reservation gaming proposals involve taking land into trust that is currently held in fee and is often not even closely located to trust lands.*
   - Is it a fundamental right of tribes to have land taken into trust on their behalf at any location within the United States they so desire, irrespective of the distance to their current reservation or any connection to ancestral or native lands?
   - If not, what limitations should apply on where a tribe can or cannot have lands taken into trust on their behalf?

We believe that questions about Indian trust lands must be viewed in historical context. Through the Removal Policy, Indian tribes were called upon to cede hundreds of millions of acres of land in violation of existing Indian treaties. During the Era of Allotment and Assimilation (1881 to 1934), Indian land holdings plunged from 158 million acres to 48 million acres. Many tribes lost entire reservations during the Termination Policy of the 1950s. The United States called on Indian tribes to cede hundreds of thousands of acres of land for flood control and other public projects well into the 1960s. Even today, the federal government continues to seek both rights of way and title to valuable Indian lands for public projects like interstate highways. So, as the United States considers applications for trust land acquisitions, it is essential to bear in mind that:

- Historically, Indian tribes held vast territories—sufficient to sustain tribal economies and independent Indian nations;
- In violation of treaties and statutory agreements, Indian tribes were forced to cede their most valuable tribal lands to benefit the United States, states, local governments and non-Indian citizens at the expense of Indian communities;

- Indian tribes were left with marginal, unproductive lands; and
- Today, more lands go out of trust and distinctly Indian ownership than are taken into trust for American Indians and Indian tribes.

Against this background, we believe that fundamental fairness dictates that reasonable tribal government requests to reacquire homelands to rebuild and meet the needs of their communities should be accommodated.

Such tribal requests are addressed through the Department of the Interior's "land into trust" regulations. 25 C.F.R. Part 151 (authorized in part by the Indian Reorganization Act, 25 U.S.C. §§ 461-479). For purposes of off-reservation land acquisition, these regulations provide in relevant part:

> Off-reservation acquisitions.
>
> The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, where the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated [by Congress]:—as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater weight to the concerns raised [by] state and local governments [including] the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

25 C.F.R. § 151.11. In essence, the Secretary's regulations establish a "sliding scale" where tribal interests in on-reservation acquisitions and acquisitions of nearby lands are given more weight and as the distance increases between a proposed acquisition of land from existing reservation lands, more weight is given to state and local interests. These regulations provide appropriate and adequate protection for state and local government interests in Indian trust land acquisitions.

Existing law as set forth in 25 U.S.C. § 465 and 25 C.F.R. § 151 appropriately balances tribal, state and local government interests. State and local concerns are given more weight in off-reservation acquisitions and the Secretary provides more deference to State and local concerns as the distance from existing Indian lands increases.

- Should a higher standard of review apply when the off-reservation lands in question will be used for purposes of gaming?

A higher standard of review is in place for off-reservation acquisitions of trust land that will be used for gaming purposes. In addition to meeting the requirements of 25 C.F.R. part 151.11, tribes must navigate the process set forth in the Indian Gaming Regulatory Act at 25 U.S.C. § 2719(b)(1)(A). Pursuant to IGRA, when a Tribe seeks to acquire off-reservation land for gaming purposes, the Secretary is required to consult the local community, the Governor, and neighboring Indian tribes, and make a determination that gaming on such lands would be in the best interests of the Tribe, and would not be detrimental to the surrounding local and tribal community. The State Governor then has veto authority over the Secretary's determination.

Attached to our response is the Department of the Interior's "Checklist for Gaming and Gaming-Related Acquisitions" (hereinafter "Checklist"). This Checklist is used as an aid in the Section 20 two-part determination process. The Checklist defines local officials to be consulted as those within 10 miles of the land where gaming proposed. "Nearby tribal officials include the tribal governing bodies of all tribes located within 50 miles of the site of the proposed trust acquisition." In determining whether the acquisition would be detrimental to the surrounding local and tribal community, the Secretary will consider:

1. Evidence of environmental impacts and plans for mitigating adverse impacts;
2. Reasonably anticipated impact on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community;
3. Impact on the economic development, income, and employment of the surrounding community;
4. Costs of impacts to the surrounding community and sources of revenue to accommodate them;
5. Proposed programs, if any, for compulsive gamblers and the source of funding; and
6. Any other information which may provide a basis for a Secretarial determination that the gaming establishment is not detrimental to the surrounding community.

Interior officials have also recently added the requirement that tribes prepare an Environmental Impact Statement.

As we noted in our testimony, we believe that under Section 20 of the Act the Secretary has a trust responsibility to the neighboring Indian tribes to appropriately

consider their interests. As part of that consideration, we believe that it is appropriate for the Secretary to consider whether the applicant Tribe has an aboriginal or historical connection to the land. In our view, consideration of the Tribe's aboriginal or historical connection to the land is consistent with the history of the Indian Reorganization Act, which intended to assist tribes in reacquiring lands taken through the past federal policies discussed above.

- Should this standard include active participation and a requirement for concurrence from local governments, even though they are generally otherwise prohibited from having a say on matters concerning Indian lands?

The United States Constitution's Commerce Clause empowers Congress to regulate commerce with Foreign Nations, among the Several States, and with the Indian tribes. This Clause reflects the separate sovereign authority of each entity. Thus, we believe it is appropriate that IGRA's Section 20 two-part determination process respects State sovereignty by calling upon the Governor for concurrence in the Secretary's determination. In our view, the State speaks for itself, including its political subdivisions. Accordingly, we believe that it would be unnecessary and inappropriate to require the concurrence of local governments under Section 20.

3. Tribes have long fought to protect their ancestral lands from the unwanted incursions of outsiders, both Indian and non-Indian alike.

- If a tribe is seeking to have land taken into trust in an area that is not within the ancestral lands of that tribe, should other tribes whose ancestral lands encompass the site have the ability to object to the land going into trust?

In our view, the Secretary has a trust responsibility to protect all Indian tribes. Accordingly, under the Section 20 two-part determination, the Secretary should give substantial weight to the views of neighboring Indian tribes. If an application to take land into trust is not within the aboriginal or historical area of the applicant Tribe and a neighboring Tribe objects because it is within its aboriginal or historical area, the Secretary may deny the application.

- The ability to veto the land going into trust?

If the Secretary gives appropriate weight to the interests of neighboring Indian tribes, it is unnecessary to amend the Act in this regard.

- How can the term "ancestral lands" be defined as precisely as possible so it is clear to all observers, Indian and non-Indian alike, which lands are ancestral to any given tribe?

"Aboriginal lands" means the original territory of an Indian tribe, which the tribe occupied from time immemorial. "Historical lands" means lands which an Indian tribe occupied later due to warfare, removal, or forced migration, etc.

4. Should a cap be placed on any revenue sharing with state governments from an off-reservation gaming facility?

Congress passed the Indian Gaming Regulatory Act to support economic self-sufficiency for Indian tribes, not to raise revenue for states.

IGRA established a balance between tribal and state interests by requiring tribes to enter into compacts to conduct class III gaming, and requiring states to negotiate such compacts in good faith—or be subject to suit in federal court. IGRA also made clear that because Indian tribes are governments, "nothing in [the Act confers] upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian Tribe". No State may refuse to enter into [compact] negotiations—based on the lack of authority—to impose such tax." 25 U.S.C. § 2710(d)(4).

However, the U.S. Supreme Court's 1996 decision in Seminole Tribe v. Florida destroyed the balance in the compacting process by voiding the right of tribes to sue States for failure to negotiate in good faith. As a result, tribes have no recourse when a state negotiates in bad faith. In recent years, a number of states have attempted to impose unreasonable revenue sharing demands and concessions of tribal sovereignty on tribal governments through the compacting process. Such demands violate both the intent and express purpose of IGRA.

- If so, what should the cap percentage be?

A good model for limiting revenue sharing was proposed by former Senate Indian Affairs Committee Chairman Ben Nighthorse Campbell with the introduction of S. 1529 in the 108th Congress. Section 2(f)(2) of the bill would have amended IGRA Section 2710(d)(4). Concerning revenue sharing with a State government, the Secretary could only approve such agreements if the total amount of net revenues exceeded the amounts needed to fund both tribal governmental operations/programs and the promotion of tribal economic development. Moreover, any revenue sharing agreement should be based upon net revenues, not gross revenue, to insure that the Tribe is the primary beneficiary of the agreement. In addition, in return for revenue

sharing, "a substantial economic benefit [must be] rendered by the State to the Indian tribe."

These requirements would restore some balance between tribes and states, and restore the original intent of IGRA to rebuild and provide economic self-sufficiency to tribal communities. Naturally, in order to avoid upsetting settled expectations it would be important to "grandfather" existing agreements between tribes and states.

5. Should a tribe be able to ask for or accept a casino operation as a substitute, either in whole or in part, of a cash payment to settle a land claim?

IGRA permits off-reservation gaming on lands placed in trust as part of a land claim settlement. This more narrow exception requires that: (1) a Tribe has a valid land claim; (2) that the State agrees to settle the claim; and (3) that Congress enact legislation approving the land claim settlement, authorizing the lands as eligible for gaming pursuant to IGRA. The significant hurdle requiring the passage of federal legislation ensures that only legitimate land claim settlements will be recognized under IGRA. To date, only one Tribe (Seneca of New York) has successfully navigated the land claim settlement exception.

- If a casino is acceptable as a settlement, should tribes whose ancestral lands encompass the location where the casino would be located be consulted before the settlement is finalized?
- Should they be allowed veto power over such a casino-based settlement as a tool to protect their ancestral lands?

We believe that tribes with aboriginal claims to settlement lands should be given adequate notice and an appropriate opportunity to be heard in the settlement and congressional legislative processes.

6. While there have been only three incidences since IGRA was enacted of off-reservation land being placed into trust for gaming purposes, there are currently dozens such projects either in the proposed stage or being reviewed by the BIA.

- What impact do you think all of these proposals have on public support for Indian gaming?

There are currently 11 applications for gaming or gaming-related trust land acquisitions pending at the Office of Indian Gaming Management. Of those 11, three (3) are less than 6 miles from the tribe's reservation. (See attached Table of Pending Acquisitions).

A few high profile proposals generate tremendous media attention no matter how unrealistic they may be. In some cases, the local communities themselves are entering into development agreements with out of state tribes as a means of economic revitalization.

However, we do believe that there is a need for education of the public about the strength of the current legal processes. As a result, the NIGA-NCAI Tribal Leaders Gaming Task Force is considering an Intertribal Protocol for Off-Reservation Gaming, which would call upon tribal governments proposing off-reservation gaming locations to minimize negative impacts on other tribes and engage in a mutually respectful dialogue with state and local governments.

- Do you believe that the vagaries of current law regarding off reservation gaming encourage the proliferation of proposals for off-reservation gaming?
- Do you believe that clarifying the law on off-reservation gaming, and placing greater restrictions on when off-reservation gaming is allowed, will reduce the number of proposals for off-reservation gaming?
- Will such changes serve to weed out proposals for off-reservation gaming of dubious merits?

We believe public education about the significant processes that are in place would significantly clarify the facts about off-reservation gaming. We recommend that the Committee direct the Interior Department prepare a press release that describes all legal requirements and processes for off-reservation gaming proposals—from the 151 land into trust process, to additional requirements for the exceptions to IGRA's Section 20. That document should reference the Interior's Checklist, all relevant Interior Solicitor's opinions, NIGC land opinions, and other relevant materials. The document should also describe the actual experience under IGRA.

When the media and developers who make substantial investments in these often failed proposals are made fully aware of the entire process, we believe that public support for Indian gaming will be protected and only proposals with significant public support will go forward.

7. Do you believe that the original intent of IGRA was to allow Indian gaming to be conducted at any location within the United States that a tribe is able to purchase and have placed into trust?

- Or was the original intent of IGRA to foster economic development on Indian lands held at the date of enactment?

IGRA's primary purpose was to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. The inclusion of Section 20 was an acknowledgment by Congress to allow for tribal economic development on re-acquired homelands that were taken due to the destructive policies of the past. Section 20 must be read in conjunction with 25 C.F.R. § 151 which, as discussed above, creates a sliding scale to evaluate off-reservation gaming proposals by giving more weight to state and local concerns as the distance increases. Actual practice under IGRA demonstrates the reasonableness of this approach.

8. In Minnesota, the governor is entering into an agreement with three tribes to operate an urban casino under the auspices of the Minnesota State Lottery. As currently constructed, IGRA would not apply to this proposal. Is there any other statute authorizing or requiring the Secretary of Interior to ensure tribal interests are protected in such gaming proposal as this where at least one of the parties is a tribal government or tribal government business enterprise? Should there be?

- Does this agreement violate the terms of any tribal-state compact in Minnesota?

The Minnesota proposal is subject to approval by the state legislature and the terms of the proposal are constantly changing. On April 5, 2005, the proposed partnership was rejected by the Minnesota Senate Agriculture, Veterans, and Gaming Committee by a vote of 10-4. Therefore, until a viable proposal is presented to the legislature it is not clear if the proposal violates any tribal-state compact in Minnesota, but it may violate IGRA if the tribes are not the primary beneficiaries of the agreement.

- What would be the impacts to tribes around the country if other governors entered into similar agreements with tribes in their states?

It is hard to say because the agreement is not final, but as noted above, it may violate IGRA. Accordingly, it is not a valid model.

- In such a deal as proposed in Minnesota, what is the level of federal scrutiny of outside investors, management agreements, and vendor contracts?

The agreement may be subject to challenge in Federal Court, if it violates IGRA.

- Are the tribes entering into this deal capable of determining whether or not they will benefit from it? Are they capable of knowing whether or not developers, casino management companies, and the state government might be taking advantage of them?

NIGA defers to the sovereign right of all its member tribes to determine their own affairs. Tribal leaders are no less capable than any other elected officials.

FROM CONGRESSMAN GIBBONS:

1. This Committee has held hearings on legislation that would allow a tribe to go hundreds of miles off their reservation and open a casino in the ancestral lands of another Tribe.

- Do you have any specific suggestions on how Congress should proceed in this regards?

Congress should first review the facts about off-reservation gaming. Off-reservation gaming involves two categories of land acquisitions: (1) off-reservation sites sought through the "two-part determination process" (Indian Gaming Regulatory Act (IGRA) § 20(b)(1)(A)); and (2) lands taken into trust as part of a land claim settlement (IGRA § 20(b)(1)(B)(i)).

Only three off-reservation sites have been approved through the two-part determination process: (1) for the Forest County Potawatomi in Milwaukee, Wisconsin (Governor's concurrence 07/24/1990); (2) for the Kalispel Tribe in Airway Heights (Spokane County), Washington (Governor's concurrence 06/26/1998); and (3) for the Keweenaw Bay Indian Community in Chocolay (Marquette County), Michigan (Governor's concurrence 11/07/2000). Given that only three applications have been approved in over 17 years under IGRA is testament of the arduous process that is in place.

For years, the Department of the Interior has used a "Checklist for Gaming and Gaming-Related Acquisitions" to guide it in making the initial determination of whether an acquisition pursuant to Section 20(b)(1)(A) "would be in the best interests of the Indian Tribe and its members, and would not be detrimental to the surrounding community". The Guidelines require significant consultation with "State

and local government officials whose jurisdiction includes or borders the land," and with "[n]earby tribal officials," which includes "all tribes located within 50 miles of the site of the proposed trust acquisition." In addition, the Guidelines have been recently amended to require an Environmental Impact Statement be conducted prior to the Secretary's determination.

If the Secretary makes a positive determination in favor of the applicant-Tribe, then the Governor of the State must concur with her determination.

Again, as a result of this significant process, only three applications have been approved for gaming on off-reservation lands placed into trust pursuant to Section 20(b)(1)(A).

IGRA also permits off-reservation gaming on lands placed in trust as part of a land claim settlement. This more narrow exception requires that: (1) a Tribe has a valid land claim filed in court; (2) that the State agrees to settle the claim; and (3) that Congress enact legislation approving the land claim settlement, authorizing the lands as eligible for gaming pursuant to IGRA. The significant hurdle requiring the passage of federal legislation renders the land claim settlement exception almost impossible to meet. Only one Tribe (Seneca of New York) has successfully navigated the land claim settlement exception.

Thus, only four off-reservation land acquisitions have been approved for gaming pursuant to the Indian Gaming Regulatory Act in over 17 years. While the number of applications for off-reservation gaming have increased, the significant process and requirements in place have and will continue to prevent significant growth of off-reservation.

Lands placed into trust for gaming purposes pursuant to the other exceptions contained in IGRA's Section 20 should not be considered off-reservation, because they encompass lands contiguous to existing reservations or lands that constitute a Tribe's initial reservation (landless, restored, and acknowledged tribes).

- Also, with over 300 tribes seeking recognition and presumably gaming, please comment on the impact that a policy permitting "reservation shopping" and "off-reservation gaming" will have on communities across the country.

The National Indian Gaming Association consists only of federally recognized Indian tribes and takes no position on particular applications for federal recognition. Congress should again review the facts about this issue.

In the 17 years since the enactment of IGRA, only 8 tribes have been recognized through the Federal Acknowledgment Process (FAP).[1] (Five tribes have been recognized by congressional Act).[2] The majority of these tribes sought acknowledgment long before the enactment of IGRA.

IGRA provides that a Tribe may conduct gaming on after-acquired lands if such lands are placed in trust as "part the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process." 25 U.S.C. § 2719(b)(1)(b)(ii). This does not end the process. The Department of the Interior then uses requirements from its unpublished Checklist to make a final determination of whether the Tribe can conduct gaming on the initial reservation. The Checklist states that, "When an application [for gaming on 'after-acquired' lands] indicates that the proposed acquisition falls within [this] exception, the Area Director must provide documentation that the particular exception is applicable to the case. Copies of the enabling acts or legislation such as the settlement act the restoration act, the reservation plan, the final determination of federal recognition and other documentary evidence relating to the tribe's history and existence must be included as part of the acquisition package. A legal opinion from the appropriate Regional of Field Solicitor's office concluding that the proposed acquisition comes within one of the above exceptions must be included."

A number of House Resources and Senate Indian Affairs Committee hearings over the past several years have revealed that the FAP is flawed, under-funded, and under-manned.

All federally recognized Indian tribes have a vested interest in ensuring that only legitimate, historical Indian communities are acknowledge as Indian tribes—either through the FAP process, through congressional Act or other means. As a result,

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[1] San Juan Southern Paiute Tribe, AZ (3/28/1990); Mohegan Indian Tribe, CT (5/14/1994); Jena Band of Choctaws, LA (8/29/1995); Huron Potawatomi, MI (3/17/1996); Samish Indian Tribe, WA (4/26/1996); Match-E-Be-Nash-She-Wish Band of Potawatomi Indian (formerly Gun Lake Band), MI (8/23/1999); Snoqualmie Indian Tribe, WA (10/6/1999); Cowlitz Tribe of Indians, WA (1/4/2002).

[2] Aroostook Band of Micmacs, ME (11/26/1991); Pokagon Potawatomi Indians of Indiana & Michigan, IN (9/21/1994); Little Traverse Bay Bands of Odawa Indians, MI (9/21/1994); Little River Band of Ottawa Indians, MI (9/21/1994); Loyal Shawnee Tribe, OK (12/27/2000).

we encourage Congress to properly staff and fund the process to provide sufficient, timely, accurate, and unbiased decisions on petitions for tribal recognition.

Because so few tribes have been acknowledged since the enactment of IGRA, and because of the significant process in place for acknowledged tribes to conduct gaming on their initial reservations, we believe that IGRA's exception for newly acknowledged tribes has not and will not result in significant negative impacts on nearby communities.

2. A few years ago, during the Proposition 5 campaign that allowed full-scale Indian gaming in California, the tribes ran television ads stating they wanted to do gaming just on their reservation lands. Now in California, there are several tribes that are trying to conduct off-reservation gaming.

- If a tribe has a reservation and/or a traditional service area, why should any tribe be permitted to establish gaming off-reservation, distant from its reservation?

As noted above, the exceptions contained in IGRA's Section 20 address historical mistreatment, malfeasance, and mismanagement of Indian land holdings. The Department of the Interior has approved only four off-reservation land acquisitions for gaming purposes in more than 17 years under IGRA.

- Also, please comment on the fact that other tribes are opposed to tribes seeking "off-reservation" gaming.

NIGA understands the concerns that tribes have with regard to off-reservation gaming. While the Section 20 two-part determination procedure is not without its difficulties, we feel that if the process is followed, and that all affected Indian tribes are fully consulted, that these difficulties will be addressed. Here again, we would emphasize that the Secretary of the Interior should give as much weight to the views of neighboring tribes as she gives to local governments in the Section 20 process.

The Secretary has a trust responsibility to protect all Indian tribes. Accordingly, under the Section 20 two-part determination, the Secretary should give substantial weight to the views of neighboring Indian tribes. If an application to take land into trust is not within the aboriginal or historical area of the applicant tribe, and the neighboring tribes object because it is within their aboriginal or historical area, the Secretary may deny the application.

3. When tribes seek to enter already established gaming areas, doesn't that create an un-level playing field since tribes are not subject to state regulations; are not subject to the restrictions placed on other gaming establishments; do pay not state taxes; etc.?

The United States Constitution's Commerce Clause acknowledges Indian tribes as separate sovereigns, with Foreign Nations and the Several States. In addition, treaties, and hundreds of federal laws, regulations, and U.S. Supreme Court decisions acknowledge Indian tribes as sovereign governments. The Indian Gaming Regulatory Act also acknowledges the right of Indian tribes, as separate governments, to conduct gaming to generate governmental revenue, just as state governments conduct lotteries and use other forms of gaming to fund their governmental programs. Tribes and states negotiate gaming regulatory regimes pursuant to tribal-state class III gaming compacts. IGRA specifically acknowledges that no state or unit of local government may impose a tax on a tribal government, even pursuant to a tribal-state class III gaming compact. As a result, we would disagree that Indian gaming creates an un-level playing field. Instead, the ability of Indian tribes to conduct gaming reflects the status of tribes as governments, which is acknowledged in the U.S. Constitution, laws and court decisions.

4. What criteria should be used by the Department of the Interior in it's determination of land-into-trust?

The Department of the Interior has promulgated appropriate regulations on the acquisition of trust land. See 25 C.F.R. §151. Applied together with Section 20 of IGRA, those regulations provide a strong framework for reviewing trust land acquisitions for gaming purposes.

- Should there be a requirement of substantial historical connection between the tribe and the parcel to be taken into trust? Why/why not?

We believe that the Secretary may appropriately require an aboriginal or historical connection to the land.

- How recent should the historical connection be? 100 years? 200 years?
- What about distance from the tribe's current service area? 10 miles? 20 miles? 70 miles?

Given the unique circumstances of Indian tribes and the United States' history of treaty violations, it is difficult to establish a time or distance limit. We believe

that each case should be reviewed on its own merits, against the background of the United States' treatment or mistreatment of the Tribe.

- Do you believe that the farther away the casino site is, the less likely tribal members will be able to take advantage of employment opportunities with a casino? [Alternatively, if the tribal members move near the casino to get jobs, then will the traditional community/service area be disrupted?]

Again, the answer will depend on the circumstances. Many tribes have little or no land base to sustain their community. Under these circumstances, a number of tribal citizens might be willing to relocate to a different part of the reservation in order to take advantage of employment, housing and other opportunities that additional reservation lands will provide. The Committee may recall that only 50 years ago the United States pursued a policy of Relocation.

5. If landless, shouldn't land-into-trust be restricted to the area where the tribe is located? Where they live, need jobs, need health care and services?

This restriction is currently in place. IGRA Section 20(a)(2)(B) states that the initial reservation of a landless Tribe must be located "within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located." The Interior Department's unpublished Checklist requires the Regional Director to "provide documentation that the proposed acquisition is in the tribe's last recognized reservation. The Regional Director's analysis of this issue must include documented information relating to the history of the tribe to show that the tribe is presently located in the state in which the land proposed for trust acquisition is located. [In addition,] a legal opinion from the Office of the Solicitor addressing this issue must be included."

6. If some tribes are permitted to select the "best gaming" locations, wouldn't all tribes want to do that? What about tribes that played by the rules and have their casino on their reservation land, even though it may not be the best gaming location?

As noted above, this hypothetical has not played out given the significant processes already in place. Off-reservation gaming has been approved in only very limited circumstances.

7. Please comment on how the federal campaign contribution laws apply to tribes and the fact that tribes are exempt from overall donor limits and can give directly from their treasuries. No other organization is similarly situated.

Indian tribes, like states, local governments, and unincorporated entities (such as homeowner associations, cooperatives, partnerships, LLPs, LLCs, PACs, and many others), are not treated as "individuals" for purposes of federal campaign laws. These entities are subject to the per candidate/per election limits of $2100. Because they are not single human beings they are not subject to the aggregate donor limits of $101,400 per two-year election cycle imposed on individuals. (Amounts permitted for the 2006 cycle). This limit on individuals was established to prevent a lone affluent citizen from unduly influencing elections. However, unincorporated entities, such as tribes, states, and others include numerous individuals—and are thus, treated accordingly under federal law.

In addition, tribal governments, like state governments, may use general treasury funds to make contributions to federal campaigns, as long as such funds come from permissible sources. See Federal Election Advisory Opinion 1991-14 (permitting state governments to use state tax revenues and licensing fees to finance federal candidates and political party committees). Thus, Indian tribes are not uniquely treated under federal campaign laws, but instead are properly treated as governments.

It is important to note that tribal governments and individual tribal citizens were prohibited from participating in the federal political process for nearly one hundred fifty years from 1776 to 1924. During this time, the United States adopted policies and laws that sanctioned the murder of Native Americans, taking of hundreds of millions of acres of tribal homelands, destruction of tribal economies, and the forced abduction of Native children from their homes to federal boarding schools where they were forbidden from speaking their language or practicing their religion. These shameful policies all occurred while tribal governments had no voice in Congress, could not participate in the political process, and while Native Americans had no right to vote in federal elections. Accordingly, Native Americans have a experienced a denial of voting and electoral rights and today, clearly understand the importance of democracy.

Because Indian lands are held in trust by the federal government (and are often subject to federal jurisdiction), most federal laws passed by Congress uniquely affect tribal communities unlike non-Indian lands. An entire title of the United States

Code (Title 25) is dedicated to the unique treatment of tribal governments and individual Indians. Thus, Native Americans must work closely with the Federal Government.

Fortunately today, tribes now have a voice. Native Americans were granted U.S. citizenship in 1924, and now vote in growing numbers in federal elections. Like other similarly situated entities, Indian tribes comply with the Federal Election Campaign Act of 1971, as well as the Bi-Partisan Campaign Reform Act of 2002. According to the Center for Responsive Politics (www.opensecrets.org), Indian tribes contributed $7 million to federal campaigns in the 2004 election cycle. This figure represents less than 0.35% of national federal campaign contributions (House, Senate, and Presidential elections) which totaled more than $2 billion. Native American participation in the political process was not disproportionate, but our participation was as meaningful and important as the participation of others across America.

8. Please comment on the increasing trend of tribes now crossing state lines away from their reservation to establish gaming.

- Please comment on the situation in CO where the Cheyenne-Arapaho of Oklahoma are seeking land in CO to establish gaming. In that situation, the tribe is claiming 27 million acres even though their land claims were definitively and legally settled in the 1960s. Their action is designed to force the Governor to agree to a smaller parcel near the Denver Airport for gaming.

As stated above, only four off-reservation land acquisitions have been approved for gaming pursuant to the Indian Gaming Regulatory Act in nearly 17 years. None of these applications have crossed state lines. While the number of applications for off-reservation gaming have increased, the significant process and requirements in place have and will continue to prevent any significant growth of off-reservation gaming.

The Denver Airport proposal provides a perfect example of the Act at work, and of media hype that does not acknowledge political and legal reality. Without the support of the state and local governments, this proposal will not move forward under the Section 20 two-part determination process. In addition, without a congressional Act to implement any possible land claim settlement, it will not move forward under IGRA's land claim settlement exception.

NOTE: Attachments submitted for the record have been retained in the Committee's official files.

The CHAIRMAN. Well, thank you, and I appreciate the testimony of all the witnesses. I think first of all I would say I want to thank all of you for not taking a position on the bill, because at this point it is a discussion draft. What we are trying to do is move forward with those discussions and trying to figure out what works and what doesn't. Just as we have been sitting here over the last several hours, there are a lot of different ideas that I have heard and things that have come up that I think bear some changes to the draft.

A couple of you talked about opening up the law and being able to control this process, and I can assure you—and I am sure that the Ranking Member, Mr. Rahall, would join with me, that if we are able to reach a consensus on this bill that we will ask that it be a very limited rule in terms of what can or cannot be part of this one before it ever comes to the Floor because I am not really interested in bringing something like this up under an open rule.

Mr. Luger, you talk about going through the regular hearing process and opening this up so that we have the opportunity to hear this out. Before this draft was ever even made public I talked to a number of different people about this, and what direction I wanted to go, and what was happening with this because I wanted to make sure that everybody knew that this was a discussion draft, that we were putting it out there just so people could have an opportunity to see this and respond to it, because obviously, as Chief Martin said and we have heard from other people, is that this is

a problem in different parts of the country for different reasons, and it is something that I feel ultimately threatens tribal sovereignty if we don't get control over it. That is a big concern that I have.

One thing about the local government issue—and I think there is some misunderstanding about what my intentions were in terms of the local government. It is my understanding, the way this draft is written, that on these Economic Opportunity Zones, that if it is located on existing tribal trust land, and if in North Dakota they wanted to take—if one of the tribes happened to be more remote and they wanted to co-locate with an existing casino on existing tribal land, that they would have the ability to do that. My intention on this was that that would go forward being the tribe at that point is, for all intents and purposes, is the local government. They are the ones who have control over that land.

On the other Economic Opportunity Zone, that would be on lands that are not currently in trust, and in that case I would rather that be located in a community that says, yeah, we want it. We want the jobs created here. We want the economic opportunities created here. And in that case we would have a local government sign off.

And I think those are two very different issues, two very different ways of looking at it. What I am trying to do is give as much opportunity as I can to the tribes that may not be right next to a major urban center.

Does that kind of fit along with—I mean you obviously have a lot of different tribes, a lot of different things moving on this. Does that kind of fit with what you see as an economic opportunity for those that may be remotely located?

Mr. LUGER. Yes. The answer is yes. And the fact that—where we have a problem is back to one of the questions of the earlier committee members. You have hit it right on the head. We will use Turtle Mountain for an example. They're 250 miles away looking at Grand Forks, North Dakota when the Spirit Lake Nation is 50 miles away from Grand Forks. Now, as you stated, in that zone if Spirit Lake and Turtle Mountain agreed that this was in their best interest to do this, we don't have a problem with that. That it would seem to me that they would be the local community input. So I agree that you have hit some chords of truth and that we're going to continue to assist the Committee in developing some consensus to see if we can get some of this straightened out.

The CHAIRMAN. Now, on the one hand we have the opportunity zones that would be located on current trust land. On the other hand we have an Economic Opportunity Zone that would be located on land that is not currently in. Now, I want to ask you about that. If instead—I mean what I see happening in different parts of the country is that you have a tribe with an existing casino that may be an hour or two hours away from a major population center, and then you have somebody else that comes in and wants to be an hour and a half away or 45 minutes away, and they keep trying to do one better. What we are doing is we are ending up with creating a situation where these guys are going head to head and it is going to end up hurting everybody.

Wouldn't it make more sense in that situation that we take one place that—with a community that says, "Come on in. We want

you here. We want to establish this kind of an economic opportunity here," and have those tribes have the ability to co-locate in that situation, and then take the land into trust under that situation? Does that sound like it is something that is workable rather than—you heard the lady from Oakland who testified about the five different proposals right around the City of Oakland. If she went out another 25 miles, there are 12 different proposals that are there, and instead of having 12 of them located all over the place and all the different problems with local communities and all of that, wouldn't it make more sent to locate them together in a community that says, yeah, we want them?

Mr. LUGER. I think your concept deserves serious consideration, and it's something that we're going to sit back and take a look at and see if there are some—there's a couple of technical points that I would want to raise to it, but as far as the concept goes, I know the tribes in the Great Plains Region are going to give it serious consideration to see how they would fit under that scheme.

The CHAIRMAN. Mr. Martin, could I have you comment on that as well?

Mr. MARTIN. Our tribes, as the Great Plains Tribes, will take that under serious consideration. In general the concept is something that is worth looking at because you hit on the aspects of tribal involvement, tribal discussion, self-determination and tribes working out problems amongst themselves.

I would take it back to also though we have to look at what the original intent of IGRA was and what it looked at at that time. IGRA made provision for tribes that were not recognized or restored after. So the original intent of IGRA was that where you are now is where you are now, and that you should stay within those boundaries of whatever circumstances got you to that place and be able to exercise that tribal authority of that tribal government at that place in time.

The CHAIRMAN. Mr. Van Norman, did you want to?

Mr. VAN NORMAN. Well, I guess I would say, going back to the history, the way the Act has operated, that it is important to note on the local government consultation that actually the three projects that successfully went forward under Section 20, Forest County Potawatomi, Kalispel and Keweenaw Bay Indian Community, only went forward with the support of the local governments. So what we saw under the current process was that actually consultation with the local governments was enough, and that the Secretary took that into consideration.

You also have to look at the Code of Federal Regulations, and as an acquisition gets further away from a reservation, they're directed to give more weight to the local government concerns.

So I think it's worth taking a look at the existing practice and what has taken place under that. Certainly we would feel, as you mentioned, that there's no need for local government approval when you're talking about existing reservation lands. I think it is a very interesting concept. I think clearly, as the Chairman of the Committee, you've been thinking hard about this and hearing from different folks. It is a creative approach to a situation, and we certainly want to have those dialogs, and in fact if you can come and address our tribal leaders as we move forward, we appreciate that.

The CHAIRMAN. I look forward to continuing those discussions. You and I have had the opportunity many times to talk about this, but I look forward to having the opportunity to continue those discussions.

I am going to recognize Mr. Kildee.

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

It is good to have all three of you here. Chief Martin, I have known you forever, as young as you are, and it is good to work with you, all of you.

One nice thing about working with Chairman Pombo is that no one can question his great concern both for Indians and Indian sovereignty, so you have a committee here that is really convinced of the genuine nature of Indian sovereignty. As I had to remind a candidate for Governor a few years ago, that Indian tribes are not social clubs, they are sovereign nations and the sovereignty is a retained sovereignty, and it is mentioned in our U.S. Constitution, not granted. It is just recognized in that.

I would like to, Chief Martin, I ask you does USET have a position on out-of-State off-reservation gaming and in-State off-reservation gaming, and could you maybe go into that some?

Mr. MARTIN. It is an honor to be before you again, Congressman. I hope your family is doing well.

Mr. KILDEE. Yes, they are. Thank you.

Mr. MARTIN. USET does have a position on the out-of-State in a sense that we believe, as I answered earlier to Chairman Pombo, the circumstances for a tribe to wind up where they're at presently whether it was voluntarily or forcibly has to be given consideration. So therefore we are definitely opposed to the concept of reservation shopping where tribes are jumping across State lines and multiple States just for lucrative markets where that occurs.

On the in-State, we have not taken as close a look on that. We are studying the proposal as it exists now. Chairman Pombo brings up an interesting way of having to look at that. I think we have to look at that. And as long as the tribes who are affected—will be affected in that State has an opportunity to dialog and make a process where it's transparent for those tribes to have input into the decisionmaking, not necessarily maybe a veto, because you may be talking about different types of—the scenario before. We would definitely be against a tribe even in-State that wants to go totally outside of their aboriginal land and put up a casino just because it's a lucrative area in there. So the history and the aboriginal lands of the tribes has to come into play in these decisions also.

Mr. KILDEE. Thank you.

Mark, you and I have discussed IGRA for a long time. I helped write IGRA right in this room many years ago. I wasn't sure we needed it. I wasn't sure it was good because I thought Cabazon was so good, and we actually put some restrictions on Cabazon with that, and we brought the State Government into the picture.

We brought the State Government in, but I am very reluctant to bring local government in, very, very reluctant to bring local government. Now, we do have a consultative process if—like a tribe was trying to move into Auburn Hills, Michigan, which they finally backed off of, but there is—maybe a consultation, but a veto power by a local unit of government really goes way beyond the

compacting or the approval that we gave to the Governor. I think we have to approach that most cautiously, most carefully, with great input from the three of you on that.

As a matter of fact, reading the bill here it says that Indian tribe may participate in Class II gambling, Class III, if the Secretary determines that participation is in the best interest of each participating Indian tribe, and the Indian tribe for which the Indian lands within the economic zone are held in trust.

Let's talk about trust land. Now, trust land is sovereign land. Then it says: and the State, city, county, town, parish, village and other general purpose political subdivisions of the State with authority over the land that is concurrent or contiguous to the economic opportunity zone approves. Now, approval is way beyond consultation. Yet it talks about that those lands are held in trust. I just am very reluctant to give any local creature of State Government control to really veto how you use your own trust land.

Would you concur with that?

Mr. VAN NORMAN. Congressman Kildee, we agree that there is a concern about involvement of local governments and share your views. As Chairman Pombo stated, I think that when you're talking about—and especially the existing trust land provision, that that provision is unnecessary because normally the local governments would not have any approval because that's an area for tribal self-government.

I also do think it's worth looking at the existing practice under the consultation provision. We've seen the Secretary take that very seriously and really, under the current Section 20, they've only moved forward when the local governments have agreed. And they also don't just look at the statute, they look at the regulations, and the regulations say that for off-reservation acquisitions the further that you move away from the reservation the more deference should be given to the State and local government. So I think that as we discussed the bill, that's worth taking a look at.

Mr. KILDEE. Well, you know, the encouraging thing of working with Chairman Pombo is that he would be the first one to admit that this first draft was not written on Mount Sinai, it was written on Capitol Hill.

[Laughter.]

Mr. KILDEE. So we can go back and look at it again and—

The CHAIRMAN. If the gentleman would yield for just a second. It was not written on Mount Sinai, it was written in the room next door, but—

[Laughter.]

The CHAIRMAN. I just want to follow up on Mr. Kildee's question. In the case of an on-reservation Economic Opportunity Zone, in that case in listening to this, it seems like it would make more sense for there to be—if we are going to create one of these zones on existing trust lands, it sounds to me like it would make more sense if there were some consultation with the local community, but not approval if it is on existing trust lands.

But the—obviously that tribe would have to sign off on it because it is their land. So in that case they would in essence be the local government that would be signing off on it, but I think that if we do this, then you would have to have some kind of a consultation

process with the local community in that case, because we are talking about the opportunity to open a number of casinos in one place or a number of gaming facilities and hotels and everything that goes along with that.

So I think in that case it would probably make sense to have some kind of a consultation process because the way the bill is drafted right now there is a limited number of these per State. So if the Secretary is trying to determine where the best place in a State would be to establish one of these, it would obviously be somewhere where they would have the least opposition to doing it and where it would make the most sense for economic opportunity for the tribes. Does that make sense to you?

Mr. VAN NORMAN. It makes sense that, you know, especially in the on-reservation zone that the consultation would be better than involving the local governments in any kind of approval because that's already Indian land.

The CHAIRMAN. Yes. OK.

Mr. LUGER. I concur.

Mr. MARTIN. I would have to caution though that our tribes would perceive it that any involvement absent the already stated purpose of IGRA where tribes can enter into Class II gaming without the concurrence or any consultation with the local government would be perceived as backing up.

But I understand your portion is going toward what is the intent, the prospective of trying to work out an enterprise zone for tribes that find themselves in desolate areas where it would not be profitable. So it goes toward the intent of that. But a perception where it's already established reservation land, and that tribe wants to enter into Class II gaming, they do not need the local government approval.

The CHAIRMAN. But in the case—I want to make sure I understand you—that is if a tribe wants to put one facility on their trust land, correct?

Mr. MARTIN. Yes, sir.

Mr. LUGER. Right.

The CHAIRMAN. And in the case of an Economic Opportunity Zone we are talking about a number of tribes that would be located on one trust land. So I think there is somewhat of a difference there, and I do understand what your issue with the Class II gaming, and we are going to have to continue to talk about that, but I think there is a difference when we are talking about several facilities versus one.

Mr. MARTIN. And upon clarification, as this hearing is doing, I think your proposal and therefore local government does merit some sort of consideration.

The CHAIRMAN. Mr. Kildee, did you—

Mr. KILDEE. Just one statement. I have to leave now and catch a plane. I know Chief Martin will understand. He has met my family. My wife and I are still celebrating our 40th wedding anniversary, and I wanted to join her, so I am going to have to leave now.

The CHAIRMAN. You had better leave.

Mr. VAN NORMAN. Congratulations.

Mr. KILDEE. Thank you very much. Thanks a lot.

The CHAIRMAN. Mr. Walden?

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

I am sort of learning about these issues, so bear with me, and I will try not to stray too far. The issue of local government involvement, I understand the sensitivity that you feel toward a veto, if you will, by a local government. I have several tribes and reservations in my district and I deal with both, local governments, obviously, State governments and all of that. One of the concerns that the local governments always have is just the impacts of any kind of development or action on the rest of the community and how those impacts get paid for.

In my hometown, there is a tribe that has lands that have been in trust pre-IGRA that are in the middle of the Columbia Gorge National Scenic Area. They are up on a hillside. They acquired some land adjacent to that they want to bring into trust and originally wanted to put a large casino in the middle of what the Federal Government has declared a National Scenic Area, put the parking garage on the acquired lands, and link to the pre-IGRA lands and put this four-story thing right up on the side of a hill. And the local community went, well, shall we say just nuts. 70 percent in a plebiscite voted against it or more.

And so they looked at some alternatives, and they are looking off-reservation, and they went 16 miles to the west and there is a community there that said, "Come on down. We'd love to have you," 80 percent support. They are now in negotiations for a compact with the Governor, and I think soon will announce that.

I have expressed concerns to the Chairman that if they finally reach this agreement with the community, a supportive community and all of that, I wouldn't want this legislation to somehow upend all that work by saying, well, you weren't in tribal trust by the time this legislation passed.

How do we resolve this issue? Because I am sure if a local government were to do something that adversely affected tribal nations, that you would want to say, "Wait a minute, you should have consulted us on that." The State may have no piece of whatever the local government—how do we work out this conflict?

Mr. LUGER. Members of the Committee, personally I think that it's going to be really difficult unless we fix the Seminole decision, I really do. That's just my own personal opinion on it, but until the Seminole decision is addressed, a Seminole fix is in play, we are going to have this constant bantering.

Mr. WALDEN. All right. And then—go ahead, yes. Somebody else has a comment.

Mr. VAN NORMAN. Yeah. Let me just say, you know, I think that history would be a little bit different if tribal governments had had some kind of approval process vis-a-vis local governments or State governments, and we might have larger reservations, for example. So I think that the question is when you're dealing with one government and dealing with another government, I think consultation, you know, is one thing, but approval, especially at the level where tribal governments are really providing services just the same as State or local governments, and feel that, you know, we are coordinant governments entitled to that kind of respect.

Mr. WALDEN. I mean in my State I believe one of the casino convention centers now is the State's top tourist attraction or number

two. It used to be Timberline Lodge and Multnomah Falls. Obviously, the impact of that volume of travel doesn't just start at the reservation boundary. How do you deal with, if you are the local government and you have—and this isn't the case—but I am just saying as an example, how do you work out those issues if you have a tribe that says "Forget it, we're not going to give you a dime. It's not our problem, it's yours." What is the local government supposed to do?

Mr. VAN NORMAN. There's a provision in current law, and that's what the tribes are relying on in terms of these discussions, that provides for that consultation with local government, and that's a factor for the Secretary to take into account in determining whether it's detrimental to the surrounding community. So that's how local law—current law looks at that.

But also through the compact process, the State can consider the impacts on local communities and ask for mitigation.

Mr. WALDEN. OK. Now—

Mr. MARTIN. If I may?

Mr. WALDEN. Yes, sir.

Mr. MARTIN. And I've, I've negotiated, renewed I think 17 compacts over the last eight or nine years and—

Mr. WALDEN. 18 more than I have done.

Mr. MARTIN. And I have come to find out that integrity is part of the question. Those tribes that you have stated the case where they're unwilling is extremely rare. We have to be sensitive to public opinion as well as everybody else, and in the compact process, for example, in North Dakota we had public hearings in every one of those counties and municipalities where the renewed compacts were going to get in. So the executive branch, the legislative branch got to take those all into consideration before a final stamp was put on.

Mr. WALDEN. Lest I be misunderstood, I am not saying any of them in Oregon have done that, I don't think they have. But just as we wrestle with these issues, you can see.

And then there is—if I could, Mr. Chairman, just a second more. Then there is this issue of competition among tribes and between tribes. One of the tribes in my district was very supportive helping another get status for gaming, and now this tribe—and the other tribe was very appreciative of all that, gave them a big plaque, all this stuff. Now, guess what? They are trying to do the same thing and the other tribe is trying to block them. Imagine that. And so they are trying to do it off-reservation, and this tribe is isolated. They have tried a casino where they are, and it is just pretty darn difficult.

So representing a district of 78,000 square miles is second only to Mr. Gibbons or the single member States, very rural. I worry about the haves getting more and those of us out in the very rural remote areas, never being near a population center, what do we do for those folks?

Mr. LUGER. If I may—and they're facing that in Minnesota right now. This was talked about in the intent of IGRA. I believe Senator Inouye said that it would never be a panacea. There's some cold realities in this. There are some tribes that aren't going to do good by gaming. That was a good question today about the one

individual tribe. Do you have anything else on plan beside gaming? There are some tribes in Indian country that are not going to benefit hardly at all if any from gaming, and we need to get used to that.

And we not—just like—you know, like a class difference in taxes. I don't want to be in the position of distributing wealth. If they were lucky enough to be where they're at geographically, fine and great. We use—and others are used constantly in our area, but the reality of it is, given enough time, those areas and the works that they do with the other tribes begin to mitigate that in helping them perform—or help with economic activities that will work in that rural area. Those tribes that are in that rural area are just that, rural. They're farmers, ranchers. There's other things that can be done, but gaming—and I keep coming to this amongst ourselves, even the tribes—is not a panacea.

And you've got developers out there that are trying to pretend with certain elected tribal councils that this is your right, and it isn't. It's for us to work out if it's available to us, and maximize it to the best interest that we possibly can.

Mr. WALDEN. Then is it your view that there should be no post IGRA gaming cited; if the lands weren't in trust pre-IGRA that they shouldn't be allowed to take land into trust and do gaming?

Mr. LUGER. No. But what I do think is that travel input is the key to this, that and the fix of the Seminole. I do.

Mr. VAN NORMAN. That's one thing, you know, we need to have our own dialog among the tribal governments, and we're going to have a series of dialogs—

Mr. LUGER. Imagine that.

Mr. VAN NORMAN.—as you move forward with your hearings so that we—

Mr. LUGER. You can tell it's going to get rocky.

Mr. VAN NORMAN. Yeah. Well, we want to make sure we have a broad spectrum of member tribes from the largest gaming tribes to the Oglala Sioux Tribe, which is one of the poorest tribes in the country.

Mr. WALDEN. Good, because obviously the haves aren't wanting to give up anything. I mean that happens no matter what culture you're in.

Mr. LUGER. And if I may, you know, the haves and haves not story, I just debated an individual from Minnesota, and it's kind of disingenuous for people to determine who has or who isn't and what's wealthy and what isn't. And the bottom line is, is that look at these large land-based tribes where I'm at. Standing Rock's got 3 million acres and 18,000 members. Well, their unmet need is humongous. And we recognize that. We're not going to be in a same position as somebody that's got 220 members and is sitting on the end of New York City. It's just cold reality. So sometimes we're going to have to accept reality.

Mr. WALDEN. I really appreciate your input. It is helpful for me as I learn more about these issues and wrestle with them in my own district and work with the tribes.

Mr. MARTIN. As we start to deliberate it on our side, we would hope to solicit the Committee to referee some of those discussions.

[Laughter.]

Mr. WALDEN. Yes. We are trying to solve all those account issues too, aren't we, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. LUGER. Again, just one more comment. I can only say from the Great Plains it's absolutely critical to us that jobs is number one.

Mr. WALDEN. Absolutely. No, I understand that.

Mr. LUGER. And on-reservation scenarios have priority, and we feel that way strongly amongst ourselves. And given time we'll work out the others. This has only been going on for, you know, what, 10, 12, 15 years, but that is really our basic sentiment. And to thank the Chairman and the Committee for helping us get through this.

Mr. WALDEN. Can I ask like an explosive question perhaps?

The CHAIRMAN. Maybe not.

[Laughter.]

Mr. LUGER. To Mr. Van Norman, please.

[Laughter.]

Mr. WALDEN. When you are talking about haves and haves nots and how we do this and we all know federally there is a pretty small pie and it is getting tighter and tighter, as—and I may be way off, I have not been briefed on this so bear with me—but as there are funds available through BIA for different places and tribes, do we need to look at somehow those tribes that are very profitable and have a lot of money in the reservations—and I don't even know if they continue to get BIA support and funding—and say, you know, maybe this is some way we can help with the scarce resource that is available there?

The CHAIRMAN. The gentleman's time has expired.

[Laughter.]

Mr. WALDEN. Thank you, Mr. Chairman.

The CHAIRMAN. That is the subject of another hearing.

[Laughter.]

Mr. WALDEN. All right.

The CHAIRMAN. And we have had discussions about that and I appreciate the question, but I think we will save that one for another hearing.

Mr. Pallone?

Mr. PALLONE. Thank you, Mr. Chairman.

You guys were probably here when we had the first panel, and I am sure you heard me explain my concern over the whole issue of creeping over Indian sovereignty, in other words to the extent that—I mean if you listen to the first panel you would probably be very concerned about opening up IGRA because of the suggestion that, you know, local towns or communities should exercise a veto and all these notions—I think many of them not exactly true about rich tribes and the ability to have all kinds of money to impact the law or the statute.

But the same thing applies in terms of—to me, I have the same concerns in terms of restrictions on sovereignty that might apply to one tribe against another. In other words, I was thinking about what Tim Martin, where you said that in dealing with States the out-of-State tribe will waive most aspects of its sovereignty. In other words, in order to get a good deal they will waive all their

sovereignty, and that is a disturbing possibility. But the question in my mind is, well, again, is that something for Congress to deal with? In other words, if theoretically tribes are nations, and they can make a deal with a State, you might say, "Well, why should the Federal Government step in and prevent that from happening?" Maybe that is an infringement on sovereignty and a way for the Federal Government to step in and do something that becomes almost big brother.

What is your response to that?

Mr. MARTIN. I believe that each tribe should have their opportunity to be self-determining in there. In a perfect world that would not have any negative impact on other tribes to be just as self-determined. But there is this other element. It is the State or other—the developers that in a sense are bringing up false expectations to this tribe who has nothing, so they think if they get anything, it's better than nothing, but not realizing, being too narrowly looking and not being foresight to realize that decision may haunt them in the future.

Mr. PALLONE. I understand, and I appreciate your response. But what I am thinking in the back of my mind is that becomes sort of paternalistic as well on the part of the Federal Government, if you will. I mean you can think about it that way.

Mr. MARTIN. Just as we will interact as a sovereign to the Federal Government, I would hope that Congress will give us time to interact amongst ourselves to work out those conflicts that may arise.

Mr. PALLONE. And then the second thing, you know, this whole idea about one Indian Nation being able to exercise veto authority over another in the issue of wanting to settle a land claim. In other words, I am not saying that that is what the Chairman's bill does because I know you don't really deal with the land claims at all, but I mean—

The CHAIRMAN. It is not in there.

Mr. PALLONE. Right, it isn't. But I mean, again, my concern is to what—in the same way I would be concerned about the Federal Government stepping in and saying, "You can't do this" to a tribe "because somehow you don't have the ability, you don't really know what you are doing." I would have the same concern whether one tribe should have a veto over another. I mean it is the same problem. You might say, look, you know, laissez-faire, these are sovereign nations, let them negotiate with the State or let them deal with each other and negotiate. Don't let one veto another's ability to game or do anything. I mean that is not the way to operate among sovereigns, so to speak. If anybody wants to respond to that?

Mr. LUGER. I didn't see the land claim issue in the bill and I—

Mr. PALLONE. It is not.

Mr. LUGER. And with respect to the veto and our relationship with another on a one-to-one basis, I put it to you this way in kind of an old, a western heritage sense. If somebody's dropping a fence pole in my back yard, I want to have some say so over it, and that's what this is about.

Right now the advantages to those that want to do, but for those that say this is going to have a negative impact on us, we're kind

of moved off to the side. And just common sense would say if somebody's going to do something in your back yard that's going to negatively impact you, you should have some say so.

Mr. PALLONE. OK. But again the issue is, how far do you want to go? Do you negotiate it, which is what sovereigns do? I mean if you make the analogy, say the U.N. or sovereign nations like the U.S., that maybe they should simply negotiate and there shouldn't be some veto or some ability to absolutely say no.

I don't know if anybody else wants to—I am being very philosophical here, guys.

Mr. MARTIN. And that's part of the discussion that needs to take place. I think there exists now the consultation process, and the Secretary is bound by her or his fiduciary trust responsibility to look at negative impacts of a sovereign tribe. You're saying it's one tribe a veto over other. I'm not sure our tribes would agree there. We believe every tribe should have self-determination. But the Secretary of Interior has the trust responsibility as one tribe is doing to look at the impact on the other tribes because it is just as equal to all tribes, so therefore there is already that call for that government to balance that relationship that exists between both those tribes or multiple tribes.

Mr. PALLONE. If I could ask one more thing, Mr. Chairman, none of you are—oh, I am sorry, Mark. Go ahead.

Mr. VAN NORMAN. Congressman Pallone, thank you. I just do want to mention—and maybe this is a technical point—but in the current Section 20(b)(1) there is a provision for land to come into trust pursuant to a land claim settlement, and as I mentioned in my testimony—or in Chairman Stevens' testimony as well, there's only been on circumstance where that's been utilized to date, the Seneca Nation in New York.

But the bill does strike out that provision, so it would amend that provision. And I assume that we have member tribes that have these land claims that that will be part of our discussion and part of our dialog among the tribes about how that all works out.

Mr. PALLONE. OK. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Kind?

Mr. KIND. Thank you, Mr. Chairman.

I know the hour is late and they have been very generous with their time, but I want to welcome everyone and certainly appreciate your testimony. I apologize getting here a little bit late. We had business wrapping up in another committee, but I have been trying to catch up by reading the written testimony, and rest assured, we will be looking into this.

But, Mr. Chairman, first of all I want to express my appreciation for some of the remarks that you made earlier, that this is recognizing a very complicated issue with a lot of details that we are going to have to look through and sift through and determine the impact on how this proposed new process would actually work. I agree with you, Mr. Chairman, that if we can try to reach some consensus on the Committee and work in a bipartisan fashion, move forward on that basis, while also recognizing it might take some time in order to weed through this because a lot of this is going to be based on some anecdotal evidence on what has happened in the past, and the importance of making sure that

sovereign rights are recognized and protected, and that whatever process is drafted is fair to the parties involved, and whether it makes sense ultimately, and not too prohibited so that no advancement or no movement can be achieved at the same time.

I know just based on what I have been able to observe throughout the years, tribes are very sensitive to the fact that they do need to be good community neighbors, and when they are looking to expand, whether new trust lands or off-reservation opportunities, economic opportunities, there is a lot of working with local communities at the local level, between cities and county boards and parishes and you name it, because I think they understand that if it is going to work at all, there is going to have to be development of consensus at all levels, the local, at the State, and then obviously with the Secretary approval at the Federal level.

So hopefully when we move forward on this that we recognize that there is going to have to be a built-in consultation process in order to address various concerns, not only government to government, but tribal consultation too, whether it is in a more formal basis or whatever, but something that can help move the process along so that the communication is there.

Mr. Luger, I certainly appreciate the comments that you have been making and that you have been raising here as well. One of the issues obviously is concern about other tribes and the impact it is going to have on them. And I am just wondering if you are envisioning any change in the consultation process right now that is taking place, or something that might improve the consultation process from tribe to tribe?

Mr. LUGER. Thank you very much. And as I stated in my testimony, we—and I guess it was a question to the Chairman, if it would be out of step to write a letter to the Secretary and see where she's at on some of these things. I mean obviously I've stated it in my written testimony, but some of the examples here today, one about the 300 miles and one being recognized, one being not. Those are the types of things that I think could be addressed by that from an administrative process from the influence from this committee.

Mr. KIND. It is an excellent point because I know how easily these things can get bogged down. I mean they are inherently very difficult. Usually there is a lot of different interests at stake. Many times, unfortunately, there is a lot of local politics that come into play as well, and it is not hard to establish roadblocks as far as reaching agreement on many of these issues. And the difficulty of just establishing compacts with the States, for instance. I know in Wisconsin we have had a lot of problems on that, and it has been tough to get everyone on the same page. And because of that, thing tend to break down.

So as we move forward, hopefully we will be patient enough in order to listen to the different points of view. This hearing obviously is very, very helpful, and opens up a lot more questions or ideas that should be explored, and obviously we will be looking forward to working with you and staying engaged with you all as we move forward on a committee basis, and trying to reach even beyond that some consensus in the Congress, what can be very tricky

and very difficult because it does entail a lot of details, and I think just a lot of experience in seeing how these things ultimately work.

So with that, Mr. Chairman, I appreciate the time, appreciate you having this hearing today. I think it is very, very helpful, and certainly appreciate the witnesses' attendance. I yield back.

The CHAIRMAN. Thank you, Mr. Kind.

I want to thank our witnesses for their testimony, and again remind you that I know that there are members that have questions that they want to ask in writing. If you could answer those in writing so that they can be included in the hearing record, we will hold it open long enough to include those answers. But I know that there are a number of members that for one reason or another weren't able to be here and ask all their questions.

So I want to thank you for that. I look forward to working with all of you as this process moves forward. Again, this is a draft, and it is something that I think we need to continue to talk about. I know that you are planning hearings or discussions amongst the tribes. I think that will be extremely helpful to begin to get that kind of feedback. There are technical issues that obviously we need to fix. I mean just during the course of this hearing I heard a number of things that we could change or word a little bit differently in the draft that would accomplish what it is you gentlemen and the people you represent are concerned about.

I look forward to continuing to working with you, and thank you again for your testimony.

There is no further business. I again thank the members of the Committee and our witnesses. The Committee stand adjourned.

[Whereupon, at 6:07 p.m., the Committee was adjourned.]

[NOTE: The following list of information submitted for the record has been retained in the Committee's official files.]

- Brown, Mark, Chairman, Mohegan Tribe of Indians of Connecticut
- Confederated Tribes of the Warm Springs Reservation of Oregon
- Cox, Greg, Supervisor, President, Board of Directors, California State Association of Counties
- Franklin, Matthew, Chairman, Ione Band of Miwok Indians
- Kennedy, Cheryle A., Chairwoman, Confederated Tribes of the Ronde Community of Oregon
- Malick, Elida A., Director, No Casino in Plymouth
- Morningstar Pope, Rhonda L., Chairperson, Buena Vista Rancheria
- Royball, Edward R., II, Governor, Piro-Manso-Tiwa Indian Tribe, Pueblo of San Juan De Guadalupe, New Mexico
- Sanchez, Merlene, Chairperson, Guidiville Band of Pomo Indians
- Schmit, Cheryl, Director, Stand Up for California
- Smith, Tim, Chair, Sonoma County Board of Supervisors
- Spurr, Laura, Chairwoman, Nottawaseppi Huron Band of Potawatomi
- Toledo, Mike, Governor, Pueblo of Jemez
- Uikema, Gayle B., Chair, Contra Costa County Board of Supervisors

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