

**H.R. 4893, TO AMEND SECTION 20
OF THE INDIAN GAMING
REGULATORY ACT TO RESTRICT
OFF-RESERVATION GAMING**

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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C O N T E N T S

	Page
Hearing held on Wednesday, April 5, 2006	1
Statement of Members:	
Cole, Hon. Tom, a Representative in Congress from the State of Oklahoma, Prepared statement of	28
Kildee, Hon. Dale, a Representative in Congress from the State of Michigan	3
Pombo, Hon. Richard W., a Representative in Congress from the State of California	1
Prepared statement of	2
Statement of Witnesses:	
Arnold, Donald, Chairman, Scotts Valley Band of Pomo Indians	11
Prepared statement of	12
Response to questions submitted for the record	78
Davis-Van Huss, Jacquie, Tribal Secretary, North Fork Rancheria of Mono Indians of California, Oral statement of	15
King, Randy, Chairman, Board of Trustees, Shinnecock Indian Nation	61
Prepared statement of	62
Osmond, Hon. Jo Ann, State Representative, 61st District, State of Illinois	45
Prepared statement of	47
Shagonaby, John, Treasurer, Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, Gun Lake Tribe	3
Prepared statement of	5
Sheen, Hon. Fulton, Michigan State Representative, Representing 23 is Enough!	38
Prepared statement of	40
Worthley, Steven, Tulare County Supervisor, and Member, Indian Gaming Working Group, California State Association of Counties	49
Prepared statement of	51
Additional materials supplied:	
Conway, Connie, CSAC President, California State Association of Counties, Letter submitted for the record	73
Cowlitz Indian Tribe of Washington, Statement submitted for the record .	74
Fink, Elaine, Tribal Chairperson, North Fork Rancheria of Mono Indians of California, Statement submitted for the record	17
Ho-Chunk Nation Legislature, Statement submitted for the record	77

**LEGISLATIVE HEARING ON H.R. 4893, TO
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**Wednesday, April 5, 2006
U.S. House of Representatives
Committee on Resources
Washington, D.C.**

The Committee met, pursuant to call, at 11:04 a.m. in Room 1324, Longworth House Office Building. Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Kildee, Cardoza, Faleomavaega, Costa, Pallone, Christensen, McMorris, Kind, Inslee, Gibbons, Cole, and Dent.

**STATEMENT OF THE HONORABLE 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 H.R. 4893, a bill to amend the Indian Gaming Regulatory Act, to restrict off-reservation gaming. Under Rule 4[g] of the Committee Rules, any oral opening statements at 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 schedule. Therefore, if other Members have statements, they can be included in the hearing record under unanimous consent.

At this time I ask unanimous consent to allow Mr. Cole of Oklahoma and Mr. Dent of Pennsylvania to participate in the hearing today. Without objection, it is so ordered.

Today, the Committee Members will receive a second round of testimony on H.R. 4893, a bill to restrict gaming on certain kinds of newly acquired lands for Indian tribes. By now, many are familiar with my reasons for sponsoring this bill.

H.R. 4893 establishes a new set of rules for tribes that want to acquire gaming rights on newly acquired trust lands by invoking an exception under Section 20[b] of the Indian Gaming Regulatory Act.

Since the time H.R. 4893 was introduced, a number of tribes seeking Section 20(b) exceptions have expressed great concern. Some with pending applications have spent considerable sums of

money and worked for a long time under the existing process to acquire their gaming rights. They argue the bill's effective date changes a set of rules just as they are nearing the finish line, forcing them to start over or even lose an opportunity to have gaming altogether.

Others argue that unique historical, legal, or geographic circumstances warrant special exceptions for them, and some will argue that all they seek is a more favorable market. For the sake of simplicity, I will refer to the tribes in this category as tribes who seek a grandfathering amendment.

On the other side, some tribes, as well as local elected officials and private citizens groups, say the bill should not include any kind of grandfathering language. In their view, IGRA is not an entitlement to riches. It does not contain a guarantee that every tribe in the country can and will prosper from gaming. They say under the current law many local communities do not have a strong enough voice in the process of considering off-reservation casinos, and to begin carving out exceptions is to defeat the purpose of passing H.R. 4893.

Finally, a number of those submitting comments have views that fall somewhere in the middle. Continuing a policy of fairness and allowing all sides to have a say in the crafting of this legislation, I am hopeful today that my colleagues on the Committee will hear from witnesses representing those varying positions on what is clearly a complex set of issues.

I would now like to recognize Mr. Kildee for his opening statement.

[The prepared statement of Mr. Pombo follows:]

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

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Since the time H.R. 4893 was introduced, a number of tribes seeking a Section 20(b) exception have expressed great concern. Some with pending applications have spent considerable sums of money and worked for a long time under an existing process to acquire their gaming rights. They argue the bill's effective date changes the set of rules just as they're nearing the finish line, forcing them to start over or even lose an opportunity to have gaming altogether. Others argue that unique historical, legal, or geographic circumstances warrant special exceptions for them. And some will argue that all they seek is a more favorable market.

For the sake of simplicity, I will refer to tribes in this category as tribes who seek a "grandfathering" amendment.

On the other side, some tribes—as well as local elected officials and private citizens groups—say the bill should not include any kind of "grandfathering" language. In their view, IGRA is not an entitlement to riches. It does not contain a guarantee that every tribe in the country can and will prosper from gaming. They say that under current law, many local communities do not have a strong enough voice in the process of considering off-reservation casinos, and to begin carving out exceptions is to defeat the purpose of passing H.R. 4893.

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Continuing a policy of fairness and allowing all sides to have a say in the crafting of this legislation, I am hopeful today that my colleagues on the Committee will hear from witnesses representing these varying positions on what is clearly a complex set of issues.

STATEMENT OF THE HONORABLE DALE E. KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. Chairman, while I admire your effort to take on the complicated and controversial issue of off-reservation gaming, I have serious reservations about the bill, but will continue to work with you on this issue, and you have shown nothing but goodwill from the very beginning as you approach this issue.

Fundamental concerns I have about this bill relate to the numerous requirements that this country's poorest tribes, the landless tribes, would have to meet in order to obtain trust land in which to conduct gaming; second, the veto authority granted to state legislatures and involvement of county government; and third, the requirement that an applicant tribe would have to foot the bill to pay for a local advisory referendum.

While I remain reluctant to open up IGRA to attack by our colleagues who want to harm Indian gaming, I would like to work with you to improve the bill so that it supports tribal self-determination rather than hinder it. I look forward to hearing from the witnesses today, and again, Mr. Chairman, I thank you for this hearing and for the process which you are using.

I yield back the balance of my time.

The CHAIRMAN. Thank you, Mr. Kildee.

I would now like to call up our first panel of witnesses. They are: John Shagonaby, Donald Arnold, and Jacquie Davis-Van Huss. They represent the Gun Lake Tribe, the Scotts Valley Band of Pomo Indians, and the North Fork Rancheria, respectively.

Let me take this time to remind all of today's witnesses that under our Committee Rules oral statements are limited to five minutes. Your entire written testimony will appear in the record.

Mr. Shagonaby, we will begin with you.

STATEMENT OF JOHN SHAGONABY, TREASURER, MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS, GUN LAKE TRIBE

Mr. SHAGONABY. Good morning, Chairman Pombo, Ranking Member Rahall, and Members of the Committee.

My name is John Shagonaby. I am a tribal counsel member and Treasurer with the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians located in southwestern Michigan. Most people know us as the Gun Lake Tribe.

We appreciate the Chairman's invitation to appear today. We are a federally recognized tribe but currently have no land base. Although we are landless, we have finished the regulatory process. The Department of Interior, in May of 2005, after four years issued a final determination to acquire 146 acres of land in trust as our initial reservation upon which to build our gaming project.

Mr. Chairman, we would have those 146 acres as our initial reservation in trust today but for a frivolous lawsuit that is holding it up.

When Congress enacted Section 20 of IGRA, it clearly stated that newly acknowledged tribes should have the opportunity to realize congressional goals of IGRA, that is, utilize gaming as a means of

economic development and self-sufficiency. We are concerned that some provisions of H.R. 4893 place our tribe's final determination to take land in trust at risk, and it will forever deny the Gun Lake Tribe and what Congress clearly intended in IGRA, the opportunity for economic development through gaming.

Let me turn to the legislation by recognizing the straightforward and transparent process in which this Committee has proceeded over the past year. We appreciate the hard work of the Chairman and the Committee in addressing the issues of off-reservation gaming, reservation shopping that is going to be raised by some witnesses.

Let me be clear, as a landless tribe we are not going off-reservation, and are not reservation shopping. We are merely seeking to have land placed in trust as our initial reservation on our historic Pottawatomi homeland.

Our written statement offers two recommendations for amendments. This morning, however, I will focus on one—the absolute need for a grandfather clause to exempt certain tribes from H.R. 4893. Our tribe presents a textbook example of on why the grandfather clause is not only fundamentally fair, but warranted.

After achieving Federal recognition in 1999 through the Federal acknowledgment process, which is very difficult to get through, we decided to pursue gaming as a form of economic development. In 2001, we applied to the Department of Interior for an initial reservation, and we stated on our application we intended to operate gaming on this reservation just like the 11 other federally recognized tribes in Michigan.

We identified a site within our original homelands and only three miles from our ancient burial grounds. We did not engage in reservation shopping. We played by the rules. We selected a parcel of land that was already zoned by the local government for commercial development, an abandoned manufacturing facility. We entered into cooperative agreements with local governments for police, fire, and emergency services.

As a part of the fee-to-trust application submitted in 2001, the tribe and the BIA conducted an environmental assessment to assess the potential impacts of our proposed project which is required by the National Environmental Policy Act.

We went through an extensive and atypically long 75-day public comment as compared to the Department's 30-day practice. We went above and beyond what the rules required. Many Michigan citizens and local government officials submitted comments to the BIA. We enjoy overwhelming support from local governments, chambers of commerce, and a grass roots group consisting of over 10,000 citizens of Michigan. There is not one single unit of government that opposes this proposed casino. All support comes as no surprise since the Gun Lake Casino will bring many high-paying jobs to an area that badly needs it.

After an exhaustive review of the evidence and the extensive public comment period, the BIA concluded that our proposed casino would have no significant impact. On May 13 of 2005, nearly four years after we started the journey, the BIA issued its final determination to acquire land in trust for gaming purposes.

As I testified a moment ago, our land would be in trust today but for a frivolous lawsuit filed last June against the Department of Interior seeking to block this project. The Department of Justice is defending litigation against the plaintiff, which is anti-gaming group in Michigan. They are not a local government.

The Gun Lake Tribe has intervened to support the Department of Interior's decision and Wayland Township, the local government with jurisdiction over the land has joined the lawsuit along with groups to support the tribe and the BIA.

Now, let me be frank with the Committee. As we read H.R. 4893, the Gun Lake Tribe may have more hurtles to clear if the bill is enacted prior to the final order in our litigation. It is our understanding that without clarification by the Committee we could be pulled back into the regulatory process and meet many new requirements of the bill. This scenario will lead to substantial new delays and an incredible expense for the tribe.

Most importantly, further delay would impede our tribe's hopes for the future and our ability to provide some badly needed services to our members. Therefore, a provision that would exempt tribes that have pending trust applications must be included, and especially for my tribe which has already received a decision from the administration to acquire land for our initial reservation.

Let me leave you with this final thought. We know that Congress, when it enacted IGRA, carefully considered the unique history of tribal-Federal relationship. We hope it would do the same when it considers the special circumstances of tribes like mine who have spent many years playing by the rules. Please do not change the rules for us at the eleventh hour.

It is our honor and privilege to testify before the Committee today. I am happy to answer any questions you may have.

[The prepared statement of Mr. Shagonaby follows:]

**Statement of John Shagonaby, Treasurer,
Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, Gun Lake Tribe**

Chairman Pombo, Ranking Member Rahall and respected Members of the Committee, thank you for the opportunity to testify today regarding H.R. 4893. My name is John Shagonaby and I am a tribal council member and Treasurer of the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians, also known as the Gun Lake Tribe. Our Tribal homeland has always been in Western Michigan. We are a landless tribe, but have received a final determination from the United States Department of the Interior to place 146 acres of land in to trust in Allegan County, Michigan for the benefit of the Tribe. A private organization has challenged Secretary's decision in federal court and the United States Department of Justice is defending the Department's decision to acquire the lands.

First, let me express my appreciation to the Members of the Committee, and specifically the Chairman, for the straight-forward, cooperative and open process in which this Committee has proceeded over the past year regarding potential amendments to 25 U.S.C. §2719 of the Indian Gaming Regulatory Act. Indian Country has had significant opportunity to work with the Committee on the review of this legislation through two draft bills, many consultations at various Indian association meetings across the country and several oversight hearings. Our Tribe, in particular, has enjoyed a solid working relationship with many of the Committee Members and staff, including Representative Dale Kildee (D-MI), who has always maintained an open door to our Tribe. We recognize the Committee's hard work on addressing concerns with the so-called reservation shopping and off-reservation issues and understand the goals of H.R. 4893. In the spirit of cooperation, we would like to offer two recommendations for amendments and share our general concerns about certain provisions of the bill.

H.R. 4893 IMPOSES NEW REQUIREMENTS ON LANDLESS TRIBES

H.R. 4893 expressly prohibits newly recognized landless tribes from acquiring any trust land on which those tribes may conduct gaming unless the tribe can meet the following new requirements: First, the Secretary of the Interior must determine that the proposed gaming is not detrimental to the surrounding community and nearby Indian tribes. Next, this determination must be approved by the Governor, the State Legislature and any other Indian tribes within a 75 mile radius. Finally, the petitioning Tribe must pay for a local "advisory" referendum and enter into a memorandum of understanding with the county or parish where the land is located. These additional requirements pose new and we believe unintended challenges to those landless tribes seeking to reclaim their homelands as an initial reservation. While our overall preference would be to exclude landless tribes altogether from these requirements, we offer the following comments for the Committee's consideration.

PROPOSED AMENDMENT: INCLUDE A GRANDFATHER CLAUSE

If the proposed legislation moves forward, our primary recommendation is the inclusion of a so-called "grandfather clause" to exempt tribes like ours that have completed or nearly completed the federal regulatory process. As the Committee is aware, many Indian tribes across the country have made tremendous investments into their gaming projects—both financially and in terms of the time and effort of tribal members. This should not be overlooked by Congress.

In fact, one need only review the five year history of our land-to-trust application to appreciate the need for such a grandfather clause:

At every step of the process we have followed the rules. After finally gaining federal acknowledgment in 1999, our Tribal Council identified suitable land for economic development that is only three miles from our ancient tribal burial grounds. The land has an existing industrial warehouse on it and is zoned light industrial. It was always our intent to use this land and the building to develop a casino. The Tribe submitted its fee-to-trust application pursuant to 25 C.F.R. §151 et seq., to the Minneapolis Area Office of the Bureau of Indian Affairs on August 12, 2001. As part of the fee-to-trust application to acquire land into trust for gaming purposes, the Tribe and the Bureau of Indian Affairs (BIA) conducted an Environmental Assessment (EA) in satisfaction of the requirements of the National Environmental Policy Act (NEPA). Our Tribe is highly sensitive to our natural environment. This is why the Tribe made every effort to be extraordinarily cooperative and responsive to the Bureau of Indian Affairs during the agency's determination of whether our casino project might pose any significant impact on the environment of West Michigan.

As the Committee is aware, federal regulations require that our Tribe comply with NEPA in order to have land acquired in trust for our benefit. Compliance with NEPA is achieved if an EA of the proposed project results in a Finding of No Significant Impact, to the environment by the BIA "often referred to as a "FONSI". NEPA requires, however, that if the BIA finds that a project has a significant impact on the environment, an Environmental Impact Statement must be written by the agency. Over a three year period, beginning in mid-2002, the Tribe worked closely with the BIA Regional Office's environmental resources experts to produce an EA. The Tribe and its consultants prepared several revisions of the EA following comments from both the BIA and the public.

During an extensive and atypically long 75-day public comment period (November 2002—February 2003), Michigan citizens and local government officials submitted over 300 letters to the BIA containing project comments and concerns. Each public comment, as reflected in the administrative record, was painstakingly reviewed by the BIA. In the end the EA examined everything from the project's effects on the water supply, traffic and air quality to the effects on animals in the surrounding area. In addition, since such great scrutiny is placed on casino projects, the EA examined the effects of secondary development resulting from the casino and its operations and examined potential alternatives to this project.

After an exhaustive review of the evidence and the extensive public comment, the BIA concluded that a FONSI was appropriate, and with this finding of no significant impact, an EIS was not required. The BIA issued the FONSI on February 27, 2004. More than a year later, on May 13, 2005, the BIA published in the Federal Register its final determination to acquire the land in trust for the benefit of the Tribe.

Mr. Chairman, our land would be in trust today but for a lawsuit filed June 13, 2005 against the Department of the Interior seeking, among other things, to enjoin the Secretary from moving forward with her decision to acquire land in trust for our Tribe. As I mentioned above, the Department of Justice is defending that litigation. The Plaintiff in this action is a private anti-gaming group from West Michigan. In fact, the attorneys representing the plaintiffs challenging the Secretary's

determination are the same attorneys that lost a challenge to the previously landless Pokagon Tribe in Michigan on nearly identical causes of action. Today, the Pokagon lands are now in trust. Our case is nearing completion and we are confident that we will also prevail.

If H.R. 4893 is enacted prior to a final order in our litigation, it is our understanding that without clarification the Gun Lake Tribe could be pulled back into the regulatory process and required to meet many of these new criteria. This scenario would lead to substantial additional delays and incredible expense for the Tribe. Most importantly, such further delay would seriously impede our Tribe's hopes for the future and our ability to start to provide some of the services so badly needed by our tribal members. Therefore, we respectfully request that a provision exempting tribes like ours from this new legislation be included in H.R. 4893.

PROPOSED AMENDMENT: ALLOW FOR ALTERNATIVE COMPACTING

As you know before a Tribe can conduct Class III gaming, it needs a gaming compact with the State—for which the state is required to negotiate in good faith. Eleven federally recognized Tribes in Michigan have gaming compacts, some of which were negotiated by former Governor John Engler and subsequently approved by the Michigan Legislature.

The United States Supreme Court in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) ended a tribe's right to bring a cause of action in federal court against a state that refused to bargain in good faith for a tribal state gaming compact—unless that state waives its sovereign immunity. There is currently no remedy for an Indian tribe to sign a compact with a state refusing to negotiate in good faith. Our recommendation would be the authorization of the Department of the Interior to issue alternative compacts when a state Governor or state legislature refuses to negotiate in good faith a compact with an Indian tribe. This amendment would promote intergovernmental cooperation between states and tribes and result in the furtherance of a cooperative relationship between the states and tribes. Specifically, such an amendment would codify by statute the authority of the Secretary to issue the Class III gaming procedures of 25 C.F.R. Part 291 et seq.

GENERAL CONCERN WITH H.R. 4893: THE ADVISORY REFERENDUM IMPOSES A DIFFICULT CHALLENGE

We are concerned that the “advisory referendum” requirement creates a significant impediment to Indian tribes. First, H.R. 4893 does not impose deadlines requirements on the county officials to act and there are no federal or state regulations in place for such an event. Also there needs to be clarification of whether the election could be called as a special election or held in regular course during the Primary or General elections.

Next, the Committee may want to consider exempting the tribe from state laws addressing the qualification of a referendum for the ballot. Most states require the collection of hundreds of signatures and payment of a filing fee. Another related concern is that not all states allow local referendum and, as such, those local officials may be ill-equipped to hold and manage a ballot initiative. Third, a tribe would need to reach a financial arrangement with the county on the cost of the election for its particular referendum. Perhaps the Committee can offer guidance as to what costs would or could be included or limited by this arrangement.

Fourth, the element of campaign costs associated with a referendum should be carefully weighed by the Committee. A tribe would need to hire public and political relations experts to campaign for its side of the referendum. This creates a new significant financial investment for the tribe. Fifth, there is a general concern that Congress does not possess the constitutional authority to compel a local government to act. Finally, the results of this election, as stated in H.R. 4893, are only advisory and have no impact on the mitigation of public concerns about proposed gaming projects. In other words, is it the intent of the Committee to require that tribes and local governments conduct what is essentially a very expensive public opinion poll?

GENERAL CONCERN WITH H.R. 4893: PROPOSED TWO-PART DETERMINATION IS UNFAIR TO INITIAL RESERVATION TRIBES

This new two part determination in the initial reservation exception appears contrary to basic elements of fundamental fairness. Such a determination would create an uneven playing field and further disadvantage the most disadvantaged tribes in America. Landless restored and newly acknowledged tribes have been without land and the benefits of federal recognition for significant periods of time. These tribes are forced to carve out small pieces of their original homeland from local jurisdictions that typically are not eager to lose land from their tax rolls and regulatory authority. Indeed, the very reason IGRA contains exceptions for the initial

reservations of a tribe is because Congress did not want to penalize those tribes that were not yet recognized by October 17, 1988.

GENERAL CONCERN WITH H.R. 4893: INTERFERENCE BETWEEN TRIBAL SOVEREIGNS

H.R. 4893 requires the concurrence of other Indian tribes within seventy-five (75) miles of the applicant project site to concur with the proposed acquisition for gaming purposes. Such a provision, for the first time under Congress' plenary authority, enables neighboring Indian tribes to interfere with another tribal sovereign's internal decision-making and self-determination. Allowing and requiring concurrence by neighboring tribal governments is tantamount to economic warfare between neighboring tribal governments.

In fact, the application and effect of this provision will be uneven in various regions in the nation and undermine economic development. For example, California tribal projects under this provision may be required to seek upwards of twenty-five (25) concurrences from neighboring tribes while Tribe in the mid-west might have merely one (1) or no tribes required to concur because sheer geographic distance gives these tribes a free pass. In practical terms such a concurrence is a death-blow to a gaming project. Why would those other tribes agree to allow a competing casino? Their market shares will inevitably be cut. Landless tribes, like ours, are recognized by the federal government with the same privileges and immunities as other tribes with land prior to October 17, 1988. This provision in its present form makes landless tribes a different class of tribes because it denies us the ability to have an opportunity to use IGRA under the same rules as everyone else.

In short such a provision undermines the spirit of IGRA: economic development through self-determination.

GUN LAKE MEETS THE PRIMARY GEOGRAPHIC, SOCIAL, HISTORICAL, AND TEMPORAL NEXUS TEST

The legislation also creates a new test for tribes seeking their initial reservation. Under H.R. 4893, the Secretary is required to determine that the tribe has its primary geographic, social, historical and temporal nexus to land. Although we are uncertain how these terms may ultimately be defined in light of case law and Departmental practices, we firmly believe that Gun Lake Tribe has such a nexus to the land.

In fact, we have long and established ties to an area that is now Western Michigan. The Gun Lake Tribe descends primarily from the Pottawatomi Band, led by Chief Match-E-Be-Nash-She-Wish. Prior to European contact, the Gun Lake Tribe used and occupied lands in the Great Lakes, in what is now known as present-day Michigan Lower Peninsula. This is where we are today. In the late 1700s, the Gun Lake Tribe lived under the direction of Chief Match-e-be-nash-she-wish at a village at Kalamazoo, which we called "Kekamazoo," and which is located near where Michigan Highway 43 crosses the Kalamazoo River.

In 1821, the Michigan Indian Tribes and the United States entered into the 1821 Chicago Treaty, under which the tribes ceded all Michigan land south of the Grand River to the United States. Match-e-be-nash-she-wish signed this treaty on behalf of the Gun Lake Tribe, and as a realization from stipulations from the 1795 Treaty, he and his band were provided a 3-mile square of land at Kalamazoo. The northeast corner of the reservation was a short distance northeast of present day Michigan Avenue Bridge which crosses the Kalamazoo River as part of Michigan Highway 43. Today, Western Michigan University's main campus is located approximately in the center of the 3 square mile area which was known as the Match-E-Be-Nash-She-Wish Reservation.

Despite previous treaties between the United States and the Michigan tribes, and despite the huge amounts of land ceded, pressure continued on the tribe to cede more land. In 1827, Match-e-be-nash-she-wish agreed to cede his small reservation at Kalamazoo for an equal size land base adjacent to the Nottawaseppi Reservation near Mendon. However, the Tribe was never paid for the land cession and they did not move to this location. Before the land could be surveyed and provided to Match-e-be-nash-she-wish and his Tribe, all the major chiefs in southwest Michigan except Match-e-be-nash-she-wish signed the 1833 Chicago Treaty, ceding their land rights to the United States. To avoid a forced removal to Kansas as a "hostile" Band, Match-e-be-nash-she-wish moved the Tribe north, first to Cooper, then Plainwell, then Martin, and finally to Bradley in 1839. Tribal members maintained a connection with the Kalamazoo area into the 20th century, as residents of the Bradley settlement would collectively move south to the Kalamazoo River during the summer months to camp, fish, and socialize. The United States never fulfilled its treaty obligation to make payment for the Gun Lake Tribe's Kalamazoo land cession.

In 1839 in Bradley, Allegan County, the Tribe placed itself under the protection of an Episcopalian Mission while the Tribe occupied what was known as the Griswold Colony, or Bradley settlement. Indian colonies like the Griswold Colony were established pursuant to the 1819 Civilization Act, which allowed five participating denominations to establish trust agreements, in which the missionary societies would hold land in trust for the Indians, build churches and schools, clear and fence fields, teach farming techniques, and make blacksmiths and mills available to the tribes.

Funding for the Griswold Colony had been set by treaty for 20 years. In 1855, the assistance provided by the treaty came to an end and a new treaty was made with the Tribe whereby they were granted outright ownership of lands in Oceana County near Pentwater, Michigan. The majority of the Griswold Indians took advantage of the provisions of the new treaty and moved northward, while a few families stayed behind. Within 10 years, however, most of the Griswold Indians had lost their lands in Oceana County, and many returned to the mission grounds, which had not been disposed of, despite the fact that the work there had come to an end. The Indians lost their lands in Oceana County not to taxes, but because the patents to the lands were never delivered to those that held land certificates, and thus the land selection process in Oceana County was never legally completed by the United States government.

When the land patents were not delivered, the Gun Lake tribal members returned to Allegan County, to the 360 acre reservation which was still in trust with Bishop McCoskry. However, during the period when some members lived in Oceana, the reservation members that remained behind refused to pay Allegan county taxes on the reservation lands, based on treaty rights. Tribal members returning from Oceana County met with court action by Allegan County and the reservation land was put up for sale for back taxes. Within a few years, practically all of the Tribal members had lost their land to non-Indians for failure to pay their taxes.

In 1890, pursuant to federal law allowing the "Pottawatomi Indians of Michigan and Indiana" to receive a payment from the United States for past annuities, the Pokagon Band and Nottawaseppi Pottawatomi filed cases in federal court. However, only the Pokagon Band was paid, and not the Allegan County Pottawatomes, our Tribe. In 1899, the Supreme Court ruled that the Allegan County Indians were also eligible to share in the judgment. The Taggart Roll was developed to establish the additional parties to be paid, and it contains 268 Pottawatomi Indian names, many of whom are descendants of Match-E-Be-Nash-She-Wish's Band. The Bradley Indian community used the funds to expand and acquire land in the area.

The Tribe had unambiguous previous Federal acknowledgment, which is demonstrated by treaties extending at least through the 1855 Treaty of Detroit with the Ottawa and Chippewa Indians of Michigan, to which the Tribe's chief was a signatory, through the 1870 date at which annuity payments under prior treaties were commuted. There was never an express congressional legislation terminating the Tribe; the Tribe was simply passed over for a Treaty before treaty making ended in 1871.

Over one hundred years later, in 1992, the Gun Lake Tribe petitioned the Bureau of Indian Affairs for acknowledgment. In August of 1999, the Tribe was acknowledged as a federally recognized Indian Tribe, re-establishing their government-to-government relationship with the United States. Since restoration as a federally recognized tribe, the Tribe has identified a site in Allegan County within the Wayland Township as a proposed site to place in trust for the benefit of its members. In fact, most of the Tribal members currently reside in the Allegan area. The Tribe chose to remain in Allegan County because it is part of the Tribe's aboriginal lands and the land on which the Tribe has lived since 1839.

It is also important to highlight that on June 25, 2003, the Tribe received a Department of the Interior Solicitor Opinion that acknowledged Gun Lake Tribe's historical nexus to proposed land acquisition site and determined that land acquired in trust for the land would be proclaimed the Tribe's initial reservation. The opinion concluded that the Tribe could conduct gaming activities on the land under the "initial reservation" exception in Section 20 of the Indian Gaming Regulatory Act.

THE GUN LAKE PROJECT IS WIDELY SUPPORTED

As Senate Committee on Indian Affairs Chairman, Senator John McCain (R-AZ) observed during the May 18, 2005 committee hearing on trust lands, the Gun Lake Tribal project has received "a pretty impressive display of local support." This is quite true, as part of the public comment period for the Environmental Assessment, the Bureau of Indian Affairs received letters supporting the Tribe's proposed land acquisition and development from the following groups/individuals:

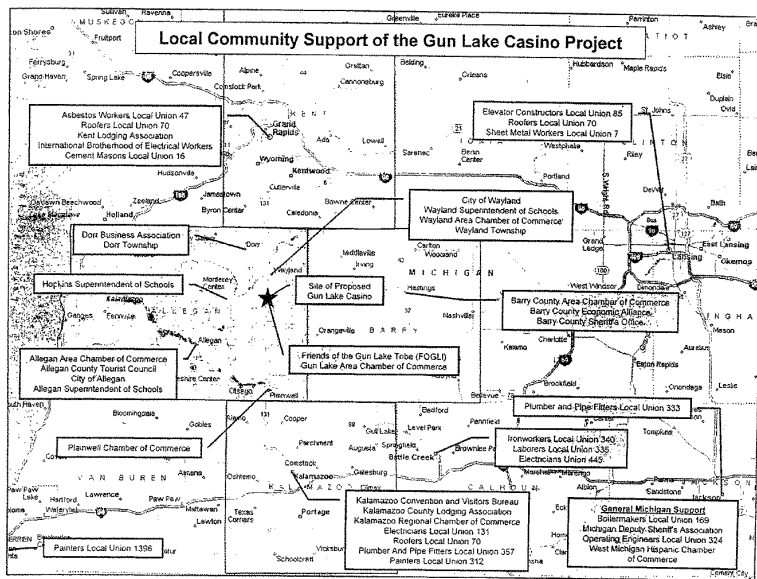
- Wayland Township

- International Brotherhood of Electrical Workers
- Michigan House of Representatives
- City of Wayland
- Allegan Public Schools
- Barry County Economic Development Center
- Gun Lake Area Chamber of Commerce
- Allegan County Health Department
- Wayland Area Chamber of Commerce
- Plumbers/Pipe Fitters Union
- Wayland Union Schools
- Dorr Township
- Barry County Area Chamber of Commerce
- Allegan County Board of Commissioners
- Wayland City Police
- Deputy Sheriff's Association of Michigan
- Michigan House Democratic Leader Buzz Thomas
- Michigan State Majority Floor Leader Randy Richardville

Unfortunately, there are a small handful of detractors such as MichGo and 23 is Enough!—a witness testifying in the second panel today. We understand that these two organizations are led and funded by a small collection of businessmen who operate their companies regionally. We also believe that 23 is Enough! has not opposed any other gaming projects in Michigan aside from the Gun Lake project—not even the commercial gaming operations recently opened in Detroit. This group seems solely focused on our Tribal project.

Furthermore, none of this group's leaders submitted comments during the lengthy environmental review conducted by the Bureau of Indian Affairs. This raises a legitimate question of whether this group has gathered to oppose Indian gaming in the State or to oppose what promises to be a significant local competitor for the job base in Western Michigan. After all, the Gun Lake Casino is expected to bring 4,300 new jobs to the area, as well as local supplier purchases, local and state revenue sharing, a proven recreational attraction, and other economic development to the depressed area.

As a final thought, we know that Congress, when it enacted IGRA, carefully considered the unique history of tribal-federal relationship and we hope it will do so when it considers the special circumstances of landless tribes affected by this legislation. It is an honor and privilege to present testimony to Committee today and I am happy to answer any questions you have of me.



The CHAIRMAN. Thank you.
Mr. Arnold.

**STATEMENT OF DONALD ARNOLD, CHAIRMAN,
SCOTTS VALLEY BAND OF POMO INDIANS**

Mr. ARNOLD. Good morning, Honorable Chairman Pombo, and Members of the House Resources Committee.

My name is Don Arnold, Chairman of Scotts Valley Band of Pomo Indians. Also with me today is our Vice-Chairman, Crista Ray, and also Dore Bietz of the Indian lands consultant.

As a small landless tribe in California, we have an application in with the Department of Interior to place in trust restored land for gaming purposes and economic development.

The tribe has expended a considerable amount of time and resources toward this project. We were one of 41 tribes that California terminated pursuant to the Rancheria act of 1958. Termination means we lost our property rights.

During the '60s and the '70s, the Federal government then implemented the relocation, relocating Indians to the Bay Area. The majority over the Scotts Valley Band of Pomo Indians relocated to the Bay Area. I, myself, was relocated to San Francisco.

Twenty-seven years later, in 1992, Scotts Valley was restored to recognition by court order along with three other tribes, Guidiville, Mechoopda and Lytton. The court precluded us from returning to our former Rancheria area, our land base.

In 2000, BIA recognized that the majority of our tribal members live in the Bay Area. Contra Costa County has been designated our service population, service area. Our tribe has researched and have documents, ethnohistory, facts linking Contra Costa County to our historical Pomo site. The territory ceded to the United States in the Nineteenth Century.

Based on this history, and our modern ties, the tribe has decided to seek restoration in our land base in Contra Costa County. Our application was submitted in January of 2005. Our tribe has offered the county a limited waiver of sovereign immunity to make enforceable the terms of our MSA with these agreements.

The tribe currently is negotiating with the City of Richmond, although our site is in an unincorporated area of Contra Costa County. The tribe wants to be a good neighbor. We continuously reach out to the community for communications with them.

Concerns: We would now like to express our ideas on the legislation.

First, there must be a mechanism for landless and newly restored and recognized tribes. California tribal history is unique and complex as you mentioned earlier, Congressman. There must be a way to combine, protect for the small, needy, unjust landless tribes while ensuring that requirements should be in place for historical claims that the tribe must meet. Every tribe should have the same rights as others.

Second, we need to maintain the standard and process for acquisitions, and without having to change the long-standing Federal policy, and recognizing tribal sovereignty. We have concerned while giving veto power to local governments and other tribes. However, we do recognize the need for local community involvement.

Finally, there needs to be a grandfather clause for those tribes already in the process. Many of these tribes have exhausted much time and resources like Scotts Valley. Changing the rules to the game is unfair. Any grandfathering should be inclusive in any tribe who has an application in for the purpose of gaming on the date of enactment of any new bill. This is the only fair and equitable remedy for those tribes, all tribes that have spent any time in the process.

Grandfathering does not guarantee approval as you know, and Scotts Valley will continue to follow the process as outlined.

What about other tribes who do not have an application in? Their rights should also be protected.

In closing, the rules of the game should not be changed midway through the seventh inning. Let us say a rancher has spent several years and hundreds of thousands of dollars in working through the local zoning regulations so he could put a new building on his property. Toward the end of the process the local government changes the law and does not grandfather his application. He has to start all over again and jump through this even higher hurdles. The result is that he will lose his investment, the time and money just like tribes will if we are not grandfathered.

Grandfathering language is critical for landless tribes, and I want to thank you for your time and the Committee. We are open for questions and answers. Thank you.

[The prepared statement of Mr. Arnold follows:]

**Statement of Donald Arnold, Chairman,
Scotts Valley Band of Pomo Indians,**

Introduction

Honorable Chairman Pombo and members of the Committee, my name is Don Arnold and I am the Chairman of the Scotts Valley Band of Pomo Indians. Thank you for the opportunity to speak in front of you today on such an important issue.

Scotts Valley is a small landless Tribe in California that has an application with the Department of Interior to have land placed into trust as a restored tribe for gaming purposes. To date, the Tribe has expended a considerable amount of time and resources in order to comply with the federal fee to trust and restored lands applications process. I hope that I can provide some valuable information about the unique history and needs of California Tribes as well as update you as to where we are in our project and why we are concerned with the proposed legislation. We also would like to specifically speak to the issue of grandfathering and why Scotts Valley and other tribes should not have the rules changed in the seventh inning of the game.

Scotts Valley History

The Scotts Valley Band of Pomo Indians of California is a federally recognized Indian tribe, which has absolutely no trust land base. The Tribe's status as a federally-recognized Indian tribe was illegally terminated in 1965 under the California Rancheria Termination Act, and restored in 1992 pursuant to a judgment of the Federal District Court for the Northern District of California. The Judgment, however, specifically precludes the Tribe from re-establishing our former Rancheria.

As a result of the Federal Government's termination and relocation policies throughout the 20th century, the vast majority of tribal members were relocated to the San Francisco Bay area, and, in 2000, the Bureau of Indian Affairs designated Contra Costa County, California as the Scotts Valley Band of Pomo Indians "service population area." Because a large percentage of tribal members reside in and around the County and the County has been designated as the Tribe's service population area, the Tribal Council has determined to restore the Tribe's trust land base in the County, and to fully establish the Tribal Government and Tribal community in Contra Costa County. The Property is located in the extreme western end of the County close to the sites of historic Pomo villages and trails and the territory the Pomo ceded to the United States in the 19th century. The Property is thus the

closest part of the Tribe's present day service population area to historic Pomo territory. As a result, the Tribal Council has determined that the development and operation of a gaming facility on the Property is an important Tribal Government project designed to improve the economic conditions of the Tribe and its members, increase tribal revenues, enhance the Tribe's economic self-sufficiency and promote a strong Tribal Government capable of meeting the social, economic, educational, cultural and health needs of the tribal members. Accordingly, the Tribe has requested that the Secretary of the Interior acquire title to six (6) parcels of real property totaling approximately 29.87 acres located within an unincorporated area of the County in trust for the benefit of the Tribe.

Application for Land Into Trust

After much time and resources, the Scotts Valley Tribe submitted an application under 25 C.F.R. 151 on January 25, 2005. This application is an extensive compilation of both required and submitted documents filling numerous binders that includes a narrative addressing all requirements within 151 such as need, authority, impacts on the State and Political Subdivisions jurisdictional issues and title requirements.

In addition, a detailed Environmental Impact Statement (EIS) was developed which identifies a range of measures necessary to mitigate significant impacts our project will have on the local community. Not only has the Tribe publicly agreed to mitigate those impacts, but also has offered the County in which our restored trust land base would be located a limited waiver of sovereign immunity in order to make fully enforceable the terms of a Tribal-County agreement regarding the mitigation of impacts to the County.

The Tribe also is currently in negotiations with the City of Richmond to develop an MSA that addresses the mitigation of the impacts to the City of our proposed project. Quite simply, the Tribe wants to be good neighbors of the community in which our restored trust land base is located, and continuously reach out to the community to ensure that happens.

Since Congress included the "restored lands exception" when it enacted IGRA, it is clear that Congress knew and understood the plight of landless illegally terminated tribes, such as Scotts Valley. Congress did not give landless, illegally terminated tribes a free pass. Instead it created a rigorous mechanism for a landless, illegally terminated tribe, like Scotts Valley, to restore its trust land base and operate a gaming facility as a means of promoting tribal economic development, self-sufficiency and a strong tribal government. Scotts Valley is following this mechanism; the only mechanism which can provide our Tribe assurances of its sovereign survival.

Concerns with H.R. 4893

In 1988, Congress saw Indian gaming as an appropriate expression of tribal sovereignty and, accordingly, Congress enacted IGRA to protect and regulate that activity. It is clear, however, that, with certain exceptions, Congress intended to limit Indian gaming to Indian lands that existed on the date of enactment (October 17, 1988).

The problem was that not all tribes held tribal lands in 1988. Congress very specifically intended to assist such disadvantaged tribes by providing that, when they finally obtained land, their land would be treated as if it effectively had been in trust since before October 17, 1988. In other the words, Congress provided the restored lands exception of Section 20 (b) (1)(B)(iii) of IGRA so that eligible tribes such as Scotts Valley could be placed closer to the position they would have been in had the Tribe been restored and held lands in trust prior to 1988. By so doing, Congress provided a mechanism by which newly restored tribes would be on a more level playing field with the tribes that were lucky enough to have been restored and had a land base on the date of IGRA's enactment. Congress knew that locking restored landless tribes out of the economic development opportunities made available by IGRA would do an incredible injustice to those tribes.

The purpose and intent of IGRA's restored lands provision is informed by the opinions of the federal courts that have considered this issue. In 2003, in a case involving a California tribe, the D.C. Circuit (in an opinion joined in by now Chief Justice Roberts) explained that the restored lands and initial reservations exceptions "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 v Norton*; 348 F.3d 1020, 1030 (D.C. Cir. 2003). In 2002, in an opinion involving a Michigan tribe that was later affirmed by the Sixth Circuit, the District Court said nearly the same thing, saying that the term "restoration maybe read in numerous ways to place belatedly restored tribes in a comparable position to earlier

recognized tribes while simultaneously limiting after-acquired property in some fashion.” Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Attorney for the Western District of Michigan, 198 F. Supp. 2d, 920, 935 (W D. Mich. 2002), aff’d 369 F.3d 960 (6th Cir. 2004) (referring to the factual circumstances, location, and temporal connection requirements that courts have imposed). The restored lands provision “compensates the Tribe not only for what it lost by the act of termination, but also for opportunities lost in the interim.” City of Roseville, at 1029.

Only rarely does Congress provide the Secretary with special authority or direction to acquire trust land for a particular restored tribe. Therefore, newly restored tribes like Scotts Valley must rely on the general discretionary land acquisition authority given to the Secretary pursuant to Section 5 of the Indian Reorganization Act. (25 U.S.C. 465) As a consequence, landless restored tribes must submit to Interior’s usual process for reviewing fee-to-trust applications, including complying with the requirements of Interior’s fee-to-trust regulations (25 C.F.R. Part 151).

H.R. 4893 would amend Section 20 to impose on newly recognized, newly restored and landless tribes an extensive laundry list of new requirements before those tribes could obtain trust land for gaming. Such comprehensive requirements have never been imposed on tribes with reservations in existence in 1988. Indeed, on its face, H.R. 4893 appears to conflict with Congress’ own policy direction to the federal agencies that they may not promulgate regulations or make any determination that “classifies, enhances or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes.”¹

Section 20 is working as Congress intended. The Section 20 exceptions were intended to place tribes that were either unrecognized or landless in 1988 (Scotts Valley was both) on an equal footing with recognized tribes that had established trust land bases. The exceptions were not intended for recognized tribes with established land bases to improve their competitive environment, and therefore these tribes should not be attempting to use the exceptions for such purposes.

Grandfathering Tribes already in the process

Scotts Valley is a landless illegally terminated/restored tribe that is following the federally established procedures for taking land into trust for gaming purposes, and it is truly hurtful when the illegal termination of our Tribe and the relocation of our people are ignored and we are accused of “off reservation shopping.” We are not “reservation shopping”, instead we are following the very vigorous requirements the Congress established for restored tribes to restore their trust land base. The tens of thousands of pages included in the Tribe’s trust application will show that the Tribe has both a strong historic connection to our proposed restored trust land and an even stronger modern day connection to that same proposed trust land.

Our tribe, as it always has, will tenaciously move forward in its fight for its survival, this time by following the federal procedures set forth for establishing a restored land i.e. pursuant to the provisions and case law governing Section 20(b)(1)(b)(iii) of IGRA and 25 C.F.R. 151. This section provides adequate safeguards for tribal, state and local governments, and should not be changed.

There are considerable provisions under current law for public input into the Tribe’s restored lands application. In addition to the public consultation and comment requirements built into the fee to trust process, there are a significant number of opportunities for public participation required by the National Environmental Policy Act (“NEPA”). The Department of the Interior has made clear in its recently revised guidelines for gaming acquisitions that most tribal casino projects will require preparation of an EIS to assess a wide range of potential impacts, including ecological, social, economic, cultural, historical, aesthetic, and health impacts. The Scotts Valley project is no exception.

The enormous amount of public opinion that is made a part of the NEPA and EIS processes is perhaps best demonstrated by walking through the extensive process in which Scotts Valley has been engaged:

- On July 20, 2004 the Bureau of Indian Affairs (BIA) published a notice of intent to prepare an EIS in the Federal Register describing Scotts Valley’s proposed project, explaining the NEPA process, announcing a scoping meeting, and soliciting written comments on the scope and implementation of the proposed project. Public notices announcing the proposed project and the scoping meeting also were published in local papers. The scoping process was intended to gather information regarding interested parties and the range of issues that would be addressed in the EIS.
- The BIA held the public scoping meeting on August 4, 2004 in Richmond, California, and received comment letters during the scoping process. In December

¹See 25 U.S.C. § 476(f).

2004 the BIA issued a scoping report describing the NEPA process, identifying cooperating agencies, explaining the proposed action and alternatives, and summarizing the issues identified during the scoping process.

- The BIA then prepared a preliminary draft EIS, which was circulated to the cooperating agencies for comment. Cooperating agencies for the Scotts Valley project included the County of Contra Costa, California, the City of Richmond, California, the California State Department of Transportation and the Environmental Protection Agency.
- Based on the comments received from the cooperating agencies, the BIA then prepared a draft environmental impact statement which was released for public comment on February 17, 2006. The BIA also held a public meeting in Richmond, CA on March 15, 2006 after the draft EIS had been made available to the public. At that meeting, several members of the community commented on the draft EIS; many of them positively.
- All the comments on the draft EIS, whether received in writing or through the public meeting, are being considered and addressed in the final EIS. The information included within that final EIS will be considered by the Secretary while he/she determines whether or not to take the Scotts Valley parcel into trust. Therefore, the views of local elected officials, local citizens, and even the card rooms will be available to the Secretary for consideration before he/she makes a decision as to whether to take this land in trust for Scotts Valley.
- Finally, after the Secretary of the Interior has considered all the public comments, including information about impacts and mitigation, if he/she does decide to acquire trust title to the land, Interior's regulations provide the public with a very clear and very unambiguous opportunity to challenge the Secretary's decision in federal court before he/she implements that decision. 25 C.F.R. 151.12(b) requires the Secretary to give the public at least 30 days notice of his/her decision to take land into trust before he/she will actually take the action to acquire trust title. Accordingly, if the public ultimately is not satisfied that its concerns have been addressed through either the fee to trust, the NEPA or EIS processes, it can exercise all available remedies at its disposal to prevent the Secretary from taking the land into trust.

In summary, I am here today to advocate among other things for the insertion of "grandfathering language" in H.R. 4893 that protects those illegally terminated landless tribes, who like Scotts Valley have already gone to considerable effort in their petitions to the federal government for a land base, on which to conduct gaming under the original provisions of IGRA. In conclusion, we hope that if passed, the Pombo Bill will add such "grandfathering language" and cut off dates to its final form before enactment to protect the Tribes who have followed the process and been engaged with time and resources.

Thank you for your attention to this testimony.

The CHAIRMAN. Thank you.
Ms. Davis-Van Huss.

STATEMENT OF JACQUIE DAVIS-VAN HUSS, TRIBAL SECRETARY, NORTH FORK RANCHERIA OF MONO INDIANS OF CALIFORNIA

Ms. DAVIS-VAN HUSS. Thank you, Chairman Pombo, for the opportunity to appear before the Committee today.

While my tribe has concerns about the specific proposals contained in this legislation, we understand the circumstances that have caused the Chairman to introduce this bill. I would like to focus my statements on what we believe are unintended consequences of this bill, and specifically how it would preclude my tribe from engaging in gaming on restored lands located within our modern day and ancestral homelands, an effort that we have pursued with strong local support for over two years.

Our tribe is the largest restored tribe in California. We have 1,386 tribal citizens, and we are growing. For several years, we have been engaged in a process to acquire gaming-eligible lands to provide our tribal citizens the same economic development opportu-

nities as enjoyed by other tribes. We are proceeding through this difficult process because the only gaming-eligible lands available to us, the North Fork Rancheria, sits on a rocky hillside adjacent to the Sierra National Forest, and is in trust for six individuals, not the tribe.

Neither the tribe, the local community, nor the State of California considers the Rancheria to be appropriate for commercial development, and any such development would do little to advance the needs of either the tribe or the larger community.

In 2003, we began working cooperatively with Madera County to identify an appropriate location for a gaming facility on our historical lands in Madera County. We eventually identified a 305-acre parcel on an unincorporated area just north of the City of Madera. The parcel is located within lands set aside under the unratified treaties of 1851 and near the reservation operated for our ancestors in the 1850s.

Our proposed gaming and entertainment project is consistent with the county's land use and development plans for the location. Further, the location avoids impacts to the environmentally sensitive foothills and minimizes the impact on gaming operations of neighboring tribes.

In August 2004, the Madera County Board of Supervisors unanimously approved an MOU with the tribe under which the tribe will provide \$87 million over 20 years for mitigation of project impacts on the county, and for sustained charitable contributions.

A year later the county passed a second resolution in support of the tribe's proposals project at the proposed location. I believe the Committee is in receipt of written testimony from Madera County's Supervisor Gary Gilbert that outlines the county's support of our project.

The North Fork project has become something of a model for responsible development, one where the tribe working with the county has identified an environmentally and economically viable location within our homeland to provide sorely needed economic resources through the creation of living wage, full benefit jobs, sustained charitable contributions, and significant shared revenues.

Our project is distinguished by its strong local support, its emphasis on collaboration, its adherence to the spirit and letter of the law, and its goal for improving the lives of all Madera County residents.

Yet despite all this, our project would never be able to satisfy all of the requirements in this proposed legislation. Indeed, it seems unlikely that any tribe in the country, particularly in California, could satisfy the requirements of the legislation. Most problematic is the requirement that requires the concurrence of any tribe within 75 miles of the proposed site. This provision is anti-competitive. It effectively provides other tribes without jurisdiction or land-use authority over the lands the power to veto another tribe's gaming project simply to protect their market share.

There are 107 federally recognized tribes in California, and five are within 75 miles of our proposed site. The two tribes with the largest gaming facilities in our area, despite our best efforts, oppose our project for competitive reasons.

While we agree that these tribes should be consulted as part of the Federal process, they should not have the same power as the Secretary or the Governor.

We also request that the Committee eliminate the requirement for concurrence by the state legislature of the Secretary's decision to approve an application. This bill already provides for concurrence by the Governor, which has only occurred three times in 18 years since IGRA was enacted. Given the Governor's role as chief executive of the state, it is unlikely a Governor would concur in a decision by the Secretary without strong local support. Requiring additional concurrence of the state legislature simply provides successful gaming tribes who enjoy tremendous influence, especially in California, with the state legislature additional power to veto projects that threaten their competitive position.

We also question the need for a countywide referendum. We elect our officials to make tough decisions concerning land use and development. Those officials already have the power under California law to call for an advisory vote when appropriate. Madera County does not require an advisory vote or referendum when approving large or controversial developments, whether that be a new Wal-Mart or a rock quarry, and we do not see why the Federal government should impose such a requirement on a gaming development. A referendum simply creates another opportunity for competitive interest to spend hundreds of thousands of dollars in creating a high-profile political campaign that ultimately has little to do with what the residents of the affected community want.

As you can see, this well-intentioned legislation will have significant unintended consequences on my tribe. Our tribe has been following the spirit and letter of the law for over two years, and the process we, along with local elected officials and business leaders, have invested an enormous amount of time and resources. It would be unfair to change the rules on us and the community at this stage.

We urge the Committee to consider adding a grandfather provision that would allow us to continue through the process under the existing law.

I appreciate this opportunity and thank you very much.

[A statement submitted for the record by Ms. Davis-Van Huss on behalf of Elaine Fink, Tribal Chairperson, North Fork Rancheria of Mono Indians of California, follows:]

**Statement submitted for the record by Elaine Fink, Tribal Chairperson,
North Fork Rancheria of Mono Indians of California**

Introduction

The North Fork Rancheria of Mono Indians first wishes to thank Chairman Pombo for the opportunity to appear before the Committee today and provide our Tribe's story as well as our perspectives on H.R. 4893, a bill to amend the Indian Gaming Regulatory Act of 1988. While the Tribe has concerns about the specific proposals contained in this legislation, we understand the circumstances that have caused the Chairman to introduce this bill and also understand his perspectives in wanting to further tighten the authority of restored and newly-recognized tribes to acquire land for gaming beyond those already contained in section 20 of the IGRA. I would like to focus my statements on what we believe are unintended consequences of this bill and specifically, how it would preclude the Tribe from engaging in gaming on restored lands located within our modern day and ancestral homelands—an effort that we have pursued with strong local support for over two years.

Tribal History

The North Fork Rancheria of Mono Indians is a federally recognized Indian tribe with governmental offices in Madera County, California and the largest restored tribe in California. Our ancestors were Northfork Mono, and also included members of local Yokut and Miwok tribes. Historically, our ancestors used and occupied overlapping territories of the San Joaquin Valley tribes, gaining access to specific regions through a complex and interdependent system of social, political, and economic ties between Native groups.

The arrival of non-Natives in the San Joaquin Valley, as early as the 1810s, thoroughly disrupted our life there, as our ancestors were pushed farther and farther into the foothills and mountains, in order to flee from the kidnapping, violence, and disease which decimated our populations. With the 1849 California Gold Rush, tensions between Native peoples and miners as well as settlers escalated rapidly in the San Joaquin Valley, and culminated in the Mariposa Indian War of 1850-51. The Gold Rush accelerated the destruction of Native society to a pace never before seen in North America, as literally a million new immigrants came to California in the span of a few years to seek gold on our lands. In response the federal government sent three treaty commissioners to California to negotiate treaties for peace and the cession of land in exchange for the establishment of reservations. The interests of the Northfork Mono were represented directly in the ensuing treaty negotiations by trusted chiefs of neighboring Mono and non-Mono tribes with whom we had kinship and socio-political ties. The April 29, 1851, treaty expressly provided that our ancestors were intended beneficiaries of the treaty. This and two other treaties reserved adjacent tracts of Native lands on the Valley floor where the present-day City of Madera is located and near the site for our proposed gaming facility.

The lands reserved in these treaties were quickly overrun by settlers, ranchers, miners and, later, farmers, leaving only a series of small "Indian farms" operating over a large area. One of these, the Fresno River Farm, was located in the immediate vicinity of the present-day City of Madera and later became the headquarters for the entire reservation. Although Congress eventually refused to ratify the treaties based on objections from the California Legislature, by 1854 the Fresno River Farm or Reservation was viewed as one of the five reservations authorized by Congress a year earlier. In 1856, the Indian Agent for the Fresno River Reservation identified a significant number of our tribal ancestors who lived on, visited, and recognized the Reservation as their home and headquarters. At the same time, most of our ancestors integrated the Reservation into their yearly subsistence cycle, spending part of the year on reservation lands cultivating crops and collecting treaty-stipulated goods, and part of the year off reservation grounds hunting, gathering, and fishing. Operation of the Reservation was plagued with problems, however, and in 1860 the Reservation was closed. Our tribal ancestors subsequently integrated into the mining, lumber, ranching, and agricultural economies, thereby adapting their use and occupancy of the Valley floor and foothills to supply their subsistence in new ways.

Beginning in the 1890's, the federal government made a limited number of land allotments to Native people. Because very few public domain lands were available, the government turned to the National Forests for lands that could become Indian allotments. Consequently, most lands allotted to Tribal ancestors were in the Sierra National Forest, although some were within approximately 18 miles from the City of Madera. In 1903, a Presbyterian Mission was established in the town of North Fork. Native parents began sending their children to be educated and sheltered at the Mission while continuing their migratory patterns by working as wage laborers on farms and logging operations in the San Joaquin Valley. In 1916, at the urging of the Mission, the Federal Government purchased the 80-acre North Fork Rancheria next to the Mission to provide shelter to Indian families whose children were attending the Mission. The rocky soil and precipitous landscape were unsuitable for farming, however, and the Rancheria never was able to support more than a few families.

In 1961, the federal government terminated the Tribe's federally recognized status and transferred the Rancheria land to fee for the lone resident then living on the Rancheria. The Tribe's status as a federally recognized Indian tribe was restored in 1983 under a stipulation for entry of judgment in *Tillie Hardwick v. United States of America*, No. C-79-1710-SW (N.D.Cal 1983). Four years later, the lands within the Rancheria boundaries were restored to the status of "Indian Country" as part of the same lawsuit under a stipulation for entry of judgment for Madera County. The lands within the Rancheria boundaries were subsequently transferred into trust for the benefit of the six individuals who had been residing on the land, not for the Tribe.

The Tribe subsequently opened an office in rented quarters in the early 1990's, adopted its Constitution in 1996, and since then has used its limited funding to establish a modern tribal government. We have purchased lands for tribal housing and are currently constructing a community center and single-family homes for tribal citizens on those lands. Our tribe has also assumed responsibility for administering Temporary Aid for Needy Families for Indians residing in Madera, Merced, and Mariposa Counties. We have an active environmental department and are working to maintain our language and culture. I am very proud that today, our Tribe is the largest restored tribe in California with some 1380 tribal citizens.

Economic Self Sufficiency

Like other California tribes whose restored reservations are nothing more than several dozen acres of inadequate lands, and which are held in trust for a few tribal members, we have sought to acquire gaming-eligible trust lands on which to provide economic development opportunities for our tribal citizens. Our own Rancheria sits on a rocky hillside adjacent to the Sierra National Forest about a 40 minute drive from Yosemite National Park, and can only be accessed from a dirt road. Neither the Tribe, the local community, nor the State of California consider the Rancheria to be appropriate for commercial development, and any such development would do little to advance the needs of either the Tribe or the larger community.

Consequently, in 2003, the Tribe approached its local district supervisor for the County of Madera about working cooperatively to identify an appropriate location for a gaming facility on historical tribal lands in Madera County. The County agreed, recognizing the opportunity to diversify its agriculturally based economy and to lower unemployment rates that hover around 12% in the County and as high as 25% in the City of Madera. Working cooperatively with the County, the Tribe eventually identified a 305 acre parcel in an unincorporated area just north of the City of Madera in Madera County, California. The parcel is located near the former reservation where our ancestors worked and lived in the 1850's. Developing our proposed gaming and entertainment project at this location would be consistent with the land use and development plans of the County. Further, it would avoid impacts to the environmentally sensitive foothills and minimize the impact to the gaming operations of neighboring tribes. Although the lands may qualify as restored lands under Section 20, we have requested the Secretary to make a determination that the lands are eligible for gaming under the two-part process under Section 20(b)(1)(A) of IGRA.

Community Benefits

In August 2004, following two well publicized and attended public meetings, the Madera County Board of Supervisors unanimously approved a Memorandum of Understanding with the Tribe in which the Tribe has agreed to provide \$87 million over 20 years for mitigation of project impacts on the County and for sustained charitable giving. A year later, in August 2005, the Madera County Board of Supervisors passed a second resolution in support of the Tribe's proposed project at the proposed location. I believe the committee is in receipt of written testimony from Madera Supervisor Gary Gilbert that outlines the County's support of the Tribe's project.

In October 2004, the Bureau of Indian Affairs issued a Notice of Intent to prepare an environmental impact statement for the project pursuant to the National Environmental Policy Act. Once the draft environmental impact statement is issued early in the summer of 2006, the Tribe also expects to enter into additional agreements with the City of Madera and Caltrans, and likely other entities, to mitigate any project impacts on roads and other resources within their respective jurisdictions which are identified in the report.

The North Fork project has become something of a model for responsible development—one where the Tribe, working with the County, has identified an environmentally and economically viable location within our homeland to provide sorely needed economic resources to a struggling local economy. The proposed destination resort and hotel is expected to create 1500 living wage jobs plus 750 additional construction jobs. The majority of jobs are expected to be secured by Madera residents. The project is also expected to stimulate an additional 2100 jobs and provide increased discretionary spending from payroll and additional income to local businesses.

The Tribe's announcement has resulted in a significant number of proposals for large retail and other commercial development in the immediate vicinity of the Tribe's proposed site. Development of any one of the proposals would result in millions in sales tax revenue for the cash-strapped City of Madera and hundreds of new jobs in an area with one of the highest unemployment rates in California. However,

potential developers have indicated that their projects will not be built unless the Tribe is able to construct its proposed resort. Much is at stake here both for the Tribe's nearly 1400 citizens and for thousands of area residents looking for jobs and a better life for their children.

Community Support

As I have indicated, our project is distinguished by its strong local support, its emphasis on collaboration, its adherence to the spirit and letter of the law and its goal of improving the lives of all Madera County residents. It offers the promise of economic vitality for the Tribe, the community and the state through the creation of living-wage/full-benefit jobs, sustained charitable contributions and significant shared revenues.

Concerns Regarding H.R. 4893

Yet despite all this, our project would never be able to satisfy all of the requirements in the proposed legislation. Indeed, it seems unlikely that any tribe in the country, particularly in California, could satisfy the requirements of this legislation. Most problematic is the requirement that requires the concurrence of any tribe within 75 miles of the proposed site. This effectively provides other tribes without jurisdiction or land use authority over the lands the power to veto another tribe's gaming project for competitive reasons. There are 107 federally recognized tribes in California, and five are within 75 miles of our proposed site. The two tribes with the largest gaming facilities in our area, despite our best efforts, oppose our project for competitive reasons. We believe this provision is anti-competitive, in that it provides tribes the power to stop any project that might compete with existing gaming facilities. The nearby tribe requirement usurps the land use and development planning authority of local jurisdictions by providing a nearby tribe the power to veto a project supported by a local jurisdiction. While we agree that nearby tribes can and should be consulted by the Secretary as part of the process, they should not have the same power as the Secretary or the Governor.

We also request that the Committee eliminate the requirement for concurrence by the state legislature of the Secretary's decision to approve an application. This bill already provides for concurrence by the Governor, which has only occurred three times in the eighteen years since IGRA was enacted. Given the governor's role as chief executive of the state, it is unlikely a governor would concur in a decision by the Secretary without strong local support. Under his May 2005 proclamation, California's Governor states that he will consider concurring in determination by the Secretary only when there is local support and the project satisfies an independent public policy. Requiring the additional concurrence of the state legislature simply provides successful gaming tribes, who enjoy tremendous influence with the state legislature, additional power to veto projects that threaten their competitive position.

We also question the need for a county wide referendum. We elect our officials to make the tough decisions concerning land use and development. Those officials have the power under California law, and presumably in other states, to call for an advisory vote when appropriate. In Madera County, the Board of Supervisors does not require an advisory vote or referendum when approving large or controversial developments, whether that be a new Walmart or rock quarry, and we do not see why the federal government should impose such a requirement for a gaming development. This is particularly true for our project where the County has thoroughly considered the issue and entered into a binding agreement with our Tribe regarding future land use, development, and jurisdictional issues. A referendum simply creates another opportunity for competitive interests to spend hundreds of thousands of dollars in creating a high profile political campaign that ultimately has little to do with what the residents of the affected community want.

As you can see, this well-intentioned legislation will have significant unintended consequences on our tribe. Our tribe has been following the spirit and letter of the law for over two years. In the process, we, along with the County and the local community, have invested enormous time and resources. It would be unfair to change the rules on us and on the community at this stage, particularly given our inequitable land situation and the fact that our proposed site is within our home county and on lands which our people have used and occupied for centuries. We urge the Committee to consider adding a grandfather provision that would allow us to continue through the process under existing law.

I appreciate this opportunity to submit comments to the Committee.

The CHAIRMAN. Thank you. I thank the entire panel for your testimony.

I would like to begin the questioning and start with Ms. Davis-Van Huss.

In your written testimony and in your oral testimony you spoke of your concerns over having the state legislature, having concurrence from the state legislature. Can you expand on what those concerns are?

Ms. DAVIS-VAN HUSS. I believe my tribe's concerns with the state legislature, especially in California, is as of late you know that it has been very difficult for new compacts to get through the legislature and to get ratified. I mean, I attended last week an informational hearing with the GO committee, and the actual informational hearing was over four hours.

And I think our concern is because there is influence from the large gaming tribes, the big gaming tribes, that it is very difficult to have a project heard on its own merits.

The CHAIRMAN. And why would that be any different with the Governor?

Ms. DAVIS-VAN HUSS. Well, the law already allows the Governor, the existing Section 20, the two-part determination under IGRA already says the Governor has to give concurrence for your project.

The CHAIRMAN. Do you believe that under the current rules your tribe would be able to negotiate all of the hurdles that are in front of you and that you could have this land taken into trust for gaming purposes?

Ms. DAVIS-VAN HUSS. Yes. We are completely confident that we can go through the process and be successful.

The CHAIRMAN. Mr. Arnold, do you believe that under the current rules that your tribe could negotiate all of the hurdles that currently exist, and that the land could be taken into trust in Contra Costa County for gaming purposes?

Mr. ARNOLD. I do. I think that Scotts Valley is a unique case in the fact that we have moved forward with this for the last two years, dotting the i's and crossing the t's in a fashion to abide by the process that is in place.

One of the reasons where our site is is because exactly Contra Costa County is one of our service population areas. Therefore we are not reservation shopping. We don't have a reservation. A lot of the termination of other discussions were that we were reservation shopping. That is not a true statement, sir.

The CHAIRMAN. You mentioned that the judgment of 1992 restoration case precludes your tribe from reestablishing your former Rancheria. Why is that?

Mr. ARNOLD. Well, unfortunately, a lot of the litigation was done by the California—what is it—the California Lawyers Association there, and some of the practicing lawyers were new to the cases. They were all mitigated differently. There was no process of understanding the findings of the tribe itself.

As you could see, Guidiville, Mechoopda, Scotts Valley and Lytton, we were all different findings in the courts, so the process was not—there was no process in the fact of going through the process.

Now we have a lot more knowledge of what is happening, and so therefore in working with Congress and understanding the process and policies of Section 20, everybody should move forward with the understanding that there is a process. A lot of the people in right now do not understand that there is a policy.

The CHAIRMAN. Where was the original Rancheria?

Mr. ARNOLD. Our Rancheria was ours, given to us in 1906 in Lakeport, California, 57 acres, and the topo of the land was between two hills.

The CHAIRMAN. Well, that is fairly typical.

Mr. Shagonaby, you obviously believe that you are close to getting approval on your application.

Mr. SHAGONABY. Yes, we do have our final determination and if we did not have a lawsuit pending, it would be in trust.

The CHAIRMAN. What was the basis of the lawsuit?

Mr. SHAGONABY. The basis of the lawsuit is pretty much typical of the challenge that the Pokagon Band of Pottawatomis Indians, our sister tribe, just resolved. They did win their court litigation and are moving on. But basically we didn't do a thorough enough job to take the land in trust on environmental concerns. They challenged whether the Secretary even has the authority to take land into trust for tribes. There are some other points that they do raise, but we feel that all those issues have been successfully litigated already, so we feel we are in a very strong position to win this lawsuit.

The CHAIRMAN. I will tell the three of you that you do all have compelling testimony and it is something that obviously we have taken into consideration and will continue to do that in working with you, but I have heard testimony so many times that there is only three tribes that have negotiated the process up to this point, and all three of you believe that you will be successful in negotiating the process, and that alone would double the number that claim that they have gotten through the process right now, and we all know that there are dozens of tribes that are somewhere in the process of moving forward with this, and that is one of the reasons why this bill ended up being introduced to begin with.

Obviously, you all believe that you have unique situations, and have been working with the current rules, and that is something that we are trying to address.

I appreciate you being here and sharing your testimony. This is important to the Committee to hear this side of it as we move forward with this legislation. So thank you for that.

I am going to recognize Mr. Kildee for his questions.

Mr. KILDEE. Thank you very much, Mr. Chairman. I would like to address my questions first to Chairman Shagonaby.

I was there the night or the day when your tribe had finished the arduous BRAC process and got your recognition, the reaffirmation of a recognition of your sovereignty and attended the social event that evening, and been close to the tribe since that time. I think it was in 1999, wasn't it?

Mr. SHAGONABY. Yes, it was.

Mr. KILDEE. The process was, it was a very, very arduous process, and you have waited now for about seven years now to really get to the next step, the big step that will enable you to exercise

your sovereignty, and the elements of sovereignty as defined by the *Cabazon* decision of the U.S. Supreme Court.

What is the current financial state of your tribe at the present time?

Mr. SHAGONABY. Right now, it is not very good. The tribes in Michigan are successful today because of the economic development that they have brought to their homelands. We are on the short end when it comes to appropriations, the BIA, HUD, EPA. We do not get very much funding right now.

We operate out of a strip mall in Dorr, Michigan, and lease space. We really need resources to fully service our membership with housing, with health care, with a clinic. I mean, there are a lot of things, as you well know, Mr. Kildee, that tribes can do with revenues that they generate from their economic development through gaming.

So right now our financial situation is not strong at all.

Mr. KILDEE. How much land are you seeking to put into trust, to have put in the trust?

Mr. SHAGONABY. We are seeking to 146 acres placed in the trust.

Mr. KILDEE. Have you acquired that land in fee now or are you seeking to acquire it?

Mr. SHAGONABY. It is in fee simple right now.

Mr. KILDEE. Fee simple.

Mr. SHAGONABY. Yes.

Mr. KILDEE. And that would be basically the land in which you would construct whatever needs your tribe might have, including a casino and housing?

Mr. SHAGONABY. That land is just slated for economic development purposes right now. We hope to have revenue to purchase other lands and place them into trust for those type of services.

Mr. KILDEE. OK, for housing and——

Mr. SHAGONABY. Correct.

Mr. KILDEE.—maybe a medical facility or school or whatever you might——

Mr. SHAGONABY. Well, we have a little master plan that we put together to hopefully implement those services soon.

Mr. KILDEE. You never lost your connection with Michigan, have you? I mean, your——

Mr. SHAGONABY. No.

Mr. KILDEE.—history goes way, way back, I know, and I have worked with your cousins, the Pokagon Band. They are on the Michigan/Indiana border. The court decision just within the last few weeks would really probably spill over into your final decision, would it not?

Mr. SHAGONABY. Yes, it would. We feel it is the same type of lawsuit. It is from the same law firm that filed suit against the Pokagon Band. So we feel confident that the Pokagon decision has really cleared up all the issues that are out there as far as the lawsuit. We feel we just have to go through the motions, and make our arguments, and we feel that we are backed up pretty solidly by case law.

Mr. KILDEE. I have followed gaming in Michigan since the time I used to work at the bingos at St. Mary's Church in Flint,

Michigan. We used to have pretty well the monopoly on gaming, the churches.

[Laughter.]

Mr. KILDEE. We lost that in 1972, when they changed the constitution of Michigan. All gaming was forbidden until about 1974, give or take a year. So all gaming was forbidden, and had they not changed the constitution, then no one could game in Michigan.

There are two states where native gaming cannot take place, that is Utah and Hawaii. Michigan would have been one of those states, the third one, were it not for the fact the people amended the constitution of Michigan, removing the prohibition on gaming and letting the legislature pass whatever laws would be necessary after that.

But the fact of the matter was those who are against gaming probably should more broaden their—if they really are against on moral grounds, broaden their view and say let us outlaw all gaming. But very often it is the Indian gaming that irritates them, but not the St. Mary's.

I was a good runner at those bingo games.

[Laughter.]

Mr. KILDEE. And got the cash back to them fast. I was in the seminary, studying to be a priest at the time. Of course, it was almost part of our training then to do that.

[Laughter.]

Mr. KILDEE. With that, I yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. I think that is a good time.

[Laughter.]

The CHAIRMAN. Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Chairman, and I first want to admit that I have never been a bagman for the gaming.

[Laughter.]

Mr. GIBBONS. Well, I appreciate the panel being here. Thank you very much for your testimony. You know, there has been a great deal of discussion before this Committee for the need to accommodate those tribes that have already begun the IGRA process, and some claim that this legislation is or will unfairly penalize those tribes who have already begun or invested in that process.

I can appreciate the value of that philosophical argument, and that it is not right for the government to change the rules in those entities that have abided by those rules since they were created in 1988.

However, I also believe that it is important for this Committee, that if this Committee adopts any grandfather language, we do so in a way that does not create a significantly broad definition that does not properly curb the off-reservation issue.

Now with that being said, I have a couple of ideas that I want to run by you and to see what your thoughts are about certain restrictions that could be adopted in this legislation, and if you will tell me what your belief is, your position is on these issues, that would be great, if you do agree with them or if you don't agree with them.

First let me say that I think providing tribes with the ability to fund economic development and investment is important. Once a

tribe has already established a gaming industry, let me ask this question, and I will begin with Ms. Davis Van-Huss.

Should Congress bend the rules to allow for this same tribe to build additional facilities? In other words, a tribe that already has economic benefits from one casino, why should they be allowed to build another?

Ms. DAVIS-VAN HUSS. As you know, that already happens in California. There is a tribe that I know that has two facilities.

I believe, I think my tribe's stand would be that as long as it was on their reservation, that that would be acceptable. Does that answer your question?

Mr. GIBBONS. Well, I am just asking for your input.

Mr. Shagonaby?

Mr. SHAGONABY. Yes, I have already gave a whole lot of thought about that. I guess if you go through the regulatory process and follow the rules, if you did want to choose a second site, then I guess that is the prerogative of the tribal government.

And the purposes of Gun Lakes, we are just looking to create our initial reservation, and then just enjoy the economic development that tribes in Michigan have already recognized.

So with the off-reservation controversy, I just want to make a point is that we are not—I don't feel we are embroiled in that controversy of a tribe already having a casino, and then going for a second one. I mean, we are in the process of just working on our sole casino.

The way the compacts in Michigan work and the way that we have already passed a compact in 2002, and waiting for final ratification, is that the state negotiated that provision one per customer. So if we ever wanted to go back and I am not saying we would ever do that, but if we did want to go back for a second gaming facility, the state has all the leverage in the world to say yes or not to that position. So I think that falls within the state compact process if you are going to have another casino.

Mr. GIBBONS. Mr. Arnold?

Mr. ARNOLD. Thank you. We believe that if in fact you have an opportunity to do that, then we should also give thought to the reason why IGRA was created in 1988, the gaming process, and that is to benefit the Indians.

So the fact that if you get an opportunity to build a second casino, you must give it back to the people that are to benefit from that, and that is the Indian people.

We do have a lot of people right now that got their hands out that are in Indian gaming right now that shouldn't have their hands out.

Mr. GIBBONS. OK.

Mr. ARNOLD. We believe that the money should go back to the oversight of health care, the process of health services for the Indian people, and donate that money toward them. They should give it back from what they received. Thank you.

Mr. GIBBONS. Mr. Chairman, would you indulge me for just one more question on this? I realize my time has expired on this, but I have just one follow-up question with regard to this if I could just begin. I know there is a need for some to test the historical nexus of distance to a tribe and its efforts in economic development.

My view is that distance shouldn't be 200 miles. It should be more like closer to 50 miles. What do you think of that historical nexus being limited to something like 50 miles, and I will start with Mr. Shagonaby.

Mr. SHAGONABY. I would support that provision of the 50 miles. At the outskirts of our service area is probably about 50 miles. Just for purposes of our personal application our original settlement is less than three miles and our offices are about eight miles, and the majority of our membership lives within the county that we are proposing it, so I would support a 50-mile radius.

Mr. GIBBONS. Mr. Arnold.

Mr. ARNOLD. We also support the 50-mile radius. We believe that the input from these people and the concerns from community should also reach there. Thank you.

Mr. GIBBONS. And finally, Ms. Davis Van-Huss.

Ms. DAVIS-VAN HUSS. We would also support the 50 miles.

Mr. GIBBONS. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, and I want to thank the members of the panel for their testimony. Certainly would like to offer my personal welcome to Congressman Cole joining us in our hearing this afternoon. Proud member of the Choctaw Nation from Oklahoma. Very happy to——

No, Chickasaw.

[Laughter.]

Mr. FALEOMAVAEGA. Well, they are good friends anyway.

[Laughter.]

Mr. FALEOMAVAEGA. Well, as a member of the Samoan Tribe.

[Laughter.]

Mr. FALEOMAVAEGA. Mr. Chairman, I certainly want to thank you for your leadership and the attention that you have given since holding the chairmanship of this committee and your sensitivity to Native American issues. Certainly also the same can be said for our Senior Ranking Member, Mr. Rahall, West Virginia. And I would be remiss if I don't also offer my commendation to Senator McCain as Chairman of the Indian Affairs Committee.

It is quite obvious that what has happened in most recent months or the last year that we hit a very sensitive nerve here ever since the situation with Abramoff and the problems that he has had in terms of tribal contributions not only to campaigns of Members of Congress, but something is being triggered here, and I hope that we are not going fishing just to make it more difficult for the members of the Native American community that do participate in the gaming operations.

I know that members have very strong feelings. Some are very much against gaming on moral grounds, and I know my good friend from Nevada has questions of that too given the fact that states are totally free to do lottery and the multi-billion dollar industry that does provide needs for the state's educational programs, and so we are in a quandary here, sometimes where do you put your values and how do you really get to understand what we really are trying to address here.

In the years that I have served here, I have hardly seen any real serious amendments brought for any changes to IGRA. This is

what, 18 years now that IGRA has been in operation, and I want to ask the members of the panel your take in terms of any provisions in IGRA that you find deficient that we need to address seriously, also the Chairman's proposed bill provide for that, to facilitate more the allowing our Native American communities to participate in gaming operations?

I would like to ask the members of the panel if you feel that the current provisions of IGRA adequately addresses your needs, or if not, obviously the Chairman definitely has strong feelings about why he has introduced this legislation, and I wanted to ask the members of the panel if you could respond to that.

Mr. SHAGONABY. Thank you for that. My tribe is on record, along with many tribes across the country, that the *Seminole* decision in 1996 basically said, it gave states, we feel, that leverage over the tribes in a sovereign-to-sovereign negotiation process.

So we feel that amendment to IGRA should include a fix, the *Seminole* fix to make compacting with states and tribes on a level playing field as the original intent of IGRA was supposed to be.

Mr. ARNOLD. As to the answer to that question, we do have—the Supreme Court has touched basically on that policy that what is in place today is adequate for a land acquisition, although a lot of the confusion is between a gaming acquisition and a housing acquisition is well noted that we have confusion there.

But as it may remain in effect, these regulations are suitable for Scotts Valley. Thank you.

Ms. DAVIS-VAN HUSS. I will radiate the same sentiments on behalf of the North Fork Rancheria. We feel that IGRA is working. In our particular instance we are going through the process. We are following the letter of the law just how it was intended, and we feel that at the moment it is working on behalf of our tribe, and we don't feel IGRA should be amended.

Mr. FALEOMAVAEGA. I know the gentlelady had expressed concerns about requiring state legislative approval and also a county referendum. You don't agree to the provisions of the proposed bill to that effect, and I wonder if the other two gentlemen also agree to that concern.

Mr. SHAGONABY. No is, I guess, the short answer. You know, a tribe is sovereign. We have a relationship with the Federal government, and I think that relationship is—I mean the Federal government understands the relationship with the tribes, and I think that is the best place to do it. Local and state governments is a huge education process on tribal sovereignty. You know, we spend a lot of time consulting with the local community and the state, and we feel we have a great relationship, and we don't think we need any regulation to force that. We are already doing it, so we feel it is fine the way it is.

Mr. ARNOLD. Good question. I think that Scotts Valley is in a position to—our sovereignty is very important. Congress understood that in 1988. That is why they afforded the tribes that right of sovereignty.

As it is today, the cities and counties and states are not looking at tribes with same sovereignty situations before them. We are treated like second-class citizens. We need that understood that we are sovereign nations.

With that, we concur with the older regulations as it stands today. With all due respect to Chairman Pombo, I think that the bill stipulates more regulation and overdue process that we need to jump through that higher hoop to create our same sovereignty and retrieve land into trust on behalf of tribes. Thank you.

Mr. FALCOMA. Well, this has always been one of the unique features of our system of government. It is gray area when you talk about sovereignty, and I think that is the reason why over the years you have had to go to the Supreme Court to get a decision, and they also at times have been contradictory in their statements as well.

With that, Mr. Chairman, thank you.

The CHAIRMAN. Ms. McMorris, did you have questions?

Ms. MCMORRIS. No.

The CHAIRMAN. Mr. Cole.

Mr. COLE. Thank you, Mr. Chairman. Thank you, first of all, for your indulgence in letting me participate as a non-member. I would like to ask unanimous consent to submit a statement for the record.

The CHAIRMAN. Without objection.

[The prepared statement of Mr. Cole follows:]

Statement submitted for the record by The Honorable Tom Cole, a Representative in Congress from the State of Oklahoma

Chairman and distinguished Members of the Committee:

Thank you for allowing me to participate in this important hearing today. As an enrolled member of the Chickasaw Nation, Native American issues are something that I truly hold dear to my heart, and I sincerely appreciate all the hard work the House Resources Committee does on behalf of the Native American community. In particular, I would like to thank you, Mr. Chairman, for your willingness to work with tribes as you have carefully re-drafted this bill a number of times in hopes of allaying as many tribal concerns as possible while still achieving the intended purpose of the bill. In addition, Mr. Chairman, I greatly appreciate your thoughtfulness in allowing me to share my views.

As Members of the House and representatives of diverse constituencies, we each feel a powerful sense of responsibility to our constituents and seek always to address their concerns responsively. The bill before the Committee today presents even greater difficulties in this regard than is typical in that it affects relationships between governmental entities, each of which are accorded certain legal prerogatives and often have competing interests.

The need to balance the tribal, state, and federal interests is evident in the very structure of the Indian Gaming Regulatory Act, otherwise known as IGRA. By striving to achieve this balance, enactment of IGRA is consistent with basic tenets of federal Indian law and the fundamental principles of modern federal Indian policy as well as principles of federalism. Provisions for federal oversight of tribal gaming and federal approval of gaming compacts reflects the primacy of the federal-Indian relationship, but by leaving to state and tribal governments a large measure of freedom to negotiate specific compact terms, subject to federal review and approval, IGRA was crafted to minimize federal intrusions into either tribal or state sovereignty.

Under current law, a state governor negotiates the tribal-state compact. In some states, there are even constitutional restraints on the power of the governor to bind the state, requiring gaming compacts to be authorized by state legislatures as well. It is perfectly legitimate for each individual state to determine whether or not the state legislatures have a say in such matters.

Mr. Chairman, I must confess the current law works just fine as it is. There has not been one instance in which a tribe has opened a casino without the consent of the local community, the state governor, and the Secretary of the Interior. Creating additional levels of local bureaucratic approval for a state-tribal compact seems to be a solution looking for a problem, and treads on tribal sovereignty.

In my opinion, this bill goes too far by extending to county-level governments the authority to affect federal decisions. The granting of such authority to local units

of government is unprecedented in federal Indian law and policy. County and parish governments are instruments of state government, deriving their authority by operation of state law. Empowering a local government to influence negotiations between a tribe and state directly diminishes tribal sovereignty.

In addition, I disagree with the federal government mandating that the state legislature should be involved in such a decision making process. Again, this is a matter of state jurisdiction, and one which each state has dutifully addressed when necessary. I cannot help but question the propriety of federal legislation subjecting federal decisions to local referenda or mandating how a state should manage its own affairs.

Another portion of the bill seeks to allow tribes to co-locate their casinos on the land of just one tribe. While I share your belief that tribes, working with their local and state counterparts, should be able to respond to the demands of the market, I am concerned that the current proposal is overly prescriptive.

Mr. Chairman, I also believe it is extremely important that this bill not negate any aspect of a tribal-state compact already in existence. As you know, tribal economic development and diversification relies heavily on the agreements within these compacts. Extensive planning and resources are invested in the future of a tribe based on its agreement with the state. In order to avoid inadvertently harming the future vitality of a tribe, I believe it is important that nothing in this bill adversely affect existing tribal-state compacts.

I will close by commending the Committee for the manner in which it has approached this subject matter. Regardless of how strongly the Native American community may feel about the bill's content, everyone appreciates the manner in which the Committee has proceeded by first circulating drafts and affirmatively listening to the feedback from Indian country. Without question, this process reflects this Committee's commitment to the principle of government-to-government consultation, a cornerstone in the federal Indian relationship. I wish to express my profound appreciation to the Committee for the opportunity to share my views on behalf of Indian Country on this critical matter.

Mr. COLE. Thank you. Thank you for your testimony. Let me, if I may, add a preface. You all have very specific tribal concerns obviously with how this legislation might impact you. I represent a state with 39 tribes, only two of which are indigenous. So all of them theoretically have claims beyond their borders, although most of them are not involved in trying to do anything outside the State of Oklahoma. Again, there are some notable exceptions to that, and some of them, frankly, are like your situation. Some of them have land. Some of them are landless even though they have maintained their tribal identity. They were taken from areas, moved onto existing reservations, told that they could negotiate with the existing tribe for a land base, and that never happened for whatever reason. There just simply wasn't a large enough land base for them to purchase.

So a lot of the problems that we are confronting in this legislation, I really want to commend the Chairman for trying to take a stab at something that is tough because it does set tribe against tribe. You are trying to untangle really difficult historical patterns of removal and resettlement that were unjust at the time, and we are trying after the fact to deal with the consequences.

Let me just pull you all back from your concerns because there are some areas, and you have addressed this, that I have specific questions about, want to know what you think.

First of all, and I would appreciate it you just answer this in turn, maybe starting with you, Ms. Davis Van-Huss, and kind of go across the panel. Would you prefer that the system just simply not be changed? I mean, would you prefer that the existing laws regulate everything, that we not legislate in this area?

Ms. DAVIS-VAN HUSS. Well, specifically in the case of my tribe, the North Fork Rancheria, we feel like, as I stated earlier, we feel that the process is working, especially we are, you know, halfway, maybe three-quarters of the way going through it with the amount of money that we have expended, the time, the energy, the dedication by our tribal council. So we feel that the process is working and we feel that it should not be amended.

Mr. ARNOLD. Scotts Valley also agrees with that. We have been through meetings clear across the United States from California to New York addressing the same issues. All tribes, I am saying all tribes that I have talked to across the United States have indicated that we do not want to open IGRA at this time. Thank you.

Mr. SHAGONABY. I would concur with the panel on that. I think obviously there are a lot of issues out there that are the hot topic, you know, a second casino is going offsite, far from your homelands. You know, we are not really in that fight, but we feel that IGRA should not be open at this time to do that, but we just wanted to make sure with respect to the Committee and the Senate Committee that we are just telling our story on that situation, and providing our input, but we would have to concur with a lot of tribes across the country that it would be a dangerous time to open up IGRA.

Mr. COLE. So it seems fair to say, and correct me if I am wrong, that while you are here all of you seeking to be grandfathered in in one way or the other, that is sort of the secondary solution. The preferred solution would not to be in the position of petitioning to be grandfathered in.

Second question. I particularly have the same concerns that a number of you expressed about local governments being empowered to basically make decisions where tribes are concerned. We have a recognized sovereign-to-sovereign relationship between tribal governments and state governments. Counties, in particular to me, are an extension of state sovereignty, and if there is a difference between what a county and the state wants, that is something for the state to resolve internally. That is not something for us to legislate either in a specific geographic area, and what I am worried about is to press it more broadly for Indian country.

In Oklahoma right now, our tribes negotiate sovereign to sovereign to with our state government. We have a very good relationship, although we certainly have our differences. They don't have to go down to the county level to negotiate. They try to take those things and concern.

Do you have the same set of concerns that all of a sudden you will be trapped into multiple negotiations with different entities that have almost been elevated to a sovereign status?

Mr. SHAGONABY. Yes, I would concur with that. I think when it comes to gaming, you know, there is a state compact process in play here, and I mean, the state—you know, the county being, I guess, a creature of the state government, then the county has a lot of say to the state on how the compact should be negotiated.

So with that being said, we stress the importance of government-to-government relationships in cooperation with the county and all governments. I think if you sit at the table and talk about that issue without being mandated or given, I guess, a veto power over

what a tribe wants to do, I think that wouldn't be in the best interest of the tribe.

Mr. ARNOLD. Scotts Valley believes that there is a mechanism here to negotiate with cities, counties, and states, just like the Federal government deals with tribes. It is government to government. There is a mechanism at work here that would resolve all the problems, but you have to sit down and talk about it. You cannot not ask the question and assume that that is the way it is.

So many of our counties and cities assume that is what is going to happen, and they project the obvious downfall of the community when an Indian casino is in their neighborhood. So what we have is a lack of communication in this area. We need to more or less negotiate with the cities and counties and sit down and talk. They need to be open just like the tribes. Tribes are here to build a building that is safe for everybody. We are here to enact the same laws that state, county, and cities enact when they are in that position. Why would we do a less than adequate job of doing that?

Our governments are the same. We have the same concerns as everybody else, and that is the safety of the patrons. Thank you.

Ms. DAVIS-VAN HUSS. I just want to make the comment on behalf of North Fork. We did sit down with our local government probably the beginning of 2004, to identify an environmentally appropriate and economic area within our historical land in Madera County. We worked with the local government right at the beginning of 2004. We sat down with them. We negotiated a memorandum of understanding to mitigate the impacts off of the reservation that would take place. We have a very good working relationship with the county.

Even in our MOU that we negotiated, if there is future development on the site, we would have to renegotiate. We agreed to renegotiate the MOU with the county so any future development or any expansion we would have to sit back down at the table with the county before anything else would transpire, so we have a very, very good relationship with the county.

Mr. COLE. May I ask one last question, Mr. Chairman? I yield back. I am sorry.

The CHAIRMAN. Mr. Kind.

Mr. KIND. Thank you, Mr. Chairman. I appreciate another opportunity to have a hearing on this very important piece of legislation. I want to thank the panels for your testimony here today, and this is a complicated issue because of the varying degrees of interest that tribes from across the country have. Each of you have expressed your own individual concerns in regards to the pending legislation, and because of that there has been kind of a lack of uniformity in regards to tribes throughout the country in light of this legislation, which makes our job all the more difficult and more complicated.

But I think we do have a very solemn obligation as members of this Committee with jurisdiction over Native Americans to do our best to make sure that whatever we do is fair, as equitable, that it respects the sovereign rights of tribes across the country.

So what I would like to have you focus on right now is the sovereignty issue. I think legislation can be introduced with the best of intentions, and have local input in a project may make sense.

Having a Governor's approval or state legislative approval before any project moves forward intuitively makes sense, but it may not be consistent with the sovereign rights of Native Americans in this country as granted under the U.S. Constitution, the recognition of sovereign in the U.S. Constitution.

So if each of you could kind of come back to the sovereignty issue because I think that is something that all tribes across the country are going to have an interest in. They are not going to want to see any type of diminishment in regards to sovereign rights in regards to any type of legislation, let alone this one.

I know there have been some expression of concern just through your own testimony in regards to local veto power for instance, and the requirement under the bill requiring not only Governor approval but also state legislative approval.

So could you address that briefly just to highlight any sovereignty concerns that you have with the pending legislation?

Mr. SHAGONABY. I guess we do have a lot of concerns about putting up more hurdles to get the project going. I just know working with the counties and the states and being aware of what goes on across the country is that it would make more politics in play with the tribe.

I mean, the tribe, we have a clear case, I mean, there are 11 or 12 tribes, we are the twelfth, and we just wanted to be on the same par playing field with the rest of the tribes, and I feel that it would be harder for us to exercise our sovereign right to game with more hurdles involved with it, and it would just delay and cost the tribes more, and that many more years that we will go without services that are enjoyed by other tribes across the country.

Mr. KIND. Mr. Arnold?

Mr. ARNOLD. One of the things that we would beg the Committee to look at is the sovereignty of a tribe is looking at the Federal government sovereignty of the United States in comparison. Whenever you chip away, when another country chips away at the United States, we are irritated, and the same thing happens with sovereignty of Indian tribes. If you take an inch, you take a yard.

As it continues to wear down the sovereignty of Indians, what do we have left? We do not have the power, and this is what is happening locally in your cities and counties. Understanding of the sovereignty and the reason why we have it, Native American tribes have sovereignty. We need to compare that in the thought pattern of making the law so it is a level playing field for all. The sovereignty of cities and counties is the same situation. So impeding on sovereignty of Indian tribes is very harsh. Thank you.

Mr. KIND. Thank you. Ms. Davis Van-Huss.

Ms. DAVIS-VAN HUSS. I believe the legislation represents a significant shift in the historical relationship between tribes and the Federal government, and it represents a diminishment of sovereign rights.

And to touch on what you said about other tribes' sovereign rights, what it does, especially in my area, is it ends up pitting a sovereign government against a sovereign government, and I am speaking of it pits another tribe against another tribe, and I don't feel that another tribe should have the veto power. They should—you know, I am responsible, I am an elected official for my tribe

to represent the best interest of my tribe. I don't feel it is right for another tribe to come in and tell me what is right for my own people. So I think that is another issue that I know the North Fork Rancheria has a grave concern with.

Mr. KIND. What I have heard from your previous testimony is a recognition that any land acquisition or any project before it moves forward you necessarily have to have local and state community acceptance, and developing that relationship otherwise, and I am not aware of any project moving forward if there is great local opposition to it, to begin with, and I think your previous testimony was recognizing that reality.

I thank you all again for your testimony. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman.

I guess I should say initially that I am sympathetic to the idea that we should not be opening IGRA at all. I am concerned about the impact of opening IGRA, and you know what the consequences would be, so I am sympathetic to some of the statements that have been made in that regard because I think the process is working for the most part.

The way I read the proposed changes though in the legislation under certain circumstances a tribe that does not have gaming but wishes to have gaming would have to locate their casino on another tribe's land and pay up to 40 percent of their revenues to the landholding tribe.

My question is, is there any evidence—I guess this would be to Chairman Arnold or to Tribal Secretary Davis Van-Huss, is there any evidence that a tribe with an existing reservation and casino would want to have other tribes locate casinos on their land? Isn't this just a windfall for the existing tribe which basically does nothing but is able to collect royalty payments that could be worth millions of dollars? And why wouldn't the landholding tribe simply build itself another casino?

Mr. ARNOLD. One of the unique things that we have in the State of California is that there is 109 federally recognized tribes there, and in 1999 compact, we have a situation where they help the non-gaming tribes. The process works. As you could see around, we do have better education programs. We do have better health care to the other tribes that need help. It is working. It is going to take awhile to build but the process is working.

The whole point of what Congress did in 1988 was to provide self-sufficiency for the Native American. If in fact this is working, and it is going to take time, in doing so the second casino or the assistance of another tribe helping another tribe, this is what we believe it is all about.

Where the revenue does, that is the big problem that the government is trying to tell us where to send it to how, how to spend our money. These are infringements of our sovereign rights.

But as the process is working, the intent of 1988 is working. You may not see it as big and gigantic as it is today, but it is working, and we have looked into it. We have seen it work. There is a lot of tribes out there, Table Mountain for example has extensive dental care, they have child care, they have education programs that

are working. I am very proud of these tribes that have looked into the process and health care of what it was all meant to be. Thank you.

Mr. PALLONE. Did you want to say anything, Ms. Davis? Go ahead.

Ms. DAVIS-VAN HUSS. Mr. Pallone, I believe upon reading the provision that is set forth in H.R. 4893 in reference to what your statement was about pairing up another tribe, I believe in California what Chairman Arnold stated is that California is unique, and I believe reading the provision that it makes an exception for a tribe in California, the Viejas Band that is teaming up with, I believe it is the Ewiiapaayp Tribe to locate their future casino site on Viejas's reservation. I don't believe that will happen again in California. I don't believe so.

Like I told you earlier about North Fork, we have 1,386 tribal members and we are growing. Chairman Arnold alluded to the revenue-sharing trust fund that comes to non-gaming tribes in California. We get \$1.1 million per year from the gaming tribes.

With our tribe, we have 1,386 people. \$1.1 million does not benefit our tribe that much for education, health care, child care. A lot of tribes in California disburse that \$1.1 million to their tribal members. Some tribes in California, as you are very well aware of, Chairman Pombo, they might have six tribal members. Some tribes have 18. Like ours, we are one of the largest—well, we are the largest restored tribe in California. You know, we are pushing 1,500 tribal citizens. Economic development is needed by my tribe.

Mr. PALLONE. OK. I was going to ask another question. There is not much time here. But Mr. Shagonaby, if I am pronouncing it, you gave several good suggestions for amendments in your testimony with regard to grandfathering and alternative compacting. You recommend that the Secretary of the Interior be authorized to approve a compact if the Governor and state legislature is not negotiating in good faith.

We know that the Secretary has this authority which would kick in only after a state refused to waive its sovereign immunity to enter court over a compact. But how would we gauge when a legislature is not acting in good faith? What if one entity supports but the other will not? How would that be handled under what you are suggesting?

Mr. SHAGONABY. Well, I think a *Seminole* fix would address that situation. I guess that just for the instances of our tribe we got through the process of the legislature, overwhelming majority on both houses voted for it, but then the Governor refused to—declined to sign it on the way out the door so it is pending for another Governor.

I think for the best interest of tribes in the way we, I guess the spirit of IGRA, and Congress's intent was to make sure that it is a level playing field, and then the tribes and the states sit down and negotiate, and not take a long time to do it.

I would be happy to provide some written testimony to this committee addressing that issue in depth, but off the top of my head I don't really have any.

Mr. PALLONE. With the Chairman's permission if we could have him respond in writing, I would appreciate it.

The CHAIRMAN. Absolutely.

Mr. PALLONE. That would be fine. Thank you.

The CHAIRMAN. I recognize Mr. Cole who had another question.

Mr. COLE. Thank you very much for your indulgence, Mr. Chairman.

I had a question that is really—I am not sure it is quite fair to address it to you because really you have got a concern about it, but it relates to the approval process for compacting inside a state.

Right now this legislation would mandate that state legislatures participate in that compacting situation. I know in my own state their participation is relatively minor. It is the Governor to—it is an executive agreement by and large with a legislative committee that approves the final result, but it doesn't even go to the full legislature. That is the way we chose to set it up in our state.

There are other states where full legislative approval is required. There is some where no legislative input is required.

So number one, I think at least one of you, I think Ms. Davis Van-Huss addressed this. How do you feel about the prospect of legislative approval?

Then number two, whether you oppose it or favor it, do you see it is within the right of the state to decide how it wants to approve a compact, or is that something we should mandate at the Federal level so there is uniformity on a state-to-state basis?

Mr. SHAGONABY. Well, I guess we feel that the compact process is a tough one. In the State of Michigan, there are 11 tribes. There are 11 compacts. We are still waiting for our compact. There is also commercial gaming. I mean, it is legal. The way we read IGRA is that if it is allowable within a state, the tribe has a right to do it also, and anything that could help streamline the process and not take such a long time I think would be very supportive, our tribe would support that.

On how you do that, I think if similar fix is a good way to do it, but if Congress isn't amenable to taking a harder look at that and make sure the process is fair, I feel that IGRA's intent was to—you know, if the state allows it and it is legal, then the tribe and the state should sit down in a timely manner and negotiate the agreements, but I feel that it would be beneficial for the tribe for that to happen.

Mr. COLE. Just to clarify my question before we move on because you got part of it, but the real question is whose right is it—we have the ability if there is deliberate obstructionism to stop that or to intervene. But whose right do you think it is to decide how the state from its side is to negotiate or approve a compact?

Is that something that ought to be uniform across the board or again is that something that is a state prerogative and each individual state ought to be free to do what they want to do?

Mr. ARNOLD. Are you——

Mr. COLE. Yes.

Mr. ARNOLD. OK. We believe that it is mandatory that the states be regulated in that fashion. What it is now is dollar sign out there that is holding Governors at bay as they can hold up a compact, and get the tribes to come to an understanding of unfair practices.

There has to be a mechanism that holds the state accountable to the tribes, like in the State of California we have the compact. In

that compact it states that you must negotiate a fair compact, but in doing so there is no limit on the dollar sign amount. There has got to be a percentage that is standard across the United States, and take that—carry it away from the states as to gigging the tribes or taking their sovereignty right away, and getting the job done. Thank you.

Ms. DAVIS-VAN HUSS. Thank you, Mr. Cole. I think North Fork Rancheria's position would be, especially in California, we would hope that the Governor would work with the legislature and work with the tribes on coming up with some kind of amicable procedure on negotiating a compact, like Chairman Arnold said about the percentages, but I feel each state should have their own.

Mr. COLE. Their own. That, just for the record, I think would be the position in our state, Mr. Chairman. We would prefer that somebody not tell us from Washington about how we want to approve individual contracts. We would want to have that procedure.

Can I ask you just a question for clarification? It is the last question I have. It is my understanding that the bill does not affect existing compacts that are already in place, negotiated, and approved. Is that correct?

The CHAIRMAN. That is correct.

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

The CHAIRMAN. Mr. Kildee, you had a follow up?

Mr. KILDEE. Yes, just briefly. We thought when we wrote IGRA, and I helped to write IGRA back in 1988, we thought we put a *Seminole* fix in before there was a Seminole problem.

[Laughter.]

Mr. KILDEE. And Babbitt actually wrote the rules and regulations on how to—when the state government was not negotiating in good faith, but that got held up in the courts. Just about two weeks ago the Senate voted on a *Seminole* fix which would have put in some regulations, but that went down by one vote, so it is still of interest to the Congress that Seminole situation.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Cardoza, did you have a question at this time?

Mr. CARDOZA. No, I abstain.

The CHAIRMAN. I will tell the panel that there may be further questions that the Committee has, and they will be submitted to you in writing, and if you could answer those in writing so that they can be included as part of the hearing record.

I think that as we have gone through this whole process in trying to move forward with this bill many of the issues that you have brought up obviously are issues that we have concerns over in trying to move forward with this, so I appreciate you being here and sharing your testimony with us.

Mr. Costa has joined us, and I wanted to give him an opportunity if he had a question before I dismiss the panel.

Mr. COSTA. Thank you very much, Mr. Chairman. I appreciate your focus and attention on I think what is an important issue in states that have Class III gaming throughout the country, and what the policy is both on the national level and what individual state policies are, and that has been really at the crux of a concern that I have had for several years.

As I have shared with members of the Committee, my experience is somewhat similar to Congressman Cardoza in the sense that we were in the state legislature for a number of years, and I saw a policy evolve over 15 years.

So let me begin by asking our witness from California who I am somewhat familiar with if she could describe to us what she believes the policy is in California toward Class III gaming as best you know it.

Ms. DAVIS-VAN HUSS. Can you elaborate on your question a little bit?

Mr. COSTA. Well, I mean, you are going through a process now, I am somewhat familiar with that process you are going through, not obviously every detail as it relates to your tribe, and your particular circumstance, but it seems to me that going back to the early 1990s we had one set of policies within Governor Wilson under the flexibility given him under the national act. We had another policy under Governor Davis, and we have a third policy under the current Governor, Governor Schwarzenegger.

Ms. DAVIS-VAN HUSS. So are you referring to the compact negotiations?

Mr. COSTA. Right.

Ms. DAVIS-VAN HUSS. How you enter into that?

On my tribe's part, we have met with the State of California. We have met with the Governor's Office, but those negotiations are confidential. As far as his policy, he came out with his proclamation that kind of outlines what he will and will not accept.

Mr. COSTA. What do you believe are the differences between this policy and the policy of previous administrations?

Ms. DAVIS-VAN HUSS. Well, that is hard for me to answer. I have only been in Indian politics and tribal council for the last three years, but I see that—some tribes don't agree with this, but I think our opinion is that the Governor is trying to do the best he can with volatile situations being there is, you know, the big dollar tribes fighting against the smaller tribes such as ours, and I think he tries to stay out of the fight but he tries to do the best he can for the state, and I can just say he has worked well with my tribe. I don't know if that quite answers your question.

Mr. COSTA. Well, I think it points out to the fact of a belief that I have, and I have related it to the Chairman and to others who are willing to listen, that, frankly, we don't have a consistent policy in California, and maybe it is different in other states. But I think the biggest thing that we could do on the national level is to really require all states that have Class III gaming come up with a defined policy prospectively, I mean, because my view is that we have had one set of arrangements or "let us make a deal" time under Governor Wilson, and then we had another set of agreements under Governor Davis in terms of "let us make another deal" time, and now we are on to a third variation of policies.

It seems to me unless we clearly outline a requirement that states ought to come up with a policy that relates to how much gaming you are going to have in your state, how you are going to spread it geographically throughout the state, how you are going to spread the benefits between the large tribes, the medium, and the smaller ones, and have some clarification on how you are going

to regulate it in the future all together, that you are going to continue to have a different policy from administration to administration.

I think it is incumbent upon us to set some standards, some criteria both on the Federal level to states with their legislatures and their Governor to define what gaming policy in their state is going to be if they have Class III gaming.

Mr. ARNOLD. As Scotts Valley looks at that, we do have several policies. We have three in the State of California. The Governor right now refuses to agree to a compact or to negotiate a compact if you don't have land in trust. So that is one of his points.

But if you would surround that with a grandfather clause and that would be the negotiating point for negotiating with your state, they can't use it against you and you would be on the same level.

Mr. COSTA. No, in draft legislation that I have looked at, I have always assumed that there would be a grandfather clause, if you will bear with me, Mr. Chairman, because whatever previous agreements have been made, I think need to be honored and kept, unlike many of the treaties that we have had with Native Americans historically, but that is another matter.

But I think these compacts that have been made should be honored and kept, but I think the policy ought to be required as we go forth prospectively and every state that has Class III gaming ought to have one, and clearly define what their policy is in the future.

Thank you, Mr. Chairman, for your time.

The CHAIRMAN. Thank you, and I thank the panel for your testimony. I am going to dismiss this panel, and call up our second panel of witnesses. They are Representative Fulton Sheen of the Michigan Legislature; Representative Jo Ann Osmond of the Illinois Legislature; Steven Worthley who represents the California State Association of Counties; and Randy King of the Shinnecock Indian Nation.

The CHAIRMAN. I want to thank our witnesses for joining us. I would like to take this time to remind all of our witnesses that under Committee Rules your oral statements are limited to five minutes. Your entire written statement will appear in the record.

Representative Sheen, we are going to begin with you.

**STATEMENT OF FULTON SHEEN, MICHIGAN STATE
REPRESENTATIVE, REPRESENTING 23 IS ENOUGH!**

Mr. SHEEN. Thank you, Mr. Chairman, and thank you to the Committee for being able to speak to you.

My name is Fulton Sheen. I am the State Representative from Michigan's 88th District. I was County Treasurer previous to being elected state representative, and my wife and I have a financial planning business there, and I talk with many small businesses who are my clients in Allegan County.

I commend the Chairman and the Committee for their foresight in tackling this long overdue issue. IGRA has not changed since 1988 and this industry has gone from \$100 million then to nearly \$20 billion now. Reservation shopping needs to stop, but it is only one part of the problem.

The casino concept that we are dealing here with today I do not think was on the minds of the people signed the treaties on either side originally, and then this concept was manufactured, I think, out of thin air in the 1970s by attorneys and then IGRA took hold of it in 1988.

But specifically, I would suggest a two-year moratorium to thoroughly study this issue and find a full solution. Twenty-three Michigan casinos is more than enough, and so is the \$18.5 billion that we spend at the Indian casinos. I believe Congress needs to get their arms around this while they still can.

Michigan is in an economic and employment crisis right now. Tribal casinos are booming, but our economy is probably the worst in the nation. Unemployment is high, manufacturing jobs that make up 25 percent to the nation's total loss of its manufacturing base are leaving our state as well, and our 23 casinos don't seem to be helping that bottom line, and I would venture to say it is hurting it.

Casino proliferation will perpetuate these problems and threaten our recent investments and our progress toward trying to fix the situation that we have in our state. And because of the sovereign nation status, I believe we have no recourse once that casino comes into place. Currently we have 23 total casinos, 17 Native American casinos, only three of which are still paying the State of Michigan or have to pay into their local communities, and now those three are now suing the State of Michigan because of the lottery/Keno gambling plan that was put into effect that constitutes statewide gambling, and so soon we will have no Native American casinos contributing to the state at all.

So what was considered to be an asset by some now becomes a liability to all.

In August of 2001, the Gun Lake Tribe filed plans to build a Class III casino in Allegan County in my district. Grand Rapids commissioned an independent study by the Anderson Group which you have, and in that study interestingly enough it found that two jobs were lost for every one job that was created, and that found that there would be a net loss of 800 million, affecting not only Allegan County but all the counties that surround Allegan County.

We wanted to slow down this process and get a full understanding of the consequences. IGRA has not allowed us to do this. It has ignored the voters in the state and the local officials. Only one municipality out of 34 in my county is supportive of the Gun Lake Tribe coming in officially.

The fact that I am testifying here before you today basically is the testimony of the sentiment of the people in my county because there were options. When I ran in 2002, there was 11,000 signatures collected on a petition against the casino. However, they couldn't even collect 1,000 supporting it, and that was in 2002. The majority of those signatures came from Allegan County, but there were some input from around us as well.

Almost all of West Michigan officials oppose it, as do the majority of Michigan Federal officials. The Detroit casinos who we voted somewhat 10 years ago to put into effect, we have referred to that vote a number of times, they have had their time there, but now in 2004, we also had a vote, Proposal 1, which was against any

more expansion of gambling in our state and 64 percent of the people voted they didn't want any more.

The State Senate rescinded its previous support of the casino. The house refused to take it up, or will follow the lead in the senate. The survey recently showed that 85 percent say 23 casinos are enough and 64 percent oppose the Gun Lake casino. The people of Allegan County don't want the casino. Yet it seems to be being shoved down our throats.

Less than half of the states have Native American casinos, thus it doesn't seem to be what I can see to be mandatory, and to my knowledge I know of no state that has ever been forced by the Federal government to have one. These facts should influence the decision in Washington but they have not.

Something is wrong when out-of-state interests like Station Casino can override the voters and state officials. In my county, the current homebuilder association director was for a time the director of tourism in Las Vegas. He then went from the tourism in Las Vegas to go to Mount Pleasant and became the tourism director there. At that point in time he talked to the very same people and he knew them all by name that he talked to in Las Vegas.

These Michigan details, I think, show a need for a moratorium. The current laws are not working. How can the government in good faith allow a single new tribal gaming development to go forward?

Current and future casinos don't want IGRA opened because after almost 20 years the people don't like the results. I urge you to consider the following sets of specific reforms:

Mandatory requirement of a comprehensive, regional Economic, Environmental and Social Impact Statement for all land-in-trust applications;

Mandatory reporting and full disclosure of financial and legal records of non-tribal casino management companies;

Local government, state, legislative, and gubernatorial approval for land-in-trust;

Local and statewide voter approval for any land-in-trust application for the purposes of a Class III casino gambling license;

Clarification of Class II gaming to eliminate abuses and loopholes in electronic bingo games;

And I reiterate my plea for a moratorium and a reform to take care of this problem before more jobs are lost and more families are put at risk.

Thank you.

[The prepared statement of Mr. Sheen follows:]

**Statement of The Honorable Fulton Sheen, State Representative,
State of Michigan**

Good morning. Thank you Chairman Pombo and members of the House Committee on Resources for the opportunity to testify today.

My name is Fulton Sheen and I'm the State Representative from Michigan's 88th District. This district is largely rural, and contains the land that has been slated for casino development by the Gun Lake Tribe. I have served in the Michigan State Legislature since 2003, and held the position of Allegan County Treasurer prior to taking state office. Since this casino was proposed some five years ago, my position as an elected official as well as my deep ties to Allegan County have caused me to spend a great deal of time and effort studying the issue of tribal gaming and realizing the deep need for IGRA reform.

I want to commend the chairman and members of this committee for their leadership and foresight in tackling this issue that has been ignored for far too long. The

rampant proliferation of tribal gaming is running roughshod over states' rights and local control and is jeopardizing everything from my own neighborhood to, as the Jack Abramoff scandal has demonstrated, the very integrity of our federal political system.

In 1988, Congress passed the Indian Gaming Regulatory Act ("IGRA") in an effort to control the development of Native American casinos, and, in particular, to make sure that the States had a meaningful role in the development of any casinos within their borders. At that time, Native American gambling accounted for less than 1% of the nation's gambling industry, grossing approximately \$100 million in revenue.

Since that time, the Native American casino business has exploded into an 18.5 billion dollar industry that controls 25% of gaming industry revenue, with no end in sight. Despite this unbridled growth, IGRA and the land-in-trust process remains basically unchanged, and the body charged with oversight of this industry, the National Indian Gaming Commission ("NIGC") limps along with 78 employees and an annual budget of \$10.5 million. In contrast, the State of Nevada runs its oversight agency with 439 employees and an annual budget of \$36.4 million.

While I wholeheartedly agree that "reservation shopping" is an activity that must be stopped, it is just one tiny component of the full legislative overhaul that is needed. My message to you today is that IGRA and its associated land in trust process is outdated, broken, open to manipulation by special interests and in desperate need of immediate reform. It has unfairly and inappropriately fostered an industry that creates enormous wealth for a few select individuals and Las Vegas interests at the expense of taxpaying families, small businesses, manufacturing jobs, and local governments. My plea to you is that you study these issues in depth, and that you impose an immediate two-year moratorium on any further casino expansion pending the results of your study, as suggested by Michigan Congressman Mike Rogers. Twenty-three casinos in Michigan is more than enough, and so is the \$18.5 billion this nation already spends in American Indian casinos. Congress needs to get its arms around this while it still can.

In my home state of Michigan, we are in the midst of a fiscal and job crisis. While tribal casinos are booming, our state economy lags among one of the worst in the nation. Michigan has been among one of the hardest hit states in the nation due to new global market forces, outsourcing of jobs, and skyrocketing labor and health care costs.

Michigan ranks among the top in the nation with the most number of casinos, with 20 existing facilities (17 tribal, 3 non-tribal) and three approved tribal facilities for a total of 23 casinos. Unfortunately, Michigan also ranks top in the nation for our unemployment rate, with manufacturing job losses in Michigan alone accounting for approximately 25% of our nation's lost manufacturing base. Discretionary spending is down, bankruptcies are up, and several cities, including Detroit, are on the verge of receivership.

Casino proliferation is bound to make the economic picture even worse for Michigan. Our research shows that Michigan has reached a saturation point in casino gambling and any jobs and money tied to new tribal gaming will only displace jobs and consumer spending that would otherwise occur in traditional taxpaying entertainment-related industries. In other words, further casino development will not add jobs and value to the Michigan economy. Rather, it will shift jobs and money from existing taxpaying businesses to tribal operation that do not pay state or local taxes.

Our research also shows that while local and state governments receive some revenue sharing percentages from tribal gaming, the dollars pale in comparison to the overall new costs to government and social service agencies from increased infrastructure demands, traffic, bankruptcies, crime, divorce, and general gambling-related ills.

The bright lights, big numbers, and empty promises of casino gambling have blinded too many local and state governments. In Detroit, the three proposed casinos were hailed as new economic engines that would revitalize the downtown area with new jobs, new buildings, and spin-off entertainment businesses. They promised new hotels, new restaurants, new entertainment, and more tourists from outside of the area. Five years since the casinos opened, the promises remain empty or broken.

According to a recent Detroit Free Press article, "beyond the casinos walls, little spin-off is evident." The Michigan Restaurant Association reported that there has been little to no new restaurants and many restaurants that were on the brink have shut down. Analysis also reveals that an overwhelming majority of the dollars spent in Detroit casinos are siphoned from individuals located within a 50-mile radius. Bankruptcy has doubled, crime has risen, and the city is running a \$1.2 million budget deficit on police, fire, and gambling-related services, even after receiving their revenue sharing payments.

Uncontrolled proliferation of casino gambling will also threaten the investments that we have made in Michigan to transform ourselves in the wake of manufacturing losses. We are cultivating innovative economic development opportunities in the areas of life sciences, advanced manufacturing, and information technology. We are also investing billions to revitalize our core cities with new and improved arts, cultural, and entertainment related activities to curb sprawl and draw in more tourist, homeowners, businesses, and tax revenue. In Grand Rapids alone, more than \$1 billion in public and private investments has been spent in the last two decades to revitalize our core city. The proliferation of casino gambling threatens to suck jobs and dollars away from these emerging economic development efforts.

I am presenting you with these Michigan-specific details because I believe it demonstrates the urgent need for you to act swiftly and decisively to impose a two-year moratorium, to study the issues thoroughly, and then to craft a new solution that takes into account the new realities of the Native American gambling business as it exists today. The existing laws and regulatory tools are not working. We cannot afford to let casinos proliferate while this study goes on because the costs will be too high.

In August 2001, the Match-E-Be-Nash-She-Wish Band or Gun Lake Tribe of Pottawatomini Indians filed an application to put 10 parcels of land into federal trust with the Bureau of Indian Affairs and released plans to build a 180,000 square foot Class III casino with 2,500 slot machines, 75 game tables, a hotel, convention center, golf course, specialty restaurants, and entertainment facilities in Allegan County, which is my district, between the core cities of Grand Rapids and Kalamazoo. The casino would operate around the clock.

Following this announcement, myself along with a group of concerned community leaders turned to the Grand Rapids Area Chamber of Commerce with questions about the impact the proposed Gun Lake casino would have on the region. The Chamber commissioned the Anderson Economic Group to conduct an independent economic impact study to assess the impact of the proposed tribal casino in Allegan County.

The economic impact study revealed that for every one job created by the casino, more than two jobs would be lost in the surrounding counties. The study also found that the surrounding counties of Kalamazoo, Kent, Ottawa, and Barry would suffer an economic hemorrhage of more than \$880 million lost over 10 years. The net economic loss to the entire region significantly outweighs the modest localized gains in the immediate area around the casino.

The independent economic research underscored what similar studies have found. Unlike the destination casinos in Las Vegas, most casinos in places like Michigan do not generate new dollars or new jobs; rather they siphon off jobs, money, and economic vitality from surrounding communities in a 50-mile radius and increase costs to government and social service agencies. In fact, the vast majority of casino revenues come from the surrounding communities. Almost all of those dollars would have been spent in other local, taxpaying businesses in the absence of the casino.

As this Committee knows, any major new federal project—and that is what this casino will be if the federal trust process goes forward—must complete an Environmental Impact Statement (“EIS”). The only way a project can avoid this requirement of the law is by demonstrating that there is no conceivable way in which the project will have a significant impact on the host community. The Bureau of Indian Affairs made this finding for the Gun Lake project—erroneously in our view—in early 2003.

On February 10, 2003, the Grand Rapids Chamber objected to the finding and to the Environmental Assessment that supposedly supported it. At a minimum, the Chamber urged the BIA to complete a full scale EIS for the project. Incidentally, a tribe promoting a casino project in Battle Creek, about 70 miles or so from the Gun Lake project, is now completing a full scale EIS after a Judge Penfield Jackson here in Washington rejected the Environmental Assessment the BIA had relied upon to evade the EIS requirement in that case. But at Gun Lake, the BIA persisted in its refusal to proceed with an EIS for the Gun Lake project and published its decision to proceed with a trust acquisition for the Gun Lake tribe.

The Gun Lake Tribe's environmental assessment was an incomplete and inaccurate reflection of the regional economic, environmental, and social impacts associated with the proposed casino. The Tribe's study took a cookie-cutter approach to a very complex issue, basically stating that this proposed government-subsidized development would have no negative impact on the surrounding community and would result in the creation of 4,500 jobs.

Of course, the BIA-approved study did not consider the associated economic hemorrhage for the entire region, as shown by the Anderson study. It will now be necessary for citizens like me, who are determined to spare my community the negative

effects of this casino project, to resort to litigation, as citizens have done elsewhere in my State and throughout this Country. I do not think this is what Congress had in mind when it adopted IGRA almost 20 years ago for a then-struggling Native American casino industry.

Unfortunately, IGRA and the rules pertaining to the Land-in-Trust process for casino site acquisitions do not require a comprehensive, regional environmental impact study and instead only require a pin-point study of the proposed development. Nor does the process include a failsafe process for ensuring that the will of the citizens in the host community is carefully considered. Our polling demonstrates that over 64% of the citizens in the region are opposed to the casino development. In fact, my State recently voted overwhelming 58%-42% to subject any new non-Indian casino gambling in the State to a vote of the people. And yet, we are now told by the BIA and others that this overwhelming voice of the citizenry—supported as it is by solid economic and social research—cannot be heard at all, and will have nothing to do with whether this project is rammed down the throat of an unwilling host community.

This is not the way it should be, and I do not think this is what Congress had in mind when it passed IGRA. In fact, when Congress originally enacted IGRA, it provided that, as a general rule, casino gambling would not take place on newly acquired trust land. There were, of course, some exceptions, but the general rule was no casino gambling on new trust acquisitions. I believe Congress passed this general rule to prevent precisely what we see actually happening now: namely, a mad and largely unregulated land rush pushed by casino developers eager to cash in on a profitable revenue stream that is not burdened by the same tax rates or regulations that other businesses have to incur. Somewhere along the way, the good intentions of Congress have been hijacked, and it is time for this body to re-assert control over this process.

Since 1988, Las Vegas investors and tribal casino owners have become wealthier, smarter, and better equipped with new technology and a barrage of lawyers and lobbyists to manipulate the federal gaming law. Casino stakeholders and special interests have started “tribe-shopping” and existing tribal casinos have stretched the limits of the law with “off-reservation casinos,” something this committee has realized must be stopped. Casino stakeholders and tribal casino owners have manipulated the definition of Class II gaming by introducing slot-machines that somehow supposedly meets the definition of Class II bingo-style gaming. When Congress approved the definition of Class II gaming in 1988, a bingo-hall meant a bingo-hall. They did not intend for slot machine like to pass as a bingo-machine without regulation or oversight from appropriate authorities, and without the approval of a valid state compact.

Tribal leaders and their Las Vegas investors have also become brazen in their threats to open casinos with or without state approval. They have used ethically questionable promises of contracts, marketing, and charitable giving as a means to foster support. And, in the case of Gun Lake, threats to only use contractors that are members of the Kalamazoo Chamber vs. the Grand Rapids Chamber because one supported the project and one opposed it.

As Senator John McCain recently stated in an AP story, “he never envisioned the explosive growth” triggered by the federal Indian gaming law. It is fair to assume that seventeen years ago, the other Members of Congress also likely did not foresee nor consider the potential negative regional impacts of tribal casinos. The current law reflects an outdated form of thinking and rules that desperately need reform and updating to require a comprehensive and regional environmental, economic and social impact assessment for any and all land-in-trust applications.

IGRA, as currently implemented by BIA, also ignores and ultimately disregards the will of the voters, the sentiment of state and local elected officials, state legislative action opposing a tribal casino development, and/or regional opposition to a proposed tribal casino project. Case in point is the proposed Gun Lake tribal casinos:

First, every state and several of the federally elected official in West Michigan wrote to the BIA opposing Land-in-Trust for the proposed Gun Lake casino. I was deeply involved in these efforts and was amazed at the resounding unity expressed by my colleagues. However, the casino project is going forward.

Second, Michigan voters established an overwhelming public mandate against the expansion of casinos in the state with 58% approval of Proposal 1, a constitutional amendment requiring a local and statewide vote of approval before any new non-tribal casino gambling will be allowed to operate. In Allegan County and the counties surrounding the proposed Gun Lake tribal casino, the margin of voter approval for Proposal 1 was even greater (Allegan County 64-36, Kent County 63-37, Kalamazoo 59-41, and Ottawa County 70-30). The project is going forward anyway.

Third, in December 2004, the Michigan State Senate rescinded support for the Gun Lake tribal casino compact, citing voter sentiment in Proposal 1 and the Anderson Economic study results. The project is going forward anyway.

Fourth, 23 is Enough just released an independent public opinion poll conducted by Harris Interactive, one of the nation's largest and most respected polling firms, to assess public support for the proposed Gun Lake casino.

The results reveal strong opposition to the proposed Gun Lake casino among West Michigan voters in Kent, Kalamazoo, Ottawa, Allegan Counties. Most notably, 85% polled said 23 casinos are enough (47% too many casinos, 38% just enough casinos). 59% said Governor Jennifer Granholm should not negotiate a compact with the Gun Lake Tribe (59% not negotiate, 36% negotiate). 64% oppose Gun Lake casino after being informed about the positive and negative impacts (64% oppose, 33% support). Women 35+ years old are among the core group of opponents to the casino. The project is going forward anyway.

These polling results, coupled with the overwhelming statewide voter approval of Proposal 1, action by the State Senate, and overwhelming opposition among state elected officials in West Michigan are considered meaningless and are disregarded in the Land-in-Trust application process. This is important and meaningful information that bears significant weight and demands consideration. This is not the way it should, nor the way it was intended to be.

In summary, IGRA is broken, outdated, and after 17 years without review or updating, needs significant overhaul and reform. While I commend Chairman Pombo's initiative to remove "reservation shopping," much more is needed. I urge this committee to take its reforms one step further by imposing a moratorium on all land-in-trust applications, including the Gun Lake Tribe's land acquisition, until a thorough debate and comprehensive review is conducted and IGRA is updated and reformed to address the following concerns:

1. Mandatory requirement of a comprehensive, regional Economic, Environmental, and Social Impact Statement for all Land-in-Trust applications. The Tribes should be required to account for and project the regional economic, social, and environmental impacts of a proposed casino. Indicators could include job creation/loss, business investment creation/loss, absenteeism, productivity, tardiness, bankruptcy rates, crime rates, divorce rates, abuse/neglect rates, and overall rate increase of problem/addicted gamblers.
2. Mandatory reporting and full disclosure of financial and legal records of non-tribal casino management companies. With a growing number of tribal casinos declaring bankruptcy and record level of fines for improper conduct being assessed to casino management companies, full disclosure should be mandatory on all financial and legal records and issues.
3. Local government, state legislative, and gubernatorial approval for land in trust. Congress should amend IGRA to require that a Governor must concur in all cases before state lands are put into trust for the purposes of gambling. There should also be a provision that requires the support of the state legislature and affected local units of government before land is removed from the tax rolls. Mechanisms such as this will go a long way to restoring the general rule Congress established in 1988 against casino gambling on newly acquired trust land.
4. Local and statewide voter approval of any Land-in-Trust application for the purposes of Class III casino gambling. In Michigan, precedent was first set in the local and statewide vote on the Detroit casinos, and then in 2004, Michigan voters established a public mandate by requiring a local and statewide for any casino-style expansion. Tribal casinos were exempt because of federal constitutionality issues. The federal law should follow Michigan's lead and apply the same voter approval standards to tribal casinos.
5. Clarification of Class II gaming to eliminate abuses and loopholes for "electronic bingo games". In order to get around the compact requirements of IGRA, many tribes and their non-Indian sponsors have turned to "gray games" to open or expand a casino. Class II gaming allows bingo to be played on tribal lands even without a state-tribal compact. Slot machines, however, are a Class III device and require a compact. Manufacturers of slot machines have now created electronic bingo games that look and feel like a slot machine, but that the gambling industry is trying to pass off as allowable Class II bingo. The Class II loophole has created a difficult situation for states either trying to halt the expansion of casinos or regulate them in a responsible manner. I recognize that the NIGC is trying to address this problem, but frankly it cannot wait. NIGC does not have the resources to reign in this problem. Indeed, it lacks the resources to effectively regulate an expanding \$18.5 billion industry, much less take on this added regulatory burden. Congress needs to re-assert its express

intent to forbid slot machines of any kind—whether tagged with a “bingo” name or not—in the absence of a valid state compact

In closing, I reiterate my plea to you to study these issues in depth, and urge you to take immediate action and impose a moratorium on any further casino expansion pending the results of your study. It is imperative that Congress takes swift and decisive steps today to get its arms around this issue before more jobs are lost and more families are put at risk.

The CHAIRMAN. Thank you.
Ms. Osmond.

**STATEMENT OF THE HONORABLE JO ANN D. OSMOND,
STATE REPRESENTATIVE, STATE OF ILLINOIS**

Ms. OSMOND. Good afternoon, Mr. Chairman and members of the Committee. I wish to thank you for allowing me to appear before you on the matter of the Wisconsin, Kenosha casino, and its potential impact on Lake County, Illinois.

I am Jo Ann Osmond. I am the Illinois State Representative for the 61st District. The 61st District has Lake Michigan boundary on the east and the State of Wisconsin on the north. Several towns in my district are within a six-mile radius of the Kenosha casino. The 61st District is part of Lake County, an urbanized county of 665,000 residents just north of Chicago.

The Federal Indian Gaming Regulatory Act requires that the Secretary of the Interior consult with appropriate state and local officials in order to determine whether a tribal casino on newly acquired land would not be detrimental to the surrounding communities. The Bureau of Indian Affairs' checklist for gaming-related acquisitions specify that communities within 10 miles of the proposed casino are part of the surrounding community, and must be consulted.

This 10-mile radius includes the northeastern part of the 61st District. It includes the towns of Zion and Winthrop Harbor. This 10-mile radius is too small when you consider the impact of the massive casino. Most casinos consider their marketing area to be within an hour's drive of the casino and the environmental impact statement required for the Indian casinos consider economic markets as far away as 75 to 100 miles.

Indeed, according to the Kenosha's own plan, approximately 71 percent of the revenue projected from the casino and 62 percent of the customers will come from outside the Kenosha area, most of which will come from northern Illinois. Despite this overwhelming evidence suggesting that most of the casino's impacts will come from northern Illinois and despite the fact that my district lies within the BIA's 10-mile radius, the Kenosha draft EIS makes only a small reference to it in over its 100 pages of reference.

As to consulting, none of the towns in my district within the 10-mile radius of the casino were consulted by the BIA. Lake County, which has repeatedly written to the BIA expressing its concerns, was also ignored by the BIA.

Since the BIA would not hold a hearing in Illinois, would not study or consider northern Illinois impacts, I held a hearing on March 6th and invited the BIA to attend. They did not, but did say that they would accept the comments as part of the record.

At the hearing on March 6th, a representative from Congresswoman Melissa Bean's office was present, and made testimony. Letters expressing serious concern from the proposed casino were read into the record from State Representative Mark Beaubien, 52nd; Ed Sullivan, 51st; Kathy Ryg, 59th, Robert Churchill, 62nd. All are elected Lake County representatives.

Over the last seven years, 16 letters from elected public officials have been written to the BIA raising concerns about the project, and I have copies of them if you wish to put them into your record.

The Menominee Tribe of Wisconsin wants approval of 223 acres in Kenosha, Wisconsin, to Indian lands. The Menominee Tribe Reservation is 200 miles from Kenosha. The tribe, in partnership with the Kenosha businessmen, who was part of the first failed attempt to build a Kenosha casino, and the Mohegan Tribe of Connecticut, want to build an \$808 million casino, giving 3,100 positions, casino-hotel entertainment project. The Mohegan Tribe has been hired to run the casino.

When completed, this project will be the largest in the Midwest, and will rival the size of Las Vegas' largest casinos.

First, the problem that was identified in the meetings where the Menominee Tribe estimates that the facility will offer 5,000 jobs. The jobs will be given, in priority, to Kenosha, Racine, and Milwaukee Counties, next to all other residents of Wisconsin. There is no mention of Illinois in any of their plans.

Illinois, once again, would be denied the jobs. They would have the benefits.

The environment, there is 3 million visitors from my district traveling through the district to the casino. Both Lake County and Kenosha Counties are non-attained areas for ozone. What happens to the ozone level when these people begin to drive through my district?

Then there is the traffic congestion, which is a huge problem. Lake County politicians are more identified as being pro- or anti-growth than Democrats or Republicans, with an estimated 3 million visitors to the Kenosha casino annually from the south anticipated, this is a very big problem. Illinois taxpayers are expected to carry the burden for road repairs, traffic management, police, and first responders without any support from this casino.

I know I am out of time so I am trying to go to my final statement. I apologize.

Our local services, social services will also have the burden.

My fellow representative, Mark Beaubien, has repeatedly made a point that the Menominee are trying to locate a casino in an area outside of the traditional and historic homeland. This doesn't make sense to me. If a tribe can locate casinos outside their traditional homelands, then can they locate casinos anywhere, including casinos in our largest city, Chicago, New York, Miami?

Finally, I worry about the Indian casinos coming to Illinois. Several tribes like the Ho-Chunk and the Prairie Band Potawatomi have tried to put casinos in Illinois. We really have a well regulated commercial gaming industry and do not need poorly regulated, huge Indian casinos coming from out of state.

In closing, I understand, Mr. Chairman, that your casino bill, H.R. 4893, addresses the problems that we have in Illinois, and

with the Indian casinos. Further, unlike Senator McCain's legislation, it would not grandfather in flawed sitting process we have experienced in Illinois.

On behalf of my constituents, I wish to thank you in allowing me to speak today.

[The prepared statement of Ms. Osmond follows:]

**Statement of The Honorable JoAnn Osmond, State Representative,
61st District, State of Illinois**

Good morning Mr. Chairman and members of this committee. I wish to thank you for allowing me to appear before you on the matter of the Wisconsin, Kenosha casino and its potential impact on Lake County, Illinois. I am Jo Ann Osmond, Illinois State Representative for the 61st District. The 61st District has Lake Michigan boundary on the east and the State of Wisconsin on the North. Several towns in my district are within 6 miles of the Kenosha casino. The 61st district is part of Lake County, an urbanized county of 665,000 just north of Chicago.

The federal Indian Gaming Regulatory Act requires that the Secretary of the Interior consult with "appropriate state and local officials" in order to determine whether a tribal casino on newly acquired land "would not be detrimental to the surrounding community".

The Bureau of Indian Affairs' Checklist for Gaming Related Acquisitions specifies that communities within 10 miles of a proposed casino are part of the surrounding community and must be consulted. This 10-mile radius includes the northeastern part of the 61st District, including the towns of Zion and Winthrop Harbor. This 10 mile area of impact seems very small to me when you are considering the impact of a massive casino. Most casinos consider their marketing area to be within an hour's drive of a casino and the Environmental Impact Statement required for Indian casinos considers economic markets as far away as 75-100 miles. Indeed, according to Kenosha's own study, approximately 71% of the business projected from the casino and 62% of the customers will come from outside the Kenosha area, most of which will come from Northern Illinois. Despite this overwhelming evidence suggesting that most of the casino's impacts will come from Northern Illinois and despite the fact that my district lies within the BIA's 10 mile radius, the Kenosha Draft EIS makes only an off hand reference to Illinois on one of its hundreds of pages. As to consultation, none of the towns in my district within 10 miles of the casino were consulted by the BIA. Lake County, which has repeatedly written the BIA expressing its concern, was also ignored by the BIA. Since the BIA would not hold a hearing in Illinois and would not study or consider Northern Illinois impacts, I held a hearing on March 6 and invited the BIA to attend. The BIA did not attend the meeting, but did say they would make the comments part of the record. The hearing transcript and all the exhibits were then submitted to the BIA for the record.

At the hearing on March 6th, a representative from Congresswomen Melissa Bean's office was present. Letters expressing serious concerns with the proposed casino were read into the record from State Representative Mark Beaubien -52nd District, State Representative Ed Sullivan -51st District, State Representative Kathy Ryg-59th District and State Representative Robert Churchill-62nd District. All are Lake County representatives. Over the last 7 years, 16 letters from elected public officials have been written to the BIA raising concerns about this project. Among those writing have been Congressman Mark Kirk, Former Congressman Phil Crane, Congresswoman Melissa Bean and Lake County Board Chairman Suzi Schmidt.

The Menominee Tribe of Wisconsin wants approval to change 223 acres in Kenosha, Wisconsin, to Indian lands. The Menominee Tribe's Reservation is 200 miles from Kenosha. The Tribe, in partnership with a Kenosha businessman, who was part of a first failed attempt to build a Kenosha Casino, and the Mohegan Tribe of Connecticut, want to build an \$808 million, 3100 position casino-hotel entertainment project. The Mohegan Tribe has been hired to run the casino. When completed, this project will be the largest in the Midwest and will rival the size of Las Vegas' largest casinos. Through our public hearing and comment process, we have identified a number of concerns. First, there are jobs. The Menominee Tribe estimates that when the facilities are fully up and running that approximately 5,000 people directly and indirectly could be employed. As part of the Tribe's intergovernmental agreement, 80 percent of the facility's workforce must come from Kenosha, Racine and Milwaukee counties. The agreement, which has been adopted by the Menominee Legislature and the tribe's Kenosha Gaming Authority, gives first preference to Kenosha County Residents, followed by Racine and Milwaukee counties. Fourth

preference will go to Wisconsin residents outside of those three counties. No consideration will be given for Illinois Residents which are just 6 miles away.

According to comments made by former Menominee Chairman Michael Chapman to the Kenosha News:

"The tribe's commitment is to Kenosha and southeastern Wisconsin. It was never the tribe's intent to employ an Illinois resident-dominated workforce.

The tribe will also work with potential retail and commercial leaseholders to encourage them to do the same."

In short, we provide the casino revenues, Wisconsin keeps all the jobs.

Next, there is the environment, which does not respect state borders. The problem here is 3 million visitors from my district and traveling through my district to reach the casino. Both Lake County and Kenosha County are non attainment areas for ozone. What happens to the ozone level when all these people begin driving to the new casino?

The National Environmental Policy Act establishes procedures for Federal agencies to follow to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken". The combination of these two federal laws requires that the Department of the Interior investigate and disclose to Illinois citizens and local governments exactly how this \$808 million casino project, expected to attract 4.9 million visitors annually, will impact Illinois and its environment. Yet, our worsening ozone problem has been ignored by the BIA in the Draft EIS.

Then there is the traffic and congestion, which is such a huge problem Lake County politicians are more identified as being pro or anti growth than they are Democrats or Republicans. With an estimated 3 million visitors to the Kenosha casino annually coming from south of the casino site, one can imagine what impact that the traffic is going to have on Lake County's already clogged major arteries into Wisconsin, including Hwy 41, Sheridan and Green Bay roads. Illinois taxpayers will be expected to carry the burden for road repairs, traffic management, police and first responders without any support from the casino. Yet, the BIA doesn't even bother to examine or consider these problems.

Then there is drinking and driving. Prior to the standardization of the drinking age in both Illinois and Wisconsin at the age of 21, the townships of Illinois just south of the Wisconsin state line were known to professionals as the "Blood Border". In January 1980, legislation signed by former Gov. James R. Thompson(R-IL) increased the drinking age in Illinois from 18 to 21. Wisconsin, however, refused to voluntarily enact a parallel law until September 1986. For more than 6 1/2 years, from January 1980 until September 1986, the minimum legal drinking age was 21 in Illinois but only 18 in Wisconsin. This irrational disparity in these two laws gave thirsty young Illinoisans a lethal incentive to try to go north to Wisconsin, drink and drive home while intoxicated. Victims of the "Blood Border" included young adults southward after a night of drinking in Wisconsin bars and taverns just across the state line. The Alliance Against Intoxicated Motorists counted 65 separate victims of "Blood Border" in the early 1980's. My late husband, Tim Osmond, was a volunteer paramedic with the Antioch Rescue Squad who spent many Friday and Saturday evenings in the Squad building waiting for the siren calling them to the scene of another accident. In those days drinking seemed to be the main factor. You are no doubt asking why I am bringing this up for your consideration. The estimation of the amount of traffic coming thru the 61st district can only bring to mind how will the district cope with traffic control, accidents and the need of paramedics? Some Casino goers, like the young driver many years ago, will enjoy their gaming too much and head home drunk thru the 61st District. Then, we will have the blood border once again.

Finally, there is the increased need for Illinois social services for our problem gamblers frequenting the new casino. The Kenosha casino is going to provide this support to Kenosha residents but will not give any support to Illinois governments. Our own local social service agencies, which are already being asked to do more with fewer resources, will be charged with picking up the pieces for any number of Illinois residents and their families that may be negatively impacted by compulsive gambling. Illinois also has a self-exclusion list for problem gamblers that bars these individuals from betting at any of our nine casinos and those in northern Indiana. The mega casino being planned in Kenosha may be too close and too tempting for those individuals on the self-exclusion list. There are no efforts being made to screen or recognize known problem gamblers crossing state lines.

While I think of all the difficulties this proposed casino will cause for my district and the problems I have had being heard by the BIA, I was alarmed to learn that this project would be grandfathered under Senate Bill S. 2078 which just passed out of the Indian Affairs Committee. How can you grandfather a proposal, which

excludes local input and ignores local community impacts? This Kenosha Casino project, which has been pursued for 7 years, is the poster child for how not to site a casino.

Then there are all the press reports alleging organized crime ties for the first group of Kenosha Casino developers. While most of these first developers are no longer part of the project, others still remain. I worry that the procedures which allowed the first developers to be a part of this project will be inadequate to protect my constituents from being exposed to criminal elements.

Also, my fellow representative Mark Beaubien has repeatedly made the point that the Menominee are trying to locate a casino in an area outside their traditional or historic homeland. This doesn't make any sense to me. If tribes can locate casinos outside their traditional homelands, they can locate casinos anywhere including casinos in our largest cities like Chicago, New York or Miami.

Finally, I worry about these Indian Casinos coming into Illinois. Several tribes like the Ho-Chunk and the Prairie Band Potawatomi have tried to put casinos in Illinois. We already have a well regulated Commercial gaming industry and do not need poorly regulated, huge Indian casinos coming from out of state.

In closing, I understand Mr. Chairman that your Casino reform bill, HR 4893 addresses the problems we have had in Illinois with Indian Casinos. Further, unlike Senator McCain's legislation, it would not Grandfather in the flawed sitting process we have experienced in Illinois. On behalf of my constituents, I thank you for pursuing the right kind of reform legislation and for holding this hearing.

[NOTE: Letters submitted for the record by Representative Osmond have been retained in the Committee's official files.]

The CHAIRMAN. Thank you.
Mr. Worthley.

**STATEMENT OF STEVEN WORTHLEY, TULARE COUNTY
MEMBER, INDIAN GAMING WORKING GROUP, CALIFORNIA
STATE ASSOCIATION OF COUNTIES**

Mr. WORTHLEY. Thank you. On behalf of the California State Association of Counties, I would like to thank Chairman Pombo, Ranking Member Rahall, and the other Distinguished Members of the Committee on Resources for providing us with the opportunity to submit testimony on H.R. 4893.

Chairman Pombo, I also would like to thank you for your considerable outreach to CSAC throughout the development of this important legislation.

I am Steven Worthley, 4th District Supervisor for Tulare County. I want to disclose I am not a member of the CSAC Indian Gaming Working Group, but I am very happy to pinch hit for them today. I am in my second term of office, and I am here representing the entire CSAC represented body.

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

Because of this, CSAC had devoted considerable staff time and financial resources to address the impacts of Indian gaming on county services and affected communities.

CSAC's approach to the issue of Indian gaming is simple: To work on a government-to-government basis with gaming tribes who have followed the provisions of IGRA and to seek a mechanism that allows local governments to work with tribes to mitigate any off-reservation impacts from proposed casinos.

Examples of our approach are numerous in California where comprehensive agreements between tribes and counties, each

addressing the unique concerns of the tribe and the community, have been negotiated in the past few years.

I want to quickly mention the model for negotiation between local government and tribes provided by the most recent state tribal compacts negotiated by the Schwarzenegger Administration. The result of this model has been improved government-to-government relationships and the successful incorporation of major gaming facilities into counties and communities.

Now to comments specific to H.R. 4893. Chairman Pombo, CSAC is pleased to support your off-reservation gaming legislation which includes provisions that would require tribes seeking to acquire trust land for purpose of gaming to negotiate judicially enforceable mitigation agreements with counties as a condition to having trust land acquisitions approved by the Department of Interior.

This provision largely addresses the overriding principal supported by CSAC in its tribal lands policy. Please note that CSAC recommends that the language of H.R. 4893 be modified to further clarify the legislation's meaning of "direct effects of the tribal gaming activities on the affected county or parish infrastructure and services."

We recommend that the definition of infrastructure and services include but not be limited to infrastructure maintenance and improvements, health and welfare service, law enforcement and emergency services, and environmental services such as air quality, watershed management and erosion control. Enumerating the specific costs and services impacts would help to ensure that sound mitigation agreements are developed between county and tribal governments.

In addition to the mitigation agreement requirements of H.R. 4893, CSAC is supportive of provisions of the Pombo bill that would require more extensive oversight with respect to casino proposals for newly recognized landless tribes. While we support giving local communities a seat at the table to decide whether or not a casino should be located in a particular area, CSAC supports giving county boards of supervisors, which represent all county residents, the right to consent to gaming-related trust acquisitions.

A countywide advisory referendum as called for in the bill represents a prudent step in gauging a community support or opposition to a particular gaming proposal. However, CSAC believes that a vote by elected county boards of supervisors represents an equally critical component in the process of determining the viability and suitability of a casino proposal.

Because counties would ultimately be responsible for negotiating mitigation agreements with tribes under H.R. 4893, CSAC urges you to consider modifying the legislation to allow county or parish-elected bodies to have the right to concur with the Department of Interior's prescribed determinations.

With regard to the bill's tribal gaming consolidation proposal, CSAC is supportive of the legislation's language that would require all consulting gaming operations to take place on already existing reservation lands deemed suitable for such operations in accordance with IGRA.

CSAC also believes that there is an opportunity to clarify H.R. 4893 to ensure that tribes that are allowed to consolidate

gaming operations are required to negotiate judicially enforceable agreements with the affected county for the mitigation of all off-reservation impacts, and that such agreements must be reached each time tribes agree to consolidate gaming operations.

In conclusion, CSAC is pleased to support H.R. 4893 which represents a significant improvement over the provisions of current law. Additionally, CSAC believes that with necessary and appropriate revisions, such as enumerating services and cost impacts of mitigation agreements, as well as allowing county boards of supervisors to determine the viability and suitability of a casino proposal, H.R. 4893 would further the original goals of IGRA while also helping to minimize the abuses that have proven to be detrimental to those tribes in full compliance with applicable Federal laws.

I want to thank again Chairman Pombo and members of the Committee for their prolonged attention to this important issue. CSAC looks forward to working with you to ensure the best possible outcome for tribal governments and those communities affected by Indian gaming. Thank you.

[The prepared statement of Mr. Worthley follows:]

Statement of Steven Worthley, Supervisor, Tulare County, and Member, Indian Gaming Working Group, California State Association of Counties

On behalf of the California State Association of Counties (CSAC) I would like to thank Chairman Pombo, Ranking Member Rahall, and the other distinguished members of the Committee of Resources for giving us this opportunity to submit testimony as part of the hearing to consider Chairman Pombo's legislation (HR 4893) to restrict off-reservation gaming. I am Steven Worthley, District 4 Supervisor for Tulare County and a member of the CSAC Indian Gaming Working Group.

CSAC is the single, unified voice speaking on behalf of all 58 California counties. The issue raised in this hearing, and those addressed by H.R. 4893, have direct and unique bearing on counties, more so than any other jurisdiction of local government.

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

For the past three years, CSAC has devoted considerable staff time and financial resources to the impacts on county services resulting from Indian gaming. We believe that California counties and CSAC have developed an expertise in this area that may be of benefit to this Committee as it considers amendments to the Indian Gaming Regulatory Act.

Introduction:

At the outset, the California State Association of Counties (CSAC) reaffirms its absolute respect for the authority granted to federally recognized tribes. CSAC also reaffirms its support for the right of Indian tribes to self-governance and its recognition of the need for tribes to preserve their tribal heritage and to pursue economic self-reliance.

However, CSAC maintains that existing laws fail to address the off-reservation impacts of tribal land development, particularly in those instances when local land use and health and safety regulations are not being fully observed by tribes in their commercial endeavors. As we all know, these reservation-based commercial endeavors attract large volumes of visitors.

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

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

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

Most of these services are provided to residents both outside and inside city limits. Unlike the exercise of land use control, such programs as public health, welfare, and jail services are provided (and often mandated) regardless of whether a recipient resides within a city or in the unincorporated area of the county. These vital public services are delivered to California residents through their 58 counties. It is no exaggeration to say that county government is essential to the quality of life for over 35 million Californians. No other form of local government so directly impacts the daily lives of all citizens. In addition, because county government has very little authority to independently raise taxes and increase revenues, the ability to adequately mitigate reservation commercial endeavors is critical, or all county services can be put at risk.

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

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

CSAC commends Chairman Pombo and the other Members of the House Resources Committee for seeking to curb the increasing practice of "reservation shopping." This written testimony is in support of H.R. 4893, which would preserve the original goal of IGRA while minimizing the impacts of "reservation shopping" on local communities. CSAC offers its assistance to Chairman Pombo and the House Resources Committee as H.R. 4893 is advanced through the legislative process.

Background:

A. The Advent of Indian Gaming

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

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

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

B. Development of CSAC 2003 Policy

In 1999, California Governor Gray Davis and approximately 65 tribes entered into Tribal-State Compacts, which permitted each of these tribes to engage in Class III gaming on their trust lands. The economic, social, environmental, health, safety, traffic, criminal justice, and other impacts from these casino-style gaming facilities on local communities were significant, especially because these gaming facilities were located in rural areas. The 1999 Compacts did not give counties an effective role in mitigating off-reservation impacts resulting from Indian casinos. Consequently, mitigation of these impacts could not be achieved without the willingness of individual tribes to work with the local governments on such mitigation. Some tribes and counties were able to reach mutually beneficial agreements that helped to mitigate these impacts. Many counties were less than successful in obtaining the cooperation of tribes operating casino-style gaming facilities in their unincorporated areas.

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

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

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

C. Implementation of CSAC's 2003 Policy

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

ILLUSTRATIONS OF SUCCESSFUL COUNTY/TRIBAL COOPERATION

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

In Southern California, San Diego County has a history of tribes working with the San Diego County Sheriff to ensure adequate law enforcement services in areas where casinos are operating. In addition, San Diego County has entered into agreements with four tribes to address the road impacts created by casino projects. Further, a comprehensive agreement was reached with the Santa Ysabel Tribe pursuant to the 2003 Compact with the State of California.

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

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

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

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

ILLUSTRATIONS OF CONTINUED PROBLEMS ADDRESSING CASINO IMPACTS

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

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

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

D. The Advent of "Reservation Shopping" in California

The problems with the original 1999 Compacts remain largely unresolved, as most prior Compacts were not renegotiated. These Compacts allow tribes to develop two casinos and do not restrict casino development to areas within a tribe's current trust land or historical ancestral territory. For example, in the Fall of 2002 a Lake County band of Indians was encouraged by East Coast developers to pursue taking into a trust land in Yolo County for use as a site of an Indian casino. The chosen site was across the Sacramento River from downtown Sacramento and was conveniently located near a freeway exit. The actual promoters of this effort were not Native Americans and had no intention of involving tribal Band members in the operation and management of the casino. In fact, one promoter purportedly bragged that no Indian would ever be seen on the premises.

In rural Amador County, starting in 2002 and continuing to the present, a tribe being urged on by another out-of-State promoter is seeking to have land near the small town of Plymouth taken into trust for a casino. The tribe has no historical ties to the Plymouth community. The effort by this tribe and its non-Native American promoter has created a divisive atmosphere in the local community. That new casino is not the only one being proposed in the County; a second, very controversial new casino is being promoted by a New York developer for a three-member tribe in a farming and ranching valley not served with any water or sewer services, and with access only by narrow County roads. The development of these casinos would be an environmental and financial disaster for their neighbors and the County, which already has one major Indian casino.

In the past two years in Contra Costa County, there have been varying efforts by three tribes to engage in Indian gaming in this highly urbanized Bay Area county. The possibility of significant economic rewards from operating urban casinos has eclipsed any meaningful exploration of whether these tribes have any historical connection to the area in which they seek to establish gaming facilities.

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

CSAC's 2004 POLICY REGARDING DEVELOPMENT OF TRIBAL LANDS

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

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

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

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

Importance of County Involvement in Developing Mitigation:

The history and examples provided above illustrate the need for counties to be involved in developing appropriate off-reservation mitigations related to Indian casino activities. There is not yet a definitive study on the impacts of gaming on local communities. However, in those counties that are faced with large gaming projects, it is clear that the impacts on traffic, water/wastewater, the criminal justice system and social services are significant. For non-Indian casinos it is estimated that for every dollar a community collects from gambling-related taxes, it must spend three dollars to cover new expenses, including police, infrastructure, social welfare and counseling services.¹ As local communities cannot tax Indian operations, or the related hotel and other services that would ordinarily be a source of local government income, the negative impact of such facilities can even be greater. This is one reason that CSAC sought amendments to California Tribal-State Compacts to ensure that the off-reservation environmental and social impacts of gaming were fully mitigated and that gaming tribes paid their fair share for county services.

In 2003 CSAC took a "snapshot" of local impacts by examining information provided by eight of the then twenty-six counties (the only counties that had conducted an analysis of local government fiscal impacts) where Indian gaming facilities operated.² The total fiscal impact to those eight counties was approximately \$200 million, including roughly \$182 million in one-time costs and \$17 million in annual costs. If these figures were extrapolated to the rest of the state, the local government fiscal costs could well exceed \$600 million in one-time and on-going costs for road improvements, health services, law enforcement, emergency services, infrastructure modifications, and social services.

Even when a particular gaming facility is within a City's jurisdictional limits, the impacts on County government and services may be profound. Counties are the largest political subdivision of the state having corporate authority and are vested by the Legislature with the powers necessary to provide for the health and welfare of the people within their borders. Counties are responsible for a countywide justice system, social welfare, health and other services. The California experience has also made clear that particularly large casino facilities have impacts beyond the

¹ Cabazon, The Indian Gaming Regulatory Act, and the Socioeconomic Consequences of American Indian Governmental Gaming—A Ten Year Review by Jonathon Taylor and Joseph Kalt of the Harvard Project on American Indian Economic Development (2005) at p. 9 (citing Sen. Frank Padavan, Rolling the Dice: Why Casino Gambling is a Bad Bet for New York State at ii (1994).

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

immediate jurisdiction in which they operate. Attracting many thousands of car trips per day, larger facilities cause traffic impacts throughout a local transportation system. Similarly, traffic accidents, crime and other problems sometimes associated with gaming are not isolated to a casino site but may increase in surrounding communities.

As often the key political entity and service provider in the area, with a larger geographic perspective and land use responsibility, county involvement is critical to ensure that the needs of the community are met and that any legitimate tribal gaming proposal is ultimately successful and accepted. Local approval and mechanisms that create opportunities for negotiation are necessary to help insure a collaborative approach with tribes in gaming proposals and to support the long-range success of the policies underlying IGRA.

Comments on H.R. 4893:

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

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

In California, through the most recent State-Tribal Compacts negotiated by the Schwarzenegger Administration, counties and other local governments have been provided an appropriate opportunity to work with gaming tribes to address off-reservation impacts. The result has been improved government-to-government relationships between tribes and county governments and the smooth incorporation of major gaming facilities into counties and communities.

Also in the vein of improved relationships, CSAC recently worked with several tribes to stage a day-long forum on "Government-to-Government Relationships: A Forum on Indian Gaming," which was very well attended and featured topics such as negotiating memorandums of understanding, implementing public safety protocols, and additional opportunities for tribes and local governments to work collaboratively. This and other recent events demonstrate that, contrary to possible fears of tribal leaders, local governments have not acted arbitrarily or capriciously in their dealings with tribes. In fact, the improved relationships are the result of each government gaining a better understanding of the responsibilities and needs of the other.

Because we in California have several positive examples of counties and tribes working together for the betterment of their respective communities, CSAC supports Chairman Pombo's efforts to address the practice of "reservation shopping." Below are specific comments on key provisions of H.R. 4893.

Judicially Enforceable Agreements

As stated in CSAC's most recent Policy on Tribal Lands (adopted February 23, 2006), "the overriding principle supported by CSAC is that when tribes are permitted to engage in gaming activities under federal legislation, then judicially enforceable agreements between counties and tribal governments must be required in the legislation. These agreements would fully mitigate local impacts from a tribal government's business activities and fully identify the governmental services to be provided by the county to that tribe."

CSAC is pleased that H.R. 4893 would require tribes seeking to acquire trust land for purposes of gaming to negotiate judicially enforceable mitigation agreements with counties as a condition of having trust land acquisitions approved by the Department of Interior. CSAC recommends, however, that the language of H.R. 4893 be modified to further clarify the legislation's meaning of "direct effects of the tribal gaming activities on the affected county or parish infrastructure and services." We recommend that the definition of infrastructure and services include but not be limited to infrastructure maintenance and improvements, health and welfare services, law enforcement and emergency services, and environmental services such as air quality, watershed management, and erosion control. Enumerating the specific costs and services impacts would help to ensure that sound mitigation agreements are developed between county and tribal governments.

Increased Oversight of Gaming Proposals

In addition to the mitigation agreement requirements of H.R. 4893, CSAC is supportive of provisions of H.R. 4893 that would require more extensive oversight with respect to casino proposals for newly-recognized or landless tribes. While we support giving local communities a seat at the table to decide whether or not a casino should be located in a particular area, CSAC supports giving county boards of supervisors the right to consent to gaming-related trust acquisitions.

A county-wide advisory referendum—as called for in the bill—represents a prudent step in gauging a community's support or opposition to a particular gaming proposal. However, CSAC believes that a vote by elected county boards of supervisors represents an equally critical component in the process of determining the viability and suitability of a casino proposal. Because counties would ultimately be responsible for negotiating mitigation agreements with tribes under H.R. 4893, CSAC urges you to consider modifying the legislation to allow county or parish elected bodies to have the right to concur with the Department of Interior's prescribed determinations.

Consolidation of Gaming Among Tribes

CSAC does not oppose the concept of gaming consolidation among tribes, and supports the bill's language reaffirming the fact that all Indian gaming operations must take place only on lands deemed suitable for such operations in accordance with IGRA. CSAC also believes that there is an opportunity to clarify H.R. 4893 to ensure that tribes that are allowed to consolidate gaming operations are required to negotiate judicially enforceable agreements with the affected county for the mitigation of all off-reservation impacts, and that such agreements must be reached each time tribes agree to consolidate gaming operations.

Primary Geographic, Social and Historical Nexus

When the phrase "primary geographic, social and historical nexus" is used in the bill, CSAC recommends that it be based on objective facts that are generally acceptable to practicing historians, archeologists, and anthropologists. If there is a question by a tribal, state or local government as to whether the nexus has been established, the bill should provide for a judicial determination in either federal or state court on the issue, where the tribe would have the burden of showing the requisite nexus by a preponderance of evidence. This would provide a credible mechanism for determining a tribe's primary geographic, social and historical nexus and allow for judicial review of the facts in cases of doubt.

Conclusion:

CSAC presents this written testimony in support of H.R. 4893, and we stand ready to assist Chairman Pombo and Committee Members in their efforts to modify IGRA to address the increasing practice of "reservation shopping." In California, the Chairman's bill—with the aforementioned necessary and appropriate revisions—would allow counties a voice in matters that create impacts that the county will ultimately be called upon by its constituents to address. This voice is critical if California counties are to protect the health and safety of their citizens. Otherwise, counties find themselves in a position where their ability to effectively address the off-reservation impacts from Indian gaming is extremely limited and dependent on the willingness of individual tribes to mitigate such impacts.

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

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

ATTACHMENT A:

CSAC POLICY DOCUMENT REGARDING COMPACT NEGOTIATIONS FOR INDIAN GAMING

Adopted by the CSAC Board of Directors

February 6, 2003

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

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

CSAC believes the current Compact fails to adequately address these impacts and/or to provide meaningful and enforceable mechanisms to prevent or mitigate impacts. The overriding purpose of the principles presented below is to harmonize existing policies that promote tribal self-reliance with policies that promote fairness and equity and that protect the health, safety, environment, and general welfare of all residents of the State of California and the United States. Towards that end, CSAC urges the State to consider the following principles when it renegotiates the Tribal-State Compact:

1. A Tribal Government constructing or expanding a casino or other related businesses that impact off-reservation³ land will seek review and approval of the local jurisdiction to construct off-reservation improvements consistent with state law and local ordinances including the California Environmental Quality Act with the tribal government acting as the lead agency and with judicial review in the California courts.
2. A Tribal Government operating a casino or other related businesses would mitigate all off-reservation impacts caused by that business. In order to ensure consistent regulation, public participation, and maximum environmental protection, Tribes will promulgate and publish environmental protection laws that are at least as stringent as those of the surrounding local community and comply with the California Environmental Quality Act with the tribal government acting as the lead agency and with judicial review in the California courts.
3. A Tribal Government operating a casino or other related businesses will be subject to the authority of a local jurisdiction over health and safety issues including, but not limited to, water service, sewer service, fire inspection and protection, rescue/ambulance service, food inspection, and law enforcement, and reach written agreement on such points.
4. A Tribal Government operating a casino or other related businesses would pay to the local jurisdiction the Tribe's fair share of appropriate costs for local government services. These services include, but are not limited to, water, sewer, fire inspection and protection, rescue/ambulance, food inspection, health and social services, law enforcement, roads, transit, flood control, and other public infrastructure. Means of reimbursement for these services include, but are not limited to, payments equivalent to property tax, sales tax, transient occupancy tax, benefit assessments, appropriate fees for services, development fees, and other similar types of costs typically paid by non-Indian businesses.
5. The Indian Gaming Special Distribution Fund, created by section 5 of the Tribal-State Compact will not be the exclusive source of mitigation, but will ensure that counties are guaranteed funds to mitigate off-reservation impacts caused by tribal gaming.
6. To fully implement the principles announced in this document and other existing principles in the Tribal-State compact, Tribes would meet and reach a judicially enforceable agreement with local jurisdictions on these issues before a new compact or an extended compact becomes effective.
7. The Governor should establish and follow appropriate criteria to guide the discretion of the Governor and the Legislature when considering whether to consent to tribal gaming on lands acquired in trust after October 17, 1988 and governed by the Indian Gaming Regulatory Act. 25 U.S.C. § 2719. The

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

Governor should also establish and follow appropriate criteria/guidelines to guide his participation in future compact negotiations.

ATTACHMENT B:

CSAC REVISED POLICY DOCUMENT REGARDING DEVELOPMENT ON TRIBAL LANDS

Adopted by CSAC Board of Directors

November 18, 2004

Background

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

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

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

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

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

Policy

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

2. CSAC recognizes and respects the tribal right of self-governance to provide for the welfare of its tribal members and to preserve traditional tribal culture and heritage. In similar fashion, CSAC recognizes and respects the counties' legal responsibility to provide for the health, safety, environment, infrastructure, and general welfare of all members of their communities.
3. CSAC also supports Governor Schwarzenegger's efforts to continue to negotiate amendments to the 1999 Tribal-State Compacts to add provisions that address issues of concern to the State, tribes, and local governments. CSAC reaffirms its support for the local government protections in those Compact amendments that have been agreed to by the State and tribes in 2004.
4. CSAC reiterates its support of the need for enforceable agreements between tribes and local governments concerning the mitigation of off-reservation impacts of development on tribal land⁴. CSAC opposes any federal or state limitation on the ability of tribes, counties and other local governments to reach mutually acceptable and enforceable agreements.
5. CSAC supports legislation and regulations that preserve—and not impair—the abilities of counties to effectively meet their governmental responsibilities, including the provision of public safety, health, environmental, infrastructure, and general welfare services throughout their communities.
6. CSAC supports federal legislation to provide that lands are not to be placed into trust and removed from the land use jurisdiction of local governments without the consent of the State and the affected county.
7. CSAC opposes the practice commonly referred to as “reservation shopping” where a tribe seeks to place land into trust outside its aboriginal territory over the objection of the affected county.
8. CSAC does not oppose the use by a tribe of non-tribal land for development provided the tribe fully complies with state and local government laws and regulations applicable to all other development, including full compliance with environmental laws, health and safety laws, and mitigation of all impacts of that development on the affected county.

ATTACHMENT C:

CSAC Fact Sheet on Indian Gaming in California (11/5/03)



Indian Gaming and Local Impacts

A Forum about the Future of California

Indian Gaming In California...
A Growing Number

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

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

The CHAIRMAN. Thank you.
Mr. King.

**STATEMENT OF RANDY KING, CHAIRMAN, BOARD OF
TRUSTEES, SHINNECOCK INDIAN NATION**

Mr. KING. Chairman Pombo, Ranking Member Rahall, and Members of the House Resources Committee, thank you for giving me the opportunity to speak today.

My name is Randy King, and I am the immediate past Chairman of the Tribal Trustees of the Shinnecock Indian Nation.

Last night we held our tribal elections, the latest in an unbroken chain of annual elections that dates back to 1792. Although I chose not to run this year, let the record state after six years in tribal office this will be the year that I finish that screen room for my wife.

[Laughter.]

Mr. KING. I know that our nation is in good hands and I speak today on behalf of our nation, and with the support of our new board of trustees.

The heritage of the Shinnecock people dates back thousands of years. Although we once occupied a vast region of Long Island, our property has dwindled over the years to less than 1,000 acres. Today, almost half of our enrolled members live on this land, on a reservation set aside under New York law. The State of New York and its predecessors have formally recognized the Shinnecock Nation for more than 340 years, but even though we have been seeking Federal acknowledgment from the Bureau of Indian Affairs since 1978, the Federal bureaucracy has yet to formally recognize our nation. After 28 years, we are still waiting for a decision.

Despite nearly three decades of delay, the Shinnecock people are optimistic. Last year a Federal court issued a decision holding that we are what we have always known ourselves to be, a sovereign Indian tribe. We remain hopeful that the Department of Interior will add us to the list of federally recognized tribes. In the meantime, we continue to seek justice in the courts without waiting for help from the executive branch of the Federal government.

Unfortunately, while we have remained stuck in the Federal recognition process, we have watched many other tribes achieve Federal recognition, construct casinos, and abuse the BIA process to try to build even more casinos. Given our history with the BIA, we are encouraged by your willingness to shake up the status quo.

As you can imagine, we are particularly pleased that you have taken up the cause of examining the Federal recognition process. We also deeply appreciate the thought and care taken in developing H.R. 4893. This bill can do much to level the playing field and stop outlandish casino proposals that threaten to backlash against legitimate tribes such as the Shinnecock.

While we support the intent of the bill to reform a flawed BIA process, we do hope that the Committee will consider some suggestions for minor amendments to the bill. We hope that the final bill will protect those tribal nations that, like the Shinnecock, have played by the rules and have been met with years of bureaucratic inaction.

First, let us remember that H.R. 4893 is aimed to restrict the practice of reservation shopping, a goal all should share. The Indian Gaming Regulation Act is meant to allow an Indian nation to game on its own lands. The Shinnecock Indian Nation occupies land that was ours before the first European settlers arrived on our shores. Our land is our home and always has been.

We believe that H.R. 4893 should clarify that Indian land actually occupied continuously for all of recorded history should receive the same treatment as Federal reservations created much more recently. The Shinnecock people have occupied our lands for centuries, and we should be able to have economic activity on our own lands.

Even though IGRA is meant to allow tribes to use land that has been theirs throughout the centuries, we do recognize political realities. One reality is that in some communities powerful groups use political power to try to deny a tribe its right.

Given this reality, we believe that H.R. 4893 should preserve the ability in narrow and limited circumstances for a tribe to agree to alternate locations for economic activity. We believe that land claim settlements when limited to the state in which the tribe is located will allow tribes facing serious local opposition to achieve economic progress.

At the same time, we recognize that there are legitimate concerns about tribes claiming reservations through arguments that are tenuous at best. We believe that the bill should close the door on any inappropriate manipulations of the system. We encourage the Committee to further strengthen proposed provisions against interstate moves by limiting gaming to the state in which a majority of the tribe's members reside.

In conclusion, I would like once again to thank you for your courage in tackling these difficult issues when so many others stand silent. As you move forward, I hope that your reforms are a success and that they protect the ability of tribes to use their own lands.

Thank you.

[The prepared statement of Mr. King follows:]

**Statement of Randy King, Chairman, Board of Trustees,
Shinnecock Indian Nation**

Chairman Pombo, Ranking Member Rahall and Members of the House Resources Committee, my name is Randy King, and I am the Chairman of the Tribal Trustees of the Shinnecock Indian Nation—one of the oldest continually self-governing tribes in the country. I would like to personally thank you for allowing me the opportunity to address this Committee.

The heritage of the Shinnecock people dates back thousands of years. We live now on a remnant of the lands where we lived long before the first European settlers arrived in North America. Although we once occupied a vast region of land on Long Island, spanning from Montauk Point to Manhattan, our property has dwindled over the years to less than 1,000 acres, all in the Town of Southampton, New York. Beginning with the illegal seizure of our land by the first settlers, the Shinnecock people have endured a continual encroachment on our property rights for over 360 years.

The State of New York and its predecessors have formally recognized the Shinnecock Indian Nation for more than 340 years, and almost half of our enrolled members currently live on a reservation set aside under state law. Despite this fact, the Federal bureaucracy has yet to formally recognize our Nation, even though our existence and our needs have been known to the federal government.

In 1978, we asked the federal government for assistance in filing a lawsuit to obtain justice for the theft of our lands. The Bureau of Indian Affairs decided we first

should be federally recognized and treated our litigation request as our petition for federal acknowledgment. We then created the "Shinnecock Federal Recognition Committee" to manage our petition for federal recognition with the Department of Interior. That was 28 years ago—and we are still waiting for a decision.

Despite nearly three decades of delay, the Shinnecock people are optimistic. On November 7, 2005, a federal court, in a case in which our tribal status was at issue, and after receiving our petition to the Department of the Interior and thousands of pages of legal briefs and documents, issued a decision holding that the Shinnecock Indian Nation is what we have always known ourselves to be, a sovereign Indian tribe as a matter of federal law. We have had a dialogue about this court decision with the Department of Interior, and we remain hopeful that the Department may add us to the list of federally recognized tribes. In the meantime, we continue to seek to vindicate our rights without waiting for help from the executive branch of the federal government, as we press forward to have the courts further confirm our sovereignty and provide us with justice for the wrongs that have been done to us.

While we have remained stuck in the federal recognition process for some 28 years, forced to defend our rights without the federal assistance enjoyed by other tribes, the Shinnecock people have watched many other tribes achieve federal recognition, construct casinos, and exploit federal law to attempt to build even more casinos.

Against the backdrop of bureaucratic delay and opportunistic actions by others, the Shinnecock Nation is encouraged by the Chairman's and the Committee's willingness to "shake up" the status quo. As you can imagine, we are particularly pleased that you have taken up the cause of examining the federal recognition process. We also deeply appreciate the thought and care taken in developing H.R. 4893. This bill can do much to level the playing field and stop outlandish proposals that threaten a backlash against legitimate tribes such as the Shinnecock. It is from this perspective that I respectfully ask the Committee to consider some minor refinements to the bill to protect those tribal nations which, like the Shinnecock, have played by the rules and been met with years of bureaucratic inaction.

First, let us remember that H.R. 4893 is aimed to restrict the practice of "reservation shopping", a goal all should share. Section 20(a) of the Indian Gaming Regulatory Act ("IGRA") is intended to allow an Indian Nation to game on its own lands. Yet some would interpret Section 20 as limiting tribes to lands that were part of a federal reservation. The Shinnecock Indian Nation, however, occupies land in the heart of its aboriginal territory, land that was ours before the first European settlers arrived on our shores—and land that remains within our aboriginal territory today. Our land is our home, and always has been. Its status as Indian land does not stem from action of the federal government, but precedes the existence of the federal government. We should not be denied the ability to have economic activity on our own tribal lands, held for hundreds of years. Consequently, we propose that H.R. 4893 add affirmative language that clarifies that Indian land actually occupied continuously for all of recorded history be given the same treatment as federal reservations created much more recently. The Shinnecock people have occupied our lands for centuries, and we do not believe that we should be penalized for the Department of Interior's prolonged inaction in response to our application to acknowledge our unquestionable status as an Indian tribe.

Despite the fact that IGRA intends to allow tribes to game on land that has been theirs through the centuries, we do recognize political realities. One reality is that in some communities, powerful local groups and people may marshal political power to attempt to deny a tribe its rights. Given this reality, we believe that H.R. 4893 should preserve the ability, in closely circumscribed circumstances, for a tribe to agree upon alternate locations for economic activity. We believe that land claim settlements, when limited to the state in which the tribe is located, would allow tribes facing serious or insurmountable opposition to achieve economic stability, while still preventing inappropriate manipulations of the system.

At the same time, we recognize that there are legitimate concerns about tribes claiming reservations through arguments that are tenuous at best. We believe that the amendments we seek can fulfill the intent of IGRA without opening the door to such spurious claims. We appreciate the effort in H.R. 4893 to tighten the rules against such claims, and would encourage the Committee to further strengthen proposed provisions against interstate moves by limiting gaming to the state in which a majority of a tribe's members reside.

In conclusion, I would like once again to thank the Chairman and the Committee for allowing me to testify and for your courage in tackling these difficult issues when so many others stand silent. My people have lived on our land for centuries, and I am but one person in a long line of individuals fighting for justice for our Nation. It has been a long and difficult journey to get where we are today. I simply

ask that the Committee keep the Shinnecock Indian Nation in mind, and take our suggestions as what they are—comments from a tribe that is only trying to avoid being penalized for the actions of others. Thank you.

The CHAIRMAN. Thank you. I thank the entire panel for your testimony.

Mr. KING, Chairman King, I will start with you and the questions. Do you believe that there is a difference between land that is already in trust and land that tribes are seeking to bring into trust for gaming purposes?

Mr. KING. Well, we are still in the struggle. We recently had our tribal status determined by a Federal judge in November, so this is all new ground to the Shinnecock. We are still in the struggle so I cannot have the conversations with the degree of specificity of some of the other members of the previous panel.

But I do know this, the Shinnecock Tribe has endured for 400 years on land that has dwindled through the years, and because of the way this bill is written it should not preclude the tribe from gaming on lands that may be more appropriate to the local community.

We are a tribe that is sensitive to the communities' ears, and we are open to dialog to those communities and to those concerns, but we should not feel after 400 years of trying to prove our tribal status that we would be shut out of any opportunities that other tribes are able to enjoy at this point.

The CHAIRMAN. If your land were taken into trust and a decision was made to have gaming on your land, on your historic land, and 10 years in the future another tribe came up and took advantage of the current process and had land taken into trust that was near you, do you believe that you should have anything to say about that?

Mr. KING. Well, I do believe that the determination of the Shinnecock Tribe is made by its members, and by its people by consensus, and I do not believe that any other tribe should be able to object to us moving forward with our sovereign rights.

The CHAIRMAN. Should you have the ability to object to someone else moving into your historic area?

Mr. KING. Well, at this point here we have endured for 400 years, and if you are talking about the State of New York, there are tribes that are asserting land claims in the State of New York that reside out of New York, and we believe that the resources within New York are tenuous and limited at best, and because we are in this struggle, and that 28 years in the BIA process, Federal acknowledgment process, could shut the door on us, and that is why we are here today.

The CHAIRMAN. I can tell you that in regards to other legislation that I have introduced dealing with the recognition process and our efforts on this Committee in dealing with that, obviously your tribe was one of those that came to the forefront. I think 28 years is too long to wait. Regardless of what the answer is 28 years is too long to wait for an answer.

Mr. KING. It is.

The CHAIRMAN. And that is one of the reasons why this Committee has moved forward on that issue.

Mr. KING. And we respect your analysis of the deficiencies in that process.

[Laughter.]

The CHAIRMAN. I am sorry. Twenty-eight years is too long to wait for an answer on anything.

Mr. Worthley, in terms of the counties seeking a greater input into what happens, I believe there is a difference between existing land that is in trust and what role the county can play in that particular instance, and land that is being petitioned to be brought into trust, or maybe they don't, but does the CSAC have a policy or do they differentiate between land that is currently in trust and land that is being petitioned to be brought into trust?

Mr. WORTHLEY. Thank you, Mr. Chairman. They do recognize that there is a distinction and there is a concern for that because that sort of shopping for additional real estate outside of traditional tribal boundaries, while it may be appropriate in some circumstances, other times it represents a lot of problems.

I think that is why the proposal is to allow for counties to have greater input into that decisionmaking process as opposed to lands that are already in trust, understanding that the sovereign powers of the tribes already exist in those situations. As they seek to promote those sovereign powers elsewhere, it is appropriate for counties to have more input in that process.

The CHAIRMAN. Mr. Sheen, Representative Sheen, you suggest in your testimony a moratorium, and I am sure you are aware that there have been efforts in numerous discussions in Congress dealing with a moratorium on new gaming. There have been even suggestions that we should completely withdraw the ability of tribes to game. I think the people, depending on what their own districts or their own personal beliefs are, have come up with a number of different scenarios that this committee has had to deal with.

But in suggesting a moratorium, would you rather we have a two-year moratorium or a moratorium of some period or would you prefer that we come up with a long-term fix to the generic legislation?

Mr. SHEEN. Well, I would say that you would probably need some time to do that. However, a long-term fix is something that we do need, and I believe that is why we need to take a look at IGRA, and we need to take a look at what has it done in the last 20 years.

So a long-term fix definitely needs to happen, and I, of course, favor that as opposed to a short-term fix, but how long would it take to put that forward? I guess that is the question.

The CHAIRMAN. Well, we have been doing this for two years now, so I don't know. Thank you.

I am going to recognize Mr. Kildee for his questions.

Mr. KILDEE. Thank you very much.

First of all, I would like to welcome Mr. Sheen, a member of the body I served in for 10 years, and appreciate your presence here with your rich background being the county treasurer of Allegan before you joined the Michigan House of Representatives.

I think you and I are not in agreement on these things, but that is the greatness of a democracy, and the greatness of the process that Mr. Pombo has started here. We have to start out by recognizing that we, all of us up here, and you as a member of the state

legislature take an oath to uphold the Constitution of the United States, and the Constitution is very clear. It says the Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes. They list the three sovereignties very, very clearly, Article I, Section 8.

Congress takes that very seriously as I am sure you do. I have read the Treaty of Detroit. It says, "This constitution and the laws of the United States, which shall be made in pursuance thereof and all treaties made or shall be made under the authority of the United States shall be the supreme law of the land, and the judges in every state shall be bound thereby. Anything in the constitutional laws of any state to the contrary notwithstanding."

Every two years I take an oath to uphold this, and it is very important. This sovereignty is not just a get well card or some little gesture toward the Indians. It is a reality. It is the law of the land, and that is exactly what the *Cabazon* decision was based upon.

Basically, and I am not an attorney, I am a Latin teacher, but they basically said if you outlaw gaming or certain form of gaming, then you could outlaw gaming all over the state, including on sovereign land, sovereign Indian land, which is sovereign. But if you only regulate that gaming, then state regulations do not apply on the sovereign land. Sovereign land is different than the rest of Allegan County. It has a sovereignty. And as the other tribes in Michigan have their real sovereignty.

So we have to recognize that we have to follow the Supreme Court decision. We have to follow the Constitution. IGRA actually in a sense really puts some restrictions, limited *Cabazon* because without *Cabazon* we would have had probably a lot of confusion out there, but Indians sovereign nations could have tried various and sundry way of gaming, but we finally said no, let us get some order here.

I almost didn't vote for it because I thought it was putting too many restrictions on *Cabazon* decision, but we did say OK, we will compact with the state and we thought we had a *Seminole* fix before the Seminole problem arose, but we did do that. So it is the law of the land upheld by the Supreme Court, and codified in law by the Congress.

So I am sure that, knowing Allegan County, I know it quite well. I know it is a county where probably a lot of people are just opposed to gaming. Has your organization taken any position against the gaming which takes place in Michigan, which has really proliferated, probably proliferating more quickly as far as locations than Indian gaming? You can hardly go into a place where one could get a libation without finding electronic Keno where people are just rolling the dollars back and forth.

Has your organization taken any position on repealing that 1972 amendment which permitted gaming in Michigan, or have you taken any position of trying to limit this new gambling which takes place in almost every tavern in Michigan? Have you taken any position on that?

Mr. SHEEN. Well, at this point in time if you are asking me how do I feel about repealing the lottery.

Mr. KILDEE. Yes.

Mr. SHEEN. I would be happy to put that bill forward.

Mr. KILDEE. OK.

Mr. SHEEN. As far as I am concerned, at this point I think the main concern of 23 is Enough! is just that. It is 23 casinos is enough. Do they support or are they against the lottery? That, you know, they really haven't discussed, they have focused on the issue at hand.

Earlier you said our Constitution upholds rights, and I am a firm believer in the Constitution, but this idea of casinos, Native American casinos is not written in our Constitution anywhere.

Mr. KILDEE. Sovereignty is though.

Mr. SHEEN. Sovereignty is written in there, but this whole concept of what we are doing here, I guess I am a firm supporter of civil rights, but I have a difficulty with special rights, and you know, here you have a group that for all practical purposes secedes from the nation, secedes from the state, wants all the rights and privilege of citizenship, but seemingly without the responsibilities that go with it. Doesn't that concern you?

Mr. KILDEE. Well, John Marshall in his famous decision talks about the sovereignty as a retained sovereignty. It is not something that we gave to them in the Constitution. It is not something that Michigan gave to them or Congress gave to them even. John Marshall makes it very, very clear that this a retained sovereignty, and that treaties entered into even before the Constitution still had to be recognized. I think we have to really consider that this is a real sovereignty. It is not just a pious saying or something to make Indians feel good. It is a real sovereignty.

So we have an obligation. When we read this, we don't grant France its sovereignty. We recognize its sovereignty. We don't grant the Chickasaw Tribe, which Mr. Cole belongs to, we don't grant them their sovereignty. We recognize their sovereignty. So we can't just willy nilly pass legislation that doesn't recognize the fact that this is a genuine sovereignty, a real sovereignty, and not just a pious thought.

So, I know you recognize it. I know you personally. I know that you are a man of good will, but I think we just have a different approach to this and different ideas on it. But I thank you for your testimony.

Mr. SHEEN. Thank you.

The CHAIRMAN. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, and I want to thank the members of our panel for their testimony.

For the record, Mr. Chairman, I just want to associate myself with the gentleman from Michigan and his comments concerning the issue that we are discussing with the members of the panel.

I certainly have the utmost respect for Representative Sheen and his opinions and sentiments expressed in our hearing this afternoon concerning this relationship that we have with the Indian tribes. I don't know if Representative Sheen is aware of the fact that our country and our government negotiated and had 389 treaties with the Indian tribes, and guess what? We broke everyone of those treaties.

I also would like to note for the record that when we have a treaty relationship with other foreign countries, it has the same

standing as that of the U.S. Constitution. The treaty and the constitution are equal in par in terms of our relationship.

I note also you mentioned, Representative Sheen, that I got the impression that you feel that the State of Michigan has not benefited with these gaming operations in the State of Michigan. I am curious who the Governor was that negotiated these compacts because as I understand it the Pequot Indians and their compact relationship with the State of Connecticut, hundreds of millions of dollars have benefited the State of Connecticut, Connecticut has benefited for their educational needs and so many other things that have gone on, and very successful relationship.

I might also add that when the Pequot Indian Nation first went out to seek assistance or funding, trying to get this enterprise going, not one U.S. bank, whether it be from the county, the city, or state, was willing, was willing to finance their offered enterprise. They had to go to a foreign businessman to get some capitalization to allow them, and now doing a very successful enterprise in the State of Connecticut.

But I am surprised that the State of Michigan and your opinion, Mr. Sheen, has not benefited from this. I would kind of like to think that every compact that I am aware of, and any negotiations that have taken place with our Indian tribes, that there has been a mutual benefit gained for both the state as well as the tribes, and I wanted to ask Mr. Sheen if I got the right based on your testimony.

You are saying that the State of Michigan has not benefited from these gaming enterprises?

Mr. SHEEN. What happens is initially there is a benefit when it is getting built and when it started, but the fact of the matter is—this is a record of Michigan Treasury—is that we no longer are receiving any dollars on the Native American casinos that are there. They have ceased paying the agreed amount in the compact initially to the State of Michigan. We have 17, three are still paying. Those three are now suing the state and soon we will most likely have none.

Now, that is a fact whether we like that fact or we don't like that fact, and I agree with you, treaties are important, and treaties should not have been broken. But again, in the treaty I saw nothing talking about casinos in that treaty, and you know, that is kind of what I have read into the situation.

Mr. FALEOMAVAEGA. Well, I am sure that there were no anticipation of having casinos even built among the states even before our country was founded. My understanding that we had lotteries at the time of the Revolution. A lottery was initiated by the Colonies to get funding to support the revolution against the British Empire, and I don't know if that is a form of gaming, but as I read it lottery is a form of gaming that states throughout the country are benefiting. It is a multibillion dollar industry, and the uniqueness about this IGRA that I want to share with my colleagues and the members of the panel is that Congress controls this, and again it is because of a government-to-government relationship that we have with the Indian tribes.

For good or for bad, the point here is that we don't regulate state lotteries and the horse racing or any of the gaming that goes on

among the states. My good friend from Nevada would be the first one to object as a matter of state constitutional rights, I suppose, that the Federal government is not to regulate gaming among the states, but they sure will do it for the tribes as we are doing it now through IGRA, and this notion that there is syndicate involvement among the Indian gaming operation is nonsense.

How can it be when the Congress is the one that is putting controls and making sure that it is a clean operation, and that it is done properly?

I kind of like to think that when these compact agreements are made between the states and the tribes that the government or whoever is representing the Governor, these negotiators will be doing it on a fair and equitable basis so that both the states as well as the tribes benefit.

I wanted to ask Representative Osmond when you mentioned that certainly the State of Illinois is not benefiting with the gaming operations that take place in Wisconsin. Am I correct, the lotteries, it seems like all the money is going to Wisconsin and not to Illinois because of the location of these?

Ms. OSMOND. It is six miles from my district, and the way that it is projected is that all the revenue, 70 some percent is going to come out of Illinois, and they are going to come through my district, and Illinois has a lottery.

Mr. FALEOMAVAEGA. Well, the State of California is also complaining because it is about a 10 to 15 billion dollar loss to the State of California who all go to Las Vegas to gamble, and I don't know if California officials are complaining because it is what democracy, we are free to go wherever we want to go to participate in the gaming process.

Ms. OSMOND. I think one of my main concerns is the sizes of this particular casino. It is going to be the largest in the Midwest, and if the regulations are set up that they need to look at a 10-mile radius, they have violated those regulations that you have so kindly set forth. They are not looking at the impact that will come into my district.

Mr. FALEOMAVAEGA. That is certainly something that we need to look into. I want to note to Mr. King that your tribe has been waiting for 28 years. There is a tribe in North Carolina called the Lumbees, one of the largest. They have been waiting over 100 years to be federally recognized, and I want to commend the Chairman that we are making every effort to pass legislation to provide a much more equitable method of Federal recognition for our Indian tribes.

I just wanted to note that, and I am afraid—I do not agree with the proposed bill and to the fact that the counties have to be involved in this, my good friend representing the counties. I think if we do it what is to prevent the city or how many other groupings that we have to get approval from. It will make it almost impossible for these tribes to conduct their business.

I think just having the Governors of the various states to be the chief negotiator ought to be sufficient.

With that, Mr. Chairman, I know my time is up, thank you.

Mr. WORTHLEY. Mr. Chairman, if I could just quickly respond to that. From the county's perspective, we are the ones that are

impacted by the effects of the casinos when they are built. They affect the counties. They don't affect the State of California as a whole.

And as Mr. Costa noted, with changing administrations we get different policies. Under the current administration, counties feel rather secure about their positions in terms of knowing that our needs will be met if there is going to be an approved compact with a tribe. Under the previous administration we did not have that protection, and yet we are stuck with the problems, the air quality problems, the transportation problems, the social problems. They affect the counties and the state is free to walk away from those issues if they choose to.

So it is very important to the counties. We are just asking to say you need to mitigate these things and as a condition to—again, increasing the size, going outside of their tribal boundaries into new lands.

Mr. FALEOMAVAEGA. I also want to mention that administrations also change here in Washington, and with a change of policies and priorities. We go through the same problems that the counties and the cities and the states go through. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Dent?

Mr. DENT. Thank you, Mr. Chairman, and thank you for your courtesy in allowing me to participate in this hearing, and I do appreciate your leadership on this off-reservation gambling issue.

I come from the State of Pennsylvania, and I represent a district where a land claim has been filed by the Delaware Tribes of Oklahoma based on a 1737 land conveyance, basically going back nearly to the time of the Wakeen purchase, which occurred in my state, and the fact is 25 homeowners, a crayon factory, Crayola, and other commercial owners of property are under the situation where there is a land claim for these few hundred acres for the purpose of establishing a casino in the Commonwealth of Pennsylvania, as I said, in my district.

So I am deeply concerned about this issue of offsite gambling. And again, the Delawares have not really been in my state for a few centuries.

What I am trying to understand with this bill and this may be a rhetorical question but feel free to answer if you think you can, that if a tribe is recognized in another state, say Oklahoma, and they are seeking a title to lands in my state for the purpose of placing a casino on that land, and you assume further that the tribe were to prevail in a Federal court and be awarded title to the land in question in my state, how would this bill impact the tribe's ability to place a casino on that land, especially in light of this one section of the bill, I guess it is Section 1[f], subsection [f], that basically an Indian tribe shall not conduct gaming regulated by this act on any lands outside of the state in which the Indian tribe has a reservation on the date or the enactment of this subsection unless such Indian lands are contiguous to such a reservation on that Indian tribe in that state.

The bottom line is how would this legislation impact a state like mine where there is litigation currently ongoing? I throw out that question to any of the panelists. If you can't answer that question, I am not expecting you to. I was a state legislator and so that is

how I became familiar with this issue. This is a complex and arcane area of the law for many, and so that is question I have. Maybe, Mr. Worthley, if you have any thoughts on this.

Mr. WORTHLEY. If the litigation is to regain fee title to the property, I think that is a separate issue from whether or not the land would be in trust.

In other words, they can hold title to the property but that doesn't necessarily make it trust land. The issue is once it is in trust then the sovereignty takes place, which would give them the power and authority then to extend their gaming abilities or whatever else they want to do with that property.

So I think it is a very good question, but it needs further definition. Are they looking to put this land into trust or are they——

Mr. DENT. Yes.

Mr. WORTHLEY.—looking to just gain title to the property?

Mr. DENT. Trust.

Mr. WORTHLEY. In which case that is why we would support the legislation because if it is going to be going into trust, then you are looking at extending the sovereignty of this nation into potentially a new area with impacts. And so how do we negotiate with those impacts? That is why it is so important for us to be able to have the ability to do that. Otherwise they could just step in there and circumvent all the local rules as far as transportation, air quality, all the types of mitigation that we would look to try to gain from tribes as a result of the impacts that will come off the reservation or offsite.

Mr. DENT. So you believe the language in the legislation that would protect the community like mine from a tribe out of state, trying to put land in trust for the purpose of establishing a casino that may currently be involved in some kind of litigation?

Mr. WORTHLEY. As I understand the current language of the bill, a condition to the land being put into trust would be they would have to meet with the local government and enter into a binding enforceable agreement to deal with offsite impacts.

Mr. DENT. The local government or the state government?

Mr. WORTHLEY. The bill says local government. I think they already have the power through the state government.

The CHAIRMAN. I can answer it. As the bill is written right now, it would preclude them from coming into your state as you describe. In particular, in the provision that Mr. Worthley is discussing, when it comes to local impacts and mitigation, they would have to negotiate with the local government to mitigate their impact just as any other development would.

Mr. DENT. OK. Thank you.

My second question is if the same tribe in my case, the Delawares, and again they are federally recognized, but they don't have a reservation in Oklahoma even though that is where they happen to be residing, would that change the outcome in the same situation? The Delawares do not have reservations so to speak in Oklahoma. They are trying to establish this land claim or putting this land in trust in Pennsylvania. How would that be impacted by this legislation?

The CHAIRMAN. If the gentleman would yield, it would not change it. They would not have the ability to do that under the way the legislation is currently drafted.

Mr. DENT. OK. And then the final question, there is an offshoot of the Delawares that is not federally recognized. Would they be able to make a similar land claim under this bill? They are not federally recognized but again with a presence in my state.

The CHAIRMAN. They would have to go through the recognition process.

Mr. DENT. They would? OK, thank you very much for your courtesy, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Kildee.

Mr. KILDEE. Thank you again, Mr. Chairman.

Representative Sheen, we have had a good discussion here, and your personal integrity and your ethical conduct are well known back in Michigan, so that is not a question here. I know you feel very sincerely on this, and sincere people can have differences.

But you did point out that casinos are not mentioned in this sovereignty clause in the Constitution, and that is true, but neither are police, tribal police departments or fire departments or schools or medical facilities. I mean, the Constitution gives a broad general outline of government. So none of these things are mentioned. Yet we know we have tribal police department, tribal fire departments in many tribes. We have schools, not just BIA schools but schools run by the sovereign tribe. We have medical facilities. These are all prerogatives of sovereignty. They flow from sovereignty. They are not mentioned.

The Constitution is a very short document. I never leave home without it. I can carry it in my inside pocket here. So it is a very short document. But these are all prerogatives of sovereignty, so certainly casinos are not mentioned but neither are the other prerogatives of government mentioned there.

But I do appreciate you taking your time to come down here and your efforts and hope to see you back in Michigan. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. I want to thank the witnesses for their testimony and for their questions. The members of the Committee may have some additional questions for the witnesses, and we will ask that you respond to those in writing so that they can be included as part of the official hearing record.

Again, I want to thank both of our panels of witnesses. Obviously this is an issue that is complex, it is difficult, and the Committee will continue to work on this in an effort to get it right, so I do appreciate your input into the legislation.

If there is no further business before the Committee, then the Committee stands adjourned.

[Whereupon, at 1:27 p.m., the Committee was adjourned.]

[Additional information submitted for the record follows:]

[A letter submitted for the record by Connie Conway, CSAC President, California State Association of Counties, follows:]

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March 14, 2006

The Honorable Richard Pombo
 Chairman
 House Committee on Resources
 1324 Longworth House Office Building
 Washington, DC 20515

Dear Chairman Pombo:

On behalf of the California State Association of Counties (CSAC), I am writing to you in support of your off-reservation Indian gaming legislation (HR 4893). California's counties appreciate your strong leadership on this issue, and we recognize the considerable time and effort that went into the process of developing HR 4893.

As you know, California's counties are at the forefront of responding to the myriad of challenges associated with the alarming rise of off-reservation Indian gaming operations in our state. In particular, county governments have been forced to expend considerable resources as a result of addressing the numerous local impacts caused by off-reservation casinos. Accordingly, CSAC strongly supports provisions of your legislation that would require tribes seeking to acquire trust land for purposes of gaming to negotiate judicially enforceable mitigation agreements with counties as a condition of having trust land acquisitions approved by the Department of Interior.

Please note that CSAC recommends that the language of HR 4893 be modified to further clarify the legislation's meaning of "direct effects of the tribal gaming activities on the affected county or parish infrastructure and services." We recommend that the definition of infrastructure and services include but not be limited to infrastructure maintenance and improvements, health and welfare services, law enforcement and emergency services, and environmental services such as air quality, watershed management, and erosion control. Enumerating the specific costs and services impacts would help to ensure that sound mitigation agreements are developed between county and tribal governments.

In addition to the mitigation agreement requirements of HR 4893, CSAC is supportive of provisions of your bill that would require more extensive oversight with respect to casino proposals for newly-recognized or landless tribes. While we support giving local communities a seat at the table to decide whether or not a casino should be located in a particular area, CSAC supports giving county boards of supervisors the right to consent to gaming-related trust acquisitions.

A county-wide advisory referendum - as called for in the bill - represents a prudent step in gauging a community's support or opposition to a particular gaming proposal. However, CSAC believes that a vote by elected county boards of supervisors represents an equally critical component in the process of determining the viability and suitability of a casino proposal. Because counties would ultimately be responsible for negotiating mitigation agreements with tribes under HR 4893, CSAC urges you to consider modifying the legislation to allow county or parish elected bodies to have the right to concur with the Department of Interior's prescribed determinations.

Again, CSAC is pleased to support to HR 4893, and we ask that you give consideration to our proposed modifications that we believe would further strengthen the legislation. Thank you again for your strong leadership on this issue and for your responsiveness to the needs of California's counties.

Sincerely,

Connie Conway
 CSAC President

[A statement submitted for the record by The Cowlitz Indian Tribe of Washington follows:]

**Statement submitted for the record by The Cowlitz Indian Tribe
of Washington**

Mr. Chairman, Vice Chairman, and members of the Committee, the Cowlitz Indian Tribe of Washington ("Cowlitz Tribe") respectfully submits the following statement for the Committee's consideration in conjunction with its recent and upcoming hearings concerning H.R. 4893, "a bill to amend IGRA Section 20 to restrict off-reservation gaming."

Introduction

When Congress enacted the Indian Gaming Regulatory Act (IGRA) in 1988, it recognized the important role gaming played in Indian communities. Likening gaming on reservations to state-supported lotteries, the Senate Select Committee on Indian Affairs acknowledged that "the income [from gaming operations] often means the difference between an adequate [tribal] governmental program and a skeletal program that is totally dependent on Federal funding" (P.L. 100-497, 1988 U.S.C.C.A.N. at 3072). The truth of this simple assertion has not changed in the nearly two decades since IGRA was enacted. Many tribes have been able to use gaming proceeds to fund better schools, improved healthcare, various social programs, and employment for tribal members. As a result, gaming proceeds have provided tribes with a means to achieve financial independence and exercise true self-government.

Tribes like ours, stripped of federal recognition and a land base for many years (in our case 150 years before we were restored to recognition in 2002), have been unable to participate in federal programs tied to a reservation land base and have been unable to engage in any meaningful economic development. As a result, our tribes have the most limited economic resources and are in the greatest need of non-federal economic development. Our tribes are the very tribes Congress was trying to assist in 1988 when it included the initial reservation and restored lands exceptions in Section 20.

We are concerned that H.R. 4893 as currently drafted effectively will prevent landless tribes from being able to participate in the one economic development activity that has improved the lives and livelihoods of so many other tribes and their members. For this reason, as described in more detail below, the Cowlitz Tribe strongly urges the Committee not to adopt H.R. 4893 as currently written.

Summary of Existing IGRA Provisions/Underlying Intent

In 1988, Congress enacted IGRA to protect and regulate Indian gaming as an appropriate exercise of tribal sovereignty. However, with certain exceptions, Congress intended to limit Indian gaming to Indian lands that existed on the date of enactment (October 17, 1988). Hence, Section 20 of IGRA contains a general prohibition against gaming on lands acquired in trust after October 17, 1988.

The problem was and still is that not all tribes held tribal lands in 1988, nor in fact did they all even benefit from federal recognition in 1988. We believe that Congress very specifically intended to assist such disadvantaged tribes by providing that when they finally obtained recognition and land, their land would be treated as if it effectively had been in trust since before October 17, 1988. In other words, Congress included the initial reservation and restored lands exceptions in Section 20 so that eligible tribes could be placed on a more level playing field with the tribes that were lucky enough to have been recognized and to have had a land base on the date of IGRA's enactment. We believe that Congress knew that blocking newly recognized and restored tribes from access to the economic development opportunities made available by IGRA would be wildly unjust.

Our understanding of the purpose and intent of IGRA's restored lands and initial reservation provisions is informed by the opinions of the federal courts that have considered this issue. In 2003, in a case involving a California tribe, the D.C. Circuit (in an opinion joined in by now Chief Justice Roberts) explained that the restored lands and initial reservation exceptions "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 v. Norton*, 348 F.3d 1020, 1030 (D.C. Cir. 2003). In 2002, in an opinion involving a Michigan tribe that was later affirmed by the Sixth Circuit, the District Court said nearly the same thing, saying that the term "restoration may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion." *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Attorney for the Western District of Michigan*, 198 F. Supp. 2d, 920, 935 (W.D. Mich. 2002), aff'd 369 F.3d 960 (6th Cir. 2004) (referring to the factual circumstances, location, and temporal connection requirements that courts have imposed for restored lands determinations). The restored lands

provision “compensates the Tribe not only for what it lost by the act of termination, but also for opportunities lost in the interim.” City of Roseville, at 1029.

From a public policy standpoint, the need for special assistance for newly acknowledged and restored tribes is clear. Newly recognized and restored tribes have had to function without a land base and/or without federal recognition for very long periods of time. Almost by definition, these tribes—tribes like the Cowlitz—have been more disadvantaged and have suffered greater hardships than those that have had trust lands and access to federal assistance for many years. Denying the Cowlitz and other newly recognized and restored landless tribes access to the one economic development opportunity that has allowed so many other tribes to find financial independence and self-determination would work yet another grave injustice on these tribes at the hands of the federal government.

Legal and Policy Concerns with H.R. 4893

While H.R. 4893 on its face appears simply to provide a new group of standards which must be met before newly recognized and restored landless tribes could acquire land in trust on which to game, we are concerned that as a practical matter the new standards are so onerous and impractical that no landless tribe will ever be able to meet them. We believe that, if left unmodified, enactment of H.R. 4893 will ensure that these tribes, which already are the poorest and most deprived of any in the United States, will never be allowed access to the same economic development opportunity afforded to tribes lucky enough to have a land base when IGRA was first enacted in 1988. With all due respect, rather than acknowledging the federal government’s fiduciary responsibility to assist the most vulnerable Indian tribes in obtaining some modest land base from which these tribes can exercise their right to self-determination and self-government, H.R. 4893’s main effect will be to ensure that state and local governments have the greatest possible leverage to exact percentages of revenue shares and to create monopolies for established Indian gaming facilities.

Specifically, H.R. 4893 would impose the following new requirements on newly recognized and restored landless tribes, in addition to geographic, social, historical and temporal nexus requirements:

- the Secretary of the Interior must determine that the proposed gaming is not detrimental to the surrounding community and nearby Indian tribes, and
- the Governor and State legislature of the state where the gaming will be conducted must concur, and
- other Indian tribes within a 75 mile radius must concur, and
- the applicant tribe must:
 - pay for a local “advisory” referendum, and
 - enter into a memorandum of understanding with the county or parish where the land is located by which it agrees to make “impact” payments to the county or parish.

Such onerous requirements never have been and never will be imposed on tribes with reservations in existence in 1988. This disparity of treatment between newly recognized and existing tribes raises a number of significant legal and policy concerns.

The requirement that the Secretary make a determination that the proposed gaming would not be detrimental to the surrounding community and nearby Indian tribes is fundamentally unfair to newly recognized and restored landless tribes like Cowlitz. These tribes have been without land and the benefits of federal recognition for significant periods of time, often as a result of government wrongdoing, so they are forced to carve out lands for themselves from existing jurisdictions. The non-Indian governments of those existing jurisdictions rarely support the loss of land from their tax rolls and or the loss of any regulatory authority. To prohibit the Secretary from acquiring trust land for a landless tribe absent a finding of “no detriment” to the surrounding community effectively gives local governments an absolute veto and so is almost tantamount to an outright ban on acquiring land for landless tribes. Therefore, rather than serving to level the playing field for tribes like Cowlitz, this provision would actually result in greater inequities for newly recognized and restored landless tribes attempting to acquire land for gaming.

The requirement of gubernatorial and state legislature approval is particularly disturbing. Governors frequently run for office on anti-gambling political platforms, and as a consequence, historically much more often than not have refused to concur in two-part determinations made by the Secretary under the existing Section 20 provision (even in states where both Indian and non-Indian gaming establishments already exist). Requiring landless restored and newly acknowledged tribes obtain gubernatorial and legislative concurrence gives governors and state legislatures unlimited veto power over landless tribes’ efforts to acquire a parcel of federally

protected trust land. Moreover, joint approval by the State legislative body and the governor will leave Indian tribes little choice but to engage in tribal lobbying of the state legislature, further driving up the cost of land acquisition for tribes that have no means of generating revenue and that already are struggling with the costs associated with buying land and funding the BIA's NEPA compliance. Perversely, this makes it even more likely that tribes will have to rely on developer funding.

The requirement that tribes within 75 miles of the proposed gaming concur is equally unfair. Many tribes already engaged in gaming would not support a new gaming tribe within 75 miles—and for competitive reasons one cannot expect them to do so. This requirement provides competing tribes with veto authority, without regard to whether they have any ties to the area and regardless of the applicant tribe's ties to the area. For this reason, the bill does not fairly balance the needs and rights of landless tribes against those of established tribes with existing gaming operations. Instead, it serves as market protection for established tribes and is likely to create monopolies—a result entirely unjustified by the already existing huge disparities between rich and poor tribes.

Requiring the county or parish with authority over contiguous lands to hold an advisory referendum funded by the applicant tribe also is not fair to either the local governments or applicant tribes. Whether a local referendum should be required before local elected officials act should be a matter left to local voters, not the federal government. This provision suggests that Congress does not trust local elected officials to make the decisions that they are elected to make. Even more disconcerting from the Cowlitz Tribe's standpoint, this provision suggests a lack of appreciation for the fact that non-gaming landless tribes attempting to acquire their first parcel of land in trust do not have the funds to pay for such a referendum. In fact, such a requirement just heightens the concern that "reservation shopping" may attract unscrupulous developers to unduly influence the process—newly recognized and restored landless tribes forced to pay for such a referendum will again be forced to turn to investors for financial support.

The requirement that the tribe and the county or parish must sign a memorandum of understanding within a year of the referendum is equally problematic. This mandates a relationship between the tribal applicant and a government entity that may not be responsible for providing any services to a facility. The county or parish with jurisdiction over the contiguous property may not even have jurisdiction over the parcel that is to be taken in trust, or over the services needed by the tribe. We do support, however, the Committee's efforts to provide some mechanism to break a stalemate should the tribe and the city reach an impasse in those negotiations. The Cowlitz Tribe, despite repeated good faith efforts to engage in meaningful negotiations with a local municipality, has been unable to secure an agreement from that municipality. Clearly, that municipality views its intransigence as a mechanism that can be used to protect local non-Indian card room operations.

In sum, while each of these requirements raises concerns when examined separately, the Cowlitz Tribe's greatest concern is the cumulative effect and the burden the proposed requirements create for newly recognized and restored landless tribes. These requirements are so onerous that they will effectively prevent most or all such tribes from acquiring land in trust for gaming, even though these tribes are not engaging in "off-reservation gaming" or "reservation shopping" as those terms are commonly used. As described above, we are hard pressed to find a justification for imposing this kind of sanction on those tribes that are already the poorest and most disadvantaged in the country.

For the above reasons, the Tribe does not support the proposed amendments to Section 20 of IGRA. If the Committee decides to amend Section 20 of IGRA, however, we respectfully request that the legislation include a provision that allows tribes already in the process to proceed under the current rules. Like the tribes that testified before the Committee, our Tribe has invested many years and significant resources to fully comply with the present law.

After we were restored to federal recognition, we requested that Interior place our proposed site into trust and requested that the site be proclaimed our initial reservation. Our trust application was submitted to Interior over four years ago and our request for an initial reservation proclamation was submitted over two years ago. In November 2004, the Bureau of Indian Affairs (BIA) notified the public that it would prepare an Environmental Impact Statement (EIS). The BIA selected a contractor to prepare the EIS and a draft EIS was recently provided to the public for review and comment. The Tribe is required to pay all expenses of the BIA's contractor—expenses that have been significant to date, and that will exceed \$1,000,000 before we have completed the process. In addition, last year the National Indian Gaming Commission (NIGC) determined that our proposed site qualifies as restored lands under IGRA if the Department of the Interior takes the site into

trust. Because we are so far along in the existing process, changing the rules at this late date would impose a significant hardship on our Tribe. We respectfully request that this Committee, at a minimum, include a provision to allow the NIGC's eligibility determination and our pending requests to Interior to be judged under the existing rules.

Conclusion

Chairman Pombo, the Cowlitz Tribe fervently requests that you remember that newly recognized and restored landless tribes like Cowlitz are poor tribes in desperate need of the United States' active assistance. We face daunting obstacles to self-governance and self-sufficiency precisely because we have no trust land. Congress must continue to insist that there be a fair and equitable mechanism to put newly recognized and newly restored tribes on a level playing field with tribes that were lucky enough to have had a reservation on October 17, 1988. This bill does not accomplish that objective, and will, in fact, have severe consequences for the very tribes who most need your help. And while we appreciate that there have been some abuses of the existing processes in connection with off-reservation gaming, we would ask that you tailor any legislative response to those concerns to take into account the real hardships suffered by newly recognized and restored landless tribes, and give those deserving tribes the same opportunity to realize self-determination and economic independence that established tribes had when IGRA was originally enacted.

[A statement submitted for the record by the Legislature of the Ho-Chunk Nation, follows:

**Statement submitted for the record by the
Legislature of the Ho-Chunk Nation**

Thank you for the opportunity to submit written testimony for the record on behalf of the Ho-Chunk Nation on the subject of off-reservation gaming, and House Resolution 4893, which seeks to restrict off-reservation gaming.

Fundamentally, the Ho-Chunk Nation supports the concept of "off-reservation" gaming, including gaming in more than one state. The Nation recognizes the importance of regulating off-reservation gaming and is therefore sympathetic to many of the purposes of this legislation. The Ho-Chunk Nation believes that restrictions on off-reservation gaming should be based on the concept that tribal gaming should only be conducted in areas to which an Indian tribe has a specific historic connection, with a stipulation that tribes should not be permitted to interfere with the established gaming markets of other tribes without their express consent.

The Ho-Chunk Nation is concerned that, as introduced, H.R. 4893 may undermine already existing government-to-government agreements regarding gaming authorities. The Ho-Chunk Nation and the State of Wisconsin negotiated in good faith a compact in 1991 that establishes parameters for Ho-Chunk gaming operations in Wisconsin. H.R. 4893 would affect our ability to fulfill the plans and intent of that compact—imposing significant financial hardship on the Nation for costs already assumed under the compact and disrupting carefully balanced Nation and state interests. This compact complies with current Indian Gaming Regulatory (IGRA) rules and regulations. The Ho-Chunk Nation believes that existing compacts between tribes and states that are consistent with IGRA should remain as they are. New legislation should respect any existing compacts between tribes and states, allowing them to remain in place, unaffected by new restrictions.

The Ho-Chunk Nation is further concerned that H.R. 4893 seeks to limit Indian gaming facilities to one state per tribe. This concept is problematic, as aboriginal territories do not fall along state lines. For the Ho-Chunk, our historic territory includes lands across the Midwest including large areas of Wisconsin, Illinois, Iowa, and Minnesota. In addition to cultural and historic ties, we have maintained tribal representation in each of those states, including formal government and social offices, as well as significant populations. H.R. 4893 limits our ability to seek lands in welcoming communities in states other than Wisconsin for economic development.

On behalf of the Ho-Chunk Nation, thank you for the opportunity to express our views and concerns regarding H.R. 4893. We hope that this will serve as a springboard for increasing communication on these important issues. The Ho-Chunk recognize the importance of this legislation for restricting off-reservation gaming, however we hope to work with the Committee to ensure that these restrictions are fair and respectful of tribal sovereignty.

[The response to questions submitted for the record by the Scotts Valley Band of Pomo Indians follows:]

Response to questions submitted for the record by the Scotts Valley Band of Pomo Indians

Thank you very much for allowing the Scotts Valley Band of Pomo Indians (the "Tribe") to testify before the House Natural Resources Committee on H.R. 4893 on April 5, 2006.

During the Committee's questions to our panel, there were a number of questions raised that Scotts Valley wishes to provide the Committee with additional information.

1. Congressman Kildee asked the Gun Lake Band to explain to the Committee the Tribe's present economic situation?

As you know, the IGRA was enacted primarily to enable tribes to conduct gaming on Indian Lands of the tribe to "promote tribal economic development, tribal self-sufficiency, and strong tribal government."

The Scotts Valley Band of Pomo Indian Tribe is truly landless. The Tribe lacks the trust land base needed to support its infrastructure and the economic development programs necessary for the promotion of tribal economic self-sufficiency and a strong Tribal Government capable of providing badly needed governmental services to tribal members. Currently, sixty-three percent (63%) of all adult tribal members are classified as unemployed, and only thirty-seven (37%) of all adult tribal members are employed full-time. Overall, 95.5% of adult tribal members are classified as low income, and almost fifty percent (50%) of tribal members receive some form of public assistance.

TRIBAL ECONOMICS

Population	% of Population Unemployed	% of Population Below Poverty Line ¹	% of Population "Low Income" ²	% of Population Receiving Public Assistance ³
United States	5.1%	12.1%	31.2%	39.9%
California	5.2%	13.3%	34.1%	Data Not Available.
Scotts Valley Tribe	63% ⁴	Data Not Available.	95.5% ⁵	46%

¹ Figures are the individual poverty line which is currently at \$9,393 per year.

² "Low Income" is defined by the US Government, Department of the Census, as being 200% of the Poverty Line.

³ "Public Assistance" is defined as Social Security, SSI, Welfare, Aid for Dependant Children, Unemployment, Medical, and/or Food Stamps. Figure represents the percent of the population receiving at least one of these benefits. Figures do not reflect potential overlap.

⁴ No employment or only sporadic part time employment.

⁵ Determination made using the HUD standard formula for various areas inhabited by Tribal Members.

2. Congressman Gibbons (NV) asked whether Scotts Valley supports a "50 mile radius" provision.

During the Hearing, Congressman Gibbons (NV) asked whether the Tribe would support a "50 mile radius provision." All of the panelists replied that their Tribes would support such a provision in any amendment to H.R. 4893 which provided the present NIGC/BIA regulatory process continue to apply to tribes already pursuing trust acquisitions under the IGRA. Our Tribe has spent considerable tribal resources, both in terms of time and money, pursuing the restoration of a trust land base under the NIGC/BIA regulatory process which has been in place since the IGRA was enacted almost 18 years ago (which is 4 years earlier than our Tribe was even restored to Federal Recognition pursuant to an Order of a Federal District Court). Our Tribe has always played by the established rules, and it seems unfair and inequitable for Congress to change the rules on us now.

While our Tribe certainly believes that a "50 mile radius provision" is fair, Congressman Gibbons did not elaborate on the details of such a provision. Would the limitation be within 50 miles of:

- a Tribe's documented historic territory;
- a Tribe's service population area;

- where a significant percentage of the Tribe's population resides; or
- a Tribe's illegally terminated former Rancheria (a limitation applicable only in California)?

The Tribe supports a geographic limitation of within 50 miles of a tribe's: (i) documented historic territory, (ii) service population area, and/or (iii) the location of a significant percentage of the tribal population. As explained below, given the Federal policies of Termination and Relocation during the 1950s and 1960s, Scotts Valley strongly opposes any geographic limitation based solely upon the location of a Tribe's former Rancheria which the United States illegally terminated. How can the Committee even consider enacting legislation which is based upon illegal conduct of the United States?

In addition to a Tribe's (i) documented historic territory, (ii) service population area, and (iii) the location of a significant percentage of the tribal population, Scotts Valley would support geographic limitations based on additional standards, provided that such standards acknowledge and reflect the results of Federal Indian policy over last several decades. During the 1950s and 1960s, the dual Federal policies of Termination and Relocation resulted in a complete dismantling of many tribal communities. This is especially true in California, and the Scotts Valley Band of Pomo Indians is a perfect example of how the Federal policies of Termination and Relocation nearly drove many California tribes to extinction.

The California Rancheria Termination Act of 1958 provided for the "voluntary" termination of 41 California Rancherias, including Scotts Valley. As a condition to termination, the United States was required to bring water and waste management systems of those Rancherias to habitable standards. In most case, and certainly in the case of Scotts Valley, this was not done.

When the Tribe was finally terminated in 1965 in violation of the California Rancheria Termination Act, approximately fifty (50) tribal members continued to reside on the Rancheria. The BIA's failure to upgrade the Rancheria's water and sewage systems rendered the Rancheria uninhabitable, thereby creating an incentive for tribal members to leave the Rancheria. Additionally, the educational and employment programs the BIA instituted pursuant to Section 9 of the Rancheria Act focused on placement of tribal members in programs and jobs in the San Francisco Bay Area, further expediting the whole scale abandonment of the Rancheria and relocation of the Tribe to the Bay Area. The uninhabitable conditions on the Rancheria, coupled with the BIA's relocation policies, resulted in the vast majority of tribal members abandoning the Rancheria in favor of the urban centers of the San Francisco Bay. By 1972, just five (5) years after termination, only three (3) tribal members of the 56 tribal members listed on the Distribution List the BIA prepared under the Termination Act, continued residing on the Rancheria.

Today, twenty-nine (29) tribal members, or slightly over fifteen percent (15%) of the tribal population reside within Contra Costa, and ninety-four (94) tribal members, or almost fifty percent (50%) of the Tribe, reside within a fifty (50) mile radius of the Tribe's proposed restored trust land base. In 2002, the BIA designated Contra Costa County and neighboring Sonoma County as the Tribe's service population area, recognizing the very significant tribal population residing in the Bay Area counties.

The Bay Area is also historic Pomo Territory. Ancestors of current tribal members have used and periodically resided in territory that includes the northern and eastern shores of the San Francisco Bay, including the coastal lands of Contra Costa County where the proposed restored trust land base is located. Historically, several Pomo villages existed on the southern Marin Peninsula close to the coastal lands of the Marin Peninsula, directly across the Bay from the proposed restored trust land base. Pomo from these villages, including ancestors of present tribal members, along with members of other tribal groups, fished the waters of Bay and gathered material essential for subsistence on the coastal lands of the Bay.

The official records of the BIA and the Indian Claims Commission recognized the shores of the Bay as historic Pomo territory. Pomo tribes which included ancestors of present tribal members signed a treaty with the United State, ceding what became known as Royce Area 296, extending from the area immediately north of Clear Lake to the northeastern shore of the San Francisco Bay, to the United States. The southern boundary of the lands ceded to the United States (Royce Area 296) is located just five (5) miles from the Tribe's proposed trust land base. The ICC "adopted

Royce as the official legal source for recognized title," clearly establishing the shores of the Bay as traditional Pomo territory.⁶

The case of Scotts Valley is representative of the historic and modern day reality for many tribes. Indians are proud people, and any geographic limitation incorporated into H.R. 4893 must recognize the long history of our Nation's Indian tribes. Many tribes, such as Scotts Valley, somehow avoided extinction under the Federal Policies of Termination and Relocation, and any geographic limitations incorporated into H.R. 4893 must also recognize the modern day situation of many tribes resulting from those Federal Policies.

Again, I thank the Committee for allowing the Scotts Valley Band of Pomo Indians to testify before the Committee on April 5th, and to submit this Supplemental testimony addressing some of the issues raised during the hearing.



⁶The claims assert by the signatory tribes to the eighteen (18) treaties submitted for Senate confirmation in 1852 were combined into a single case before the ICC. Clyde F. Thompson et. al (Indians of California) v. United States, Ind. Cl. Comm. Docket Nos. 31 and 37. In this case, the ICC relied upon the Royce Areas depicted in Royce California Map 1 for determining the acreage set aside for all of the reservations provided for in the eighteen (18) un-ratified treaties. McClurken, Ethnohistorical Report at 35. The Royce Areas included Royce Areas 295, 296 and 297.