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DISCUSSION DRAFT BILL REGARDING INDIAN GAMING AND ITS NEED AND EFFECTS IN NORTHERN CALIFORNIA

OVERSIGHT FIELD HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

Monday, June 6, 2005, in Sacramento, California

Serial No. 109-18

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE

21-759 PS WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
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Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

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OVERSIGHT FIELD HEARING ON A DISCUSSION DRAFT BILL REGARDING INDIAN GAMING AND ITS NEED AND EFFECTS IN NORTHERN CALIFORNIA.

Monday, June 6, 2005
U.S. House of Representatives
Committee on Resources
Sacramento, California

The Committee met, pursuant to call, at 12:00 noon in the California State Library, Conference Room, Floor 5, Sacramento, California, Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Gohmert, and Costa.

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

The CHAIRMAN. The hearing will come to order. I would like to have everyone take a seat, that can. Today, the Committee is seeking testimony regarding proposals in the Northern half of California to take land into trust for Indian gaming purposes.

Specifically, we have analyzed the need for the discussion draft bill I authored to amend Section 20 of the Indian Gaming Regulatory Act in a way that increases local input.

Section 20 of IGRA prohibits gaming on lands taken into trust for a tribe after October 17, 1988. At the same time, Section 20 provides several complicated exceptions to this prohibition that are meant to balance the needs of the tribes who want to build casinos on newly acquired lands and the concerns of State and local governments which have been exercising jurisdiction over such lands.

Today, the scope and number of Indian gaming operations are orders of magnitude larger than what they were when IGRA passed in 1988. Indian gaming is now an $18-billion-plus industry, and experts predict there is room for substantial growth.

California's tribes now generate more gaming revenues than tribes in any other state. This is not inherently bad. Let's keep in mind that Indian gaming stems from tribal sovereignty, and there is nothing wrong with a tribe's desire to protect its sovereign right to have gaming and to use it as a tool for economic development and tribal services on reservations that have suffered acutely from historic poverty, joblessness and privation.

However, when IGRA was enacted in 1988, most everyone expected that gaming would occur within the limits of tribes' existing reservations. With a large number of recognized tribes and tribes seeking to be recognized or restored, the State of California has seen a growing list of proposals to build Indian gaming facilities in areas where they were not expected.

In many cases, the surrounding communities feel unable to absorb the social and financial impacts associated with casinos, which can be ambitious in size and scope, yet IGRA provides only for an analysis of the impacts on communities with no real involvement by communities or other tribes in the process of permitting an off-reservation facility.

Indian gaming should not be a source of conflict between neighbors and communities. Several recent proposals to build casinos have generated such strong opposition and alarm in Northern California that some tribes are now pitted against other communities, including other tribes. Some of today's witnesses will elaborate on this unfortunate development.

This conflict is not a matter of perception; it's real and has real consequences. Colleagues of mine in the House who do not have much experience in dealing with tribes seem to take a great interest in tribal issues only when an Indian casino is proposed in their district where a tribe does not reside.

Off-reservation gaming is not just bad publicity for tribes; it's sometimes the only publicity. This can affect how Members act on bills affecting Indian tribes. Clearly, Congress has a responsibility to examine Section 20 of IGRA so that both the tribes and the people of California mutually prosper into the future.

I look forward to hearing more about Indian gaming in Northern California from today's witnesses and how the discussion draft bill to amend Section 20 of IGRA might improve the law that has contributed to the well-being of California's tribal members.

[The prepared statement of Mr. Pombo follows:]

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

Today the Committee is seeking testimony regarding proposals in the northern half of California to take land into trust for Indian gaming purposes. Specifically, we will analyze the need for a discussion draft bill I authored, to amend Section 20 of the Indian Gaming Regulatory Act in a way that increases local input.

Section 20 of IGRA prohibits gaming on lands taken into trust for a tribe after October 17, 1988. At the same time, Section 20 provides several complicated exceptions to this prohibition that are meant to balance the needs of tribes that want to build casinos on newly acquired lands, and the concerns of local and state governments which had been exercising jurisdiction over such lands.

Today, the scope and number of Indian gaming operations are orders of magnitude larger than what they were when IGRA passed in 1988. Indian gaming is now an $18-billion-plus industry, and experts predict there is room for substantial growth. California's tribes now generate more gaming revenues than tribes in any other state.

This is not inherently bad. Let's keep in mind that Indian gaming stems from tribal sovereignty, and there's nothing wrong with a tribe's desire to protect its sovereign right to have gaming and to use it as a tool for economic development and tribal services on reservations that have suffered acutely from historic poverty, joblessness and privation.

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California has seen a growing list of proposals to build Indian gaming facilities in areas where they were not expected.

In many cases, the surrounding communities feel unable to absorb the social and financial impacts associated with casinos, which can be ambitious in size and scope. Yet IGRA provides only for an analysis of impacts on communities with no real involvement by communities or other tribes in the process of permitting an off-reservation facility.

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This conflict is not a matter of perception; it's real, and it has real consequences. Colleagues of mine in the House who do not have much experience dealing with tribes seem to take a great interest in tribal issues only when an Indian casino is proposed in their district where a tribe does not reside. Off-reservation gaming is not just bad publicity for tribes, it's sometimes the only publicity. And this can affect how Members act on all bills affecting Indian tribes.

Clearly, Congress has a responsibility to examine Section 20 of IGRA so that both tribes and the people of California mutually prosper into the future.

I look forward to hearing more about Indian gaming in northern California from today's witnesses, and how the discussion draft bill to amend Section 20 of IGRA might improve a law that has contributed to the well-being of California's tribal members.

The CHAIRMAN. I want to recognize Mr. Gohmert for any opening statement he may have.

STATEMENT OF THE HON. LOUIE GOHMERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GOHMERT. Thank you, Mr. Chairman. It's an honor to be here. It's great to see such public interest in any issue even when it's divisive, but I'm here to learn, not to speak or dictate, so thank you. I am pleased to be here.

The CHAIRMAN. Thank you. I would like to introduce our first panel of witnesses. We have Tribal Treasurer Leslie Lohse from the Paskenta Band of Nomlaki Indians and Chairman Wayne R. Mitchum, Cachil Dehe Band of Winton Indians in Colusa.

The CHAIRMAN. If I could have you stand, as is customary in the Resources Committee, we will swear in all of the witnesses.

[Witnesses sworn.]

The CHAIRMAN. Let the record show they have both answered affirmatively.

Welcome to the Committee hearing. It's nice to see you both. Let me take this time to remind all of today's witnesses that, under Committee Rules, oral statements are limited to five minutes. Your entire written statement will appear in the record.

Ms. Lohse, we will begin with you.

STATEMENT OF LESLIE LOHSE, TRIBAL TREASURER, PASKENTA BAND OF NOMLAKI INDIANS

Ms. LOHSE. Mr. Chairman, members of the Committee, welcome to California. Thank you for allowing me to appear before you today. As you said, my name is Leslie Lohse, I am a member of the Paskenta Band of Nomlaki Indians. It is located in nearby Tehama County. I am the Treasurer and the spokesperson for our tribe. I serve as the Pacific Region Area Vice-President for the National Congress of American Indians, the BIA Central California

Agency Policy Committee Chairperson and Treasurer of the California Tribal Business Alliance.

Today I will present my testimony on behalf of my tribe and based upon my own experience.

Your leadership in addressing the issue of off-reservation gaming is a very important and critical step in the right direction and we do support this legislation.

Unfortunately, since the passage of IGRA, many non-Native American opportunists have sought ways to cash in, some at the expense of the tribes that they profess that they are helping and some at the expense of the local community.

The purpose of the law was to provide a tool that is usable to bring tribes out of more than a century of abject poverty, fund reliable housing and protect schooling. We have seen that impact upon our own tribal lands.

Some have taken titles to homes for the first time and some are now able to send their children to colleges and universities to further their capabilities and their aspirations. IGRA is explicit in the fact that Indian tribes are to be the primary beneficiaries of the gaming revenue and its clear intent was to shield the tribes from outside influences intent on siphoning those gaming profits away to meet their own commercial ends.

There is a growing national concern that the inappropriate tribe-stalking role taken on by these wealthy investors in tribal gaming is corrupting the very purpose if not the letter of the law. From Connecticut to San Francisco, from Minnesota to our own Tehama County, tribal communities are beginning to actively resist the spread of off-reservation gaming. Within our own tribal community, we are experiencing the threat of tribes succumbing to those pressures of outside investors who encourage them to grab at land outside their territory for the purpose of gaming.

The Greenville Maidu Indians of Plumas County, California, are a case in point. This tribe has a great, rich history in Plumas County, but has repeatedly attempted to claim land in Tehama County where they have no historic aboriginal territory.

Nevertheless, encouraged by their investors, the tribes have petitioned the Board of Supervisors twice to claim a casino along I-5. This claim has been soundly rejected twice by a vote of 4 to 1 but that doesn't stop the financial backers. They persist in their request, costing the community much-needed funds to maintain their own community, and hoping to wear down the community's resistance.

The petition rewrites California tribal history to serve the interests of the investors in picking a prime real estate site. Most importantly to us, it is decided well within our ancestral territory. The Greenville Maidu proposal distorts history of their own and ours and defies careful and deliberate court hearings on tribal lands.

It is but one more chapter in a rush funded by non-Indian gaming investors to simply bend historical truths to serve their exploitive interests.

The Greenville Rancheria issue was settled in the Hardwick case which identified their Rancheria as being local within Plumas County, more than 90 miles away from their current site. But the

developer is blithely ignoring court rulings. These are the Wilmots of New York, a shopping center developer that has found new goals in developing and funding and operating Indian casinos.

Despite the Hardwick ruling and the rejection of the Board of Supervisors, the Wilmots have gone ahead and purchased property in the County along I-5. Their clear intention is to relocate the Greenville Maidus to this new location because, like other tribes, their ancestral land or their current land, which many likely will have, are not within a good market area.

Strangely enough, some even claim that their own lands are too environmentally sensitive, not caring about what impacts they're imposing upon another tribe's ancestral land or bringing to a local community. Members of the Committee, should just any passing investor locate a casino in your district, in your community by simply inducing a tribe to make a falsehood and even knowingly false land claim? I can assure you the investors' first priority is not the welfare of that tribe or the return of that tribe to return to their ancestral land.

Investors, such as the Wilmots of New York, seem to like to buy the land first and throw the tribe at it and see if it sticks. Rather than reservation shopping, tribe shopping is the more appropriate term I have seen several tribes fall victim to such exploitive actions. That's why Federal law must be updated to prevent this kind of exploitation and done so without delay. The legislation has certainly forced the first step that will stop the encroachment we're facing within the Tehama County.

Greenville Rancheria's 275 acres is located approximately three miles east of Greenville, Plumas County, California.

Mr. Chairman, the Paskenta Band of Nomlaki Indians is not a great competition. We only have the best hopes for our sister tribes, but it's not to be at the expense of other tribes who have stayed home or have not yet been recognized or at the expense of local communities. Out-of-state investors should never be able and permitted to hijack the process.

The Greenville Tribe Chairperson, Lorie Jaimes, has testified before this Committee and spoke out against your efforts to update the reservation law proclaiming, "It is our belief that IGRA does not need to be amended with regard to off-reservation gaming because there is no genuine problem or crisis in this area. Those who most loudly call for amendments do so because they do not understand the process."

Mr. Chairman, Members of the Committee, we respectfully disagree with the Maidu's position. In our minds there is clearly a problem of outside interference and this legislation is working toward a fair and just solution. It is authored by people who indeed understand the process.

Thank you for your efforts and this opportunity to testify. I ask that my statement be entered into the record and I am happy to answer any questions you may have.

The CHAIRMAN. Thank you for your testimony.

[The prepared statement of Ms. Lohse follows:]

Statement of Leslie Lohse, Treasurer,
Paskenta Band of Nomlaki Indians of California

Mr. Chairman, members of the Committee, welcome to California and thank you for allowing me to appear before you today.

My name is Leslie Lohse, a member of, Treasurer and spokesperson for the Paskenta Band of Nomlaki Indians of California located in nearby Tehama County. I am also the National Congress of American Indians (NCAI) Pacific Region Area Vice-President, U.S. Bureau of Indian Affairs Central California Agency Policy Committee Chairperson and Treasurer of the newly formed California Tribal Business Alliance. Today I will present testimony based on my own experiences and on behalf of Paskenta.

The Committee's leadership addressing the issue of off-reservation gaming is a tremendous step in the right direction and we support this legislation. Unfortunately, since the passage of the Indian Gaming Regulatory Act of 1988, many non-Native American opportunists have sought ways to cash in—sometimes at the expense of the Tribe and sometimes at the expense of the local community.

The debate over Tribal gaming and their wealthy investors is taking place in many communities around the country. Whether in Connecticut, the San Francisco Bay Area, or out here in Tehama County, communities are entrenched fighting the spread of off-reservation casinos. Within our own tribal community, the Paskenta Band also feels the impact when tribes led by investors search for land to claim for the purposes of gaming.

The Greenville Maidu Indians of Plumas County, California, after failed attempts to go into Oxnard, Ventura County and the Bay area, have repeatedly attempted to claim land in Tehama County where they have no historic aboriginal territory. The Greenville Tribe has approached the Tehama County Board of Supervisors and was rejected twice by a 4-1 vote; has now submitted a new proposal. No consideration is being given to the fact that the proposed site is well within the ancestral territory of the Paskenta Band of Nomlaki Indians.

The Greenville Maidu proposal presents a disturbing and exploitive picture of Tribal Governments throughout this great nation. The Greenville Rancheria issue was settled in the Hardwick case. The stipulation and judgment in that matter provides that the exterior boundaries of the plaintiff tribes' individual reservations (rancherias) would be restored to pre-termination status. Therefore, the Greenville Rancheria's "275 acres, is located approximately three miles east of Greenville, Plumas County, California."

This indicates clearly that the United States and Greenville Rancheria recognize that the Greenville Maidu's proper land request should be limited to Plumas County, California, not Tehama County, California. However, the developer, the Wilmots of New York, have purchased property in Tehama County along Interstate 5. Therefore, the Wilmots want to relocate the Greenville Maidu to this new location. Such relocation will satisfy this out-of-state investor's appetite for profit. No consideration is being given to the Maidu's true ancestral territory or the land recognition indicated in the Hardwick case. Again, the focus is on the needs of the investor, not the Tribe or surrounding community.

Legal Counsel for the Greenville Tribe, Judith Albietz, when asked why the Tribe does not have land in Greenville and if a site-search was conducted and how this location was chosen emphasized, "the developer approached the Tribe with this project." That is taken from the Minutes of the Meeting of the Board of Supervisors of the County of Tehama, Tuesday, May 18, 2004. In addition, Ms. Albietz went so far as to say, "the developer of the project, the Wilmots, will be a good partner with Tehama County...the facility will be run by the Wilmots." Notice she referred to the New York developer and not the Greenville Maidu Indians.

Members of the Committee, should an investor have the right to place a casino in your community, in your congressional districts, by convincing Tribes to make a faulty land claim? I can assure you; an investor's first priority is not that a Tribe returns to their ancestral lands. Over the years, I have witnessed many Tribes fall victim to empty promises made by investors—hopes shattered and communities overwhelmed. Rather than "reservation shopping," I have found "tribe shopping" is probably the more appropriate term. It seems that investors, such as the Wilmots from New York, purchase land and then throw a tribe at it and see if they stick. Federal law must be updated through this legislation to prevent these situations such as the one we face in Tehama County.

Mr. Chairman, the Paskenta Band of Nomlaki Indians of California is not afraid of competition. We only have the best hopes for our sister Tribes who are less fortunate as they seek economic prosperity. But that prosperity should not be at the ex-

pense of other Tribes or communities. Out-of-state investors should not be permitted to hijack the process.

The Greenville Tribe has testified before this committee and spoken candidly about its opposition to efforts led by Chairman Pombo and others to reform and update off-reservation gaming law. The Greenville Maidu Chairwoman, Lorie Jaimes, testified before this committee in Washington, D.C. on March 17, 2005, proclaiming that, "it is our belief that IGRA does not need to be amended with regard to off-reservation gaming because there is no genuine problem or crisis in this area...those who most loudly call for amendment do so because they do not understand the process." Mr. Chairman, members of the committee, there is clearly a problem and this legislation is working toward a solution—offered by people who understand the process.

Thank you for the opportunity to testify. I ask that my statement be entered into the record and I am happy to answer any questions you may have.

The CHAIRMAN. Chairman Mitchum, please.

STATEMENT OF WAYNE R. MITCHUM, CHAIRMAN, CACHIL DEHE BAND OF WINTON INDIANS, COLUSA

Mr. MITCHUM. I want to thank you, Congressman Pombo, for inviting me today to give testimony on this discussion draft amending the Indian Gaming Regulatory Act to restrict off-reservation gaming.

The Colusa Indian community, along with most tribes across the Nation, is very concerned about any effort to open the Indian Gaming Regulatory Act, no matter how noble the purpose. To do so even in a controlled environment puts at risk the sovereign rights of tribes across the United States.

The Indian Gaming Regulatory Act, IGRA, established a prohibition against gaming on lands acquired in trust after October 17, 1988. The procedures required in IGRA have worked successfully for 17 years.

During this time, only three tribes have successfully taken land into trust for gaming purposes off-reservation.

Unfortunately, when a tribe has circumvented the process defined in IGRA, it reflects negatively on all tribes. The matter is further complicated by developers who purposely seek lands in urban areas with the hopes of capitalizing on a tribe's ability to acquire off-reservation lands for gaming purposes.

This practice, commonly referred to as "reservation shopping," is often promoted and financed by opportunistic non-Indian developers who seek percentages of revenue from the resulting off-reservation casinos.

This effort creates a media frenzy of speculation that tribes are out of control in seeking lands for gaming purposes. This is not the case.

Attempts by tribes to conduct gaming on lands outside of their ancestral territory for the sole purpose of gaming, jeopardizes longstanding claims by tribes seeking to restore lands unjustly taken by past Federal policies.

It has also caused significant tensions between tribal governments and created a backlash against Indian gaming by citizen groups and leaders in the U.S. Congress.

In exchange for casino deals, tribes seeking off-reservation lands have been willing to just cede important sovereign rights to State

and local governments and have entered into exorbitant revenue sharing agreements.

The sovereignty loss and revenue sharing agreements by these tribes become new baselines for other tribes when they seek to obtain or renew Tribal/State gaming compacts or compact amendments, therefore jeopardizing the sovereignty of tribes engaged in on-reservation gaming and following the IGRA process.

Along with other tribal leaders, I have serious concern about the possible negative impacts of reservation shopping on the long-term viability of Tribal government on-reservation gaming. However, I do not believe opening IGRA is the best answer.

Tribal government gaming has been the only vehicle that has brought successful economic opportunity for my nation. While some tribes have limited themselves to gaming, many others have used the funds derived from gaming to rebuild their infrastructures, to provide dialysis and medical facilities on their reservations, to invest in quality child care for their members and their employees, to expand into other forms of economic opportunity such as manufacturing facilities.

Tribal government gaming has brought our members out of poverty and restored pride in their ancestry and culture. We will have a long way to go to bring people to the levels of the financial security enjoyed by the rest of the Nation, but we are well on our way.

Unfortunately, there are many citizen groups, as well as members of the State and Federal Legislature, who would like to see us fail. They oppose the success we have been able to reap through tribal government gaming and do not understand the restraints that IGRA imposes as to how our gaming revenues must be spent.

Congressman, I have a few more lines, but I know I'm running out of time.

The CHAIRMAN. Go ahead.

Mr. MITCHUM. Rather than expose Indian Country to further erosion of sovereign rights, which will surely happen if IGRA is opened for modification, I urge Congress to work directly with the Secretary of the Interior to require an ancestral tie to lands in making two-part determinations under Section 20(b)(1) of the Indian Gaming Regulatory Act for proposed land acquisitions.

The Colusa Indian community further urges Congress to require the Secretary of the Interior to consult with other tribes whose ancestral lands are sought for acquisition and require the concurrence of those tribes before such lands are eligible for gaming.

Last, I encourage Congress not to approve any special legislation that would permit gaming on lands outside of the tribe's ancestral territory.

Again, I thank you for this opportunity. I am available to answer any questions.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Mitchum follows:]

Statement of Wayne R. Mitchum, Chairman, Colusa Indian Community Council

I wish to thank you, Congressman Pombo, for inviting me to give testimony on your Draft Discussion Document to amend the Indian Gaming Regulatory Act To Restrict Off-Reservation Gaming.

The Colusa Indian Community, along with most tribes across our Nation, is very concerned about any effort to open the Indian Gaming Regulatory Act, no matter how noble the purpose. To do so—even in a controlled environment—puts at risk the sovereign rights of tribes across the United States.

The Indian Gaming Regulatory Act (IGRA) established a prohibition against gaming on lands acquired in trust after October 17, 1988, with certain exceptions:

1. Where lands are located within or contiguous to a Tribe's reservation;
2. Within the last recognized reservation of a landless tribe;
3. Oklahoma specific provisions;
4. Lands taken into trust as part of a settlement of land claims;
5. Lands that constitute the initial or restored reservations of Tribes acknowledged through the federal acknowledgment process or restored to federal recognition; and
6. The so-called "two part determination" process in which the Secretary of the Interior considers the best interests of the tribe and its members and the impact on the surrounding community, and the Governor of the State in which the gaming activity is to be conducted must concur with the Secretary's determination.

The procedures required in IGRA have worked successfully the last 17 years. During this time only three tribes have successfully taken land into trust for gaming purposes off reservation.

Unfortunately, when a tribe has circumvented the process defined in IGRA, it reflects negatively on all tribes.

The matter is further complicated by Developers who purposely seek lands in urban areas with the hope of capitalizing on a tribe's ability to acquire off reservation lands for gaming purposes. This practice, commonly referred to as "reservation shopping", is often promoted and financed by opportunistic non-Indian developers who seek a percentage of revenue from the resulting off-reservation casino. Their efforts have created a media frenzy of speculation that tribes are out of control in seeking lands for gaming purposes. This is not the case.

Attempts by Tribes to conduct gaming on lands outside of their ancestral territory for the sole purpose of gaming jeopardizes longstanding claims by Tribes seeking to restore lands unjustly taken by past federal policies. It has also caused significant tensions between tribal governments and created a backlash against Indian gaming by citizen groups and leaders in the United States Congress.

In exchange for casino deals, Tribes seeking off-reservation lands have been willing to cede important sovereign rights to State and local governments, and have entered into exorbitant revenue sharing agreements.

The sovereignty loss and revenue sharing agreed to by these Tribes becomes the new baseline for other Tribes when they seek to obtain or renew tribal-state gaming compacts or compact amendments, thereby jeopardizing the sovereignty of Tribes engaged in on-reservation gaming and following the IGRA process.

Along with other tribal leaders, I have serious concerns about the possible negative impacts of reservation shopping on the long-term viability of tribal government on-reservation gaming. However, I do not believe opening IGRA is the best answer.

Tribal government gaming has been the only vehicle that has brought successful economic opportunity for tribal nations. While some tribes have limited themselves to gaming, many others have used the funds derived from gaming to rebuild their infrastructures, to provide dialysis and medical facilities on their reservations, to invest in quality child care for their members and their employees, and to expand into other forms of economic opportunity such as manufacturing facilities.

Tribal government gaming has brought our members out of poverty and restored pride in their ancestry and culture. We still have a long way to go to bring our people to the levels of the financial security enjoyed by the rest of the Nation, but we are well on our way.

Unfortunately, there are many citizen groups as well as members of the State and Federal Legislature who would like to see us fail. They oppose the success we have been able to reap through tribal government gaming and do not understand the restraints that IGRA imposes as to how our gaming revenue must be spent.

Rather than expose Indian Country to further erosion of sovereign rights—which will surely happen if IGRA is opened for modification—I urge Congress to work directly with the Secretary of the Interior to require an ancestral tie to land in making two-part determinations under Section 20(b)(1) of the Indian Gaming Regulatory Act for proposed land acquisitions.

The Colusa Indian Community further urges Congress to require the Secretary of the Interior to consult with other tribes whose ancestral lands are sought for acquisition, and require the concurrence of those tribes before such lands are eligible for gaming.

Lastly, I urge Congress not to approve any special legislation that would permit gaming on lands outside of a tribe's ancestral territory.

Again, I thank you for this opportunity to share the views of the Colusa Indian Community. I am available to answer any questions.

The CHAIRMAN. I thank both of you for your testimony.

I'm going to begin with questions for Ms. Lohse. Just to begin with, can you describe the history of your tribe and its experience with Indian gaming.

Ms. LOHSE. With regard to Indian gaming in California, we were approached by many investors when they first found out that we had gained our recognition. They wanted to take it down to the Bay Area, all over the place.

We said, "No. We know where we're from. We're from Tehama County and we came with nothing and we'll leave with nothing before we go and put ourselves somewhere else because we identify ourselves with where we are."

Eventually, investors did come and try to relocate us. They would offer us 25 acres, 10 acres, because that's all you need to put a casino on. Again, we said, "No. We're looking toward the future and building a future for our tribe."

We finally found an investor that would invest in some acreage because we saw this gaming as a tool to spin off other things, to make ourselves economically sound. Yet even that investor wanted to be a Management Group. We said again, "No. We will not have a management group take care of us. We can take care of ourselves."

We can be the bank and enjoy some of the revenues from here, but we will run it because we honestly believe just exactly what Reagan had in mind when he passed IGRA, was the fact that this would put the future of the tribes in their own hands and we would gain opportunities if it works.

We said, "No, we're going to make it work." So, we turned down the management contract and they did do a consultant contract. Since then, we bought out the investor within two years because we were running it.

It's not behooving the investor necessarily to work themselves out of the contract. They want to stay there for the full seven years. But we said, "No, we want to take control of that."

Instead, we've been able to do other things economically, build hotels, all these kind of things, and we have turned into the bank for some of the investors who come and we leased our property to them.

So gaming, it has been a great tool. That's why we said before if it's applied properly, IGRA does work. Unfortunately, we have had too many lawyer lobbyists that are out there trying to lead the tribes around and circumvent the process. That's been our experience.

The CHAIRMAN. I understand, and I have had the opportunity to talk to you before. I understand from your testimony your concerns with other tribes moving in and taking—trying to establish a facility on land that you don't believe is historically theirs.

In the draft legislation, one of the concepts that we put in dealt with what we have referred to as an "Economic Opportunity Zone,

Indian Economic Opportunity Zone.'' How do you feel—and I know you're familiar with the legislation—how do you feel about that concept of being able to establish areas that would be specifically for gaming like that?

Ms. LOHSE. I'm not real clear about how that would work. I know that the concept itself sounds good because it would centralize and be able to have tribes basically buy into an area, but I'm not sure how that works.

I think some of the questions that came up were, ''OK, if this is going to be an Indian Economic Zone, I think if it's a fee land type of setting or a more lucrative setting, who has control of that land?

How are—what jurisdiction does that land fall under? What are all of the rights that go with having that land? Who does that go to? How is that protected and how is it monitored?'' Those are probably some of the concerns.

I think conceptually it's a good idea because then communities know where it's going, where the tribe is going and they wouldn't have so many fears as when they tribe gets re-recognized, ''Oh, gosh, here comes another casino.'' Those are some of the questions that I have heard and kind of pondered myself.

The CHAIRMAN. I think there are two different ones as you're aware. One is dealing with land that is already trust land that a tribe already has. The other concept was to take land that is not currently trust land and that would be taken into trust and it would be done under the names of the tribes that would be going in there and it would maintain the sovereignty just as it was on current reservation land.

That would be a way of, I think, consolidating some of this so that we don't end up with so many different proposals in different places. As you testified to, it seems like there are so many different proposals for where we go it makes it difficult.

Chairman Mitchum, I wanted to ask you about that concept with the Indian Economic Opportunity Zones and get your feedback on that and how you feel about that.

Mr. MITCHUM. I think it's basically the same. The concerns that I would have, as far as mineral rights, where would that go? As far as—I know what we have in Colusa.

If the tribes were to go to one specific place, what would happen with those? When we purchase properties as far as my reservation goes, we make absolutely sure that we have all those mineral rights and everything.

I think as far as with having a group designated for a spot, that would be my only concern.

The CHAIRMAN. In your testimony, you talk about a concern for opening up IGRA and what some of the impacts would be or what some of the possible amendments would be.

I'm not sure if you're aware or not, this year as the House Interior Appropriations bill was working its way through the House, there was an attempt made to put a moratorium on any new Indian gaming at all anywhere in the country.

We were able to stop that from going forward because of this draft legislation, because of my commitment to moving forward and under regular order and having a Committee of jurisdiction actually take control of this issue. But that attempt was made and it

is something that is out there. That's not opening up IGRA to amendments; that's throwing it out the door.

That is what we're faced with in the House right now and the sense is that there is a very real concern and a very real effort to move forward and just completely throw it away and not just look at it and look at what any possible updates would be, or any new amendments would be to it, but basically put a moratorium on moving forward with anything on IGRA.

I think that's a much more real threat to the issues that you have raised in your testimony than moving in forward on a regular order with legislation like this.

My time has expired and I recognize Mr. Gohmert for any questions he may have and welcome Mr. Costa to the hearing.

Mr. GOHMERT. Thank you. I appreciate the opportunity and appreciate your testimony. There's no reason to be nervous. I don't wear a robe anymore like I used to, I don't see a bailiff with a gun and handcuffs and I can't send anybody here to prison. I want to learn.

Ms. Lohse, you had mentioned the purpose originally was to bring Indians, Native Americans, out of abject poverty and I appreciate and understand your concern about outside interests being the ones that profit and whether or not they are behind some of the movements in this area of gaming. I don't know, I'm still learning.

Because you mentioned it, I am curious. On the gaming on ancestral lands, you had mentioned buying out previous investors. Overall, do you have any information, any raw data as to how individuals have benefited? I know as a Judge when I was sentencing people, I had the impression that some of our Federal programs had basically instead of encouraging people to develop their God-given talents and their—you and I know there is so much potential in Indians, Native Americans, that is often untapped.

Do you have data that would indicate how individual Indians have benefited and not just been enslaved to a method of getting cheap money?

Ms. LOHSE. I'm glad you brought that up.

We put together our housing program. It's not Federal dollars but we adhered to the Federal system in the fact of all the requirements that you have, the requirements that you have to put forward so that we make sure that they have some ownership and responsibility.

Many times they think, "I'm Indian, I can have this." That's not true. We have to understand there is a process. We are in government and they need to come forward and put forth their information and their application process.

Since we have just initiated this because we have just paid off the investor, now we are making more and rather than paying him, we were able to put aside $1 million toward our housing which assists with down payments, the first home owner's down payment of $10,000, but they have to show, you know, go through the process.

They have to get qualified for a loan, so they're not going out there because we don't want to put them into a losing situation

where they cannot sustain their home and have to have it repossessed or fail on their mortgage payments.

That has brought about some accountability on the tribal members, not just a program, but that they have to buy in, they have a responsibility of meeting those monthly payments, those kinds of things. Our children, we now are requiring them—they don't get a per capita check while they are going to school.

Once they get out of school, they have to have a high school diploma or a GED or they wait until they are 21 before they get this amount of money because we want them to know the encouragement is to go to school. Then we make sure that they are in school when we help them to go further with their education.

So, it's about accountability. As far as numbers, since January, we have six new homeowners since initiating this program. For many of the tribal people, they don't think that they can do this because they are so used to someone doing it for them.

We put the onus back on them to take responsibility and it's actually been very uplifting to see many of them now come and say, "Wow, this is really cool because now I'm no longer on welfare." We have taken poor people off welfare assistance. At first, it was very scary for them because they were saying, "Well, gosh, I'm going to responsible."

Mr. GOHMERT. How are they making a living?

Ms. LOHSE. Now they're getting jobs within the community. They work in our casino, on other parts of our hotels, that kind of thing. Now they see that they can be a contributor. They are no longer thinking, "I'm just a taker," or "I can't."

So, yes, the casino has offered jobs, the hotels and other economic developments that are in their own community. They now have the feeling like, "Wow, I'm worth something." They can meet their bills on a timely manner. Now they feel more encouraged to go out and find work.

Mr. GOHMERT. The benefits, the financial benefits, from gaming goes to the member government or does it go passed down to checks to individual members? I just wasn't sure of the structure, if they were considered to be the actual investors——

Ms. LOHSE. Yes, they are.

Mr. GOHMERT.—and receiving like rolling checks or something like that or if it just goes directly to the tribal——

Ms. LOHSE. You have to put together a revenue sharing allocation plan that gets approved by the Federal Government. So much percentage goes toward education, toward housing, toward general welfare issues.

Then, of course, there are some that you may be able to per cap out. I know a lot of people per capita means that you—some actually cringe at that and I know that there are many that say, "How is that right?"

Gaming revenue is tax dollars. Those are tax dollars and yet President Bush's tax plan was to put money back into the consumer's pocket to grow the economy. So any little amount that goes back into our individual Member's pocket grows the economy because now they are homeowners and——

Mr. GOHMERT. Thank you. My time has expired but I do really appreciate your responses.

The CHAIRMAN. Now I would like to recognize a new Member of the Committee, Congressman Costa, for any questions he may have.

Mr. COSTA. Thank you very much, Mr. Chairman, for holding this hearing. I think it's fitting and appropriate given the nature of not only gaming in California, Indian gaming, but also the impacts that you and I have discussed across the country. So, we appreciate your bringing the Committee here for that purpose as you work on the legislation that you have already discussed.

I was looking at the Governor's proclamation as it relates to his view of what our State policy is toward Indian gaming in California. If my memory serves me correct, we have about 107 recognized sovereign nations here in California, give or plus one are two I think, and others that are pending to seek sovereign status or recognition and that list is longer, not longer, but it's a significant list.

As I read, there have been 57 tribes that have successfully negotiated compacts and another 7 plus the 1.

I guess my question to the two witnesses here is, the Tribal Treasurer Leslie Lohse, is yours one of the ones of the seven that have negotiated a compact?

Ms. LOHSE. No.

Mr. COSTA. You haven't?

Ms. LOHSE. We were one of the 57 in the 1999 compact.

Mr. COSTA. So you were previously already included, all right.

Mr. MITCHUM. We're in the same situation.

Mr. COSTA. Then you have a sense, it seems to me, based on the fact that you have a successful compact that you negotiated.

My question to both of you is very simple: What do you believe the State's policy is toward the recognized sovereign nations in California that are not part of the 64 that currently have negotiated successful compacts?

Who wants to respond first?

Ms. LOHSE. I'm not sure what you're trying to ask, but——

Mr. COSTA. Ostensibly, if we have 64 successfully signed compacts, if you do the math and subtract 107 from 64 or 64 from—I believe you get the balance that conceivably could have compacts in future.

I would like to understand what your view is in terms of the policy for those recognized sovereign nations that today do not have compacts.

Ms. LOHSE. Obviously, that's kind of what we're talking about here today. IGRA obviously takes precedence over whether the land is eligible for gaming.

Then once that becomes eligible, then obviously the State is mandated by certain stipulations adhered to, to negotiate a compact with that tribe if they still choose to stay on the reservation and game.

The other side of it is if they go off-reservation, then that becomes the Governor's concurrence and the other things that are applied to it.

Mr. COSTA. What's your position for those who seek—the balance that do not currently have compacts and go off-reservation.

Ms. LOHSE. Go off reservation? I am not for that because the fact is that if they were to—like I said, this was meant to be a tool to be used if usable. IGRA and gaming was not to be the panacea for all tribes but it was to be used responsibly.

Mr. COSTA. I have spent a little time in the Legislature so I'm familiar with that.

Chairman Mitchum, do you care to respond?

Mr. MITCHUM. I can't add too much more other than that what Ms. Lohse said. I basically feel the same way. I think if the Governor wants to look at tribes, he has to look at them individually. There are numerous times that we have had talks and invited these folks out to see exactly what we're doing.

Mr. COSTA. Are either of you satisfied with the State's policy toward Indian gaming today?

Ms. LOHSE. He just currently came up with the proclamation——

Mr. COSTA. No, I know that——

Ms. LOHSE. Up until then, who knew what the policy was so I think——

Mr. COSTA. I didn't know. I'm not sure we actually had a policy based upon my previous experience over the years.

Ms. LOHSE. I think there has been great concern. You can ask anyone in this room. The tribal leaders would like to speak with the Governor to help them understand what policy he is establishing.

Mr. COSTA. Let me just close with another question. My time is almost up. I am a supporter of Indian gaming. I have one facility in my district, one nearby and three adjacent. My mother wouldn't let me have it any other way. It's one of her areas of entertainment.

But I am concerned. I want every one of the subsequent witnesses to understand that I am concerned about what I believe is a lack of State policy that has existed on this issue for many in areas and what pertains to those tribes that are sovereign nations but have not successfully concluded compacts.

Ms. LOHSE. We have the same criticisms. That's one of our concerns here, that Chairman Pombo's legislation is addressing the fact that many maneuvers and deals that are cut off do impact all of us here in the State, and once again that states firmly that as tribes we don't get to become an LLC, or whatever, somewhere else.

We remain here, so it definitely impacts us what Indian policy, whether it's gaming or any other issue, is here in California. We would like to sit down with the Governor and discuss it.

Mr. COSTA. Thank you very much.

The CHAIRMAN. Mr. Costa has taken particular interest in this issue and has discussed with me in the past the desire to have the states have a clearer impact and a clearer policy when it comes to Indian gaming.

I think that's one of the concerns that I have and the Committee has and one of the reasons why this legislation was put out to begin with.

Chairman Mitchum mentioned a concern about the loss of sovereignty under the possibly of amendments. I think that's a very

real concern and it's something that I think we need to address in anything that we move forward on.

Just as a follow-up to Mr. Costa's questions, do you feel that some of the compacts—and I know you're not familiar with all of the compacts that are being signed all over the country; that's something that the Committee does get involved with—but are you concerned about some of the compacts that are being signed and the potential for loss of sovereignty under those compacts?

Mr. MITCHUM. I think there has been some sovereignty lost or—what I'm afraid of is if they become competitors and those agreements enforce the rest of these nations to abide by it.

My parents and my grandparents fought and died for what we have today and I am not going to allow that to happen to them if I can help it.

The CHAIRMAN. I have one concern when it comes to the amount of money and the percentages and how that escalates. Every new compact that is signed becomes a benchmark for the next one that comes along.

The purpose of Indian gaming was to build the economy of the reservations and to try to eliminate poverty and eliminate joblessness. That was the purpose of it and if it's seen as a source of revenue for the State or local governments it completely changes the purpose.

I think I have a greater concern for some of the other provisions that are being included in some of those compacts and what long-term impact that has when it comes to sovereignty.

One of the reasons why we got into this to begin with was because of some of the provisions that were being put in. The tribe, as Ms. Lohse talks about, ends up with an outside investor who is looking for a tribe that will do something and become—who have different motivations than the tribe does and different things they want to protect than the tribe does.

Sometimes they are willing to accept things that they probably shouldn't for short-term economic gain and it's not worth giving up that sovereignty. That's one of the reasons why we got into this to begin with.

Do the Members have any further questions of this panel?

The CHAIRMAN. I am going to dismiss this panel. Thank you very much. If there are any further questions of you they will be submitted to you in writing and you can answer those in writing.

I will hold the Committee record open long enough to give you an opportunity to respond in writing and it will be entered into the record. Thank you very much.

I'm going to call the second panel, Supervisor Mike McGowan from Yolo County; Supervisor Valerie Brown from Sonoma County; Pat O'Brien from East Bay Regional Parks District; and Cheryl Schmit, Director of Stand Up for California.

[Witnesses sworn.]

The CHAIRMAN. Let the record reflect all answered in the affirmative. Welcome to the hearing. As I previously stated, your oral testimony is limited to five minutes. Your entire written statements will be included in the record.

The CHAIRMAN. Supervisor McGowan, we will begin with you.

STATEMENT OF MIKE McGOWAN, SUPERVISOR, YOLO COUNTY, INDIAN GAMING WORKING GROUP

Mr. MCGOWAN. Thank you very much. On behalf of the California State Association of Counties, I would like to thank Chairman Pombo and the other Members of Congress who are good enough to stop and hear our testimony as you consider important legislation. My name is Mike McGowan, Member of the Yolo County Board of Supervisors and Chairman of the CSAC Indian Gaming Working Group.

CSAC is a single, unified voice speaking on behalf of all 58 California counties. That voice is essential because there really are only two kinds of California counties today, those which are presently impacted by Indian gaming and those that will be in the future.

We would contend that the issue of off-reservation gaming raised in this hearing today has direct and unique bearing on counties, potentially more so than any other jurisdiction of local government. For this reason, CSAC has been very actively involved in Indian gaming issues.

As you may recall, Supervisor Richard Forster of Amador County testified on our behalf at your hearing in April in Washington, D.C. We have also submitted written testimony on your draft bill at that time. There are a couple of key points that I will be making today that I think are important about this Indian gaming issue in California.

First, regardless of the location of an Indian casino, the California county will be confronted with significant impacts from that casino's operations. Those impacts include increased demands on social services, the criminal justice system, law enforcement and fire protection, as well as impacts to environmental resources such as air and water.

Counties are mandated by State law here in California to meet these impacts whether they are caused as a result of a casino within a city's borders, in an urbanized area or in a rural area. Counties should therefore be included in all decisions related to the construction and operation of tribal casinos within their boundaries, including those within their cities.

My second point is that CSAC can be a valuable resource to those seeking more information about how to effectively address the impacts of Indian gaming on local communities.

Over the past several years, CSAC has devoted considerable staff time and financial resources to analyzing the impacts on county services resulting from Indian gaming. Because of this, CSAC has gained extensive knowledge that has proven helpful to Tribal governments, other local governments and the State government as well.

CSAC has also worked closely with two California Governors to improve government-to-government relationships between counties and tribes which benefit the State, those tribes and county governments and the citizens.

The benefits to the State and county governments include the establishment of judicially enforced negotiated agreements for addressing the impacts from Indian casinos. Tribes are benefited because they are now viewed as part of the solution instead of part of the problem.

We believe that the current Tribal/State compacts which require negotiation between tribes and counties prior to the construction or expansion of casinos fills a large gap in the Indian Gaming Regulatory Act, one that failed to address local impacts of Tribal gaming.

It's no secret that Tribal gaming has rapidly expanded in California in recent years. In fact, a survey last year revealed that 35 counties out of the 58 in California have active or proposed gaming operations within their borders, and of those proposed, more than 30 are for off-reservation casino sites, and as this Committee is aware, the pending off-reservation proposals relate to projects on land far from a tribe's ancestral territory.

If these proposals are approved, the effect would be to bring Indian gaming to each and every one of California's 58 counties, with several counties juggling the effects of more than one casino.

The impacts to counties, just in financial terms, on traffic, water resources, wastewater treatment, the environment, the criminal justice system and on would be in the hundreds of millions of dollars. Without a requirement for negotiated and enforceable agreements between counties and tribes, counties would not be able to mitigate all of those impacts. The result would be a significant reduction in the quality of life for all California residents.

We recognize, the counties recognize, that tribal casinos are not simply another profit-seeking development and fully respect and support the desire of Tribal governments to properly provide for their tribal members.

In this regard, California counties accept that one purpose of IGRA is to provide Tribal governments with economic self-sufficiency. For that reason, we do not oppose Indian gaming, yet it has become increasingly apparent to CSAC that a delicate balance is required to ensure that all forms of government, whether they are tribal, municipal, county, State or Federal and the people that they represent, are treated equitably in addressing the impacts of Indian gaming.

Because we in California have several positive examples of counties and tribes working together for the betterment of their respective communities, CSAC is very supportive of Chairman Pombo's efforts to give local governments, particularly counties, an effective voice in addressing the increasing practice of reservation shopping.

Reservation shopping is causing disruption and concern in counties throughout California because it is often geared at increasing profits to non-Indian promoters with little or no consideration given to a tribe's heritage or historic lands or to the impacts of a casino on local communities.

We support the Chairman's draft legislation in its prohibition of tribes crossing state lines to build gaming facilities in states where those tribes do not have any trust land. We also support amendments to IGRA that would expand the two-part determination to specifically include counties and other local jurisdictions.

To the degree that some have interpreted CSAC's previously submitted testimony regarding the two-part determination as support for the elimination of that two-part determination, that is not the case at all. To the contrary, CSAC remains fully committed to the two-part determination in IGRA but believes that it should be

modified so that counties and other affected local governments must also approve all land acquisitions taken in trust by the Federal Government for a tribe even when those acquisitions are considered as restored lands.

I would close by thanking the Chairman again for allowing us to speak today and for having the insight to begin the analysis of IGRA making certain it accomplishes the purposes of providing the income and well-being of the tribes but without jeopardizing the health, safety and general welfare of all members of our community.

We especially appreciate the Chairman's bill with its necessary and appropriate revisions which will allow the counties a significant voice in matters that create impacts that counties are ultimately called upon by their communities to address. This voice is critical if California Counties are to protect the health and safety of their citizens.

Thank you all very much for taking your time and for giving us this opportunity to address you today. We look forward to working with you in this and other matters to improve this bill and move forward with this issue.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. McGowan follows:]

Statement of Supervisor Mike McGowan, Yolo County Chairman, 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 proposed legislation to restrict off-Reservation gaming. I am Mike McGowan, a member of the Yolo County Board of Supervisors, and Chairman of the CSAC Indian Gaming Working Group.

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

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

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

Introduction:

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

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

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

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

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

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

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

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

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

Background:

A. The Advent of Indian Gaming

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

Over the last five years, the rapid expansion of Indian gaming in California has had profound impacts beyond the boundaries of tribal lands. Since 1999 and the signing of Compacts with approximately 69 tribes and the passage of Propositions 5 and 1A (legalizing Indian gaming in California), the vast majority of California's counties either have a casino, a tribe petitioning for federal recognition, or is the

target or focus of a proposed casino plan. As the Committee is aware, many pending casino proposals relate to projects on land far from a tribe's ancestral territory.

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

B. Development of CSAC 2003 Policy

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

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

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

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

C. Implementation of CSAC's 2003 Policy

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

Illustrations of Successful County/Tribal Cooperation

There are many examples of California counties working cooperatively with tribes on a government-to-government basis on all issues of common concern to both governments, not just gaming-related issues. Yolo County has a history of working with tribes to ensure adequate services in areas where casinos are operating. In addition, Yolo County has entered into agreements with two tribes to address the impacts created by casino projects in the county. In Southern California, San Diego County has a history of tribes working with the San Diego County Sheriff to ensure adequate law enforcement services in areas where casinos are operating. In addition, San Diego County has entered into agreements with four tribes to address the road impacts created by casino projects. Further, a comprehensive agreement was reached with the Santa Ysabel Tribe pursuant to the 2003 Compact with the State of California.

Humboldt County, located on the north coast of the state, and tribal governments have agreed similarly on law enforcement-related issues. Humboldt County also has reached agreements with tribes on a court facility/sub station, a library, road im-

provements, and on a cooperative approach to seeking federal assistance to increase water levels in nearby rivers.

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

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

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

Illustrations of Continued Problems Addressing Casino Impacts

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

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

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

D. The Advent of "Reservation Shopping" in California

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

In rural Amador County, starting in 2002 and continuing to the present, a tribe being urged on by another out-of-State promoter is seeking to have land near the small town of Plymouth taken into trust for a casino. The tribe has no historical ties to the Plymouth community. The effort by this tribe and its non-Native American promoter has created a divisive atmosphere in the local community. That new casino is not the only one being proposed in the County; a second, very controversial

new casino is being promoted by a New York developer for a three-member tribe in a farming and ranching valley not served with any water or sewer services, and with access only by narrow County roads. The development of these casinos would be an environmental and financial disaster for their neighbors and the County, which already has one major Indian casino.

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

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

CSAC's 2004 Policy Regarding Development of Tribal Lands

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

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

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

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

Importance of County Involvement in Developing Mitigation:

The history and examples provided above illustrate the need for counties to be involved in developing appropriate off-reservation mitigations related to Indian casino activities. There is not yet a definitive study on the impacts of gaming on local communities. However, in those counties that are faced with large gaming projects, it is clear that the impacts on traffic, water/wastewater, the criminal justice system and social services are significant. For non-Indian casinos it is estimated that for every dollar a community collects from gambling-related taxes, it must spend three dollars to cover new expenses, including police, infrastructure, social welfare and counseling services.[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

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

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

the Legislature with the powers necessary to provide for the health and welfare of the people within their borders. Counties are responsible for a countywide justice system, social welfare, health and other services. The California experience has also made clear that particularly large casino facilities have impacts beyond the immediate jurisdiction in which they operate. Attracting many thousands of car trips per day, larger facilities cause traffic impacts throughout a local transportation system. Similarly, traffic accidents, crime and other problems sometimes associated with gaming are not isolated to a casino site but may increase in surrounding communities.

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

Comments on Draft Legislation:

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

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

In California, through the most recent State-Tribe Compacts, counties and other local governments have been provided an appropriate opportunity to work with gaming tribes to address these off-reservation impacts. The result has been improved government-to-government relationships between tribes and county governments. Contrary to possible fears of tribal leaders, local governments have not acted arbitrarily or capriciously in their dealings with tribes. In fact, the improved relationships are the result of each government gaining a better understanding of the responsibilities and needs of the other. Because we in California have several positive examples of counties and tribes working together for the betterment of their respective communities, CSAC is very supportive of Chairman Pombo's efforts to give local governments an effective voice in addressing the increasing practice of "reservation shopping."

Two-Part Determination

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

Newly Recognized, Restored, Landless Tribes

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

Indian Economic Opportunity Zones

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

- Zones should be limited to a tribe's trust lands, and tribes should not be permitted to merge their separate trust lands to create a mega-economic opportunity zone.
- The size of the zones should be limited to an area not exceeding two square miles in unincorporated areas or one square mile in incorporated areas.

- In states where zones are created pursuant to this amendment, Indian gaming should not be permitted on land outside of a zone or on land not already held in trust by the federal government at the time this amendment is adopted, unless the tribe and affected state and local jurisdictions agree in writing that any unavoidable significant adverse impacts will be fully mitigated by the tribe.
- The location of such zones should take into account the impact that the zones could have on existing commercial endeavors.

Primary Geographic, Social and Historical Nexus

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

Suggested Revisions and Clarifications

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

Conclusion:

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

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

NOTE: Attachments to Mr. McGowan's statement have been retained in the Committee's official files.

The CHAIRMAN. Supervisor Brown.

STATEMENT OF VALERIE BROWN, SUPERVISOR, SONOMA COUNTY, NORTHERN CALIFORNIA COUNTIES TRIBAL MATTERS CONSORTIUM

Ms. BROWN. Thank you, Chairman Pombo.

Thank you for being here, Congressman Gohmert and it's nice to see you again, Congressman Costa.

Mr. COSTA. Nice to see you.

Ms. BROWN. On behalf of the Northern California Counties Tribal Matters Consortium, I would like to thank you for bringing this particular hearing to Northern California because that is indeed where there is a profound influence of reservation shopping.

My name is Valerie Brown. I am currently a Member of the Sonoma County Board of Supervisors and serve as Sonoma County's Representative to the Consortium.

The Consortium is a collaboration between Napa, Solano and Sonoma Counties. It is a new and growing organization founded by county governments in the northern part of the San Francisco Bay Area, based upon the realization that we must work together to share expertise and to respond effectively to the legal and policy decisions at the Federal level which often drive tribal development.

Our counties are also similarly situated on the northern edge of the lucrative San Francisco Bay area urban gaming market and are the target for an increasing number of new gaming proposals.

The Consortium's policies, which I gave you as an attachment, are consistent with those of the proposed legislation in that they make a deferential distinction for development proposals from tribes that have significant demonstrated ties to an area. Significant ties mean more than a tribe passed through, hunted or had some other tenuous connection to an area, but rather exercised a tribal jurisdictional presence in a meaningful and direct manner.

The key distinction for development therefore should be not necessarily urban or rural but rather presence or absence of a documented relationship of a tribal group to the land on which it seeks to develop.

Due to our shared proximity to the lucrative San Francisco urban market, gaming promoters representing and loosely affiliated with tribal clients continually approach Consortium members. These investor-driven efforts are an affront both to locally based tribes and to county governments that have worked with local tribes on a government-to-government basis to mitigate the impacts of casino development.

IGRA, as well as California Propositions I(a) and 5, were passed with the expectation that gaming would be conducted on existing Indian lands. Now the exceptions seem to be the tail that is wagging the dog and upsetting the carefully designed balance that afforded tribes the monopoly of Class III gaming in California.

In Sonoma, for example, I and other County Representatives were recently approached by financial backers of an unnamed "mystery" tribe that wanted to establish a Sonoma County casino. It was clear this tribe, the identity of which the investors refused to disclose, had not consulted with locally based tribes and were interested only in finding a location that placed them within reach of the lucrative San Francisco market.

This is but the latest of a series of overtures made to Consortium Members and of regional reservation shopping efforts, some of which the Committee has already heard testimony.

These investor-driven efforts have little regard for a tribe's historic ties to an area or to true concepts of tribal sovereignty and jurisdiction except to the extent it allows them to open a casino. In fact, it appears that investors shop for landless tribes.

The newest California twist to the reservation shopping issue also shows how the current law now serves to pit tribe against tribe. The Consortium is now observing tribes with established casinos trying to leap-frog over other tribal gaming operations to get closer to a population center. For example, the Hopland Band

of Pomo Indians, a Mendocino County-based gaming tribe located north of Sonoma County, is trying to move south along the highway 101 corridor toward San Francisco, passing a Sonoma County tribe's operations that apparently is reducing its profits.

The location the Mendocino tribe has chosen for its new casino is within the historic Rancheria boundary of another Sonoma County tribe. The Mendocino tribe has applied to the BIA and the NIGC to transfer the land to its own tribal trust property and to have it designated as "restored" so that it is eligible for gaming.

The Mendocino tribe's Trust Transfer Application, which is opposed by other Sonoma County tribes, is currently pending before the BIA. It has become a question of who files first.

The draft legislation before the Committee takes several important steps toward addressing this type of reservation shopping and the Consortium endorses most of proposed language.

One amendment the Consortium would support is to have Section (1)(A), which addresses newly recognized tribes, provide for the same type of local government input as required under Section (1)(B) for landless or restored tribes.

It appears that the inequities and need for land and economic opportunities of newly recognized tribes is no different than the needs of landless tribes and both similarly require local input and consultation regarding mitigation.

The unintended consequence of treating the groups differently is to place even additional pressure on the current acknowledgment process by providing incentives for gaming interests to promote the recognition of new tribes to avoid the requirements faced by placing land into trust for landless or restored tribes.

The experience in California, driven in part by the restoration of illegally terminated rancherias, is that the restored land exception to prohibiting gaming on lands acquired after 1988 is being misused.

This is illustrated in the Hopland tribe's attempt to have land found eligible for gaming under the restored land provision, despite the fact the tribe already has land in trust upon which it operates a casino and the land sought is within another tribe's historic jurisdiction.

Similarly, Alameda and Contra Costa Counties have been faced with numerous proposals to have land restored from remote tribes for gaming purposes. These efforts are all attempts by tribes and their investors to evade the two-part test under IGRA that provides for consultation between local communities and local tribes and the Secretary to determine whether gaming on newly acquired trust lands is detrimental to the surrounding community and concurrence by the Governor in that determination. We actually would be supportive, as CSAC is, in having a third part test and that is local jurisdiction.

Finally, the Consortium is interested in working further with the Committee to refine the Economic Opportunity Zone concept. It provides a creative mechanism to facilitate the co-location of gaming operations to help avoid the leap-frogging phenomena that now appears to be developing while also giving tribes in remote locations an opportunity to share more fully in the economic benefits of gaming.

It appears, however, that additional provisions should be considered that take into account various issues, including the potential size of the zone, county approval and a limitation to take future land into trust for gaming purposes outside of the created zones.

Again, the Consortium is appreciative of your efforts to bring this hearing to Northern California and hear of our concerns. We look forward to working with you as you continue to make this bill work more amenably.

The CHAIRMAN. Thank you.

[The prepared statement of Ms. Brown follows:]

Statement of Supervisor Valerie Brown,
Northern California Counties Tribal Matters Consortium

On behalf of the Northern California Counties Tribal Matters Consortium (Consortium), I would like to thank Chairman Pombo, Ranking Member Rahall, and the other distinguished members of the Committee on Resources for giving us this opportunity to testify. I especially want to thank you for making the effort to conduct this field hearing in Northern California where the issues surrounding tribal gaming and reservation shopping have taken on such profound importance. My name is Valerie Brown, I am currently a member of the Sonoma County Board of Supervisors and serve as Sonoma County's representative to the Consortium.

The Consortium

The Consortium is a collaboration between Napa, Solano and Sonoma counties. It is a new and growing organization founded by county governments, in the northern part of the San Francisco Bay Area, based upon the realization that we must work together to share expertise and to respond effectively to the legal and policy decisions at the federal level which often drive tribal development. Our counties are also similarly situated on the northern edge of the lucrative San Francisco Bay Area urban gaming market and are the target for an increasing number of new gaming proposals. The Consortium's Policies (attached as Exhibit A) are consistent with those of the proposed legislation, in that they make a deferential distinction for development proposals from tribes that have significant demonstrated ties to an area. Significant ties mean more than a tribe passed through, hunted, or had some other tenuous connection to an area but rather exercised a tribal jurisdictional presence in a meaningful and direct manner. The key distinction for development therefore should be not necessarily urban or rural but rather presence or absence of a documented relationship of a tribal group to the land on which it seeks to develop. Further, the Consortium Policies recognize large-scale gaming (and other development) projects have significant local and even regional impacts that, to be successfully addressed, require a collaborative effort involving both county governments and affected tribes.

California, more than any other state, has experienced an explosion of tribal gaming and land development since the 1988 enactment of the Indian Gaming Regulatory Act ("IGRA"). This development accelerated in California with the 1999 passage of Proposition 1A, and the 1998 passage of Proposition 5. The result is 54 operational casinos maintained by 53 tribal governments in 34 counties, with at least 25 additional tribal casinos in the planning stage. The scope of potential casino development is also reflected in the over 100 federally recognized tribes in California, with over 60 existing compacts, many of them providing for two casinos per tribe. As these IGRA casinos have proliferated, increased tribal gaming wealth, or its promise, has provided capital for still more gaming and non-gaming tribal development. All levels of state government now face significant challenges raised by tribal development initiatives.

It is often stated that when IGRA was enacted in 1988, it was intended to serve as a delicate balance between the rights of states, tribes and the federal government to address tribal gaming. The "delicate balance" is now upset. When IGRA was passed Indian gaming was, nationally, a $100 million business. Today Indian gaming enterprises account for over $18 billion in revenues with California alone responsible for about one-third of that amount. IGRA's original premise (and that of Propositions 5 and 1A in California) was that, with limited exceptions, gaming would be limited to existing reservations. Sadly, that is not how it is today.

This is especially critical in Northern California where a growing number of tribal entities are attempting to acquire land, seek trust status, and advance development proposals for casinos and other uses in locations based solely upon market appeal.

Some tribes are attempting to develop land without regard to current reservation location or the existence of historic or other significant ties to a chosen location. There are many legal permutations of "reservation shopping," and many jurisdictions are forced to deal with the complex legal issues it raises, often on an emergency basis. It is important to point out that the issue of "reservation shopping" extends beyond gaming. Developers are partnering with tribes to use the shield of sovereignty to embark on development projects that would otherwise never be approved due to land use inconsistencies or other impacts.

The Consortium was formed to address these challenges. With respect to the issues specifically now before the Committee the following Consortium Policies apply:

- The Consortium is opposed to any federal fee-to-trust request, for gaming or other development purposes, on behalf of a tribe that lacks significant, long-term and documented ties to the area where the trust land acquisition or development is proposed.
- The Consortium is committed to working with tribes on a government-to-government basis to consider development proposals within the Consortium's policy framework.
- The Consortium members are prepared to work with tribes to insure that county-tribal agreements will fully mitigate environmental impacts of a proposed project and that there will be guarantees of substantial compliance with county ordinances, zoning and environmental policies through an enforceable Memorandum of Understanding or similar agreement.

These policies recognize counties have an obligation to work on a government-to-government basis with tribes which have a significant historic connection to a community. Implicit in the policies, as in the proposed bill, is the recognition that the long-term success of Indian gaming depends upon a partnership with local communities to address off-reservation impacts and work together to accomplish common goals.

The Consortium Experience

Our participating counties are all members of the California State Association of Counties (CSAC) and we support and endorse the testimony submitted to this Committee by CSAC. The Consortium submits its own testimony, however, to share the unique experience of tribal gaming in the Northern San Francisco Bay Area. This experience underscores the importance of Chairman Pombo's legislative proposal to address the "reservation shopping" issue in a manner which places significant importance on a tribe's historic ties to a community. Like the legislation, our approach also is deferential to tribal sovereignty and economic development but acknowledges that the impacts of these projects are borne by the off-reservation community and, in particular, by county government regardless of whether the proposed project is located in a city or county. The need to form the Consortium, itself, illustrates the breakdown of the balances struck in the enactment of the Indian Gaming Regulatory Act when tribes are allowed to move far from their ancestral territory in search of greater gaming market share and profit.

Of the Consortium member counties, only Sonoma County has federally recognized tribes. One of these tribes has an existing casino facility and the four others are at various stages of attempting to establish gaming operations. Napa and Solano do not currently have any recognized tribes within their jurisdictions. Due to our shared proximity to the lucrative San Francisco urban market, gaming promoters representing, or loosely affiliated with tribal clients, continually approach Consortium members. Each is attempting to cash-in on the gaming market without regard to a tribe's connections or historic ties to a community.

These, often investor-driven efforts, are an affront both to county governments that have worked with local tribes on a government-to-government basis to address gaming and other tribal development issues as well as to locally based tribes. IGRA (which was intended to have very narrowly drawn exceptions), as well as the California Propositions 1A and 5, were passed with the expectation that gaming would be conducted on existing Indian lands. Now the exceptions seem to be the tail that is "wagging the dog" and upsetting the carefully designed balance that afforded tribes the monopoly of Class III gaming in California.

In Sonoma, for example, I and other county representatives were recently approached by financial backers of an unnamed "mystery" tribe that wanted to establish a Sonoma County casino. It was clear this tribe, the identity of which the investors refused to disclose, had not consulted with locally based tribes and was interested only in finding a location that placed them within reach of the lucrative San Francisco market. This is but the latest of a series of overtures made to Consortium members and of regional reservation shopping efforts, some of which the Committee

has already heard testimony. These investor-driven efforts have little regard for a tribe's historic ties to an area or to true concepts of tribal sovereignty and jurisdiction except to the extent it allows them to open a casino.

The newest California twist to the "reservation shopping" issue also shows how the current law now serves to pit tribe against tribe. The Consortium is now observing tribes with established casinos trying to "leap-frog" over other tribal gaming operations to get closer to a population center. For example, the Hopland Band of Pomo Indians, a Mendocino County based gaming tribe located north of Sonoma, is trying to move south along the Highway 101 corridor towards San Francisco, passing a Sonoma County tribe's operations that apparently is reducing its profits. The location the Mendocino tribe has chosen for its new casino is within the historic Rancheria boundary of another Sonoma County tribe. The Mendocino tribe has applied to the BIA and NIGC to transfer the land to its own tribal trust property and to have it designated as "restored" so that it is eligible for gaming. The Mendocino's tribe's trust transfer application, which is opposed by other Sonoma County tribes, is currently pending before the BIA.

The Draft Legislation

The draft legislation before the Committee takes several important steps towards addressing the types of "reservation shopping" abuses that now appear prevalent in Northern California. The Consortium particularly endorses the need recognized in the bill to ascertain a tribe's historic and ancestral ties to an area as a threshold before allowing newly recognized, restored or landless tribes to take land into trust for gaming purposes. This approach is in accord with the Consortium policies and explicitly recognizes a distinction between tribal entities that have significant documented historical ties to a specific area and those that do not.

Similarly, the Consortium fully endorses the need to have local government participating in the decision making process. This measure affords local government the opportunity to work in a constructive manner with tribes to insure that projects are appropriately sited and that the off-reservation environmental impacts of gaming development are minimized. One amendment the Consortium would support is to have section (1)(A), which addresses newly recognized tribes, provide for the same type of local government input as required under section (1)(B) for landless or restored tribes. It appears that the equities (and need for land and economic opportunities) of newly recognized tribes is no different than the needs of landless tribes and both similarly require local input and consultation regarding mitigation. An unintended consequence of treating the groups differently is to place even additional pressure on the current acknowledgment process by providing incentives for gaming interests to promote the recognition of new tribes to avoid the requirements faced by placing land into trust for landless or restored tribes.

The Consortium also supports amendments to the bill which clarify that a county or similar other general government entity providing health, welfare and public safety services to the trust land must approve a gaming trust acquisition. In California, even if a facility and trust land is surrounded by cities, it is still the county that is responsible for many public programs that will be impacted by a gaming establishment including: emergency services, probation, jail services, child and adult protective services, welfare, roads and bridges, alcohol and drug rehabilitation, and indigent health. For a tribal facility to be truly successful county government must play a role in the process.

The experience in California, driven in part by the restoration of illegally terminated rancherias, is that the restored land exception to prohibiting gaming on lands acquired after 1988 is being misused. This is illustrated in the Hopland tribe's attempt to have land found eligible for gaming under the restored land provision (25 U.S.C. 2719 (b)(1)(B)(iii)) despite the fact the tribe already has land in trust upon which it operates a casino and that the land sought is within another tribe's historic jurisdiction. Similarly, Alameda and Contra Costa counties have been faced with numerous proposals to have land "restored" from remote tribes for gaming purposes. These efforts are all attempts by tribes and their investors to evade the two-part test under IGRA that provides for consultation between local communities (and local tribes) and the Secretary to determine whether gaming on newly-acquired trust lands is detrimental to the surrounding community and concurrence by the governor in that determination. As the "restored lands" exception appears to be fueling much of the reservation shopping effort, it may be appropriate to consider, at this point in IGRA's history, elimination or narrowing of the provision and to require local government approval of a facility as contemplated under the draft legislation.

Finally, the Consortium is interested in working further with the Committee to refine the Indian Economic Opportunity Zone concept. It provides a creative mechanism to facilitate the co-location of gaming operations to help avoid the "leap-

frogging" phenomena that now appears to be developing while also giving tribes in remote locations an opportunity to share more fully in the economic benefits of gaming. It appears, however, that additional provisions should be considered that take into account various issues, including, the potential size of the zone, county approval and a limitation to take future land into trust for gaming purposes outside of the created zone(s).

Conclusion

The Consortium appreciates the sensitive nature of these issues and the controversy surrounding any amendments to IGRA. It is therefore with genuine appreciation to Chairman Pombo and the Committee for their leadership in trying to forge a solution to the reservation-shopping problem that the Consortium appears today to present these comments. It may be that circulation of the draft bill itself has already had a positive effect as the BIA just recently rejected a gaming compact in Oregon because land for the facility had not gone through the appropriate fee-to-trust process or been subject to IGRA's two-part test.

The proposed bill gives voice to local government concerns and creates an opportunity for tribes and local government to work together in a respectful constructive manner to achieve mutual goals. The Consortium stands ready to assist the Committee as it works towards addressing the problems created by "reservation shopping" and to work with other interested parties to find a balanced fair resolution that honors tribal sovereignty and respects the legal responsibility of counties to provide for the health, safety, environment, infrastructure, and general welfare of all members of their communities.

Exhibit A

Northern California Counties Tribal Matters Consortium
General Policy Principles

I. Introduction

California, more than any other state, has experienced an explosion of tribal gaming and land development since the 1988 enactment of the Indian Gaming Regulatory Act ("IGRA"). This development accelerated in California with the 1999 passage of Proposition 1A, and the 1998 passage of Proposition 5. The result is 54 operational casinos maintained by 53 tribal governments in 34 counties, with at least 25 additional tribal casinos in the planning stage. The scope of potential casino development is also reflected in the over 100 federally recognized tribes in California, with over 60 existing compacts, many of them providing for two casinos per tribe. As these IGRA casinos have proliferated, increased tribal gaming wealth, or its promise, has provided capital for still more gaming and non-gaming tribal development. All levels of state government now face significant challenges raised by tribal development initiatives. It is a key consideration that these tribal development proposals are generally governed by federal Indian law, which affords little protection to communities struggling to address the profound local impacts that often accompany gaming or other large tribal projects.

A. Purpose of the Consortium

Many tribal development initiatives, particularly gaming, have regional impacts beyond any specific jurisdiction. The Northern California Counties Tribal Matters Consortium ("Consortium") is founded by county governments based on the realization that they must work together to share expertise and respond effectively to the federal legal and policy decisions driving tribal development.

Along the legal pathway to any type of tribal development, there are a series of federal decisions and procedural steps. These steps may include tribal acknowledgment, land acquisition, fee-to-trust land conversion, approvals for gaming uses of trust lands, and approvals for gaming itself. Most of the steps offer a role and some measure of influence for the state and affected local governments. While this role is not as strong as it should be, it does afford an opportunity to take action. Proactive state and local participation is crucial as federal decisions are under consideration, because once made, jurisdiction over the tribal entity and its members is vitiated by the tribe's sovereign status, and key local regulatory powers are preempted once the property becomes tribal land. Formation of the Consortium is important to allow local governments to work together to understand the rules and laws applicable to tribal status and development and to play a meaningful and united role in shaping federal and state decisions.

County coordination is especially critical in Northern California where a growing number of tribal entities are attempting to acquire land, seek trust status, and advance development proposals for casinos and other uses in locations based solely upon market appeal. Some tribes are attempting to develop land without regard to current reservation location or the existence of historic or other significant ties to a chosen location. There are many legal permutations of "reservation shopping," and many jurisdictions are forced to deal with the complex legal issues it raises, often on an emergency basis. Reservation shopping is fueled by improved tribal financial capability, usually through third-party investors. This creates the ability not only to buy land, but also to sustain long-term procedural and political campaigns and legal disputes, often exploiting ambiguous federal rules and policies.

Federal laws, regulations, and policies do provide states and local government with some opportunity to influence the outcome of tribal land development issues. Whether an affected state or local government can effectively take advantage of the procedural opportunities available to them depends on the governmental entity's knowledge of federal law and procedures, its readiness to respond appropriately, and its commitment to persevere in a position. A consortium of counties provides a more influential body to address federal or state legislative and administrative proposals regarding tribal matters.

B. Consortium Goals

The Consortium has been organized to inform member counties of federal Indian law and policy so that they can effectively exercise their authority to respond to emerging policy and tribal development proposals. Each county belonging to the Consortium has varying degrees of experience with the conversion of fee land to federal trust status on behalf of Indian tribes and related proposals to develop that land for gaming or other economic purposes. In almost all cases, tribal plans for trust lands are inconsistent with the host county's general plans, ordinances, zoning, environmental standards or other policies. These lands and the facilities built on them become exempt from state and local taxation, and land use control, and potentially lead to serious adverse consequences on affected communities.

The Consortium's goal is to develop common principles that will guide the actions of each county and enable them to influence legislative and administrative policies in order to avoid or reduce impacts as much as possible. These general principles are intended to provide a proactive foundation for county action regarding trust land proposals, to give advance notice of county policies and standards to those who intend to propose tribal development on such land, and to advise federal and state decisionmakers of a county's position.

The Consortium approach explicitly recognizes the distinction between tribal entities that have significant documented ties to specific locations in a county and those that do not. While federal processes may also apply to this determination, Consortium counties will make their own determination with respect to such ties. This will guide county responses to tribal development proposals or development initiatives, and assist the counties in taking positions in federal proceedings. The presumption is that proposals by tribal entities without significant ties to specific locations in a county will be generally opposed and therefore ineligible for agreements with the counties. Those having significant documented ties will be eligible for government-to-government discussions and potential agreements consistent with Consortium principles.

II. Consortium Basic Principles

The following principles represent the Consortium's general policies toward tribal trust land acquisitions and other development proposals on trust lands:

A. The Consortium is opposed to any federal fee-to-trust request on behalf of any tribe that lacks significant, long-term and documented ties to the specific location in the county where the trust land acquisition or development is proposed.

The policy presumption is that each Consortium county will oppose any trust land request, regardless of the developmental purpose, where the tribe on behalf of which trust status is proposed, lacks significant ties. Counties will make their own determination on this issue and will be active participants in applicable federal proceedings. Until the county in question is satisfied that such ties exist, or are reasonably likely to be proven, no proposals for county-tribal agreements will be entertained, and other agreements related to the trust land proposal, such as those involving local governments or the State, will be disfavored.

B. In circumstances where a county is satisfied that a tribe, or an unrecognized group seeking federal acknowledgment as a tribal entity, has significant ties to a specific location, Consortium member counties:

1. Will work with the Tribe on a government-to-government basis to consider development proposals within the policy framework of the Consortium;
2. Will consider proposals to have land placed into trust for any development purpose in accordance with applicable legal authority on tribal purpose, need, and other factors, and to ensure consistency with county ordinances, zoning, environmental standards, health and safety standards, and other applicable development rules and standards;
3. Will disfavor gaming-related proposals until it is conclusively shown that the development is fully consistent with Consortium principles and is in the best interest of the county;
4. Will reserve the right to participate actively in any tribal acknowledgment proceeding based on the merits of the petition;
5. Will oppose federal acknowledgment proposals by groups seeking federal recognition outside the BIA administrative process (by legislation, for example) in the absence of approval of the county or an existing county-tribal agreement;
6. Will require that any county-tribal agreement will fully mitigate environmental impacts of the proposed project and that there will be guarantees of substantial compliance with county ordinances, zoning and environmental policies through a Memorandum of Understanding or similar agreement, in which the tribe must provide a sufficient waiver of tribal sovereign immunity to permit enforcement of the agreement; and
7. Will oppose the Congressional designation of trust land or the authorization of trust land selections in the absence of approval of the county or the existence of a county-tribal agreement.

III. Implementation Guidelines

In carrying out these principles, Consortium counties agree that they will be committed to the following:

A. Mutual Respect. The counties will be committed to respectful government-to-government relationships with tribal entities and recognize the unique role and interest of each. The same respect extends to the affected state and local governments. The concept of reciprocal respect will guide the actions of Consortium members.

B. Information Gathering. The counties affected by tribal development proposals will obtain information needed to evaluate the unique character of tribal status and the impacts of tribal development on the community, and the well-being and economic self-sufficiency of the tribal entity.

C. Education. The counties will develop, on an individual county or cooperative basis, a public education program to promote informed decisions on tribal proposals.

D. Active Participation. To protect local interests, the counties, through the Consortium, will participate actively and appropriately in state and federal policy and legislative processes to support the principles of the Consortium.

E. Trust Land/Development Response. The counties will ensure that any fee-to-trust transaction or other tribal development proposal by a recognized tribe:

1. Is subject to a comprehensive agreement (e.g., Memorandum of Understanding) enforceable in federal or state court between the tribal entity and the county;
2. Is consistent with the county's general plan;
3. Undergoes environmental review that is at least equivalent to the level of environmental review applicable to any comparable non-tribal proposal, including impacts, cumulative impacts, mitigation requirements, and other factors;
4. Includes enforceable provisions between the tribal entity and the county under which the tribal entity agrees to make payments to compensate for the government services typically covered by applicable taxes, to provide a negotiated fair share for health, welfare, and safety services, and to offset impacts of whatever developmental activity is proposed. This recognizes that such costs include: a) processing and administrative costs (such as permitting); b) impact mitigation; and c) the ongoing impacts of the activity or development;

5. Provides for the payment or mitigation from tribal entities to cover all public sector costs and economic impacts (police, fire, sewer, road, education, housing and others) associated with any development on trust lands;
6. Satisfies the health and safety standards (ordinances) of the county, either directly or by enforceable (third part enforcement) tribal ordinances;
7. Includes enforceable conditions and limitations with respect to the future development and/or changed use of any land that is to be placed in trust on behalf of the tribal entity; and
8. Includes a limited waiver of sovereign immunity of the tribal entity sufficient to permit enforcement of the terms of an agreement in federal or state court, or includes acceptable alternative enforcement provisions.

F. State and Local Government Relationships. With respect to the relationship between the counties and the State of California, and with local governments in each respective County:

1. The counties will respect and seek a partnership with the State and local governments consistent with these principles and the legal rights and responsibilities of these other governments;
2. Wherever possible, the counties will provide support and assistance to local governments and the State as they consider trust land and related tribal development proposals;
3. The counties will communicate these principles and standards, once adopted, to local governments in each county, the State, and any tribal entity interested in land within the respective county; and
4. The counties will seek to make decisions that are consistent with the interests of local governments within the counties that are likely to be significantly impacted by any proposed development.

IV. Conclusion

Tribal gaming and economic development on trust land presents a significant challenge to local governments. Through these principles, the counties in the Consortium will cooperate in efforts that protect the public interest, and provide information to tribal governments regarding the expectations that must be met to proceed with development activities. The ultimate goal is to establish a foundation upon which legitimate tribal development initiatives can proceed through a process of mutual respect and cooperation while fully protecting local community and tribal rights and interests.

The CHAIRMAN. Mr. O'Brien, please.

STATEMENT OF PAT O'BRIEN, GENERAL MANAGER, EAST BAY REGIONAL PARKS DISTRICT

Mr. O'BRIEN. Thank you. My name is Pat O'Brien. I'm the General Manager of the East Bay Regional Park District. Some of you may know we cover both Alameda and Contra Costa Counties. We're the largest property owner in that area. We operate over 96,000 acres of property and that includes a great deal of wilderness areas and parks and trail Systems.

We also support grazing and about 50 percent of our property is grazed which adds to the vegetation demands of the property.

We have many historical and cultural resources of the Native Americans that we protect. We're very supportive of the Native American community. We do, however, have significant issues with shopping for gaming purposes.

We are not against Indian gaming, but we are against this shopping in urban areas. It does create a lot of issues and problems; specifically, we have two specific impacts that we have had and one a discovery which we would like to bring to your attention which is of extreme concern.

The first impact is at Point Molate in the Richmond area. This is a Master Plan Park and there have been two public elections for funding for this park.

Both of them required a two-thirds vote and they got over two-thirds vote, so a lot of support for it. When the Navy went through a base closing process, an EIS/EIR was completed. It allowed for or proscribed a park site on this property, 40 acres. Our Master Plan proscribed it.

The City of Richmond approved the plan in 1997. Then came Indian shopping and out of some sort of magic the City approved, moved forward with a casino which was planned with the footprint of it right on top of the park property.

The California AG's Office has brought forward an issue and joined in the suit on the EIR process. So it shows this shopping creates somewhat of havoc in terms of planning, public support and we were quite concerned about the outcome of that.

The other is at Martin Luther King Regional Shoreline Park. This is over a 1200 acre park; it's in Oakland. It's one of the few soft water estuaries in Oakland still preserved. Over 300,000 people a year visit this site.

A proposal came forward to put an Indian gaming casino in a parcel which is covered on three sides by the park. Significant impact. We objected to it. It is a big concern as to the impact to the park. We have numerous issues with that.

However, in our discovery, there has been some very questionable actions which appear to have been taken by the previous Administration in terms of the Department of Interior in that they confirmed sovereignty on the Lower Lake Rancheria over the objections of the Bureau of Indian Affairs officials and contrary, we believe, to Federal law and regulations.

We know that in 1994 the Tribal List Act required three ways to be recognized: One is through an Act of Congress; the second is by Jurisdictional Decree and the third is by Part 83 Administrative Regulations under the Secretary. But Part 83 prohibits Administrative recognition of sovereignty if it was earlier terminated by Congress. In fact, this tribe was terminated in 1956, and yet we can find no authority for the recognition of sovereignty of this particular tribe.

So, it's a big concern to us and we have asked the Secretary to provide any documentation. We did get some documentation but we would really like this Committee to actually look into it too because we think more documentation needs to be available for our final judgment.

So, our issues are: Indian gaming shopping can have serious impacts on the community. We have had in the Martin Luther King area really a support by the whole community. The City of Oakland, Alameda, San Leandro the County of Alameda have all objected to this particular proposal and we think they have some serious issues. I think your legislation is a very important first step to really looking at this overall issue. We are very supportive of those efforts.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. O'Brien follows:]

Statement of Patrick O'Brien, General Manager, East Bay Regional Park District

Chairman Pombo and members of the Committee, thank you for the opportunity to appear before you today.

The East Bay Regional Park District (District) preserves for present and future generations a priceless heritage of natural and cultural resources near San Francisco Bay in Alameda and Contra Costa Counties, California.

Today, the District manages over 95,000 acres of land consisting of 65 regional parks, recreation areas, wilderness, shorelines, preserves and land bank areas. These areas are linked by 29 regional inter-park trials which connect to 1,150 miles of trails within our parklands. Ninety percent of the District's lands are protected and operated as natural parklands. We provide recreational and educational opportunities for millions of Bay Area residents, as well as visitors from across the United States and around the world.

The District is committed to maintaining a high quality, diverse system of interconnected parks which balances public usage and education programs with protection and preservation of our cultural and natural resources. More than 80 percent of District funding comes from property tax and assessment district levies in the two counties, park user fees, and park memberships.

Our commitment to cultural resources protection is strong and ongoing. Just last December the District acquired 617 acres that creates a permanent buffer for one of the most important Native American cultural resource sites in the East Bay, the Vasco Caves.

My testimony today addresses two topics:

(1) the direct and adverse impact of Indian reservation "shopping" by gaming developers on one of the crown jewels of our District parks, the Martin Luther King Jr. Regional Shoreline Park in Oakland, and a proposed new park unit at Point Molate in Richmond; and

(2) the discovery of unlawful administrative actions in the Department of the Interior that conferred Indian sovereignty on the Lower Lake Rancheria over the objections of BIA officials and contrary to Federal law and Interior Department regulations.

A third topic, the draft legislation you have prepared to address off-reservation Indian gaming development, is the subject of separate correspondence which we will be forwarding to you shortly.

1. Impacts Of Reservation Shopping On The East Bay Regional Park District

a. Martin Luther King Jr. Regional Shoreline Park

The Martin Luther King Jr. Regional Shoreline Park is a 1,220-acre park visited by more than 300,000 people annually. It protects the remainder of a once-extensive marshland at San Leandro Bay, and is one of the last salt marshes in Oakland.

By notice of November 26, 2004, (69 Fed. Reg. 68970) the Interior Department announced that the Bureau of Indian Affairs (BIA) would prepare an environmental impact statement (EIS) on the proposed acquisition of land in trust for the purpose of constructing and operating a tribal casino on 35.45 acres of land within the City of Oakland and adjacent to the Martin Luther King Jr. Regional Shoreline Park. The District, the Cities of Oakland, Alameda, and San Leandro all oppose the casino development proposal. The Bureau of Indian Affairs reported that as of April 8, 2005, more than 400 letters had been received in opposition to the casino development proposal. We know of no local jurisdiction that supports it. Moreover on May 18, 2005, Governor Schwarzenegger issued a proclamation stating that he will "oppose proposals for the federal acquisition of lands within any urbanized area where the lands sought to be acquired in trust are to be used to conduct or facilitate gaming activities." Oakland is one such "urbanized area."

The District has expended tens of thousands of dollars and considerable time in addressing the environmental impacts of the casino proposal on the Martin Luther King Jr. Regional Shoreline Park. The burdens of the proposal are tantamount to an unfunded mandate, or hidden federal tax, on Alameda and Contra Costa County taxpayers. Moreover, the future acquisition in trust, if it occurs, will permanently withdraw real property from Alameda County's tax base.

Considerable preliminary evidence has been assembled and submitted to the Department of the Interior highlighting the potential adverse impacts that a 24-hour, 7-day per week gaming operation would have on the security of the Port of Oakland, the safety of flight operations at Oakland International Airport, traffic circulation, and existing commercial development. The anticipated environmental impacts associated with water and air quality, increased noise and light pollution, disruptive

impacts on the Martin Luther King Jr. Regional Shoreline Park, and its wetlands, migratory birds, and shorebirds will require considerable additional time and resources to make a full assessment of the proposed casino's impacts. It is significant that the soils of the casino site are so polluted that the site is subject to a deed restriction prohibiting the development of the land for human habitation. The site is also subject to a federal consent decree agreed to by the U.S. Army Corps of Engineers restricting development to uses that would be compatible to the purpose of preserving the Martin Luther King Jr. Regional Shoreline Park as habitat for migratory birds and waterfowl.

b. Proposed Gaming Casino at Point Molate, Richmond, CA

The former Naval Fuel Depot Point Molate (Point Molate) is a remarkable property. Despite many years of use by the Navy, Point Molate is principally comprised of hillside and shoreline open space, with rich natural, cultural, scenic and recreational resources. Pursuant to Federal Base Closure actions, the Fuel Depot ceased operation in 1995. A community process through the City of Richmond created a Base Re-use Plan that selected as the preferred alternative a mixed-use historical village centered around a winery, with a retreat center, education and job training facilities, housing and light industrial land uses. The District has worked closely with the City of Richmond on the Plan, including preservation and enhancement of the historic shoreline, with the understanding that the public benefits from the reuse would be clear and guaranteed.

The Plan was adopted by the Richmond City Council in April 1997. The Navy processed and completed a detailed "Reuse EIS/EIR" for such uses and adopted a Record of Decision approving the document under Federal National Environmental Policy Act (NEPA) in 2002.

In 2003, contrary to any prior planning or approvals, the City of Richmond began a process and in fact sold the land to interests representing the Guidiville Rancheria Tribe of Pomo Indians. The purpose was to create a major urban gambling casino through an Indian Tribe with no apparent ties to the specific land or Richmond area. The Guidiville Band has now proposed an "off reservation" casino with some 1,100 hotel rooms, 150,000 square feet of gaming and related facilities.

The prior community approved plan, and the accompanying NEPA document have apparently been discarded, and the proposed casino located on top of a 40 acre public park site.

Point Molate has been a part of the District's Master Plan for decades and the recent ballot measure approved by over two-thirds of the voters in November 2004 contains funding for Point Molate projects. Moreover, as long ago as 1988, the citizens of the District voted, also by more than a two-thirds majority, to tax themselves to raise funds that would be used in part to acquire land and develop facilities for public use at Point Molate.

Opposition to build an "off reservation" casino at Point Molate includes community groups, environmental organizations, and the Contra Costa County Board of Supervisors. The District, along with local community groups, has filed suit under California's California Environmental Quality Act in order to require an open and public review of the project, which by law, should have occurred prior to approval by the City. The California Attorney General has recently joined the lawsuit on the side of our District arguing that California law has, in fact, been violated by the actions to date allowing the casino project to proceed. We are grateful also for the Governor's May 18, 2005, proclamation regarding urban gaming, which reflects a policy consistent with our community values.

Nonetheless, current federal law and regulations severely limit our ability to have a voice in this new casino project.

2. Unlawful Administrative Actions In The Department Of The Interior That Conferred Indian Sovereignty On The Lower Lake Rancheria

In the course of reviewing the trust acquisition and casino development proposal at the Port of Oakland site adjacent to the Martin Luther King Jr. Regional Shoreline Park, we discovered evidence from Department of the Interior and Bureau of Indian Affairs documents and other materials that call into question the Lower Lake Rancheria's status as a federally recognized Indian tribe. The results of our research to date are set forth in the June 2, 2005, correspondence to the Secretary of the Interior that is attached to our written testimony.

In the Federally Recognized Indian Tribe List Act of 1994, Congress specifically limited the means by which Indian tribes may receive Federal recognition:

(1) By an Act of Congress;

(2) Pursuant to Interior Department and Bureau of Indian Affairs Administrative procedures in 25 CFR Part 83 (the regulations are not applicable to tribes terminated by an act of Congress); or

(3) By a decision of a United States court.

In 1956, Congress terminated the Lower Lake Rancheria by disposing of the Rancheria land in fee simple and effectively terminating Federal relations with the reservation's lone Indian occupant. There is no record of any Indian tribe having ever been associated with the Rancheria.

In the half century since Congress terminated the Rancheria, no court has ruled that the congressional termination was unlawful. Under the circumstances, the only way that Lower Lake Rancheria could be restored to recognition was by an act of Congress. Congress has not done so.

Nonetheless, in December 2000, at the end of the last Administration, the Assistant Secretary for Indian Affairs issued a letter that purported to grant administrative federal recognition to the Lower Lake Rancheria. The Bureau of Indian Affairs experts on tribal status in the Branch of Acknowledgment and Research vigorously objected to the Assistant Secretary's intended decision. They wrote: "Unless the Assistant Secretary-Indian Affairs (AS-IA) has clear authority to act outside the acknowledgment regulations, and has conducted a competent, neutral study of the facts in those cases, the Department's credibility as an unbiased agency asked with acknowledging tribes will be damaged by arbitrary acknowledgment...." The experts were overruled and Lower Lake was recognized.

A subsequent Inspector General's investigation into other questionable tribal recognition decisions at the end of the last Administration found evidence of a politicized administrative process and apparent criminal conduct.

Had the last Administration followed Federal law and its own agency regulations, we would today not have to bear the burden of an unfunded mandate costing the District tens of thousands of dollars to participate in a process that is the result of an illegal act. Instead, the Martin Luther King Jr. Shoreline, which was thirty years in the making, is now threatened and our confidence in the commitment of federal officials to act within the limits of their authority is shaken.

We request that the Committee review the attached information regarding the Lower Lake Rancheria, and include it in the record of this proceeding. Upon completion of that review, we ask that you join is in requesting the Secretary to retract the invalid recognition of the Lower Lake Rancheria, suspend the pending trust land acquisition, and remove the Lower Lake Rancheria from the list of recognized tribes, unless and until Congress restores it to Federal recognition.

The record we have examined is not complete. The District has a Freedom of Information Act request pending in the Department of the Interior. Accordingly, our testimony is based on the record that is available at this time.

Thank you for the opportunity to present this testimony: I will be happy to address any questions you may have about it.

NOTE: Attachments to Mr. O'Brien's statement have been retained in the Committee's official files.

The CHAIRMAN. Ms. Schmit, please.

STATEMENT OF CHERYL SCHMIT, DIRECTOR, STAND UP FOR CALIFORNIA

Ms. SCHMIT. Thank you. Cheryl Schmit, Stand Up For California. I have already submitted my written testimony for today and my letter from March on your original draft.

I just would like to make a few points today, very briefly. Reservation shopping in California takes on many different forms. We have tribes who have land acquisitions that are both mandatory through Acts of Congress or discretionary where tribes are attempting to get restored lands.

We have tribes who are making land acquisitions that are contiguous or adjacent to existing reservations or rancherias and tribes who are attempting to do land settlements, some that are legitimate land settlements and others that are land settlements that again like some of the restored lands issues do not have the legitimate claims to the land.

Then we have a number of issues in this State where tribes have taken land into trust under the guise of that it was going to be for housing or for a medical clinic and instead it has turned out to be for gaming.

Then additional pieces of ad hoc legislation which create opportunities for gaming and which, Chairman Pombo, you recognized last year in the amendment bill, H.R. 4908, which I really appreciate as the citizens and that Committee likewise appreciate.

Off-reservation proposals are having a domino effect of impacts on local communities. There are political and legal impacts that are existing. We have had referendums, recalls, County Grand Juries, Federal Grand Jury investigations and litigation over the California Environmental Quality Act, redevelopment agencies abuse, a number of different types.

This is also reflected in some of these very small Tribal governments that are really actually organizing for the first time. There are internal enrollment disputes and continued conflict.

The gaming investors and clearly the list of off-reservation tribes' proposals that we have in the State today documents that we have investors coming into the State that are generating these proposals. These are ever-clever investors and they are constantly finding new ways of acquiring new land in order to create new, unchallenged exceptions for gaming.

I have two examples that are in Northern California right now:

We have the Alturas Tribe who is currently constructing a gaming facility on fractional interest allotment land over which it has just recently begun to exercise governance, land which is a significant distance from the tribe's established land base and recently proclaimed to be under the tribe's governance. They have not negotiated any type of agreement with the local government and there are tribes in the area there that are stuck with this ongoing construction.

The second example involves the Santana family, an individual Indian family owning trust allotment land as of 2000, which is transferring governance of this very marketable location in the City of Cloverdale, which is about 8,000 people, to the Hopland Tribal Government located about 50 miles away.

Your legislation addresses some of these land schemes head on by requiring historic tribal government nexus with the land and local control but there are many exceptions that this legislation may wish to give consideration to or the Committee may wish to direct the Secretary of the Interior to begin holding consultation hearings on the key process and in California with local government.

Your legislation addresses local control. Accepting input from local governments and affected communities I think is significant because in the long run it will ensure the well-being of the public and the working order of local jurisdictions and clearly the long term success of Tribal Governments.

The standard for California views with considerably concern the economic zones that are set forth in the bill. CSAC has made many suggestive revisions and modifications that support concerns of citizens and communities affected by tribal gaming.

But we still view these and support the revisions in general but we caution that there will be a lack of acceptance and support for the idea of economic zones even as modified in CSAC's language and for three very good reasons. An Economic Zone is an incentive to identifying an area that is not currently Indian country which invites the abuse of land speculators and gaming developers who will drive the decisions about the location of these zones rather than the cool minds of policymakers.

Economic zones are a recipe to bypass environmental regulations and review that will encourage the development of mega-casinos in urban areas or in sensitive rural areas.

IGRA is already riddled with loopholes as everyone is beginning to discover like the restored lands exception in the two-part determination. It is basically promoting, at least in California, a land draft with meaning.

I would like to express my great appreciation to you for being willing to bring these contentious issues forward and to try to address it in legislation. It is something that California significantly needs.

The CHAIRMAN. Thank you.

[The prepared statement of Ms. Schmit follows:]

Statement of Cheryl Schmit, Director, Stand Up For California

My name is Cheryl Schmit. I would like to thank Congressman Pombo and other distinguished members of the Committee of resources for providing me this opportunity to speak before you today on behalf of affected community groups across this great State of California. My organization, Stand Up for California, serves as an advocate and information resource for community groups and policy makers trying to understand and respond to the complexities surrounding the expansion of tribal gaming. My being here today demonstrates this committee's recognition that all affected parties must be invited to the policy debate that is essential to ensuring fairness, objectivity and accessibility.

We support the efforts of citizens who want to make sure that there are adequate protections for all communities adversely impacted by unregulated gambling expansion. We do not seek to impede the economic progress and advancement of California's native peoples; rather we seek regulatory reforms that we believe are in the best interests of all the inhabitants of this State.

We sincerely appreciate the effort of Congressman Pombo to bring forward legislation in an attempt to restrict the proliferation of tribal gaming and at the same time encourage greater local government involvement in the mitigation of impacts.

Voters were emphatically told in Propositions 5 and 1A that the ballot measures would be a limited exception to the prohibition on casino style gaming and would not result in the proliferation of urban casinos. Yet here we are today, with more proposals than any other state all in varying stages of development. It is clear that off reservation land acquisitions for gaming will undermine the constitutionality of California's Indian gaming industry. Moreover, off reservation casinos pose a serious threat to the tribal gaming industry, as the public support which tribal governments enjoyed in 2000, is evaporating. The California electorate now feels betrayed by the broken promises of no urban casinos.

California is significantly affected by tribes continuing to reservation shop for new casino sites off established reservations and without historic ties. Tribes and gaming investors continue to promote numerous exceptions under IGRA for off reservation casinos that allow for the development of gaming on lands acquired after the 1988 cut off. The list I am providing you includes land acquisitions that are mandatory and circumvent the Governor, discretionary requiring gubernatorial concurrence and several exceptions to acquire land for gaming in accordance with IGRA—such as contiguous lands, land settlements through litigation or ad hoc legislation. This list continues to document the influence of gaming industry dollars on federal Indian policy for land acquisitions and tribal recognitions.

Many California tribal groups qualify for gaming due to the enactment of Senator John McCain's 1994 legislation. The unintended consequence of the List Act (Technical Corrections Act of 1994, Section 5, Pub.L.103-263, 108 Stat. 707 (May 31,

1994)) in California relates to Rancheria lands that were owned in fee—not in trust by the United States. The misapplication by the BIA of the Senator's amendment has allowed numerous land-based groups to be elevated to the federal recognition list despite legitimate questions that should have occurred. Many of the Rancheria tribal groups began to organize for the first time in 1994 and to develop off-reservation casinos.

Off reservation gaming has created a domino effect of impacts. It has created numerous instances of internal enrollment disputes over Indian lands, gaming money and power. It has set off political and legal impacts on local governments and the surrounding communities of citizens.

But gaming investors are ever-clever, coming up with new ways of acquiring new land in order to create new unchallenged exceptions for gaming. Two great examples exist in Northern California today:

- The Alturas tribe is currently constructing a gaming facility on fractional interest allotment land over which it has just recently begun to exercise governance—land which is a significant distance from the tribe's established land base and recently proclaimed to be under the tribe's governance.
- The second example involves the Santana family, an individual Indian family owning trust allotment land as of 2000, which is transferring governance of this very marketable location in a City of Cloverdale (population: 8,000) to the Hopland tribal government located approximately 50 miles away.

Your legislation addresses some of these schemes head-on by requiring a historic tribal governmental nexus with the land and local control. But, there are many exceptions this legislation needs to give further consideration too.

Local approval

Your proposed amendments to IGRA would protect and ensure the well-being of the public, the good working order of affected local jurisdictions and the long-term success of tribal governments. Your legislation addressing local input is greatly needed.

While the amendment specifically would remove the sole discretion of the Governor to approve off reservation casinos it appears to expand the approval to all affected parties. This amendment will require precise language to clarify the approval process.

Revisions and Zones

Stand Up for California views with considerable concern the idea of economic zones as set forth in the bill. CSAC has made many suggested revisions and modifications that support the concerns of citizens in communities affected by tribal gaming. Stand Up For California supports these revisions in general but would also caution there is a lack of acceptance and or support for the idea of economic zones, even as modified in the CSAC language.

- An economic zone is an incentive to identifying an area that is not currently Indian country which invites the abuse of land speculators and gaming developers who will drive decisions about the locations of these zones rather than the cool minds of policy makers.
- Economic zones are a recipe to by pass environmental regulations and review that will encourage the development of mega-casinos in urban or sensitive rural areas.
- IGRA is already riddled with loopholes—like the restored lands exception to the two-part determination in Section 20 of IGRA—which has promoted a land grab for gaming.

Conclusion

Overall, while we sincerely appreciate the opportunity that this draft legislation presents for a public debate on the impacts of tribal gaming, we believe a more moderate approach will be less objectionable and consistent with the delicate balance between the rights and authorities of states, tribes and the federal government. For example, we believe that rulemaking at the administrative level—a formal revamping of the fee-to-trust process for all new land acquisitions is a good beginning.

It is without a reasonable dispute that "Reservation Shopping" is driven by out of state gaming investors, carefully controlling their clients (a.k.a. tribes) and making "development agreements" rather than "management contracts". These gambling interests are deliberately circumventing the National Office of Indian Gaming Management and the National Indian Gaming Commission by seeking to have land taken into trust as restored lands. This type of abuse demands federal regulatory action to protect the integrity of tribal gaming operations and protect state and local governments.

- An incremental change requiring approval of all agreements is necessary as IGRA only requires management contracts to be reviewed and approved.

Stand Up for California would like to see the full support of the Conference of Western States Attorneys General and the support of all Governors for this legislation. We thank you for your willingness and courage to raise these timely and contentious issues in an open and respectful debate.

The CHAIRMAN. I am going to start with Mr. McGowan. Just to clarify the position of California Counties, there is not a general opposition to Indian gaming on Indian trust lands now or reservation lands now?

Mr. MCGOWAN. No, there is not. We have chosen not to weigh in on the question of the use of the land. We do not have any formal opposition at all or any policy objection to Indian gaming, provided it's carried out in the manner required under the State and Federal law.

Our issue primarily has always been the impacts of on-reservation activity on the surrounding lands. We are, the County Supervisors are, essentially as our State Council Members are, in their own purview. We are the stewards of the land and protectors of the environment except on Indian land.

Our issue is that, that activity should not be carried out in such a way that would adversely impact the neighborhood. My rights extend to the end of my fist, but they stop somewhere short of your chin. Our issue is that we set a level of compatibility as far as honoring and respecting Indian sovereignty, including its use of the land for gaming purposes, but also having our responsibilities honored as well.

We believe quite frankly that through some requirements for negotiation of those impacts and for judicially enforced standards that most if not all of the concerns between tribal wishing to engage in gaming and the County can be met. We feel actually very confident about that.

Our main issue is the inclusion of local jurisdiction, especially counties, in this decisionmaking process.

The CHAIRMAN. In the draft legislation we deal with local government having a bigger voice in approving certain Indian gaming facilities, but as a Supervisor, you are aware that if a development comes in, you have to be able to show a nexus between the impact and what is being required of that development to pay for.

Mr. MCGOWAN. Yes, sir.

The CHAIRMAN. To expand on Mr. Costa's idea that the State have a policy in regards to Indian gaming, if that State policy requires a negotiation between, consultation and negotiation between the sovereign tribal government and local government to have that tribe pay for whatever their impacts are on traffic or what have you, if that was part of the State compact process, would that address what the bulk of your concerns are in terms of impacts, particularly on rural counties?

Mr. MCGOWAN. It would go a long way. You're talking about just the compacts. We're dealing with that right now with trying to get these kind of provisions included in the new compacts.

Governor Davis began the process at the very end of his term and then Governor Schwarzenegger has picked up that and has included local jurisdictions as one of the entities that must be

reckoned with in that fashion. That is, we have an opportunity to negotiate to try to reach an accord. If we are unsuccessful, there are actually repercussions for the side that is unreasonable in that regard.

Once an agreement is reached, then there are the judicially enforceable—there will be an enforcement.

We supported that. We would like to see a policy in California that goes beyond just a compact because at the heart of this for us is what you mentioned in the very beginning, is this need for the nexus. Counties and cities for that matter are very comfortable with doing that analysis and coming to requirements for the development that meet that nexus test. We do it all the time.

So it's not a new thing for us to deal with that, even if it's a gambling casino in the middle of your jurisdiction. What we're asking for in essence is, give us that opportunity to do that which we do very well already.

The CHAIRMAN. Before my time expires, I'm want to go to Ms. Schmit. In regards to the Indian Economic Opportunity Zones, the law is not guaranteeing Indian gaming success to every tribe. That was never contemplated. But in moving forward with this legislation, I don't want to take away the opportunity either.

So the idea of having an Economic Opportunity Zone was to try to avoid some of the other issues that you raised in your testimony with one tribe trying to leap-frog another, others trying to use the system in order to be in an economically superior place, but to work with local tribes, local government and tribes that are seeking that opportunity and to try to consolidate that within what we call the Economic Opportunity Zone. That is the purpose of it.

I believe if you take that out of the draft legislation, you are risking the possibility that you would be taking opportunities away from tribes that currently exist for them. I don't want to do that. So we're trying to thread this needle and say, "The opportunity is there for those who chose to do it." Not every tribe chooses to game.

As Mr. Costa talked about it, about half of the ones in California chose not to now. If you look across the country it's similar to that. But those who do choose to game, I would rather have that done in a more orderly fashion than what we're currently experiencing right now.

Ms. SCHMIT. Right, and I understand that in the 1999 compacts, it was clearly in the compact that was referendumed, and it was also I believe in Prop 5, there was the component of revenue sharing made available to the non-gaming tribes of the State and that was supposed to be an incentive not to open up gaming.

Clearly, that revenue sharing continues today and many of the tribes that are promoting off-reservation casinos, not all but many, are very small numbers in the population and revenue sharing right now is at 1.2 million.

Unfortunately, this amount of revenue when it goes to these tribal governments, one tribe that I know of specifically is splitting it 60 percent with the members and 40 percent with the Tribal Council to go out and attempt to do reservation shopping. So that incentive to decrease the proliferation of gaming has kind of backfired on us.

I see the benefit to the economic zone, I truly do, but the Governor in the compact process there was the idea of—not in the compact—but there was this idea that there could be a clustering of tribes to create an economic zone basically, and it would have State oversight because it would be negotiated through Tribal/State compacts.

But this is not going well. I think it can clearly be demonstrated in Southern California between the cities of this area in Barstow where we have five or six tribes promoting off-reservation casinos. There is a debate between the tribes, there is a debate growing within the cities. Clearly, the citizens are not supportive of all of the casinos in one area.

Again, I think in my first letter I said it would need to be very carefully crafted.

The CHAIRMAN. I understand your concern and the example that you use as to how some of this money is being used, I'm familiar with the number of tribes that currently have gaming that have invested millions of dollars with other tribes who don't have gaming to build their economic base within their reservation and I have run into that all the time where these tribes are actually taking their revenues that they have raised from gaming and invested it, not just in themselves, but in other tribes. Some with great success and they have been doing that.

So this is controversial. This is a tough issue to get around, but I don't want to push us into one particular box and make it look like everybody is doing the same thing because there have been some real success stories that are out there.

Ms. SCHMIT. A successful zone I think that has already been created within the State, we can't really call them zones, but we have had in the last compact process the Vian Cross partnered with the Yuba tribe. That resolved a reservation shopping issue in San Diego County very satisfactory. I think that says lot about progressive leadership. Some of the tribes in the State are willing to do those types of actions.

So, maybe one of the zones that you are suggesting would be agreeable to success.

The CHAIRMAN. Mr. Costa.

Mr. COSTA. Thank you very much.

Ms. Schmit, are you aware over the years that you have participated and been involved in this matter of any sort of clear, coherent, statewide policy as it relates to Indian gaming in California?

Ms. SCHMIT. State policy? Citizens in the early days when I got involved with this back in 1996 and at that time under Governor Wilson citizens had access to the Governor's office to give comment on what they wanted——

Mr. COSTA. I understand and I'm familiar with all of this, but I'm talking about under either the Davis Administration or under the current Administration notwithstanding this proclamation.

Ms. SCHMIT. At the end of the Davis Administration, yes, there began to be a policy that was being addressed in the compacts. With the new Administration, I know the proclamation is new, but I have had access to numerous letters that the Governor's office has sent to community groups and members of City Councils.

Mr. COSTA. Do you think it would be more accurate to describe over the last 15 years it's really been more of a case-by-case basis than individual sovereign nations that are attempting to——

Ms. SCHMIT. Right. It has been case-by-case and each tribe reasonably is geographical and culturally——

Mr. COSTA. I understand.

Supervisor Brown, it's good to see you again.

Since you and I were both in the legislature for part of the same time—you have your own experience based upon the time you were there—is it clear that there has never really been any sort of a statewide policy as it relates to Indian gaming in California?

Ms. BROWN. I think the policy has certainly changed. As Ms. Schmit was referring, the original compact had a lot more deference to the local government than the subsequent Davis compact. I think that Governor Schwarzenegger is trying to address some of the issues that——

Mr. COSTA. Is there any clear State policy that you and CSAC can put your hands on and say, ''This is the policy.''

Ms. BROWN. I would say no. I would say it changes with—just one of the things that I would like to add is that the State of Arizona really doesn't have a lot of the same problems that we do because their state compact doesn't allow outside investors.

I think that's certainly an issue that ought to be looked at in the future in terms of how we deal with this because that has really brought forth a lot of problems for us a lot of problems that we never expected.

Mr. COSTA. Supervisor McGowan, do you care to weigh in?

Mr. MCGOWAN. I would love to. If you strip away the niceties, my arrival on the scene as far as Indian gaming policies were concerned was a shock, at least I think it is. The State of California has done a lousy job in really addressing the issue of Indian sovereignty and Indian gaming in California.

When CSAC started, we were just trying to get a little attention here and be treated halfway decently. I think most of the policy that has occurred here has really happened outside of the State Legislature and the Governor's Office.

Mr. COSTA. A number of you have spoken about reservation shopping. As I think about it in the years that I have served, it seems to be more like today with States in the process of issuing franchises and every franchise is a different deal and that's what concerns me.

It seems to me that hopefully we'll get your thoughts today, reflect on it and maybe help generally what could be in the future prospectively—obviously, those that have come among the 64 compacts. Those are agreements and I don't think you can violate them by law.

It seems to me in the future we have to look at where we're going. May I add one thing?

Mr. COSTA. Yes.

Mr. MCGOWAN. It's fundamental that we address this issue because for us to fumble around like this, suddenly can change to cause tremendous pains and ill will between people of good intentions. That would be the tribes themselves, local jurisdictions, State jurisdictions, Federal jurisdictions.

We owe it to each other to get this stuff worked out so that there is some understandable way to proceed on the rights of sovereign tribes and also responsibilities to State and local government.

Mr. COSTA. Quick question: Does CSAC believe that counties on a case-by-case basis are given leverage?

Mr. MCGOWAN. Actually, when we started, that was definitely true. As we have become, I think, more intelligent about how to deal with these issues and how to develop a relationship with the tribes, the counties are less and less in a situation where they get leverage on the deal especially if they want to pay attention to some of the successful stories from other counties and tribes, so we're getting better at it.

Mr. COSTA. Thank you.

Mr. GOHMERT. Thank you. I have been doing a lot of reading and trying catch up on this issue.

It has not been a major issue in Texas. Just to make sure that I understand and I'm on the same page and understand exactly.

My review of the draft bill indicates that this would end, and what we have heard discussion about is the two-part determination under IGRA. This proposed bill would end that and prohibit the tribes from crossing the state lines and build facilities where they don't even have a reservation.

It would allow Economic Opportunity Zones with each State where Indian gaming is legal, but some of the high points that jumped out at me if I understood correctly, a zone has to be approved by the State and local government which would give, the way I understand it, everybody including everybody here an opportunity to come and weigh in and make sure the people that they put into office represented their interests.

With regard to landless tribes, restored or landless tribes, with requirements for getting land for gaming, only if it is on their geographically historical area—the State and local governments once again are the ones who have jurisdiction and have to approve that. Is my understanding of your proposed bill correct, Mr. Chairman?

The CHAIRMAN. That's the way the draft now reads.

Mr. GOHMERT. So, there is nothing like local control and it sounds like there hasn't been enough of that, working together. I'm just curious as is my staff.

I have been a judge for many years so I'm kind of new to this. If this is out of line, you can sure tell me, but since you don't have a bailiff who will put me in jail, I'll ask it.

We have such a huge turnout here and it's obviously a nonscientific poll, but by indication of hands, how many here feel like you understand the draft of the proposed legislation?

Not too many, is it? From what you do understand, how many support the legislation that appears that appears that it would reign in some of the past abuses and allow more local control? If I could see a show of hands in favor of that?

How many oppose the new legislation? We have a lot of those don't yet have an opinion; they are just here. It's still a good indication that this many people care and will come forward and have been looking into it. I know that you have already indicated that you will allow additional witness statements and written questions,

so I would just encourage anybody that does wish to submit a written statement to do so.

From the four of you, are all four of you in favor of what you have seen of the proposed legislation?

Mr. MCGOWAN. CSAC's position is that we haven't taken a position directly on the bill. We will be prepared to do that. We're very happy. We like this progress. We think it is long overdue.

There is much of it that touches us in our hearts as far as local control is concerned. We would want to work with you all about stands versus zones. I don't think it's possible. CSAC does not have a position on that.

But this is progress, to see this kind of thoughtfulness come out of the House is very important to us. It does touch many of our issues. We want to work with you all.

Ms. BROWN. I think the one thing that might be interesting to share with you from the California perspective and being a supervisor in county government is that we are mandated by the State to put together a general plan and that general plan has any number of elements dealing with infrastructure, dealing with water, agriculture, housing, all of the elements. It's a 20-year plan.

When you have looked at your county from a 20-year perspective, today and tomorrow you have an investor who comes in on a 50-acre to 75-acre parcel and says—"Guess what? I know that that was previously ag, but now we see it as a 300-room hotel, an entertainment facility and a casino." It hugely upsets the apple cart. From our perspective, it's important that they are in at the beginning.

We have five tribes in Sonoma County and I will tell you that four of them have been very willing to work with the County, even though one tribe is a restored tribe and has no requirement to do that whatsoever. They can do what they want. They are sovereign. They have insisted on having public hearings and working with the County.

It's been a very good lesson for us. I think what we're trying to do is encourage that more because we are communities that live side by side and we are governments that work side by side. We have to understand where that goes.

Mr. O'BRIEN. I think it's a more profitable process. It certainly puts a degree of rationality and planning which so far as we have seen the reaction is that it goes against the community. Some of them shopping but most of the time it seems to go against the community interests and understandings of work relationships.

Those issues need to be out on the table so people can deal with them in a legitimate way.

Mr. GOHMERT. Ms. Schmit, I'm not familiar with Stand Up For California but I assume that you do advocate more than just standing up. Are you in a position to say you support this type of legislation or you're against it.

Ms. SCHMIT. Right. We're not taking a position on the draft legislation.

Mr. GOHMERT. So, you're just in a standing up mode.

Ms. SCHMIT. It's important to recognize the vision that CSAC has put forward in general. What we're really supporting is the fact

that the Congressman is willing to bring this up in debates, the fact that it is being debated in the House.

These are very contentious issues in the community where there is reservation shopping and it's detrimental to the long-term success of the tribes as it is detrimental to the citizens of the community. We need some way to address these issues through policy, through legislation, that allows us to live side by side in this.

We can do this. In my county, I live in Placer County, we faced this nine years ago. We had a tribe who through ad hoc legislation was restored to Federal recognition. My neighbors went crazy and it required some people to step back with cool minds and think about this.

We were very fortunate in our county. Our County Supervisor and our Congressman worked very closely with our county and agreed upon a location in an appropriately zoned area that was consistent with the general plan of our county. The agreement that the tribe made with our county is a comprehensive agreement. It did not infringe upon their sovereignty. Rather, it was a very eloquent demonstration of the exercise of our government. So, our county is not impacted like other communities have been.

Mr. GOHMERT. One of the darkest clouds on our American history has been a number of agreements made with Native Americans that have been broken, just discarded. It's a terrible testimony of our past history.

So I appreciate input from everybody to kind of get me up to speed. We just need a mechanism in place that allows both sides of this issue to hold the other accountable for any misrepresentation, whether it's the tribe holding the government accountable or the local government holding the tribal government accountable to the agreements. Thank you for your time.

The CHAIRMAN. I am going to dismiss this panel. Thank you for your testimony and for answering questions. Any further questions will be submitted to you in writing and if you will answer those in writing I would appreciate it.

Those of you who are testifying, please stand up and be sworn.

[Witnesses sworn.]

The CHAIRMAN. Let the record show that they answered in the affirmative.

The CHAIRMAN. Welcome to the Committee hearing, Chairwoman. We're going to begin with you but before you start I remind you that your entire written testimony will be included in the record. If you can summarize that and keep your oral testimony to five minutes, it would be appreciated. Thank you.

Before you begin, if I could just have order in the room. We don't have any microphones in here and it's difficult for the court reporter to hear. I would ask you to speak up when you testify but if I could have a little bit more order in the room, it would help everybody here.

Chairwoman Mejia, please.

STATEMENT OF MARGIE MEJIA, CHAIRWOMAN, LYTTON BAND OF POMO INDIANS

Ms. MEJIA. Congressman Pombo, distinguished members of the Committee on Resources, thank you for inviting me to participate

today. My name is Margie Mejia and I am the Chairwoman of Lytton Band of Pomo Indians.

To understand why we are here today, it's important to understand something about the history of our tribe. Like most California tribes, we are a small group with about 275 members. Like many other California tribes, most of our members live in poverty. Many have no or inadequate health care. Alcoholism and substance abuse are continuing problems. We have many families living together in tiny apartments.

Until the 1950's, we did have land. That land was in Sonoma County. Today this is the site of some of the most prestigious wineries anywhere in the world, but the reason that today there are vineyards on that land instead of our homes is the result of actions taken by the Federal Government.

In the 1950's, the Government decided to terminate the small Native American bands like ours as part of a failed Federal experiment to abolish reservations and forcibly assimilate Native Americans into urban areas. The result was that we lost both our legal identity and our land, but we never lost our existence as a community. Many of us continue to live together and to take care of tribal members in need as we do to this day.

Eventually we sued the United States and the outcome of that suit is that the Federal Government admitted it had broken the promises it had made in the termination agreement. In 1991 our tribal status was restored; however, that settlement effectively barred us from returning to our private land in the Alexander Valley by prohibiting us from operating a gaming facility in the area.

We had no choice but to agree to this condition because otherwise with little or no resources of our own, we would have been forced to fight a protracted legal battle against a group of wealthy wineries and the County. After restoration we re-established our Tribal Government, passed a Constitution and the right to Tribal Council.

We also began to look for a means out of the relentless poverty many of our members face and to rebuild our tribal community. We turned to gaming since the Government offered that to us as means of economic development and because it generates enough money to allow us to get a loan and finance the rebuilding of our tribe and tribal community.

In 1991, the restoration agreement, while barring us from operating a gaming facility in Sonoma County, did not foreclose on our right to find another community that might welcome us as partners. We found our road to economic self-reliance in the City of San Pablo. With the help from private investors we purchased an existing card club that had been approved by the local voters in 1994.

The City and the Tribe then negotiated a Municipal Services Agreement. At the time, such an agreement was unprecedented in California and was the most protected arrangement between local interests and an Indian tribe in California.

But there were other hurdles to come. Although it was the Government's wrongful actions which resulted in the loss of our land, by the time the Government had admitted that and prepared to make good on our loss, the legal landscape of the tribes had changed.

The law had been passed which made it extremely difficult for tribes to operate gaming on land taken into trust after 1988 unless Congress made that land eligible. Even though it was not our fault that we were in this position and although the law had not been intended for landless tribes, but rather tribes with existing reservations, our efforts to seek help from the Department of Interior went nowhere.

Finally, Congress acted to take that land into trust for us as it had in the case of many other tribes in California and other states. This was the final option after we had tried everything else. Thanks to the efforts of Congressman George Miller, that proposal was introduced in legislative form in October of 2000.

On December 27th of that year, the President signed the bill into law. There were newspaper articles about this at the time, and subsequently there were two attempts to repeal this proposal. Neither of those met with success. Relying on support of Congress, we have made a substantial investment of time and money toward gaming development.

We have negotiated generous agreements with both local and State governments and have made every effort to be a good neighbor. In fact, we believe we are doing exactly what the Federal Government wanted us to do when it refused to settle our restoration lawsuit until we agreed not to conduct gaming in Alexander Valley. The Government told us to look elsewhere and we did.

The Feinstein legislation represents another broken promise made to the Lytton Tribe by the Federal Government. It is nothing short of another Congressional termination. We believe that our right to conduct gaming is a valuable property right protected by the United States Constitution and that this right cannot be taken from us without substantial compensation.

In addition, this legislation represents government action and regulation that just goes too far.

The Lytton Tribe, like all American citizens, should not be subject to government actions and regulations that deprive them of their right to use their lands for economic development purposes.

The act of taking the land into trust for us in San Pablo was not the beginning of the story; it was the end of a very long story, a story of poor treatment of our tribe at the hands of the Federal Government.

That was an act of redress making good the wrong that had been done to us more than 50 years before. To have simply said, "We're sorry," and offered up a paper apology for the treatment of our tribe would have wrong. Taking that land into trust represented a meaningful act of redress. Taking that land out of trust would make that gesture many empty words.

This is the background to our proposal for a casino project on our land in San Pablo. Our initial proposal in 1998 (sic.) was for a modest gaming operation with something on the order of 1,000 slot machines. In the proposed compact that we signed with the Government last year, that number was originally 5,000, which was then revised down to 2500 machines.

Since there has been some controversy about the change, let me address that for a moment:

When we made our initial proposal in 1999, no compact, not ours or any other tribe's, provided for any revenue sharing with the State of California, nor did these compacts provide local and State governments opportunity for substantial environmental review, mitigation of local impacts or involvement in gaming regulations.

We stepped up to the plate to do just that, reaching an agreement to pay an unprecedented 25 percent of net gaming revenues to State and local government, to pay our fair share of public services and environmental mitigation. But that commitment also required more slot machines than originally envisioned.

We agreed to two exhaustive impact reviews prior to anything being built. These provisions are modeled after the, CEQA, California Environmental Quality Act, such as the inclusion of project alternatives, mitigation and citizen participation in the process.

The compact took one step farther by requiring the Tribe to complete agreements of mitigation with its neighbors in the City of San Pablo and the local community and State Transportation Department.

Over and above our compact obligations, the Tribe spent the past months engaged with the community to hear their hopes and concerns about our project. We negotiated and signed a compact with the Governor of California.

We have the strong support of the City of San Pablo where the casinos would be located. We believe that this proposed compact represented a good for all parties. Notwithstanding all that, as you know, the California State Legislature has chosen not to act on the compact.

As a result, we will now focus on our exercising our rights under Federal law. We will renovate the interior of the existing building to make it more attractive and to offer a wider variety of Class II gaming activities, including Class II electronic bingo games.

These are not video lottery terminals. They will fall well within the definition of what constitutes Class II gaming. We don't tend to push the envelope.

We did not ask to be in this situation. We did not ask the Federal Government to take away our name and our land, but that happened.

Now, decades later when the Government has finally acted to right those wrongs, we believe it would be wrong to take away our right to pursue economic self-sufficiency.

If this body wishes to address various issues associated with Indian gaming, so be it. But I respectfully ask you not to go back and retroactively change the rules for us.

What this body did in 2000 was the right thing to do. It was to make good a wrong the Federal Government had committed against our tribe. I ask you to let that act of justice stand. Thank you.

Right those wrongs. We believe it would be wrong to take away our right to pursue economic sovereignty associated with Indian gaming, but I respectfully ask you not to go back retroactively and change the rules for us. What this body did in 2000 was the right thing to do. It was to make good on a wrong that the Federal Government committed against our tribe and I ask you to let that act of justice stand.

The CHAIRMAN. Thank you.

[The prepared statement of Ms. Mejia follows:]

Statement of Margie Mejia, Tribal Chairwoman, Lytton Band of Pomo Indians

Congressman Pombo and distinguished members of the Committee on Resources, thank you for inviting me to participate today. My name is Margie Mejia, and I am the chairwoman of the Lytton Band of Pomo Indians. To understand why we are here today, it's important to understand something about the history of our tribe.

Like most California tribes, we are a small group, with about 275 members. Like many other California tribes, most of our members live in poverty. Many have no or inadequate health care. Alcoholism and substance abuse are continuing problems. We have many families living together in tiny apartments. Only one of our members owns a home.

But until the 1950s, we did have land. That land was in Sonoma County, and today this is the site of some of the most prestigious wineries anywhere in the world. But the reason that today there are vineyards on that land, instead of our homes—is the result of actions taken by the federal government.

In the 1950s, the government decided to "terminate" small Native American bands like ours as part of a failed federal experiment to abolish reservations and forcibly assimilate Native Americans into urban areas. The result was that we lost both our legal identity and our land.

But we never lost our existence as a community. Many of us continued to live together, and to take care of tribal members in need, as we do to this day. Eventually, we sued the United States, and the outcome of that suit was that the federal government admitted it had broken the promises it had made in the termination agreement. In 1991, our tribal status was restored. However, that settlement effectively barred us from returning to our tribal lands in the Alexander Valley by prohibiting us from operating a gaming facility in the area. We had no choice but to agree to this condition because otherwise, with little or no resources of our own, we would have been forced to fight a protracted legal battle against a group of wealthy wineries and the county.

After restoration, we re-established our tribal government, passed a constitution and elected a tribal council. We also began to look for a means out of the relentless poverty many of our members faced, and to rebuild our tribal community.

We turned to gaming because the government offered that to us as a means of economic development, and because it generates enough money to allow us to get a loan and finance the rebuilding of our tribe and tribal community.

The 1991 restoration agreement, while barring us from operating a gaming facility in Sonoma County, did not foreclose our right to find another community that might welcome us as partners. We found our road to economic self-reliance in the City of San Pablo where with help from private investors we purchased an existing card club that had been approved by local voters in 1994.

The City and the Tribe then negotiated a Municipal Services Agreement. At the time, such an agreement was unprecedented in California, and was the most protective arrangement between local interests and an Indian tribe in California.

But there were other hurdles to come. Although it was the government's wrongful actions which resulted in the loss of our land, by the time the government had admitted that, and prepared to make good our loss—the legal landscape for tribes had changed. A law had been passed which made it extremely difficult for tribes to operate gaming on lands taken into trust after 1988 unless Congress made the land eligible. Even though it was not our fault that we were in this position, and although the law had not been intended for landless tribes, but rather tribes with existing reservations, our efforts to seek help from the Department of Interior went nowhere.

Finally, Congress acted to take that land into trust for us as it has in the case of many other tribes in California and other states. This was the final option, after we had tried everything else. Thanks to the efforts of Congressman George Miller that proposal was introduced in legislative form in October, 2000. On December 27th of that year, the president signed the bill into law.

There were newspaper articles about this at the time, and subsequently, there were two attempts to repeal this proposal. Neither of those met with success. Relying on the support of Congress, we have made substantial investments of time and money toward gaming development. We have negotiated generous agreements with both local and state governments and have made every effort to be a "good neighbor". In fact we believe we are doing exactly what the federal government wanted us to do when it refused to settle our restoration lawsuit until we agreed not to con-

duct gaming in the Alexander Valley. The government told us to look elsewhere and we did.

The Feinstein legislation represents another broken promise made to the Lytton Tribe by the federal government. It is nothing short of another congressional termination. We believe that our right to conduct gaming is a valuable property right protected by the United States Constitution and that this right cannot be taken from us without substantial compensation.

In addition, this legislation represents government action and regulation that goes "too far". The Lytton Tribe, like all American citizens, should not be subject to governmental actions and regulations that deprive them of their rights to use their lands for economic development purposes.

That act, of taking land into trust for us in San Pablo, was not the beginning of this story. It was the end of a very long story—a story of poor treatment of our tribe at the hands of the federal government. That was an act of redress, making good the wrong that had been done to us more than fifty years before. To have simply said, "We're sorry," and offered up a paper apology for the treatment of our tribe would have been wrong. Taking that land into trust represented a meaningful act of redress; taking that land out of trust would make that gesture so many empty words.

That is the background to our proposal for a casino project on our land in San Pablo.

Our initial proposal in 1999 was for a modest gaming operation with something on the order of 1,000 slot machines. In the proposed compact that we signed with the Governor last year, that number was originally 5,000, which was then revised down to 2,500 machines. Since there has been some controversy about the change, let me address that for a moment.

When we made our initial proposal in 1999, no compact, not ours or any other tribe's, provided for any revenue-sharing with the state of California. Nor did these compacts provide local and state governments opportunities for substantive environmental review, mitigation of local impacts or involvement in gaming regulation.

We stepped up to the plate to do just that, reaching an agreement to pay an unprecedented 25 percent of net gaming revenues to state and local government to pay for our fair share of public services and environmental mitigation. But that commitment also required more slot machines than originally envisioned.

We agreed to two exhaustive environmental impact reviews prior to anything being built. These provisions are modeled on the California Environmental Quality Act such as the inclusion of project alternatives, mitigation and citizen participation in the process. But the compact took one further step by requiring the Tribe to complete agreements on mitigation measures with its neighbors in the City of San Pablo, the local county and the state transportation department.

Over and above our compact obligations, the Tribe spent the past months engaged with the community to hear their hopes and concerns about our project. As a result, we reduced the size and scope of our project, to make it a better fit for the community, while still offering the creation of more than 6,600 new jobs.

We negotiated and signed that compact with the governor of California. We had the strong support of the city of San Pablo, where the casino would be located. We believe that the proposed compact represented a good deal for all parties. But notwithstanding all that, as you know, California's state Legislature has chosen not to act on the compact.

As a result, we will now focus on exercising our rights under federal law. We will renovate the interior of the existing building to make it more attractive and to offer a wider variety of Class II gaming activities, including Class II electronic bingo games. These are not video lottery terminals. They will fall well within the definition of what constitutes Class II gaming. We don't intend to push the envelope.

We did not ask to be in this situation. We did not ask the federal government to take away our name and our land. But that happened. Now, decades later, when this government has finally acted to right those wrongs—we believe it would be wrong to take away our right to pursue economic self-sufficiency.

If this body wishes to address the various issues associated with Indian gaming, so be it. But I respectfully ask you not to go back and retroactively change the rules for us. What this body did in 2000, was to do the right thing. It was to make good a wrong the federal government had committed against our tribe. I ask you to let that act of justice stand. Thank you.

The CHAIRMAN. Assemblymember Hancock.

STATEMENT OF LONI HANCOCK, ASSEMBLYMEMBER, 14th ASSEMBLY DISTRICT

Ms. HANCOCK. Thank you very much, Chairman Pombo. My name is Loni Hancock. I represent much of the northeast section of the San Francisco Bay Area, including the cities of San Pablo, Richmond and Oakland where casinos are being discussed and have been proposed.

I want to thank you for your leadership in continuing the discussion around the increasing controversy surrounding off-reservation casinos and the respective roles of State, Federal, tribal and local governments.

A brief look at how we got here. In 2000 the voters of California passed a Statewide initiative, Proposition (1)(A). Proposition (1)(A) amended the California State Constitution to provide economic development for tribes by authorizing gambling casinos on traditional ancestral tribal lands, which were predominantly in rural areas. As a matter of public policy, California voters made a limited and narrow exception to the State Constitution's prohibition of Las Vegas style gambling.

In that campaign the opponents said, "You wait, urban gambling is going to be next," and the proponents of Prop (1)(A) said, "Never, it never will happen, not what we intend."

Given what they intended is what people voted for. Since Prop (1)(A)'s passage, we have seen a good number of tribes, more than 50 I believe, followed the Prop and opened gambling casinos on their tribal land.

We have also seen a handful of tribes, with ambiguous ancestral ties to land, making claims on that land for the sole purpose of opening a gambling casino.

In the San Francisco Bay area alone, we face a proposed development of up to four casinos in a 15 mile radius by tribes who have scant, if any, ancestral connection to those lands. In the case of the Lytton Band of Pomo Indians at Casino San Pablo, which has been designated as a reservation, it's about 50 miles from Sonoma County where their lands were.

In another case, the Lower Lake Rancheria Koi Nation is proposing a large casino adjacent to Oakland International Airport, nearly 150 miles from the tribe's traditional lands in Lake County. These are large-scale casinos in clearly in built-up urban areas would be a violation of the will of the voters and the intent of Prop (1)(A).

Congressman Pombo, your legislation addresses the issues of the importance of local community support for any proposed gambling casinos. I would like to talk briefly about the local community response to the expansion of Casino San Pablo from a card room to what would have been in the original compact, the third largest gambling casino in the United States, larger than anything on the Las Vegas Strip.

In a fully built-up area, half a block off the I-80 freeway, which is gridlocked for a large part of every day as it is. I would also just like to point out that in Metropolitan areas like mine, where one city blends into another, you really would need to ask opinions of all the adjacent cities because they will all bear negative impacts and they will get no revenue under anybody's scenario.

I sent out a survey to every household with a registered voter in it in my district; that's about 156,000 voters. The return survey showed overwhelming opposition to the proposed casino. 91 percent in opposition and even in the City of San Pablo, which had been promised jobs and money, it was 67 percent opposed.

Later our local TV station, KPIX, did a survey and in their survey return area it was somewhat different. There was a 57 percent opposition. In addition, the Contra Costa County Board of Supervisors passed a resolution, bipartisan, against Casino San Pablo and opposing all urban casinos.

The Alameda County Board of Supervisors also passed a resolution against the Koi Nation proposal and cities in the surrounding communities have done so as well.

Recently you have heard that the proponents of casinos say they will not do Class III gambling anymore, but will do the electronic bingo machines. There are some things you might want to look at as well as you are considering several policies because those electronic bingo machines actually look like and act just like slot machines.

The technology is improved. The lights, the flashing, the noises. You put money in and pull the handle just a like slot machine. Each pull costs money; each pull is a gamble.

It is a slot machine experience with the same detrimental social and economic impacts. The same increases in traffic, crime, blight, unemployment, gambling addiction and adverse impacts on social services.

The economics of urban gambling were made clear in a hearing that we did hold in the District looking at some of the research that has been done. There is a difference between, the distinction between, "destination gambling" and what they call "convenience gambling."

Destination gambling being where you go somewhere like Las Vegas, you pay your money, you know what you're going to spend on your vacation. You leave your money in Las Vegas and you go home to wherever home is.

Convenience gambling does not mean a major tourist destination, but rather is the person on their way home from work who stops off to pull the handle and leaves without the kid's lunch money or the rent money.

In fact, a recent study conducted by William Thompson at the University of Nevada concluded that 85 percent of the money made at Casino San Pablo, which is an example of an urban casino, 85 percent of the winnings would come from people in the Bay Area, meaning again, their discretionary money that would otherwise be spent in local restaurants, local businesses, local retail stores.

This may give the appearance of new economic development but it's not. It's moving money around and can lead to economic losses experienced by local families, local individuals and local businesses.

To conclude, today California is experiencing a proliferation of proposals for Indian gambling casinos that have little to do with tribal self-sufficiency on tribal lands.

These off-reservation casinos are, in reality, being aggressively supported and financed by out-of-state casino developers and their

lobbyists who clearly hope to build casinos in every urban area of the State.

These Las Vegas-style casinos in urban areas were never intended by the voters of the State of California and any urban casino in the area creates a precedent.

Thank you again, Mr. Chairman for holding this hearing. I look forward to seeing legislation that will prevent the entrance of gambling casinos in California urban areas.

The CHAIRMAN. Thank you.

[The prepared statement of Ms. Hancock follows:]

Statement of Loni Hancock, Assemblymember, 14th Assembly District California

Good morning Chairman Pombo. My name is Loni Hancock, I represent the 14th Assembly District in the California State Legislature. The district includes most of the East San Francisco Bay Area including the cities of Oakland, Richmond and San Pablo.

Thank you for your leadership in the House on this controversial issue. It is also encouraging to see leadership in the Senate by Senator John McCain and Senator Dianne Feinstein who has introduced legislation directly related to the Lytton Band of Pomo Indians and Casino San Pablo.

Today's hearing on "off reservation" casinos and your draft legislation is continuing the discussion on the increasing controversy surrounding tribal gambling casinos and the role of the federal, state, tribal and local governments. The expansion of tribal gambling casinos into urban areas-especially Casino San Pablo-has become one of the most controversial issues in my district and in the state.

Let us look a briefly at the single most important event to the authorization and ultimately the expansion of Indian gambling casinos into urban areas.

In 2000, the voters of California passed a statewide initiative—Proposition 1A. Proposition 1A amended the State Constitution to provide economic development for tribes by authorizing gambling casinos on traditional ancestral tribal lands. These lands were traditionally in remote rural areas. So as a matter of public policy the California voters made a limited and narrow exception to the state constitution's prohibition of "Las Vegas" style gambling. This was the intent of Proposition 1A.

Since Proposition 1A's passage we have seen a handful of tribes, with ambiguous ancestral ties to land, making claims to that land for the sole purpose of opening a casino. In the San Francisco Bay Area alone we face the proposed development of up 4 casinos within a 15 mile radius by tribes who have scant, if any, ancestral connection to those lands. In the case of the Lytton Band of Pomo Indians at Casino San Pablo, the casino's location is 50 miles from Sonoma County—the traditional ancestral territory of their tribe. In another case, the Lower Lake Rancheria Koi Nation tribe is proposing to build a casino adjacent to the Oakland International Airport. This casino proposal located in Oakland is nearly 150 miles from the tribe's traditional lands in Lake County. Clearly, these casino proposals into the states largest urban areas are in violation of the will of the voters and the intent of Prop 1A.

Your legislation, Congressman Pombo, emphasizes the importance of local community support for proposed gambling casinos and I would like to talk briefly about the local community response to the expansion of Casino San Pablo from a cardroom to a full fledged Class 3 gambling casino.

I personally sent out a survey to every household with a registered voter in my Assembly District, which contains 156,000 voters. The returned surveys showed overwhelming opposition to the proposed casino. The survey results indicated that 91% of my district opposes the development of a casino at Casino San Pablo. Even within the City of San Pablo-where the casino would be located- and where the city has been promised jobs and money, 64% of the returned surveys opposed the casino. Also, polls conducted by KPIX our local TV station that showed that 57% of the respondents oppose the casino.

In addition, the Contra Costa County Board of Supervisors has passed a bipartisan resolution against Casino San Pablo and opposing all urban gambling and urban casinos. The Alameda County Board of Supervisors unanimously passed a resolution against Koi Nation urban casino proposal.

Cities in the communities surrounding gambling casinos which will experience the negative impacts of increased traffic, crime, blight and gambling addiction have taken positions against proposed urban casinos. I have also received thousands of

letters, emails and surveys that say that Casino San Pablo is a bad economic development strategy for our community and for our State.

Recently the proponents of Casino San Pablo have said that they no longer intend to build a "Las Vegas" style casino, and that the casino now will not feature slot machines. The proponents have stated that they will operate only Class II gambling with electronic bingo machines.

Electronic bingo machines are still slot machines. Push a button or pull the handle, watch the reels spin, and see what you won. There are flashing lights and sounds to stimulate the senses. Each pull costs money. Each pull is a gamble. For the player it is a slot machine experience with the same detrimental social and economic impacts as Class 3 slot machine gambling.

These negative and detrimental impacts will include the same increases in traffic, crime, blight, unemployment, gambling addiction and adverse impacts on small business.

The issue is not Class II gambling or Class III gambling, or electronic bingo machines or slot machines...the issue is location. The location of urban casinos has substantial negative impacts on the local economy.

Economics of urban gambling can be made clear with the distinction between "destination gambling" and "convenience gambling"? If a casino is a singular and major source of tourism and patrons travel to that casino to gamble and leave their money behind, that is destination gambling. Las Vegas is good example. People travel, stay, shop, go to entertainment venues at casinos in Las Vegas and go home, leaving their money in Las Vegas.

Casino San Pablo is quite a different story. Casino San Pablo due to its location in a already built out urban area will be an example of "convenience gambling" this kind of casino will not bring in revenue from outside of the Bay Area. The money spent at the casino will largely be from the people who live in work near the casino. In fact a recent study conducted by William Thompson at the University of Las Vegas Nevada concluded exactly that 85% of the money made by the Casino San Pablo would be from people in the Bay Area.

If that is the case, the discretionary money that would have otherwise been spent at local retail stores, local restaurants, small merchants and local businesses will instead be spent at the casino. This gives the appearance of "economic development" but negatively impacts the local economy as experienced by local families and businesses. In fact the previously mentioned study shows that the direct economic losses experienced by the Bay Area from a class 3 gambling casino in San Pablo will be $138 million a year. Simply put Casino San Pablo and the other casinos proposed in urban areas are a bad bet.

To conclude, California is experiencing a proliferation of proposals for Indian gambling casinos that have little to do with self sufficiency on tribal lands. These "off reservation" casinos are, in reality, being aggressively supported and financed by out-of state casino developers and their lobbyists who clearly hope to build casinos in every urban area of the State. These Las Vegas style casinos were never intended by the voters of the State of California. The entrance of tribal casinos on non-ancestral land in densely built urban areas, such as San Pablo, would set a precedent for authorizing off reservation gambling casinos throughout California and every state where tribal gambling is permitted.

Thank you again, Mr. Chairman, for holding this hearing. I look forward to seeing legislation to prevent the entrance of gambling casinos into California's urban areas.

The CHAIRMAN. To begin with, I will start with you, Assemblywoman Hancock. In drafting this legislation and I know you are familiar with what we go through to do this, but one of the reasons why—and I understand what your concerns are with your District and where you can't really tell when you go from one city to the next and impacts are felt all over.

One of the reasons why we limited it within the legislation to the City jurisdiction is currently if the City of San Pablo were to approve a 5,000 unit apartment building, that unquestionably would have impact on surrounding cities. Good, bad or indifferent, it would have some kind of impact.

Yet under current law in California, we don't require that city to get approval of the surrounding cities in order to do it.

I have concerns about the Federal Government becoming the Federal land use where we determine what goes where. In situations like this, I would fault on the side of what local law is, what the State law is, in allowing them the ability to do that.

In this particular situation, if they negotiated an agreement with that particular city, they are responsible for that. As we had with previous panels of Supervisors, there has to be a nexus between what their impact is and what they actually have to pay for.

That's kind of how I ended up with the draft that I did. I do understand what your concerns are in terms of the impact on the surrounding communities, but with tribes having their sovereignty, they have a special situation that exists in government-to-government negotiations.

I don't want to do anything within this legislation that takes—that backs away from that and makes them do even more than what we would require somebody else with a similar development on a private site.

Ms. HANCOCK. I think that the problem that you're citing is actually one of the reasons there is now a big push for more regional planning on land use. You're exactly right about shared impact and not shared responsibility.

Again, not to single out San Pablo, but San Pablo is a city of about 30,000 people totally surrounded by the City of Richmond of 90,000 people, all of them low income, all of them in need. Contra Costa County provides social services to many, many communities. They would all be impacted by the need that would be created by the casinos.

It probably goes back to go something I heard Representative Costa talk about. We also need State policies to begin to look at this.

The CHAIRMAN. I don't think there is any question and Jim was the first one that actually brought that up to me several months ago. The more that we get into this, the more that I believe he is right, that we do need to have some kind of Statewide policy that at least makes clear what the policy is as the State puts it out there so that everybody knows what it is. Right now we don't have it.

It's not just California. I am not aware of any State that has a clear policy. That is something we do have to deal with.

Chairwoman Mejia, I read through your testimony and over the last several months I have had an opportunity to actually look at your particular tribe's situation and what has happened over the last 50 plus years to you.

I do not support anything that takes away your sovereignty or takes away your opportunities. What has happened to you, I think, is a classic case of a number of California tribes. You have tried to do something about it, you have tried to move forward with it.

I support your efforts for economic development. I believe that if you had known twenty years ago where you would be today, different decisions would have been made and we would not have been in the exact same situation that we're in.

I think it's an unfortunate situation, but like it or not, the challenges that you have gone through over the past couple of years have highlighted this issue nationally and made it a bigger issue.

When I had Members of Congress from Connecticut coming up to me and citing what has happened with your tribe as one of the reasons why we need to stop Indian gaming, that is one of the situations that we need to deal with.

Can you describe or can you explain to the Committee why the decision was made to go to San Pablo to begin with? Can you explain that? Historically from Alexander Valley, how did we end up in San Pablo?

Ms. MEJIA. I met with the County Board of Supervisors in Sonoma County. They made it very clear that they didn't want us there. I asked for suggestions.

They told us to look for maybe a newly formed city government that could use some money, that they didn't need any money because we offered to pay the mitigation issue. We offered to pay our fair share and they said they didn't need the money at the time.

I don't know if they do now or not. I haven't had further discussions with them on it. So we did what they suggested. Actually, we just started going out because we didn't want to leap-frog around.

We knew there was another tribe there. We found American Canyon, which was a new city government between Napa and Vallejo. We, in talking with the city staff people there, they led us to believe that they were actually very encouraging, that they would be open to this.

Unfortunately, they didn't speak to their city representatives. There was a public hearing held where I was literally chased to my car at 9:30 at night by people. That made it very clear to me that we weren't going to be in American Canyon.

So, we were leaving and one of the people on our team happened to drive by Golden Gate Field and thought, "Well, maybe we should talk to them because the big issue was going in community that wanted you."

We talked together with the people at Golden Gate Field and they also owned Casino San Pablo. When we began discussions with them, we started telling them what we had in mind. They said, "Well, gee, we have this card club over here that isn't doing very well."

The City really counts on the revenue from it and it has declined because of the Asian market financial impact. I'm as good at that as I am in politics, being one step back there. But that was the reason and we began discussions with them to participate in the card club because the voters in the community were open to gaming.

We began those discussions. We were—then the next step would be to meet with the City of San Pablo. In talking with them, I am very proud to say that they have been very strong allies since 1998 when we signed this agreement. That's how we ended up in San Pablo. They sent us.

The CHAIRMAN. Thank you.

Mr. Costa.

Mr. COSTA. Thank you, Mr. Chairman. My question is to Chairwoman Mejia. I want to commend you on the very concise history that you indicated that your tribe has been through and as a result of that history the promises that were obviously broken as it related to your ability to participate in what is legal in California, which is Class III gaming.

I was wondering, based upon your experience over the last 15, 20 years, do you believe that the State of California has a clear understanding or a concise policy as it relates toward Class III gaming?

Ms. MEJIA. I was aware of no policy until the Governor's proclamation. I did sit through negotiations with the Governor of the State of California. It's my understanding at that time that his approach, at least it was with my tribe, and I don't want to speak for the Governor, seemed to be that it was on a case-by-case basis because each tribe is different. There are different circumstances.

There were people that talked about Congressman Miller's legislation in the Indian Commons Act of 2000 authorizing this land to be mandated to be land that is taken into trust.

There were comments that it was done by stealth legislation or whatever, even though it was actually put into the bill in October and passed in December. It was in there for anyone who had Internet access could have accessed that section.

Having said that, in July of 2001 Senator Reed attempts to repeal the language. The tribe prevailed and it is stated in the Congressional Record on the Floor that this was done because of the unique circumstances of my tribe.

So then another attempt last Fall by Senator Feinstein. It's like, we have been before Congress not once but twice, two more times. How many times do we go before Congress? When do my people get to say, "We're OK"?

Mr. COSTA. I would submit to you that parts of that would be the result of a lack of nationwide policies on Indian gaming.

Assembly Member Hancock, a variation on the question: Why do you think, having spent 20 some years in the Legislature. I can guess or I can surmise, not only this Governor but the previous Governor as well, have not come together to—as we understand the history over the last 15 years, as Class III Indian gaming has expanded, why there has not been an effort or an attempt to create a Statewide policy of the rules which are clearly understood?

Ms. HANCOCK. I think that's a very good question. In all honestly, probably some things that haven't been tracked very closely until maybe the last four or five years when the phenomenon of off-reservation gambling has begun to be prevalent.

Many tribes did go ahead and use the process laid out by the BIA and opened casinos on their traditional tribal lands.

The next wave seems to be getting the backing of investors. I was very interested in Ms. Brown's information about Arizona.

Mr. COSTA. And by CSAC's testimony, there are 25 or less pending—including when you do the math, the 64 who have compacts. I guess that's a total of 43, notwithstanding the 25.

Ms. HANCOCK. Yes. So I think it has become more than more clear that we may need Statewide policy. I know there is at least one Constitutional Amendment that is before the body that would have a five year moratorium while we assess the number of gambling casinos that we have now in California and what the future may be and where they might go if there were any more at all.

I think frankly you have raised a very good point, that we need to have a Statewide policy.

Mr. COSTA. Thank you.

Mr. GOHMERT. As a follow-up on that, I'm wondering, if not only should there be a Statewide policy but perhaps a county policy. Contra Costa was giving me a little bit of background about your sacrifices.

Jointly, I was reminded—I got to figuring out after 18 months of a grueling campaign for Congress, probably the last person you ought to trust with making decisions for the Nation is anybody who is stupid enough to run for Congress.

Nonetheless, it's an important issue. As I understand the legislation talks in terms of the local city or community where the lands are located, but I'm wondering if there should also be each state looking at this, not just a State policy, but should it empower the counties to have oversight or something like this, should the legislation incorporate the counties into this as well?

Of course, you have the possibility of the county with the judgment of the local community for an overall county, but there are a number of issues at work.

Do you have a feeling about that, whether it should be a county or a local community? Obviously, you have participated in communities you wouldn't necessarily want the counties participating. What are your thoughts?

Ms. HANCOCK. In California, county government basically carries forward law enforcement duties, also social services. So, any increase in social services brought about by bankruptcies, suicide, increased domestic violence or any of those things, increases in crime, will be borne by the county, not necessarily by the city because cities don't traditionally do any social services at all.

For that reason, the county has a real stake. The county also does roads and infrastructure. It seems to me they ought to be involved.

Also, one of the reasons there was such strong opposition throughout the Bay Area to Casino San Pablo was that the I-80 freeway is the lifeline, economic and social, for commuters to get from work to home. The thought of increased congestion would—the casino also directly—is now because it is still a card room right now—it is directly adjacent to the only public emergency room within 25 miles of the hospital.

Really, I will. I think this is the kind of thing we ought to look at regionally because every city will feel the impact and we need to look at these things together. Now again, we're talking traditional tribal land, but when we're talking about investors, often out-of-state investors that seem to be predominantly located in Las Vegas, Arizona and Florida, doing what they call "tribe shopping" in addition to them "reservation shopping."

It becomes a very frantic and sad set of choices for everybody, including people who have enormous respect for tribal integrity and sovereignty. I think we do need a State policy and it does need to involve everyone who is impacted.

We're not talking about traditional tribal lands and I do have to say that I have had many tribes come to me in great distress because they built a casino 75 miles off the main road of their traditional tribal land and they say if they thought they could get right next to a freeway in the metropolitan area they might have tried to do that.

Mr. GOHMERT. Chairwoman Mejia, you obviously have an intense sense of fairness and I admire that. With due regard to what has happened in the past, in formulating a new Federal law, what's your feeling about requiring to negotiate with—outside the community with the counties.

Ms. MEJIA. Speaking for my tribe, I can tell you that when we negotiated the compact with the government of California, we negotiated and we agreed to have before anything was built an agreement, a mitigation agreement with the County of Contra Costa. Not just the County, not just the City, our municipal services agreement has been in place since 1998.

We also agreed to mitigate with the County and CalTrans who also stepped up to the plate with a $25 million offer to rebuild the interchange at San Pablo Dam Road prior to getting it going and underway even before the mitigation agreement with CalTrans was in place because we understood the need for that.

I think that my tribe has, to the criticism of other tribes, stepped up to the plate because we understood we were in an urban area and that we needed to step up to the plate and address those issues.

Mr. GOHMERT. I have just one question, referring to the San Pablo Dam Road, is "dam" the way it's used there, is that a noun or an adjective?

Ms. HANCOCK. I do think that we need a little clarification there. The first compact that was put forth by the Governor for 5,000 slot machines did not involve the negotiations for mitigation.

It also had a clause that says that the State Director of Finance could at their sole discretion obviate any or all of the local mitigation which at that time were only for local governments. The second compact that was proposed for the 2500 slot machines, which was about the size of a casino on the Vegas strip, did involve the county and was definitely a step forward and would be something that any policy in the future ought to consider.

Mr. GOHMERT. Thank you.

The CHAIRMAN. I just want to ask one follow-up question of Chairman Mejia. Knowing what you have been through over the last several years, I don't know how familiar you are with the draft legislation but in there is the opportunity to do what we call "Economic Opportunity Zones."

I don't know how familiar you are with those provisions in the draft, but would that have been an attractive option to you knowing now with the hindsight of everything that has happened, would that have been an option that your tribe would have pursued rather than ultimately what you did go through?

Ms. MEJIA. I understand the concept in the proposed draft. I'm not sure how it gets implemented, but I can tell you that being the Tribal Chair for the last ten years, for 275 poor people, people living in very bad conditions, I would have looked at all options.

The CHAIRMAN. The way the draft is written, there would be two different zones. One would be on land that is currently in trust and that would be a negotiation between that particular tribe and others who would come into it. The other is the ability to go into land that is currently not in trust, but having the opportunity to bring that in trust for the tribes that would be located there.

With a tribe such as yours that did not currently have land in trust, that would give you an opportunity to go somewhere with it. That was kind of the direction that we were trying to deal with in that particular case.

That was not done with your situation particularly in mind. It was actually a couple others that are out that made me start thinking about that. It seems that in listening to your testimony and the more I learn about what you have gone through, that would have been an option for you.

Did any of the Members have any other questions or comments they want to make? Mr. Costa?

Mr. COSTA. Thank you very much, Mr. Chairman. On my own time I would like to personally commend you for holding this hearing this afternoon on what I believe is an important piece of legislation, not only in California but throughout the country.

You are to be commended for your work; this is not easy work and you will probably end up getting more grief than you will accolades. Having said that, for those of you as I look around the room and many of whom I have met over the years, you're probably, as you listen to my questioning, trying to figure out, "Well, what's Costa really up to this time?"

Let me tell you and I will try to be as clear as I can. For one, I'm up to working with the Chairman of this Committee on what I hope will be thoughtful, common sense legislation that I think is necessary.

I commit to doing that as best I can. What I'm also up to is trying to deal with the issues that I think are important to the long-term impacts of Class III gaming in California.

Obviously, through my questioning I think all of you sense that I have a sense of frustration on how this is happening on an ad hoc basis, on a case-by-case basis where every deal has become kind of a deal based upon the powers that be that were involved rather than what the circumstances were with each Indian tribe.

I think we need to be fair in all of our application in the 107 sovereign nations in California that are recognized. I believe it is 107; correct me if I'm wrong. I know there are others that are pending that would like to be recognized. I think that's a difference in that; although, we probably should consider that in legislation, tribes that have not been recognized by the BIA, the Bureau of Indian Affairs that are pending recognition.

In terms of my application of fairness, I would be interested in all of your ideas, not just the 64 current sovereign nations that have compacts, but also the 25 plus and the number on top of that, that are seeking compacts. It would be my hope—I don't know if we'll be successful, I know I'm kind of still in the learning process in the Congress.

As we all know, legislation is not a precise scientific process. It's kind of an art form. In Sacramento and in Washington, D.C., as we apply our art, I would be interested in listening to all of your comments and your ideas on how we can try to put forth what I hope will be a fair and clear, logical process on those 43 tribes, I believe, that currently do not have compacts that are seeking compacts.

Realizing that the 64 that currently have them today, I believe under State and Federal statutes are modified compacts. I don't be-

lieve that there's anything that we can deal with whether we like the compacts or not. What we finally say is I do support Indian gaming in California. I have consistently supported it.

As I told you, my mother would not have it any other way because she likes to go to a couple facilities nearby as she reaches her 90th birthday this year. I do want to be fair and I think we need to believe that, whether this process involves both local and State government, it ought to basically require some guidelines to determine what the State policies should be in California.

I think we all have ideas about how traditional tribes that have the reservations and the landless tribes.

I think that needs to be hopefully addressed in the legislation. That's kind of what I'm up to in terms of trying to work as best I can with the Chairman, with the Members of this Committee to see if we can produce thoughtful, common sense legislation that deals with status for California and hopefully better than we have been able to do so far.

Let's look at the long-term issues because I think that's where we're going. There has been a tremendous lack of focus over the last 15 years. Thank you very much.

Mr. GOHMERT. Just to say thank you and thank all of you. It's when people have been too apathetic that we have gotten our worst laws so I appreciate your interest and your input.

The CHAIRMAN. I want to just, in closing, say that I appreciate Mr. Costa making the effort to be here and participate in this hearing. Obviously, this is an issue that is not only important to his District and California but to the entire country and I appreciate the input that he has had as a Member of the Committee.

Mr. Gohmert made the effort to come out from Texas to be part of this hearing. This is an issue that the Committee is dealing with that may not be quite the issue in Texas as it is in some other states and I appreciate him making the effort be here to educate himself on what is a major issue.

The only comment I would say to Mr. Costa in terms of the recognition process, that is another bill that is just as controversial as this one. My effort as Chairman was to take a number of these issues that have been before Congress and try to settle them. None of them are easy.

Whether we're talking about the recognition process or off-reservation gaming and the impact that has had, they are very complicated issues that when you deal with every tribe from tribe to tribe it's a different issue, different circumstances.

Because of that, instead of introducing legislation, we introduced a draft bill. We put everything that we could think of in that draft bill and put it out there and many of the people in this room have had comments on that draft legislation, good and bad about what works, what doesn't work, why it won't work in your specific situation.

That was the process that I decided to through instead of just telling you, "This is the way it's going to be," I put out a draft and said, "OK, tell me what's wrong with it or what's right with it." Over the last several months we have gotten a lot of comments on it.

When we ultimately get to the point of introducing legislation it will look different than the draft because we have taken a lot of comments that have come in and tried to respond to that and we have tried to make it so that it's something that when it hits in the implementation stage it's something that works. That's what we're trying to do with that.

I appreciate the panels for their testimony, all of the witnesses today for your testimony. It will make this better legislation by the time we get to the point of introducing the bill. So, I thank you for that.

For those of you who had wanted the opportunity to testify or have your comments heard as part of this hearing, I will leave the hearing record open. Anybody who has comments that they would like to submit, submit them to the Resources Committee.

They will be included as part of the record and part of this deliberative process that we are going through to come up with legislation.

I want to thank all of you for being here. Actually, for a crowded room and the number of emotions that are here, you did pretty good. I appreciate that.

Mr. Costa.

Mr. COSTA. Mr. Chairman, as a former Judge, Mr. Gohmert, I thought, would be interested in the history of this room. It was originally constructed to seat the California Supreme Court. That's part of the reason it's such a beautiful, historic room.

The Supreme Court had a lot of political leverage in the late 1880's and '90s. They thought the climate was not so much to their liking in Sacramento; that it was far better in San Francisco.

This part of the State had a lot of periodic floods in those days before the dams and reservoirs. Getting the legislation changed to where they were assigned to the County and City of San Francisco, they were required in part to convene once a year in Sacramento to show the fact that they were a part of the State of California.

They have maintained that tradition for over 100 years. They meet in this room one day a year to reaffirm that they do belong to California. It's a beautiful room to have a hearing.

The CHAIRMAN. In deference to my colleagues, I did not spend a heck of a lot of time in the Capitol in Sacramento having never served here and I stay out of courtrooms whenever possible. I appreciate it, everybody, if there is no further business before the Committee, this hearing is adjourned.

[Whereupon, at 2:35 p.m., the Committee was adjourned.]

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