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S. HRG. 109–92

TRUST LANDS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING ON TAKING LANDS INTO TRUST

MAY 18, 2005
WASHINGTON, DC

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TRUST LANDS

WEDNESDAY, MAY 18, 2005

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room 216, Senate Hart Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Dorgan, and Inouye.

The CHAIRMAN. Good morning.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

In 1934, the Indian Reorganization Act provided broad discretionary authority to the Secretary of the Interior to take land into trust for Indian tribes. This authority was given the Secretary to counter the devastating effects of the General Allotment Act under which Indian tribes lost over 90 million acres of land between 1887 and 1934. Once held in trust by the United States, the property is considered Indian country, subject to Federal and tribal law, and in most circumstances State and local laws and regulations do not apply, including zoning and tax laws.

One particular application of the authority to take land into trust that is unclear to many is how the process is applied to land that is outside reservation boundaries. When the purpose of that off-reservation trust land will be the establishment of a gaming facility, the impacts on surrounding communities are even greater and the need for clarity is at its highest.

Under the Indian Gaming Regulatory Act, trust lands outside of a reservation are generally not eligible for gaming if acquired after October 17, 1988, the date IGRA was enacted. However, IGRA provides four exceptions to the ban on gaming on post–1988 lands. In recent years, this committee has been informed of numerous attempts to use these exceptions, including the exceptions for settlement of land claims and for initial reservations, to obtain casinos far from Indian reservations, sometimes in other States.

Many Indian tribes are finding that concerns about whether lands should be taken into trust for gaming purposes is impacting all land decisions of the BIA, with many applications for non-gaming purposes taking years to be approved.

I believe it is time this committee reviewed these exceptions to determine if they are being used as we originally intended in 1988. Today, the committee will hear from a variety of witnesses to in-

form us on how the land-into-trust process works and how IGRA impacts that process.

Vice Chairman Dorgan.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator DORGAN. Mr. Chairman, thank you very much.

Often when people are unfamiliar with these issues, think of land-into-trust, they think immediately of gaming. That is the case in some circumstances, but not in most circumstances. In most circumstances, gaming has almost nothing to do with land-in-trust, and I think the Chairman described accurately that we ought to be interested and concerned with respect to land-into-trust for gaming and make sure we understand what the circumstances are in that situation. But we also need to understand there are legitimate reasons for tribes to take land into trust for economic development and other reasons, and the interminable delay that often exists now is very troublesome.

During a 15-year period, 46,000 acres of land were taken out of trust in the Aberdeen area, which is our area, and 18,000 acres placed in trust. So the fact is, more land is taken out of trust than in trust in our region for many reasons: interstate landowners with non–Indian heirs and members selling lands to pay unexpected medical bills. The list goes on and on. But the fact is, many of the fee-to-trust applications are for essential government services these days, for housing, for education issues, and other purposes.

I just think when we look at reservations in my State and others, we see conditions that exist in Third World countries. Whether it is housing, health care or education, we need to provide the tribes the tools with which to address these issues. In some cases, those tools represent the ability to take land into trust, that is exclusive of gaming.

When gaming is involved, there is another set of issues, but I really hope that with this hearing we will understand that much of this issue deals not with gaming, but with opportunities and needs of tribes for economic development and for other things that would address the circumstances of their daily living and the circumstances of the economies that their citizens face.

I think this is an important hearing being held at an important time. I hope that we will be able to glean some very good information from some excellent witnesses today, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. I thank you very much, Mr. Chairman. I commend you for holding this hearing because this hearing is about more than trust applications. It is about the Federal Government's obligation to Native America.

The Secretary of the Interior was purposely vested with the authority to take land into trust to reverse the negative consequences of the Allotment Act and other Federal and State actions which

stripped Indian tribes and individuals, as noted by the chairman, of over 90 million acres of land.

Unfortunately, the stripping of Indian lands has not stopped. According to the Department's own documents, more land is being taken out of trust for individuals than is being placed in trust for tribes. It is sad to note that there is no opposition to this movement.

Indian tribes, as we have noted, must go through a very lengthy, rigorous process to place lands into trust, including the granting of an opportunity to State and local governments to insist upon the application of strenuous environmental regulations. This can and has taken years, requiring the tribes to pay taxes on government-owned lands. Sometimes tribes are required to repeatedly update environmental reports because of our government's delay in processing the application.

But no such process exists for taking land out of trust. Critics argue that a more stringent process is necessary because State and local regulations will not apply to the land being taken out of trust. But those same critics ignore that generally applicable Federal land regulations apply to those lands, as do the laws and regulations of the tribe.

History has shown that tribes are and want to be good neighbors. They want to provide governmental services to their members and neighbors, while ensuring that their land will be there for future generations. Although I do not personally support gaming, I served as the primary sponsor of the Indian Gaming Regulatory Act because of the matter of sovereignty. Congress anticipated the taking of lands into trust for gaming purposes and imposed even more stringent requirements. But I also would like to note that there are those tribes who are still waiting for a decision and those applications were submitted long before *Cabazon*.

A most recent example of this process is the Gun Lake Tribe, which is testifying here this morning. The tribe has complied with a lengthy and exhaustive Federal administrative process for placing lands within the tribe's long-time aboriginal homeland into trust for gaming purposes. After four years, the Department indicated its intent to place the land into trust for the tribe, and now there is a 30-day public comment period.

I hope that as this issue is addressed, the committee also addresses the continued loss of trust lands, and considers the potential cost to tribes because of the delay in processing applications. I believe the native peoples of this land have given enough.

I thank you, Mr. Chairman, for scheduling this hearing. I appreciate it.

The CHAIRMAN. Our first witness is George Skibine, an old friend of the committee's, who is the acting deputy assistant secretary for policy and economic development in the office of Indian affairs in the Department of the Interior. Welcome back, sir.

STATEMENT OF GEORGE T. SKIBINE, ACTING DEPUTY ASSISTANT SECRETARY FOR POLICY AND ECONOMIC DEVELOPMENT, OFFICE OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. SKIBINE. Good morning, Mr. Chairman, Mr. Vice Chairman, Senator Inouye. I am George Skibine. I am the acting deputy assistant secretary for policy and economic development for Indian affairs in the Department of the Interior.

I am also the director of the office of Indian gaming. I am pleased to be here today to discuss the role of the Department in taking land into trust and the procedures used when the land is for gaming purposes.

My testimony will be part of the record. I will essentially summarize a few points in a few minutes that we make in the testimony.

I think, Mr. Chairman, you gave a good background on the IRA, so I am going to skip over that. The IRA, the Indian Reorganization Act, is essentially the fundamental authority that we use to take land into trust for Indians. We have promulgated regulations in 25 CFR Part 151 that implement the Indian Reorganization Act, Section 5.

Essentially, let me quote from Justice Ginsburg, who stated in a recent opinion in *City of Sherrill* v. *Oneida Indian Nation* regarding the regulations, who said:

> The regulations implemented, 25 U.S.C. 465, are sensitive to the complex interjurisdictional concerns that arise when a tribe seeks to regain sovereign control over territory. Before approving an acquisition, the Secretary must consider, among other things, the tribe's need for additional land, the purposes for which the land will be used, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls, jurisdictional problems, and potential conflicts of land use which may arise.

That is a good summary that the court made of our process for taking land into trust under the 151 regulations.

In addition, let me point out that the BIA must also determine whether it is equipped to discharge its additional responsibilities resulting from the acquisition of land into trust. We must also comply with the requirements of the National Environmental Policy Act.

The authority to approve land into trust on reservations for nongaming purposes is delegated to regional directors of the BIA. When a tribe seeks to have, or an individual Indian seeks to have land taken into trust under the Indian Reorganization Act, it will submit an application to the BIA and that application will be processed by the regional office or the agency that is responsible for this process, and appropriate State and local officials will be consulted regarding their views on the potential effects of this acquisition. So there is a consultation process.

We try to encourage the process to be very transparent so that the affected communities will be given ample opportunity to comment. If the application is for gaming, then the authority has been reserved since 1990 when Secretary Lujan issued an order saying that the central office, essentially the assistant secretary for Indian affairs, would have the authority to approve gaming-related acquisitions. In 2001, we extended that to not only gaming acquisitions, but gaming-related acquisitions.

What happens then is when an application is submitted, it is still processed by the regional office. They will do compliance with NEPA. They will do the consultation required, but if gaming is a stated purpose of the acquisition, then they will eventually have to consider whether section 20 of the Indian Gaming Regulatory Act has been complied with.

As you know, section 20 is a prohibition on gaming on lands acquired in trust after October 17, 1988, but it contains several exceptions. The major exception is if the land is on or contiguous to the reservation. But it contains other exceptions that essentially include whether the land is acquired for the settlement of a land claim; whether the land is a restored land for a restored tribe; or whether the land selected is the initial reservation of an Indian tribe pursuant to the Federal acknowledgment process.

When that happens, we will make a determination as to whether the land that is sought to be acquired that is off-reservation qualifies under one of these exceptions. Depending on whether it qualifies or not, then we will advise the regional office on how to proceed. If none of the specific exceptions apply, then there is an exception that authorizes gaming on the land that is acquired in trust after October 17, 1988 if the secretary after consultation with appropriate State and local officials and tribes, makes a determination that the gaming establishment is in the best interest of the tribe and its members and is not detrimental to the surrounding community.

We have in this Administration approved I think nine gaming applications altogether under all of these exceptions, including on-reservation. I think they are listed in my testimony. And then we have, I think, about 10 applications pending for off-reservation acquisitions under gaming that do not qualify under any of the specific exceptions, but have to go through two-part determination.

I think this Administration has approved two such two-part determinations. In both cases, the Governor must concur in the determination and has refused to do so, so in fact that has not happened in this Administration. Overall, since 1988 only three tribes have qualified under that section of IGRA, the section 20(B)(1)(a) exception.

To help the regional office implement gaming acquisition, we have issued a checklist for gaming acquisition back in 1994. We updated this checklist in 1997. We updated it again in 2001. We did a recent update in 2005 in March. That essentially is informal guidance to our regional offices on how to implement the regulations in part 151 and the two-part determination process when the acquisition is for gaming.

Let me briefly mention that there has been an issue that we have when a tribe submits an application for non-gaming purposes and changes the use to gaming. We are aware that when a tribe submits an application for, let's say, a truck stop, then essentially the acquisition will be considered by the regional office. If it is not for gaming, it will not be sent to our office in Washington and it will not be approved by the assistant secretary.

Under the law, the tribe subsequently, and this is 2 years down the road, because there are no title restrictions on the deed, the tribe can change the use of the property. We have been advised by

the Department of Justice that the title requirements prohibit us from imposing deed restrictions on the title. That has sometimes been an issue when the local public has a proven application, let's say if it was for Indian housing, and down the road has been made aware that the use has been changed to gaming. I think that is an issue that we are looking at.

We have not found yet a solution on how to deal with that particular problem. We certainly do not want to hamstring the tribes, especially if they have an economic venture that does not remain profitable, they should be able to change the use of the property. So we are tackling that issue because we are unhappy with the fact that when there is a change to gaming that the local population has not contemplated, it is creating a lot of tension within the community. I think some of the local communities feel that they have been duped into buying into a process when the ultimate aim was different. So we are looking at that issue.

Now, I mentioned that we have about 10 applications for off-reservation gaming pending. There are many, many more that are rumored. I receive delegations every week from mostly non-Indian communities that essentially come and talk about the fact that there is a potential Indian casino that is going to pop up in their community, even though there is no application.

What I tell them is that under our regulations and under IGRA, there is nothing that prohibits a tribe from getting involved with someone and essentially trying to move off-reservation. They have to go through the process, and the process is lengthy and very seldom successful, but they have the right to do that under the IRA, under our regulations and under IGRA. We just implement the law at this point. I think they feel that there is a question of cost if they are opposed to the application on the local community, and that is certainly an issue.

And then also we get communities who are all in favor of tribes moving into their communities because it will revitalize the economy and they think it is going to happen tomorrow. Then when they come to talk to us, they realize that it is a very lengthy process. We take very seriously our obligation to take land into trust, but we are really concerned about the effect on local communities.

Finally, I want to point out that in terms of delays, it is true that our regulations do not include time lines. So that once an application is submitted, there is no time line for the BIA to act on the requests. I think with respect to gaming, it is very long. It is processed at the regional office and usually takes about 6 months to 1 year, especially to comply with the environmental documentation that is required. Then it comes to our office where it will take at least a couple of other months before it is ready for approval.

So overall, gaming acquisitions take well over 1 year, and that can impose some hardship on tribes that rely on financing and on options to buy land on which they are interested. Plus, final comment, once we make a positive determination to take land into trust for any purpose, we have to publish, especially for gaming, we publish a notice in the Federal Register that gives tribes, that gives the public 30 days to challenge the decision of the secretary.

With respect to gaming, in the last 5 years, maybe even before, I think we have been ending up in court in almost all instances ex-

cept for a couple of ones. And that essentially will really delay the process.

This concludes my comments. I am here to answer any questions you may have. Thank you very much.

[Prepared statement of Mr. Skibine appears in appendix.]

The CHAIRMAN. Thank you very much.

Maybe for the record you could describe to us how and why land is going out of trust.

Mr. SKIBINE. I think that land is going out of trust, that land that is owned by individual Indians. I think it goes out of trust through probate; if there is a debt that results in foreclosure and for a variety of other issues. I am not aware that land is going out of trust that is in trust by the United States for the benefit of a tribe. My understanding was

The CHAIRMAN. These are individuals who own land in trust.

Mr. SKIBINE. Yes.

The CHAIRMAN. So there is a difference here when we say all this land is going out of trust. It is not as if tribes are giving up land. It is individuals who are for one reason for another, including wills.

Mr. SKIBINE. That is correct. Right.

The CHAIRMAN. That give land to non-Indians, which is their right to do, to give their land to whoever they want to. So I think that is an important item here because, in all due respect to my colleagues, the impression was created that somehow we are depriving Indian tribes of their land by taking land out of trust and I do not think that is the case, at least that is the information that I have.

Would you agree, Mr. Skibine, that there are significant problems today with perception, to a large degree, and to some degree reality, with this process? People hear that an Indian tribe is willing to give up its claim to most of a State in return for a small couple of acres in a downtown metropolitan area that they can engage in gaming. Is that really what we think of Native Americans trying to obtain land, to return to their tribal ways and their tribal customs?

Now we see, and one of the reasons why we are having this hearing today is I keep hearing bitter complaints from people who live near Indian tribes or live near land that they hear is being taken into trust solely for the purpose of gaming. Do you agree that there is a perception out there that this is a serious problem, at least in some communities?

Mr. SKIBINE. Yes; I agree with that. I think that the one instance I can think of was not too long ago I testified at a hearing in Colorado at the Western Governors Association, where essentially there is a tribe in Oklahoma that was seeking to settle its alleged land claim in Colorado, on millions of acres in Colorado, with a casino at the airport. The Governor was very much opposed to that.

I think we advised the tribe that we did not think the claim was valid in this particular instance. So there was no application submitted, but it certainly has created an uproar in the State of Colorado.

The CHAIRMAN. I know you do not follow closely the workings of this committee, but I am sure you saw the entire Connecticut delegation show up in the last hearing we had over their concern and

the Attorney General's concern about this whole issue of additional recognition of tribes for gaming purposes.

But also on the other hand, isn't it true that in most of these cases if there is land taken into trust that it requires the approval of the Governor of the State under IGRA?

Mr. SKIBINE. For land that is off-reservation and subject to the two-party determination, then it requires the Governor. If it is for the settlement of a land claim, then it is one of the exceptions that essentially goes around the Governor's concurrence. I think that is one of the issues.

The CHAIRMAN. How many of those are exceptions, roughly?

Mr. SKIBINE. On the settlement of a land claim, we have approved one acquisition under that exception.

The CHAIRMAN. Out of 10?

Mr. SKIBINE. No; since the beginning.

The CHAIRMAN. Since the beginning?

Mr. SKIBINE. Right, since 1988.

The CHAIRMAN. So generally speaking, then we would expect disgruntled citizenry to contact their Governor and their State government to "protect" them if they feel they need it.

Mr. SKIBINE. Yes; that is right, under the two-part determination or under the settlement of the land claim. Settlement of a land claim, we have determined it will require a judicial settlement. Usually, it will require the legislature of the State to pass legislation regarding the settlement. And then it will require congressional legislation, so that this body will have to pass a law and the President will have to sign it.

So by the time one of the settlement legislations is enacted, I think it has gone through an incredibly rigorous process. For instance, I met with a delegation from a town in Ohio not too long ago regarding a potential Oklahoma tribe moving into Ohio. They were very much in favor of this, and they thought it would happen this year because when the tribal developer of this project wanted to generate

The CHAIRMAN. Could I interrupt?

Mr. SKIBINE. Yes.

The CHAIRMAN. This movement would be based on the concept of aboriginal lands, is that right?

Mr. SKIBINE. No; I think it would have been based on a land claim of that tribe in the State of Ohio. If that happens

The CHAIRMAN. Because the tribe was moved from Ohio to Oklahoma?

Mr. SKIBINE. Yes, right; essentially, what I told them is that because it would require congressional settlement legislation, the chance of this happening is essentially down the road a year or two at the very best, if that is the exception that they seek to qualify on. They can always use a two-part determination for that because neither IGRA nor our regulations, nor the IRA, imposes a test that is based on whether there are state lines in between the tribe and the proposed acquisition.

Although we have never approved at Interior a proposed gaming establishment for a tribe that seeks to have gaming in a State in which it is not currently located.

The CHAIRMAN. If a tribe commits not to acquire land for purposes of Indian gaming, it is free after acquiring that land to change its mind. Is that correct?

Mr. SKIBINE. Yes; that is what I said.

The CHAIRMAN. How often has that happened?

Mr. SKIBINE. That apparently has happened a number of times. I do not know exactly, but I think the Inspector General found at least 10 instances when he testified here, where this has happened. We are aware that this has happened in the State of Oklahoma, for instance. But the change of the use of the land to gaming cannot occur unless there is compliance with the requirements of the Indian Gaming Regulatory Act.

So for instance, if a tribe acquires land in trust off-reservation, say in the State of Oklahoma. That will not work too well in Oklahoma. Let's say the State of Texas. Well, that is not good either. [Laughter.]

The CHAIRMAN. How about Arizona?

Mr. SKIBINE. Arizona, yes. That is a good one. [Laughter.]

Then essentially the tribe will not be able to game on the land unless it meets the requirements of IGRA. In this particular case, it will have to submit a request for a two-part determination under section 20(B)(1)(a). So we will have to go through the process of consulting with appropriate State and local officials, and of doing environmental documentation. If we make a positive two-party determination for this tribe, then it will be subject to the Governor's veto.

The CHAIRMAN. So State governments in general, and Governors in particular are seduced by the prospect of sharing in Indian gaming revenues, and the concerns of the local citizenry are therefore overridden?

Mr. SKIBINE. Well, I think that for the two-part determination process, we in the Department, we have to find where there is a detrimental impact to the surrounding community. To do that, we do extensive consultation with the appropriate State and local officials. In our checklist, I think we say it is a flexible standard, in more or less 10 miles.

The CHAIRMAN. But we keep hearing from local officials who say they were not consulted. Do you have any recommendations at this time for amendments to IGRA or legislation that may help in reducing this problem?

Mr. SKIBINE. I did not come prepared with legislative solutions, but we certainly recognize that there is certainly a perception issue, and that we are working on this issue, and we will contact the tribes and Congress if we have any solutions to offer to some of these issues.

The CHAIRMAN. We would be very eager to hear.

Senator Dorgan.

Senator DORGAN. Mr. Skibine, thank you very much.

How many land-into-trust applications are now pending?

Mr. SKIBINE. Land-into-trust for all purposes?

Senator DORGAN. Yes; for all purposes.

Mr. SKIBINE. I do not have that figure at my fingertips. However, I think we are in the process or we are trying to essentially do a data-call to find this information right now.

Senator DORGAN. Dozens, thousands, millions?

Mr. SKIBINE. I think it would probably be hundreds.

Senator DORGAN. Hundreds?

Mr. SKIBINE. Hundreds throughout the country. That is for all purposes?

Senator DORGAN. Yes.

Mr. SKIBINE. Okay.

Senator DORGAN. The trust applications, the land-into-trust applications you have been discussing with the chairman center on gaming. I think in my opening statement, I acknowledged, Mr. Chairman, that the land that is taken out of trust is often as a result of wills and someone selling the land. We are hearing cases of people selling the land to pay medical bills, and so on and so forth. I acknowledge that that is not the tribal land, the trust that belongs to the tribe. This is land that inures to the individual.

But is it the case that a majority of the applications of land-into-trust are non-gaming issues?

Mr. SKIBINE. Absolutely, yes.

Senator DORGAN. So you are describing in your discussion with the chairman the circumstances for those that deal with gaming, which is a separate and serious and significant set of issues. I agree with the chairman that they should be dealt with in a different way.

Let me ask about, in 2001 the Department issued proposed revisions to the regulations. As you know, there was an extended comment period following that, and then the proposed regulations were withdrawn. Is there intention by the Department to attempt to propose new regulations? What are you thinking about in that area?

Mr. SKIBINE. We have been pondering this question for some time. I think this is something that we are discussing internally. No decision has been made yet on whether to reissue proposed regulations or to go another route, but we are looking at what was done back in the previous Administration and what we can do to essentially facilitate the process.

Senator DORGAN. Would you provide us, then, an update on the number of pending applications, the timing, and proposed use status, so that we can get a sense of what that inventory would show?

Mr. SKIBINE. Yes; absolutely.

Senator DORGAN. That would be helpful.

What is the process the Department uses to take lands out of trust?

Mr. SKIBINE. If it is tribal land, it cannot be taken out of trust.

Senator DORGAN. Non-tribal.

Mr. SKIBINE. Which is non-tribal, I am not sure there is a process that I am aware of. It just goes naturally out of trust.

Senator DORGAN. So there are no impediments to the movement on that side?

Mr. SKIBINE. I do not think so, but I stand to be corrected because I am not really involved in these individual acquisitions. That is my impression.

Senator DORGAN. I think if you can give us the inventory of applications and the status, that will be very helpful. Again, I acknowledge, as the chairman indicated, I think that there is no question in my mind that if I were an Indian tribe, I would try to

see if I could find the most desirable parcel of property in the biggest city available to me, and see if I could take that land into trust and see if I could do some gaming on it.

I understand that. That is an urge that tribes that are located in very remote areas would likely have. Perhaps some North Dakota tribes would like to have a piece of ground in downtown Phoenix. In fact, they would probably serve most of our North Dakota customers in the winter. [Laughter.]

Mr. SKIBINE. I want to point out that I think that the Department does have serious concerns about the acquisition of far-flung lands for tribes for essentially reservation shopping. I think our discretion is to constrain under section 20(B)(1)(a), but we have serious concerns.

One of these concerns essentially is the fact that in some States it tends to de-stabilize what is the status quo, where tribes are gaming on their reservation. But if one decides to leave and is authorized to do that and come close to a very proper urban area, well, then the other ones that have for years been gaming on their reservation with the support of the State community, that may change. Essentially, we are not sure that this is in the best interest of Indian gaming overall.

Senator DORGAN. And I think those are serious issues. The backdrop of all of that is an understanding that we have taken a lot of land from Indian tribes, Native Americans over many, many years. Many of those tribes would like to have some of that land back for jurisdictional and sovereignty purposes, and it has nothing to do with gaming at all. So that is a separate set of issues that we also have to be concerned about and be knowledgeable.

Mr. Chairman, on the third floor of the building behind us, Senator Domenici is marking up the energy bill. I am a member of that committee and they are turning to an amendment of mine. So I will be gone for about 15 minutes to discuss my amendment, and then I will rejoin you.

The CHAIRMAN. Thank you very much, Senator Dorgan.

Mr. Skibine, one of the things that we did in Arizona and it was approved by the voters, a compact, was a revenue-sharing proposal, as you know, so remote tribes would be able to at least have some share of the gaming revenues. That seems to me one of the attractive aspects of the compact that was overwhelmingly approved by the voters of Arizona. Do you think that there should be more referenda of that type?

Mr. SKIBINE. Yes; we think that the Arizona compacts are very successful, and we approve those and we feel that it was very productive. I think that the compacts or the law that provides for revenue-sharing between wealthy tribes and tribes that may elect not to game, I think are something that should be encouraged.

The CHAIRMAN. Thank you very much. It is good to have you back before the committee. We look forward to some recommendations that you might have that we can use. This problem is perception and reality both. We cannot legislate perception, but there may be something we can do to correct some of the realities.

I thank you, sir.

Mr. SKIBINE. Thank you very much.

The CHAIRMAN. Our next panel is David K. Sprague, chairman, Gun Lake Tribe, Dorr, MI; James T. Martin, executive director, United South and Eastern Tribes, Nashville, TN; Mike Jandernoa, 23 Is Enough, Grand Rapids, MI; and David Crosby, Santa Ynez, CA and other spots around the Earth. Please come forward.

Chairman Sprague, we will begin with your testimony. We would like to try to keep opening statements to 5 minutes if possible. Your complete statements will all be made part of the record without objection.

Chairman Sprague, welcome.

STATEMENT OF DAVID K. SPRAGUE, CHAIRMAN, GUN LAKE TRIBE, ACCOMPANIED BY JOHN SHAGONABY, TRIBAL COUNCIL TREASURER

Mr. SPRAGUE. Good morning, Chairman McCain, Vice Chairman Dorgan and members of the committee. My name is David K. Sprague, and since 1992 I have had the honor of serving as chairman of the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians, also known as the Gun Lake Tribe. With me is John Shagonaby, our tribal treasurer.

Chairman McCain, we have provided the committee with supplemental materials that I ask be submitted to the record.

The CHAIRMAN. Without objection.

[Referenced documents appear in appendix.]

Mr. SPRAGUE. These are primarily charts that I will quickly explain as I move through my testimony this morning. There is also a statement from Congressman Dale Kildee.

Today, we come before the committee as a federally recognized tribe, but we are also a landless tribe, in the final stages of the administrative land-into-trust process where ultimately the United States will accept title to approximately 147 acres of industrial land in Allegan County, MI on behalf of our tribe.

The Gun Lake Tribe was federally acknowledged in 1999 after petitioning through the Bureau of Indian Affairs [BIA] branch of acknowledgment and research. Our tribe has a long history with the United States, and our tribe also had treaties with the United States. As a result of our playing by the rules, the restoration of a homeland for our tribe has been delayed longer than any other federally recognized Indian tribe in Michigan.

We voted to investigate the economic development option that Indian gaming provides under the Indian Gaming Regulatory Act to help us exercise self-reliance. We negotiated agreements with our business partners and moved forward through the process governed under the IGRA to establish a casino.

If I may return to the map showing the location of local groups who publicly support our tribe. The red star in the map shows where our site is located, halfway between Kalamazoo and Grand Rapids in rural Michigan. I am sure you are familiar with West Michigan, Chairman McCain, and easily recognize that this location is not in an urban or suburban area. In fact, the site we selected is about three miles from our ancient burial grounds and is within our aboriginal lands.

Now, the area is zoned industrial. The existing structure is a vacant factory building that sits between a highway and railroad

tracks. You will notice that as shown on this map, the tribe is completely surrounded by supportive local governments and community groups.

Here are a few of those key groups: the city of Wayland, the city of Allegan and the Allegan County Board of Commissioners, Wayland township, Dorr township, Kalamazoo Chamber of Commerce, Kalamazoo County Convention and Visitors Bureau, Wayland Area Chamber of Commerce, Plainwell Chamber of Commerce, Barry County Area Chamber of Commerce.

My other chart, the bar chart, shows the long process and significant amount of time between the submission of the fee-to-trust application to the publication of BIA's final notice of determination to place the land in trust. It has been over 4 years, from August 12, 2001 until last Friday, May 13, 2005.

As part of the fee-to-trust application, the tribe and the BIA conducted an environmental assessment as required by the National Environmental Policy Act. Over a 3-year period beginning in early 2002, the tribe worked closely with the regional office of the BIA environmental resources experts to produce a final EA.

Chairman McCain, we are highly sensitive to our environment. That is why we made every effort to be extraordinarily cooperative and responsive to the BIA during the agency's determination of whether our casino project might pose a significant impact on the environment of West Michigan. In fact, the tribe prepared several revisions of the EA following comments from both the BIA and the public.

The fourth bar shows the extensive and unusually long 75-day public comment period as compared to the normal 30-day comment period. During this period, Michigan citizens and local government officials submitted many letters to the BIA.

In addition, since such great scrutiny is placed on casino projects, the EA examined the affects of secondary development over a period of time resulting from the casino and its operations, and examined whether the tribe should explore alternatives to this project. After an exhaustive review of the evidence and the extensive public comment, the BIA concluded that a finding of no significant impact or FONSI was appropriate.

As the second-to-last bar shows, the BIA issued the FONSI on February 27, 2004, over 14 months ago. From February 2004 to May 2005, the tribe has been waiting for the BIA to issue a notice of final determination to take the land into trust; 14 months from the FONSI until the notice to take our land in trust is a very long delay.

We believed our notice to take our land in trust would be signed in July 2004. We were provided no reason for the delay of the signing. Finally, last Friday, May 13, 2005, the BIA finally published in the Federal Register its intent to place the land in trust.

As I mentioned earlier, there is great support from the neighboring communities. We have worked hard to meet with the local governmental bodies, Chamber of Commerce and other community leaders. This last chart shows that we do have a lot of supporters. We also have over 6,000 West Michigan residents supporting the project. These kind of numbers in favor of our self-determination is surely gratifying and greatly welcomed.

It also shows our MOUs with the local fire and law enforcement departments. The BIA received letters supporting the tribe's proposed land acquisition and development from the groups and individuals noted on this last chart. This comes as no surprise since the Gun Lake casino will bring 4,300 new jobs to the area, as well as local supplier purchases, local and State revenue sharing, a proven recreational attraction and other economic development to a very economically depressed area.

As a final note, we have looked at the success of casinos in Arizona and in other places around the country. We simply want to replicate that success for our tribe.

Chairman McCain, this has been a long road and many of our elders who worked hard to obtain acknowledgment and tribal self-sufficiency are beginning to walk on. They may not live to see the results of all of the hard and dedicated work. I sincerely want those who are still with us to see the day when this long process is completed.

I wish to express my appreciation for the honor and privilege of having been invited to present testimony today. I am happy to answer any questions.

Thank you, sir.

[Prepared statement of Mr. Sprague appears in appendix.]

The CHAIRMAN. Thank you very much.

Mr. Martin.

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

Mr. MARTIN. Good morning, Chairman McCain and members of the committee. My name is James T. Martin. I am the executive director of the United South and Eastern Tribes. I am a member of the Poarch Band of Creek Indians.

Thank you for inviting USET to participate in this important oversight hearing regarding taking lands into trust. My testimony will focus on the most controversial aspects of the land-into-trust activities, which involves off-reservation land-into-trust applications for gaming.

As I will explain, gaming considerations are driving much of today's off-reservation land-into-trust activities. Non-Indian casino developers are responsible for much of what is currently wrong with these pursuits.

Congress enacted IGRA to promote tribal economic development, tribal self-sufficiency, and strong tribal governments. The act, for the most part, has accomplished those goals. USET, however, has become increasingly concerned with the small number of Indian tribes and wealthy non–Indian developers that are seeking to establish Indian casinos far away from their existing reservation in different States from where the tribes are currently located.

In at least 12 States, most recently in New York, Ohio, Illinois, and Colorado, Indian tribes are seeking to move across State lines and often across multiple States to take advantage of lucrative gaming markets. In most cases, these efforts are being funded by shadowy developers who underwrite the litigation expense, the lobbyist fees and even the cost of land in exchange for a cut of the profits.

This kind of reservation shopping runs contrary to the intent of IGRA and well-established Federal-Indian policies. Indian gaming is not being used as a tool for tribes for economic opportunity on their lands. Rather, it is being used as a tool by developers who simply need Indian tribes as window dressing to make their casino deals work.

We recognize that this is a controversial and complex issue. My organization has spent several years studying, deliberating all aspects of this debate. We have been criticized from some corners that we should not open this can of worms.

However, after several years of thoughtful, respectful and often pointed deliberation, we thought that this issue demands action. Over the last 2 years, we have taken the following measures. In February 2003, USET was the first American Indian organization to adopt a resolution voicing its opposition to reservation shopping. The resolution called for the United States Department of the Interior to clarify its policy against this activity.

Later that same year, October 2003, USET passed a second resolution that called upon Congress to oppose the efforts of out-of-State tribes to govern land or establish casinos in different States. This year, USET adopted a third resolution opposing reservation shopping. The resolution includes a call to Congress to prohibit an Indian nation from acquiring trust land and exercising governmental jurisdiction in a State other than the State where they are located, or remote locations to which they have no aboriginal connection. Copies of these resolutions have been submitted to the committee. In addition, we have submitted a summary of tribal migration proposals we know are taking place around the country.

The committee should also understand that much, if not all, of the reservation shopping activities are developer-driven, sometimes with little or no direct involvement of the tribe on whose behalf the developer is purported working.

Let me give you a typical scenario for how developers work. First, the developer will extend a carrot to the State and local governments, arguing that an Indian casino will benefit the State by creating jobs and economic activities. The developer will offer the State a cut of the proceeds of Indian casinos in exchange for State support. In most cases, these offers violate IGRA's clear prohibition against taxing Indian casinos.

Developers also are willing to agree that the out-of-State tribe will waive most aspects of sovereignty. The out-of-State tribes are willing to make these concessions as a price for obtaining the casino because they do not impact the tribe's current reservation. Unfortunately, when there are other tribes located in those same States, where out-of-State tribes are seeking the casino, the offer to submit to State jurisdiction and pay hefty taxes on their gaming facility severely undermines the in-State tribe's continued effort to defend their sovereignty.

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

Attached to my testimony is a report from one of our USET tribes, the Oneida Nation of New York, which underscores the need for Congress to provide greater scrutiny to these developer-driven deals. It appears from this report that in some cases the developers purportedly construct their arrangements with the tribes to circumvent the profit-sharing limitations in IGRA.

In addition, it also appears that some of the developers would not be able to survive a Federal background check if they were required to submit one. We have received information from Indian nations, Governors and other groups around the country who report similar experiences with these non-Indian developers.

USET believes that the political activities and financial interests of these non-Indian developers need to be fully disclosed to the public. USET also supports the enactment of legislation which bars out-of-State tribes from exercising governmental jurisdiction in more than one State. This would likely require an amendment to section 20 of IGRA prohibiting approval of land-to-trust applications for land in States other than the States where the tribe is currently located or in remote locations to which the tribe has no aboriginal connection.

We appreciate the opportunity to testify today before this Committee on this most important issue, and we will be happy to answer your questions.

[Prepared statement of Mr. Martin appears in appendix.]

The CHAIRMAN. Thank you very much.

Mr. Jandernoa.

STATEMENT OF MIKE JANDERNOA, 23 IS ENOUGH

Mr. JANDERNOA. Thank you, Senator, and good morning. I am Mike Jandernoa, former chairman and CEO of the Perrigo Company, and also chairman of a grassroots group called 23 Is Enough.

I commend your leadership and your interest in addressing this issue. I think it has been long ignored. It is an issue that has affected in terms of Indian gaming the productivity and the manufacturing productivity of many companies, especially in our State.

IGRA has not been amended since its passage in 1988. That is 17 years ago. It is one of the few things that has not really changed in that timeline. Since 1988, the Native American casino business has exploded in the United States from $100 million to $18.5 billion, and controls 25 percent of gambling in this country. My message is that IGRA is outdated and it is broken, and it is open to manipulation by special interests, as just described, and is in desperate need for reform as it relates to gaming.

The NGIC is underfunded and understaffed. My plea is that your committee take time to study in depth and impose an immediate moratorium on any Indian gaming activities until the expansion and the understanding related to its impact is concluded; 23 casinos in Michigan is enough. We are among one of the States with the top number of Native American casinos.

The tribal casinos are booming. They are doing very well, but our State economy is among the worst. It is due to the impact of globalization, the China impact, India outsourcing. We have skyrocketing legacy costs and health care costs. Michigan is in a job crisis.

Also, we are tops in the Nation unfortunately for the unemployment rate. Our manufacturing job losses account for 25 percent of all the job losses in manufacturing across the country in just our State of Michigan. If this trend continues, we cannot handle more casinos at this time with the job losses we are incurring.

Also in Michigan, discretionary spending, that is down. Bankruptcies are up and we are financially strained in many of our cities. The Government has been blinded by bright lights, big numbers, big promises that have not been able to be kept. If you look at the Detroit example, we brought three casinos in. They promised new hotels. They promised new restaurants, new entertainment, new jobs and more tourists from outside the area. It has not happened. The vast majority of dollars that come into the casinos are from a 50-mile radius around Detroit. Many of these people cannot afford it.

Bankruptcies have more than doubled. Crime has risen substantially. The Detroit police force and Mayor have indicated that the budget is exceeding their allocation by $1.2 million just for the crimes related to bankruptcy and crimes in the immediate area. The Michigan experience has been one of empty promises or broken promises.

Further, we have noted that research has demonstrated the negative impact on manufacturing. This is at a time that our country needs productivity. Absenteeism, tardiness, and bankruptcies have accelerated the job loss in our State and across the country. Our personal journey here in the State shows that we need urgent and swift and decisive action to stop this proliferation.

In 2001, as has been pointed out, the Gun Lake Tribe filed for land-in-trust application. The Chamber in Grand Rapids commissioned the Andersen Economic Group to conduct an independent economic study of the impact to assess what it would mean to our West Michigan community.

The study was surprising. It indicated that for every job that would be created, two jobs would be lost. There would be an $880 million economic hemorrhaging to the surrounding counties. Gun Lake will siphon off jobs and money from the economy and vitality in the surrounding areas, and bring it to the local area here.

In February 2003, the Chamber objected to the finding of the Gun Lake environmental assessment and urged the BIA to complete a full-scale EIS. The BIA refused the EIS, and as just noted, it was put into the Federal Register.

The Gun Lake Tribe's environmental assessment was an incomplete and inaccurate reflection of the regional impact. We talked about and the Administration focused on only a 10-mile radius. The impact is significantly greater than the 10 miles. Now what Congress has in mind as adopted in terms of IGRA is almost 20 years old, and the rules do not a require comprehensive regional impact study. Instead, it only has this small pinpoint study which is not far-reaching enough to see the impact on all the families and the jobs in the area.

In addition, IGRA ignores all the voter sentiments and the elected officials' sentiments and the State legislature's action. First, the State and Federal officials oppose this new facility. Second, Proposal 1 passed in Michigan with 58 percent of the voters suggesting

that we limit casino expansion and require votes. Third, the State Senate rescinded the support. And fourth, polling results show that 85 percent say that 23 casinos is enough, and 64 percent oppose the expansion of the casino.

This is important meaningful information that should bear on the decisions made here in Washington, but don't. There is something wrong when wealthy out-of-State special interests like Stations Casino from Vegas can come in and override the will of our people.

In summary, again IGRA is broken and outdated and after 17 years needs to be reviewed and updated. A few recommendations: No. 1, mandatory regional economic environmental and social impact statements; mandatory casino management disclosures; local and State government approval; voter support; clarification of class II gaming to eliminate the abuses and loopholes, especially related to electronic bingo games.

In closing, I reiterate my plea and urge you to make immediate action to impose a moratorium to save jobs in Michigan and to not put more families at risk.

Thank you.

[Prepared statement of Mr. Jandernoa appears in appendix.]

The CHAIRMAN. Mr. Crosby, welcome.

STATEMENT OF DAVID CROSBY, SANTA YNEZ, CA

Mr. CROSBY. Mr. Chairman, Senator Dorgan, and members of the committee, I am honored to be here today to speak with you.

The issue that brings me here today is one of fairness, of justice, and of unintended consequences. In an effort to correct injustices done to the Native American tribes in the early days of our country, the Government gave tribes the right to have gaming. Smart lawyers saw the opportunity to get around State laws against gaming and found financing to build Indian casinos.

Whether you think gambling is an addiction or just a minor vice, casinos are not good neighbors. They say they put money into local economies, but the truth is that almost all of it goes out of town, out of State and offshore. They use our schools, roads, hospitals, firemen and police and they are not subject to our tax laws.

They inevitably bring crime to a community. A 20-year veteran in law enforcement where I live estimated that 75 to 80 percent of all the crime in our valley was casino-related. I believe him.

As disturbing as all this is, it is not my main issue here. The reason I come before your committee is the question of taking land into trust, particularly large tracts of land that are not contiguous to the reservation. We are now in a situation where the laws intended to give Indians a break are doing unfair and unjust harm to communities all over the country.

At the center of this is zoning. I expect you can guess how completely alien a subject like zoning was to a singer-songwriter, but circumstances forced me to learn. At the core of it, zoning is a compact between all the people in a town or a county to agree on what kind of place it will be to live and especially what kind of place it will be to raise our children. We in the Santa Ynez Valley through our elected officials voted to keep the agricultural and rural character of our valley, and that is the main reason we live there.

Now, there are about 10,000 of us in the Santa Ynez Valley. The current laws make it possible for about 180 tribal members to circumvent this zoning agreement as well as the building codes and the taxes completely, for profit. We have a developer named Fess Parker who sees this as a wonderful opportunity to partner with the tribe and thereby evade land-use restrictions and build a very large and completely inappropriate resort destination, a giant hotel and golf course complex, and although they deny it, we believe another casino.

I believe the tribes have every right to buy any property they want with their money, just like any American. But if they are allowed to take these lands into the reservations, into trust, then developers will be speed-dialing casino operators all over the country to take advantage of this loophole in the laws.

How can this be fair? How can it be fair to give them rights we do not have, to exempt them from laws that we must obey? We ask you, please, to look at this nationwide problem and try to find a fair and just way to let the tribes invest and grow, but not destroy the surrounding communities in the process as they are doing in Santa Ynez.

Thank you very much.

[Prepared statement of Mr. Crosby appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Crosby.

Chairman Sprague, did you decide where you wanted the land taken into trust for your initial reservation, or did the Department tell you that there was a certain area where it would take land into trust for your reservation?

Mr. SPRAGUE. No, sir; we as a council decided where we would take land into trust. We were not dictated by the Bureau.

The CHAIRMAN. Under normal procedures, your tribe's engaging in gaming would require the approval of the Governor, is that correct? Under normal procedures, I am talking about under IGRA.

Mr. SPRAGUE. We are a newly federally acknowledged tribe and we are going to use

The CHAIRMAN. So this is an exception?

Mr. SPRAGUE. This is an exception.

The CHAIRMAN. This does not require the approval of the Governor.

Mr. SPRAGUE. Right.

The CHAIRMAN. Would you care to respond to Mr. Jandernoa's comments that actually gaming is not helpful economically to the region? Would you identify yourself again, sir, for the record?

Mr. SHAGONABY. My name is John Shagonaby. I am the tribal council treasurer.

The CHAIRMAN. Okay, thank you. Please proceed.

Mr. SHAGONABY. Yes; I would like to respond to that. We are the 12th recognized tribe in the State. There are 11 tribes with compacts. They are operating casinos. We took a page from tribes on what their economies were in the State.

It is demonstrated that their economies were gaming-related, so naturally we saw what they have done with their proceeds and what they have done for their communities. So that was a natural fit. After we polled our membership, they voted overwhelmingly to support it. I feel that we have worked as demonstrated by the

board with the local communities and they are very supportive of our project.

The CHAIRMAN. My question was that Mr. Jandernoa asserts that there has been an actual decline in the economy, increase in crime, increase in bankruptcies, et cetera. Would you care to address that?

Mr. SHAGONABY. We did a study for the record and it showed that it will have a positive economic impact in the area. I think the Bureau agreed with us.

The CHAIRMAN. Would you submit that for the record?

Mr. SHAGONABY. Yes.

The CHAIRMAN. Thank you.

Mr. Martin, your testimony is critical of so-called "reservation shopping" through assertion of land claims. Yet several tribes that are members of your organization were able to successfully negotiate land claims that resulted in lands that were subsequently used for casinos. How do you distinguish between these situations?

Mr. MARTIN. In those instances, Mr. Chairman, those were related to land claims and to land taken into trust were in their aboriginal lands in the State into which they were currently occupying.

The CHAIRMAN. So you feel there is a significant difference in some of the practices you see going on between that that you see ongoing today, as opposed to the way that tribal members of your organization, tribes that are members of your organization were able to take land into trust and engage in gaming?

Mr. MARTIN. Yes, sir.

The CHAIRMAN. And repeat to me again how that is different?

Mr. MARTIN. The individual tribes of our organization had land claims and they took land into trust associated with those land claims in the State into which they were occupied at that given time. They did not jump across State lines or even across multiple States to take this land into trust. It was associated with their aboriginal lands.

The CHAIRMAN. What about if a tribe has aboriginal land in another State?

Mr. MARTIN. In those areas, it would have to be judged on a case-by-case basis. Our point in those particular areas is that many times, and as you talked earlier with Mr. Skibine, it is also perception as much as reality. We are trying to assist the committee and offer suggestions on areas to curtail the perception.

A few tribes, and I am not saying it is just running rampant all over, but you come to a few tribes that are being I believe misused by developers that create false expectations to those tribes, and try to look for loopholes and the stick of potential litigation. And then they are being encouraged even by Governors in States to want to look for revenue sharing and those types of things.

We believe that it should be judged on a case-by-case basis, but there should be some clarity brought to the regulations, and if not enough clarity to those regulations, then legislation that would bring a systematic and much more thorough review of these land-into-trust applications, particularly just for gaming.

The CHAIRMAN. Mr. Jandernoa, Chairman Sprague showed a pretty impressive display of local support for his tribe and their entering into gaming activities. How do you respond to that?

Mr. JANDERNOA. I think, Senator, the big issue comes around what you call the local community or the regional area. In the slide that was shown there, and it will, and we acknowledge, and the economic study clearly states there will be jobs added in that small area, within that 10-mile radius, that will affect and add jobs.

But the economic studies show and the facts show those jobs are going to come from surrounding areas. It will come into Allegan. We have 2,500 employees in Allegan at Perrigo Company, my company. And the jobs will come from Kalamazoo and Holland and Allegan itself and Grand Rapids into the Wayland area. We do not dispute that there will be jobs added, but they are not new incremental jobs to the entire area.

The other study shows and the impact shows in Detroit particularly, which is where they did a lot of the analysis, that the expectation and the profits

The CHAIRMAN. Those were non-Indian casinos.

Mr. JANDERNOA. Two were non-Indian and one was an Indian, but again it is a casino. Again, we do not have anything against the tribal casinos themselves, or the tribes. It is the issue of a casino and its impact, unfortunately, on many people.

The CHAIRMAN. Look, I do not pretend to be an expert on the Michigan economy, and I know to at least some degree you are, but everybody I talk to says that the reason why the State's economy is in trouble is because they are experiencing the most wrenching transition from a manufacturing-based economy to trying to grapple with a world global manufacturing situation which is putting many of them out of business or in serious difficulty. I had never heard that Indian gaming impacted the State's economy either way.

Go ahead.

Mr. JANDERNOA. Yes; I think you are absolutely right. We are suffering a crisis in Michigan in jobs in our area, both from the automotive industry and particularly in our area, the furniture industry. China has had an incredible affect on us, and Japan is making more of the auto parts. So if you look at the United States big three share of cars, our jobs, which have been in Michigan, are going to Japan for the most part making those parts.

So we are affected, but it is our productivity. Our company, Perrigo, has grown from 200 to 2,500 right in Allegan, and we have done that because we are the most productive and we have the best quality. We cannot afford to have our employees tardy or absent in keeping up that quality because we are competing with China and India now. We need the jobs we have. We cannot afford to put those employees at risk of doing a great job for us. We want to create opportunities for them to be successful, not to be distracted.

The CHAIRMAN. Mr. Crosby, the BIA testified that local communities are able to participate in the land-into-trust process. Did you or any of your neighbors participate, have the opportunity to participate and have your comments considered?

Mr. CROSBY. We participated in town meetings.

The CHAIRMAN. With the BIA?

Mr. CROSBY. Well, BIA has been present at some of them. These were called by members of our board of supervisors, and representatives from the BIA came. We have unanimously expressed our dis-

approval and pretty clearly. The impact on towns is an interesting subject and you will hear testimony on both sides of it.

I think it would help a great deal if you called to witness here some of the law enforcement people from towns where casinos are and asked them what the truth is. I think they will tell you. Casinos are not good neighbors.

The CHAIRMAN. Did the BIA indicate that lands recently taken into trust would be eligible for gaming?

Mr. CROSBY. Yes; the lands that we were talking about were specifically for that.

The CHAIRMAN. You state that, and I quote from your statement, "land should be taken into trust only when truly needed to promote tribal self-sufficiency." I think I agree with that statement. Would you consider the need for additional housing or a health clinic needed to promote tribal self-sufficiency?

Mr. CROSBY. Yes; I think those are legitimate. I even think that their wanting to have a casino is legitimate. What disturbs us is the idea that they can take large tracts, in particular in this case the center of our valley, into trust, off of the tax rolls, and out of zoning. Zoning is critical to this. Zoning is a compact between all of us who live there as to what kind of place it will be and how we can raise our kids.

If they can absent themselves from these rules and laws, it is unfair to all of the other people who live there. I think that is blatantly obvious.

The CHAIRMAN. I am sure that some of our tribal leaders would respond to that by saying if they were subject to local zoning, it would be an infringement on tribal sovereignty, but also because of local situations, they might not do too well under it. This gets into the issue of tribal sovereignty, which is of course one which remains fraught with controversy.

Finally, let me just say that the problem and dilemma that we face here on the committee as regards to Indian gaming, we can have our personal opinions as to the morality or immorality, as you mentioned, whether it is addictive or not. I leave that up to experts. I do not in any way feel that I am a judge of that.

But we do know that Native Americans have been deprived for 400 years of their rights. They have been discriminated against. They have been underfunded. We have never complied with our treaty obligations.

Finally, at least some tribes, through engaging in Indian gaming, have been able to profit and be able to take care of their tribal members. So this is a dilemma that we face, but I also agree with Mr. Martin, in particular, and other witnesses that it is time we reviewed a 17-year old piece of legislation and profited from the experiences that we have undergone, and make whatever necessary changes in order to deal with an $18.5-billion and continuing to grow industry that, as I have repeatedly said, none of us ever anticipated would reach this size when we passed the act in 1988.

It is going to be a delicate proposition, but for us not to go back and review and revise the legislation in light of how it has evolved I think would be an abrogation of our responsibilities. I agree with you, Mr. Crosby and Mr. Jandernoa, that there is some way that we have to try to get more local participation in the decisionmaking

process because I have seen the impact on local communities. Some of it is good, job creation. Some of it is bad, as we have seen in other aspects of social impact.

So I thank the witnesses today and I thank you for being here. This is a very tough issue.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, thank you.

Again, I regret I missed several of your presentations. I have read them, but I am going to get called away again for the markup that we are doing just downstairs on energy.

I am with all my might trying not to respond to the question of competition with China and India. It is considered old-fashioned and somehow out of favor for us to provide benefits to workers and that sort of thing. I will save that for another hearing, Mr. Chairman.

Let me talk just for 1 moment, or let me just ask a couple of questions about this issue. First of all, I think I have said, and I think we acknowledge there is a very big difference in taking land into trust for beneficial use of tribes who live, in many cases, in third world conditions in this country.

I know the names of people who have died in bed because they froze to death on Indian reservations. I know the names of kids who have been severely beaten because there were not enough social workers to put them in a foster home where they were going to be cared for safely. I can go through the whole litany of education, health care, housing, and the crisis that exists on reservations in this country.

So the ability to take land into trust for beneficial use of tribes is very important. It is a very different issue than the question of a tribe wishing to find a parcel of land on which to build a casino.

Now, the issue of Indian gaming is also an issue of sovereignty. That was dealt with by the courts and then we passed legislation dealing with it. We are continuing to discuss the conditions of all of that. Of course, at this table now we have examples of local disputes about the subject. Let me ask Chairman Sprague, why did the tribe when you decided to engage in gaming and build a casino, decide to choose an outside investor?

Mr. SPRAGUE. Sir, we chose an outside investor because the tribe has no money.

Senator DORGAN. Short answer, isn't it? [Laughter.]

And, Mr. Jandernoa, so we know a bit about the financial capabilities of what you are trying to do based on the outside investor you chose, Mr. Jandernoa, who are the people who have contributed to your effort to attempt to stop this casino?

Mr. JANDERNOA. It is a grassroots effort, mainly people in West Michigan, Allegan, Grand Rapids, Ottawa County. Mainly in that area, and Kalamazoo County.

Senator DORGAN. Mr. Crosby, you talked about the 6.9 acres of land, and then apparently there is another 5.8 acres. So 6.9 acres is in trust now; another 5.8 acres is being requested to be taken into trust. Yet in your testimony, you also talk about Fess Parker. Is that the Fess Parker that I remember?

Mr. CROSBY. Yes.

Senator DORGAN. Fess Parker wanting to develop 745 acres of land by transferring it to an Indian tribe. Is that your biggest concern, the potential development of the 745 acres if that land is taken into trust?

Mr. CROSBY. Yes, sir; it is. The other two serve as precursors, though, and would set a precedent, and we are appealing them, and we are trying to slow them up if we possibly can. We feel helpless, and I think you will find this in communities all around the country that are trying to deal with this. We feel helpless. We feel powerless. We feel that they have in the case of the people that we are up against, they have $200 million a year. For a citizen to stand up against that is a really difficult thing.

Senator DORGAN. I am not a big fan of gaming because I have never been a big fan of doing something at which you are destined to lose. The odds are always against you, not those who run the gaming, but against those who show up on a Saturday afternoon for the purpose of the sport of gaming. The odds are against them.

Having said that, I am not somebody who believes that we ought to stop it or believes it is immoral to have a gaming facility somewhere. So the question is not whether it should be conducted, the question is where and how, and especially with respect to Native Americans, I believe there are problems with respect to addiction and there are problems with people gaming who should not be gaming.

But I know that there are revenues that are now coming from Indian gaming facilities that are going into the social service structure of tribes and that are being helpful to invest in the lives of tribal members, many of whom are living in third world conditions.

So as the chairman indicated in his conclusion, this is a difficult issue. You heard the opening testimony today by the official from the Department of the Interior. These are difficult questions. We would all like to see expeditious judgments by governmental bodies on questions that are presented to it, and yet somehow in not just this hearing, but in previous hearings, we always see that these things stretch out and take forever. But in many cases, they take a long time because they are just enormously complicated.

This committee is paying attention to this because we think it is important. Mr. Chairman, I appreciate the opportunity today, even though I have had to bifurcate my presence here a bit.

Thank you very much for coming and presenting your testimony today as witnesses. It will give us an opportunity to further consider many of these issues as we proceed with our agenda this year.

The CHAIRMAN. Thank you, Senator Dorgan.

Would the witnesses care to make any final comments? Chairman Sprague?

Mr. SPRAGUE. No final comments, Chairman McCain.

The CHAIRMAN. Mr. Martin?

Mr. MARTIN. Yes, sir; Senator McCain and Senator Dorgan, USET stands ready to work with this committee to try to assist in bringing about some recommendations that could bring some clarity to this issue, that strikes a balance between protecting individual Indian rights of self-determination while protecting those same

individuals from some shady and unscrupulous types of individuals.

The CHAIRMAN. Thank you very much.

Mr. Jandernoa?

Mr. JANDERNOA. Senator McCain, I appreciate your giving us the opportunity to talk with you. I know this jobs issue is one you are hearing about a lot, but it has got to be important to all of us in our country, and particularly in saving manufacturing jobs. That has been my life in the manufacturing segment, and I just want to save more manufacturing jobs.

So I think we have to continue to look at that. That is why I would ask that if you could, as a committee, take a look at this information; take the time to study it; and put a moratorium on expanding Indian gaming until you understand it. Because if we go along a few more years, that is more jobs that are lost and you cannot get them back.

One other aspect that has the job and economics is another issue that I think needs to be investigated before you go further and allow more land in trust for gaming is the environmental issue. You have a Clean Air Act. We are in West Michigan. We have 14 counties in violation of the Clean Air Act, and none of it is because of what we do in West Michigan.

Unfortunately, we are just a little bit east of Chicago and Gary, Indiana, and the clean air gets spoiled here. You have a Clean Air Act and a sovereign nation, and the 1988 act did not include that; when IGRA was passed, you did not consider how that would affect businesses and local communities. I really think it is imperative that, and it is another reason that for communities that needs to be re-looked at now.

The CHAIRMAN. Thank you.

Mr. Crosby?

Mr. CROSBY. I believe you said at the outset that our written testimony was going to be taken into the record.

The CHAIRMAN. Yes.

Mr. CROSBY. I have an ad here, the Silk Group:

> We are a substantial organization, an investment group with casino and real estate interests, and are actively seeking opportunities in the Native American casino area. We have immediate availability of funds for investment in casino resort development in the California area. If you are qualified with a tribal compact and/or land in trust, please contact us for confidential discussion of your development plans.

This was in the Desert Sun newspaper. So we are talking about a pretty rampant situation in terms of trying to get this money.

I would like to include it in the record if it is all right. We have also maps and other supportive data. There are three very, very strong articles that were in the L.A. Times that make many of these points for us.

The CHAIRMAN. That will be included in the record. Thank you.

Mr. CROSBY. I thank you, Senator, very much for allowing me to come. Thank you, sir.

The CHAIRMAN. Without objection, I thank the witnesses.

The hearing is adjourned.

[Whereupon, at 11 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. DALE E. KILDEE, U.S. REPRESENTATIVE FROM MICHIGAN

Mr. Chairman, I want to thank you for giving me the opportunity to submit a statement to the Senate Committee on Indian Affairs for today's hearing on taking land into trust. I want to acknowledge one of your witnesses from the great State of Michigan: Chairman D.K. Sprague of the Gun Lake Tribe, an honorable man who served in our country's combat military in Vietnam.

Mr. Chairman, like you, I am an ardent supporter of furthering the policy of Indian self determination, providing justice to our country's first Americans, and against the past policies of the United States designed to terminate tribal nations and their culture.

Like so many tribes before them, the Gun Lake Tribe was a victim of those deplorable policies. For several years the tribe fought to reclaim their Federal status as an Indian tribe. Having petitioned the Bureau of Indian Affairs for Federal acknowledgment in 1992, the tribe was finally recognized through the very difficult administrative process of the Bureau of Indian Affairs in 1999.

Even though the tribe administers Federal programs and provides services to its citizens, the tribe still does not have a land base over which to exercise governmental authority.

Congress passed the Indian Reorganization Act of 1934 to, among other things, help tribes rebuild a land base on which they can build houses for their citizens, provide employment opportunities, maintain a justice system, and support an educational system for their children. The Department of the Interior implements that law through its regulations at 25 CFR Part 151.

The Gun Lake Tribe has complied with the Federal requirements for taking land in trust. Just last week, the Department of the Interior published a notice in the Federal Register of its intent to take 147 acres of land into trust for the tribe. The land, located in western Michigan, is part of the tribe's aboriginal lands. In addition, the Department of the Interior determined that the tribe meets the requirements of the Indian Gaming Regulatory Act exception at 25 USC 2791 (b)(1)(13)(ii) that allows gaming on land acquired after October 17, 1988.

Mr. Chairman, the tribe has painstakingly complied with every Federal law and requirement in order to achieve Federal Acknowledgement, Land into Trust, and the opportunity to operate a gaming facility.

I Also point out that the tribe has worked diligently at building strong local community and governmental support.

I commend the tribe for playing by the rules we established.

Thank You

PREPARED STATEMENT OF GEORGE T. SKIBINE, ACTING DEPUTY ASSISTANT SECRETARY—INDIAN AFFAIRS FOR POLICY AND ECONOMIC DEVELOPMENT, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and members of the committee. My name is George Skibine, and I am the Acting Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the Department of the Interior. I am pleased to be here today to discuss the role of the Department in taking land into trust and the procedures used when the land is for gaming purposes.

The Department manages approximately 46 million acres of land held in trust for Indian tribes. The basis for the administrative decision to place land into trust for the benefit of an Indian tribe is established either by a specific statute applying to a tribe, or by section 5 of the Indian Reorganization Act of 1934 [IRA], which authorizes the Secretary to acquire land in trust for Indians "within or without existing reservations." Under these authorities, the Secretary applies her discretion after consideration of the criteria for trust acquisitions in our "151" regulations [25 CFR Part 151], unless the acquisition is legislatively mandated.

The regulations, first published in 1980, provide that upon receipt of an application to acquire land in trust the Bureau of Indian Affairs [BIA] will notify state and local governments having regulatory jurisdiction over the land of the application and request their comments concerning potential impacts on regulatory jurisdiction, real property taxes, and special assessments. In reviewing a tribe's application to acquire land in trust, the Secretary considers the: need; purposes; statutory authority; jurisdictional and land use concerns; the impact of removing the land from the tax rolls; the BIA's ability to manage the land; and compliance with all necessary environmental laws.

The regulations impose additional requirements for approval of tribal off-reservation acquisitions. The Secretary is required to consider the: location of the land relative to state boundaries; distance of the land from the tribe's reservation; business plan; and state and local government impact comments. In doing so, the Secretary "shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition . . . [and] greater weight to the concerns raised" by the local community the farther the proposed acquisition is from the tribe's reservation.

When the acquisition is intended for gaining, consideration of the requirements of the Indian Gaming Regulatory Act of 1988 [IGRA] are simultaneously applied to the decision whether to take the land into trust. Section 20 of IGRA does not provide authority to take land into trust for Indian tribes. Rather, it is a separate and independent requirement to be considered before gaming activities can be conducted on land taken into trust after October 17, 1988, the date IGRA was enacted into law. Specifically, Section 20 provides that if lands are acquired in trust after October 17, 1988, the lands may not be used for gaming, unless one of the following statutory exceptions applies:

(1) The lands are located within or contiguous to the boundaries of the tribe's reservation as it existed on October 17, 1988;

(2) The Indian tribe has no reservation on October 17, 1988 and the trust lands are located in Oklahoma and (i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or (ii) are contiguous to other land held in trust ort restricted fee status for the Indian tribe in Oklahoma;

(3) The tribe has no reservation on October 17, 1988, and "the lands are located . . . within the Indian tribe's last recognized reservation within the state or states where the tribe is presently located;"

(4) The "lands are taken into trust as part of: (i) the settlement of a land claim; (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process; or (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition."

During this Administration, the Secretary has approved eight applications to take land into trust that have qualified under these various exceptions to the gaining prohibition contained in section 20 of IGRA. Of these eight, three were on-reservation acquisitions (Suquamish, Picayune, and Skokomish), three were acquisition of restored lands for restored tribes (Little Traverse Bay Band, Ponca Tribe of Nebraska, and United Auburn of California), one was for a newly federally acknowledged tribe under the acknowledgment process (Nottawaseppi Huron Potawatomi), and one was for lands acquired in trust as part of the settlement of a land claim (Seneca Nation of New York).

Finally, an Indian tribe may also conduct gaming activities on after-acquired trust land if it meets the requirements of section 20(b)(1)(A) of IGRA, the so-called "two-part determination" exception. Under section 20(b)(1)(A):

(1) Gaming can occur on the land if the Secretary, after consultation with appropriate state and local officials, and officials of nearby tribes, determines that a gaming establishment on newly acquired land will be in the best interest of the tribe and its members, and would not be detrimental to the surrounding community, but:

(2) Only if the Governor of the State in which the gaining activities are to occur concurs in the Secretary's determination.

Since 1988, State Governors have concurred in only three positive two-part determinations for off-reservation gaming on trust lands: The Forest County Potawatomi gaining establishment in Milwaukee, WI; the Kalispel Tribe gaming establishment in Airway Heights, WA; and the Keweenaw Bay Indian Community gaining establishment near Marquette, MI. During this Administration, the Secretary has made two such affirmative determinations: One for three Wisconsin tribes seeking a gaining establishment in Hudson, WI, and the other for the Jena Band of Choctaw seeking a gaining establishment in Logansport, LA. In both cases, the Governors of the affected States have refused to concur in the Secretary's determinations.

Currently, there are 11 applications for two-part determinations under section 20(b)(1)(A) pending with the BIA for sites in New York, Wisconsin, Michigan, California, and Oregon. Of these, only one concerns the proposed acquisition of land in a State other than where the tribe is currently located. However, more applications are rumored to be in development for cross-State acquisitions, including potential applications in Ohio, Colorado, Illinois, and New York. It is within the context of this emerging trend that Secretary Norton has raised the question of whether Section 20(b)(1)(A) provides her with sufficient discretion to approve or disapprove gaming on off-reservation trust lands that are great distances from their reservations, so-called "far-flung lands." We have spent substantial effort examining the overall statutory scheme that Congress has formulated in the area of Indian self-determination and economic development. This includes a careful examination of what Congress intended when it enacted Section 20 (b)(1)(A). Our review suggests that Congress sought to establish a unique balance of interests. The statute plainly delineates the discretion of the Secretary, limiting her focus to two statutory prongs. Also, by requiring that the Governor of the affected state concur in the Secretary's determination, the statute acknowledges that in a difference of opinion between a sovereign tribe and an affected State, the State prevails. Further, at least on its face, Section 20(b)(1)(A) does not contain any express limitation on the distance between the proposed gaming establishment and the tribe's reservation, nor is the presence of state boundaries between the proposed gaining establishment and the tribe's reservation a factor.

Our review indicates that the role of the Secretary under section 20(b)(1)(A) is limited to making objective findings of fact regarding the best interests of the tribe and its members, and any detriment to the surrounding community. Therefore, while the trust acquisition regulations provide broader discretion, Section 20(b)(1)(A) does not authorize the Secretary to consider other criteria in making her two-part determination, thus limiting her decisionmaking discretion to 3 that degree. It should be noted that neither this Administration, nor previous ones, have ever approved a two-part determination under Section 20(b)(1)(A) of IGRA that would authorize a tribe to engage in gaming activities on land located in a State other than where the tribe is presently located. Although off-reservation acquisitions for gaining under Section 20(b)(1)(A) are subjected to a very lengthy approval process, potential ventures between tribes and their financial partners keep emerging because neither IGRA nor the main land acquisition authority in the Indian Reorganization Act, or regulations promulgated thereunder, close the door on these projects. In our view, Section 20 of IGRA reflects Congressional intent to impose a prohibition on gaming on lands acquired in trust after enactment of the statute. Section 20 does contain a series of exceptions discussed above, but we do not believe that it was the intent of Congress that the exceptions swallow the rule.

In addition, there have been instances where an Indian tribe submitted an application to take land into trust for a non-gaming purpose, and subsequently attempted to change the use of the property to gaming. While this practice is discouraged, it is possible because the United States does not permit deed restrictions to be attached to land owned by the Government, and trust lands are lands owned in fee by the United States for the benefit of an Indian tribe. It should be stressed that Section 20 prohibits all Indian gaining on land acquired after October 1988, and this prohibition applies regardless of the original purpose for which the land was acquired. Absent an exception under Section 20(b), a tribe would still be required to secure a favorable two-part determination including concurrence by the State Governor in order to legally engage in Indian gaming on that land. It is also important to emphasize that before trust land can be used for gaming, even if acquired for another purpose, it must meet other requirements of IGRA, which include a deter-

mination that the land in question is "Indian land" over which the tribe exercises jurisdiction and over which it exercises governmental power; receive approval of a gaming ordinance by the Chairman of the National Indian Gaming Commission; and receive approval of a tribal/state gaming compact by the Secretary if the tribe is seeking to engage in class III gaining activities on the land.

Taking land into trust is an important decision not only for the tribe seeking the determination but for the local community the land is located in. The regulations seek to ensure that the local community is kept informed and allowed to participate in the process. Any community comments received are considered before a determination is made whether to take the land into trust. The tribe and the public are also given an opportunity to appeal to Federal court.

In addition, the Department recognizes the growing concerns about land venue shopping by tribes, especially for gaining purposes, and the concerns some have expressed about efforts to take developed (or land with development potential) land into trust. We are evaluating closely the expansion of tribal interests in filing fee-into-trust applications for sites ever more distant from current geographic locations or for sites with significant implications for State and local jurisdictions.

Under 25 C.F.R. parts 151.10 and 151.11 the Department is required to consider, when determining whether to take land into trust, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status. The Department is also evaluating the implications of taking land into trust on other issues such as land fractionation. For example, the Department and Congress have been actively engaged in efforts designed to reverse the negative effects of fractionation on individual Indian allotments. As such, it may be prudent to consider whether steps should be taken to limit, or eliminate, efforts to take land into trust for individual Indians as one additional means of preventing future fractionation.

While the Department has not made any decisions to alter the status quo, we recognize serious concerns exist. The Department will, of course, communicate and work with Congress and other affected parties if significant changes are proposed for the fee-into-trust program.

This concludes my remarks. I will be happy to answer any questions the committee may have. Thank you.

PREPARED STATEMENT OF MICHAEL TOLEDO, JR., GOVERNOR, PUEBLO OF JEMEZ, NEW MEXICO

Mr. Chairman and members of the committee:

I am Michael Toledo, Jr., Governor of the Pueblo of Jemez in New Mexico. Thank you for the opportunity to submit testimony for the record.

The Pueblo of Jemez is located 45 miles northwest of Albuquerque in rural northern New Mexico with a resident tribal population of approximately 3,200 members. The Pueblo is 90,000 acres located in a remote area near no major population centers. The Pueblo's current reservation lands are not conducive to establishing a gaming facility for several reasons. There are no major interstate highways traversing the Pueblo lands and the markets for gaining by seven neighboring Pueblos who already have gaming facilities in operation have saturated the potential market. The other Pueblos are building hotels, golf courses, and other amenities that would make it impossible for us to entice people to drive by these facilities to come to remote Jemez. Their locations are on the Interstate and much closer to Albuquerque and Santa Fe. Our reservation is on a two-lane road. There are only 6,000 people within a 20-mile radius of the Jemez Pueblo.

We first explored whether we could open a casino on our current lands. We were told that *any* type of casino would be a financial failure. We were essentially told, "Don't waste your time." To quote the GVA Marquette Economic Feasibility Study on Gaming at the Pueblo of Jemez, New Mexico dated August 2004: ". . . we suggest that you seek an alternative location." We also received several letters from potential Wall Street firms who specialize in financing casino. They confirmed that trying to open a casino on our tribal lands was an impossibility.

In December 2004, our Pueblo filed its section 20 application for land into trust so that we could have a casino and a revenue stream to make possible some very basic human needs for our Pueblo. We have spent countless hours in the development of the application. The filing of our application was a milestone for us which represented our hope for the future. For the first time, we have an opportunity of achieving economic self-sufficiency.

Having recently filed our trust application, we've learned that the existing section 20 process isn't easy. It has several, very high thresholds. Consequently, only four

applications have been approved by the Department of the Interior and only three casinos have been built under the process. We think the process could be improved, however. We would welcome any steps to make the process more transparent. We would also welcome changes to the section 20 process that make it more deadline-driven. The BIA, the Office of Indian Gaming and other offices involved should be given adequate time to review applications, but it would be immensely helpful if hard deadlines for completing internal reviews and for making decisions were part of the process.

Mr. Chairman, we are in the middle of the application process, and even without a change in IGRA, we see the process getting harder. The EIS requirement is one example. Since the beginning of last year, it has been the Department of Justice's recommendation that every casino application include an EIS regardless of the environmental impact. This requirement imposes cost and delay not contemplated when IGRA was enacted. It was a cost and delay that we did not fully expect when we started our project. The EIS process is long and is an open invitation for the opposition to abuse the process.

To our Pueblo, the off-reservation gaming provisions of the Indian Gaming Regulatory Gaming Act [IGRA] are the "Equal Opportunity Provisions" of the law. IGRA was designed to encourage better, stronger tribal governments, self-determination and economic opportunity. These provisions are also our best hope to meet our tribal needs-needs that have gone unmet for decades—needs that have not been provided funding by the Federal Government because of budget cuts. The provisions of section 20, gives a tribe like the Pueblo of Jemez with a remote location an opportunity to be part of the process. There is no equal opportunity under IGRA if consideration is being given to changing section 20.

We are a poor tribe with a remote location and with little economic development on our reservation. Our economic development is a convenience store with eight gas pumps on a two-lane road. Our Pueblo is 3,200 member strong and continuously growing. The growth of the Pueblo creates a heavy burden and puts a real strain on the Pueblo's infrastructure such that we are unable to provide adequate governmental services. With the recent trend in Federal budget cuts resulting in less money being available for the tribe we have no place else to turn but to look for opportunities like developing a casino outside our reservation. We do not have a casino.

In designing our project, we gave careful thought to not encroach upon the primary market of other federally recognized tribe's who are eligible to game. We have selected a location in our home State, as close to our reservation as possible, taking into account economic viability for the casino. We want to game in our state, but do not want to encroach on other gaming tribes' primary market. In order to accommodate this objective, our proposed site is in Anthony, NM, 293 miles from our reservation. Dona Ana County is the closest population center sufficiently large enough to support a successful casino. The Pueblo believes that partners with similar needs and goals are the best partners. Anthony, NM is an unincorporated area with strikingly similar demographics, infrastructure and community needs as the Pueblo of Jemez.

The 293 miles between the Pueblo's reservation and Anthony, NM, our proposed site, may sound like a long distance, but the geography and demographics should be more important than the odometer. Between the Pueblo of Jemez and our proposed site, there is a lot of open space, a lot of Federal land, some great ranches and farms, some oil and gas fields, some potash mines, and very few people. It is a sparsely and scattered population. Most of the towns are as small as the Pueblo of Jemez, and few are larger than 20,000. Anthony is the closest location to our Pueblo that would support a viable a casino based on our GVA Marquette Advisers Study.

Our project enjoys tremendous local support. Our casino project enjoys 76 percent strong support based on an objective poll conducted in December 2004. The support for our casino is evidenced by 11,000 signatures on a petition circulated in Anthony. We found our local community very reasonable, but not every tribe may have the same experience. We were asked about giving a percentage of the casino business equal to the State's share to one faction of a local group. We were also asked to fund some unrelated pet economic development projects of some of the people with which we met. We did neither because we did not believe IGRA allowed it, or that the Secretary of the Interior would approve it. We did however enter into an Intergovernmental Agreement with Dona Ana County to pay for governmental services that would be impacted by our proposed casino. Coming into a community like Anthony we know that the casino would create additional burdens for the community. Given the growing pains that we are experiencing at our Pueblo, we felt that it was only fair and reasonable to pay for some of these services such as police, fire and

emergency medical services. We want to be a good neighbor, and a welcome addition to the community.

In selecting our site, we insisted upon a county that already had gaming. Dona Ana County, New Mexico has a racetrack and slot machines. The slot machines are often three-deep with people waiting for a turn to play. We did not want to introduce gaming into a county that had not already allowed it. There are 2.2 million people and 700 slot machines in our projected market area. This compares to 786,000 people near Albuquerque, 7 casino/resorts and 7,250 slot machines. Our market study concluded that the Anthony, NM area was underserved for gaming.

As I am sure you remember, when Congress passed IGRA the "cooperative federalism" of the Equal Opportunity provisions of section 20 were carefully crafted and designed to allow off-reservation gaming under circumstances, if and only if, all levels of government were consulted. Local governments are consulted to make sure there is no local detriment. The Secretary of the Interior also has to carefully evaluate the best economic interests of the tribe applying for the land and the gaining. The State legislatures were given the authority to set the general rules for entering into compacts and for gaming in the State. Congress wisely did not give them a role in micromanaging every application, second guessing the experts or overly politicizing the process. This past legislative session in New Mexico a bill was introduced to require a case-by-case approval of off-reservation applications, second guessing the Secretary of the Interior and tying the hands of the Governor. Your committee might consider clarifying State legislatures' roles. Under current law the States' interests and power to approve or not approve an application was vested with the Governor because he represents the entire state and stands for election among all the people not just certain special interests.

Several weeks ago the CBS affiliate in El Paso aired a special edition on our project. I would like to make the transcript of that video part of the record. The video link, should you like to see it, it is available at AnthonyCasinoFacts.Com. Click on "Latest Press Information" Click on "Who are the Jemez? A Tale of Two Communities and Two Cultures." There is a little video camera icon. Click on it to watch the video.

Off-reservation gaming is an important option for Jemez Pueblo. The Pueblo struggles with the need to bring in revenues to provide basic governmental services ranging from health care, law enforcement, water and sewer, housing, emergency medical services, education and others. The tribal administration has relied heavily on Federal grants and State and Federal appropriations to try to meet the needs of the Pueblo in providing the essential governmental services. Even with the funds received the Pueblo still has shortfalls. The grants and appropriations the Pueblo receives is always decreasing sometimes not available. The Pueblo itself has very limited financial resources.

We very carefully began this journey to open a casino and to be able to use the revenue to help our people. Our project is justified under current law. If there is to be any changes to IGRA as a result of the committee's oversight hearings, we hope that you will take steps to make sure that the processing of applications does not stop while Congress considers legislation. We hope that you will consider an amendment which provides that applications started under the section 20 process can be completed under that process.

Thank you for providing an opportunity for us to comment and to tell you about our application.

Cowlitz Indian Tribe

THE COWLITZ INDIAN TRIBE

STATEMENT REGARDING FEE-TO-TRUST SUBMITTED IN CONJUNCTION WITH MAY 18, 2005 HEARING

INTRODUCTION

Mr. Chairman and esteemed members of the Committee, the Cowlitz Indian Tribe of Washington ("Cowlitz Tribe") respectfully submits the following statement for the Committee's consideration in conjunction with its May 18, 2005 Oversight Hearing on Taking Land Into Trust.

Just a few weeks ago I testified on behalf of the Cowlitz Tribe before this Committee regarding the incredible burdens imposed on our Tribe by the Department of the Interior's administrative Federal Acknowledgment Process ("FAP"). I also testified regarding the challenges that we face as a newly recognized, landless tribe. And there is no challenge greater, no obstacle more difficult, no one issue which has caused my people more pain, than our efforts for nearly a century and a half to obtain trust land and have it proclaimed to be our reservation.

The Bureau of Indian Affairs' current approach to both trust acquisitions and reservation proclamations is almost as costly and unwieldy as the recognition process – with perhaps just as much uncertainty. Indeed, the cost of completing the trust acquisition process (including NEPA compliance) and the reservation proclamation process far exceeds the costs of acquiring the land itself. This is a particularly heavy burden for a newly-recognized FAP tribe like Cowlitz, which has waited decades and expended hundreds of thousands of dollars to complete the acknowledgment process, leaving us with extremely limited resources to secure a land base from which to provide sorely needed governmental services for our members. The burdens are further compounded by the political controversy surrounding Indian gaming, which tends to portray all tribes trying to acquire land for gaming as greedy reservation-shoppers. This skewed view often creates undue and unfair negative influence on the fee-to-trust acquisition process even when the tribal applicant is a destitute, landless, newly recognized tribe like the Cowlitz, simply trying to find a piece of land from which to start building a tribal government and an economy to help support our people.

My testimony discusses the fee-to-trust and initial reservation proclamation processes, addresses the role of Indian gaming in connection with fee-to-trust acquisitions, and provides some suggestions for how the various processes can be improved. First, however, I wish to highlight the history of our Tribe as it relates to how we came to be unrecognized and landless in the first place.

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Cowlitz Indian Tribe

An understanding of our history is absolutely critical to an understanding of why we are particularly disadvantaged by the current fee-to-trust acquisition and initial reservation proclamation processes.

A History of the Cowlitz Tribe and How it Became Landless

The United States acquired the Oregon Territory from Great Britain pursuant to the Oregon Treaty in 1846. In 1853, the Washington Territory in turn was carved from the Oregon Territory. Less than a year after the Washington Territory was created, the United States began to survey the Indian populations in western Washington to obtain land cessions from them. In 1854, Acting Commissioner of Indian Affairs Charles E. Mix instructed Washington territorial Governor Isaac Stevens to commence treaty negotiations with the Washington tribes. In February 1855, Governor Stevens convened treaty negotiations with the Cowlitz and other tribes at the Chehalis River Treaty Council. The purpose of these negotiations was to obtain large land cessions from the tribes and to consolidate multiple tribes onto a smaller number of reservations.

The Cowlitz agreed to cede lands to the United States, but treaty negotiations broke down because the Cowlitz refused to accept a reservation outside of its traditional territory. As a result, the Cowlitz, unlike most other Washington State tribes, was left without a reserved land base. When an Executive Order opened up all of southwestern Washington to non-Indian settlement in 1863, the Cowlitz lost possession to all of its traditional lands -- despite the fact that the Tribe had not signed a treaty ceding those lands, the Tribe had not been compensated for those lands, and Indian title to those lands had never been extinguished by Congress. Within a short period of time the Cowlitz Tribe became entirely landless and its members were driven and scattered throughout Washington and Oregon.

There were a few efforts to establish a reservation for my ancestors in the late nineteenth century, but by the early twentieth century the Bureau of Indian Affairs came to view itself as having no fiduciary obligations to my Tribe because we held no reservation lands. Within a short time, the United States began overtly to disavow any government-to-government relationship with the Cowlitz Tribe.

Nevertheless, in the early 1900s my Tribe reorganized, elected a governing body, and initiated a series of efforts to seek compensation and replace our lost aboriginal territory. Although several congressional bills were introduced in the 1920s and 1930s that would have given the Court of Claims jurisdiction to hear our claims against the United States, none ever became law. It was not until 1946, when Congress set up the Indian Claims Commission (ICC) to hear tribal claims against the United States, that the Cowlitz Tribe had a forum to pursue our claims. We filed suit in 1951, and in 1969 the ICC determined that we had exclusive use and occupation of a particular area of southwest Washington. It also acknowledged that we had strong historical connections to additional

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lands contiguous to our exclusive use and occupancy area, but because other tribes had also occupied this area with the Cowlitz, we were not compensated for those lands. In 1973, in a settlement agreement between the Cowlitz and the United States, the ICC awarded the Tribe $1,500,000 to compensate us for the taking of our exclusively-used lands. (This amounted to approximately ninety cents per acre.)

In the 1970s and 1980s my Tribe insisted that federal legislation authorizing the ICC award include a provision setting aside money for tribal land acquisition so that we could buy back land that we had lost. But the Department of the Interior consistently opposed various versions of the settlement legislation over many years, objecting to the use of any settlement funds for land acquisition because the Cowlitz Tribe was not federally recognized. It was not until 2004, two years after we achieved recognition, and twenty-one years after the ICC awarded us compensation for our lost lands, that Interior withdrew its objection to our settlement award legislation and allowed the legislation to move forward with a land acquisition provision intact. The Cowlitz Indian Tribe Distribution of Judgment Funds Act, Pub. L. 108-222, 118 Stat. 621, was signed by President Bush on April 30, 2004. Section 4(f)(1) allows us to use some of our settlement money for land acquisition.

I repeat this history because it illustrates not only how the federal government's unfair treatment of my Tribe has resulted in years of suffering and pain for our people, but also the irony of our current landless status. In sum, the federal government refused to establish a reservation for us because we refused to leave our aboriginal territory, and then appropriated our lands for white settlement without compensation. The government then refused to continue to recognize us as a tribe because we had no reservation. When we finally were paid for the lands that were wrongfully taken from us, the federal government refused to allow us to use the settlement moneys to acquire replacement land because we were unrecognized. Now that we have endured and successfully completed the extremely onerous FAP process, the federal government forces us to jump through the same fee-to-trust hoops as would a reservation tribe trying to move to a better gaming market. Surely the United States can do better to make things right.

THE FEE-TO-TRUST ACQUISITION PROCESS

The Department of the Interior's fee-to-trust acquisition process is governed by the regulations found at 25 C.F.R. Part 151. The regulations require that a tribe submit a written application that contains the following information: the authority for the acquisition, the tribe's need for the land, the purpose for which the land will be used, any impact on the State and its political subdivisions resulting from removal of the land from the tax rolls, any jurisdictional problems and potential conflicts of land use which may arise, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land, and sufficient information so the Bureau can comply with its NEPA obligations and other Departmental

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environmental requirements. The Bureau must notify affected state and local governments and allow them 30 days to provide written comments regarding the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. Tribes also must provide title evidence to the Bureau, which typically requests that the Solicitor's Office provide a title opinion before acquiring any property in trust. The tribe must cure any title defects identified that would violate the Department of Justice title standards.

Ironically, because we have no reservation, our efforts to acquire land for an initial reservation are subject to the additional requirements applicable to "off-reservation" acquisitions. Under these provisions, the Bureau must consider the location of the land relative to state boundaries and its distance from the boundaries of the tribe's reservation, giving greater scrutiny to the tribe's justification of anticipated benefits and greater weight to any assertion by the State or local government that the acquisition will negatively impact its regulatory jurisdiction, real property taxes and special assessments. It is little wonder that this requirement could adversely affect tribes like the Cowlitz that are effectively trying to "carve out" a reservation from an existing local jurisdiction that, for understandable reasons, may be hostile to the idea of losing land from the tax base and local regulatory authority over those lands. Tribes applying to acquire off-reservation land for business purposes must also provide a business plan that specifies the economic benefits anticipated.

BIA also must comply with NEPA as part of its decision-making process for all discretionary trust acquisitions. As discussed in more detail below, BIA's NEPA compliance procedures may be the most unwieldy and time-consuming aspect of the Part 151 process, particularly for gaming acquisitions that now are almost always subject to preparation of an Environmental Impact Statement (EIS). Additional notice and comment procedures are required for the EIS process that necessarily increase the time and effort spent on BIA's NEPA compliance. In addition, BIA requires that tribal applicants foot the bill for its NEPA compliance, which can be extremely expensive.

Typically, because of understaffing and backlogs, it will take the BIA months before it even begins consideration of a fee-to-trust application, and in most cases, the entire process takes years to complete. All gaming acquisitions (and the related NEPA documentation) are subject to a second, independent layer of review by staff in Headquarters BIA and Solicitor's Office, which slows the process even further. While BIA Regional Directors are authorized to make decisions on non-gaming, off-reservation acquisitions, these recommendations are also subject to Headquarters review before final action may be taken to acquire the land.

When Interior does finally decide to acquire land in trust, the tribe must wait an additional thirty days before the Department actually acquires title in trust, to allow for any legal challenges to

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the proposed acquisition. In many cases, particularly in connection with gaming acquisitions, legal challenges are filed that may take years to resolve before Interior finally acquires the parcel in trust.

THE INFLUENCE OF INDIAN GAMING

Given our circumstances and the substantial costs and uncertainties created by Interior's cumbersome fee-to-trust and reservation proclamation processes, gaming development is practically the only economic endeavor that will attract outside investment and allow us to get back on our feet. We are not looking for ways to get rich quick – we are trying to fund the building of government buildings, homes, schools, and health clinics. We are looking for access to the same economic development opportunities afforded other tribes that were lucky enough to have a land base on October 17, 1988.

As this Committee is well aware, the Indian Gaming Regulatory Act ("IGRA") provides an exception to its prohibition of gaming on lands acquired in trust after 1988 for the initial reservation of tribes that are acknowledged by Interior through its administrative process. One of the main purposes of this and other IGRA exceptions to gaming on after-acquired lands is to ensure that tribes like the Cowlitz that were not federally recognized and had no reservations in 1988 are not unfairly disadvantaged relative to more established tribes that held trust lands before IGRA was enacted. The equitable policy considerations underlying these provisions should not be lost in the current political controversy over "off-reservation" gaming. Similarly, blanket revisions to IGRA or Interior's fee-to-trust regulations that fail to take into account the historical wrongs and resulting disadvantages faced today by tribes like the Cowlitz should be rejected.

PROPOSED REFORMS

We support having a rigorous process that governs the acquisition of trust land, as long as that process fairly is applied fairly and within reasonable time frames, and accommodates the unique difficulties and hardships suffered by tribes like the Cowlitz. In fact, by reforming the trust acquisition and reservation proclamation processes in a meaningful way, all tribes could enjoy substantial cost savings and become less dependent on outside sources of financing, and the federal government would also conserve increasingly scarce resources and reduce its vulnerability to outside political influence. To that end, the Cowlitz Tribe respectfully offers the following suggestions to improve the fee-to-trust and reservation proclamation processes generally, as well as specific suggestions to make the process more accessible and fair for newly recognized, landless Tribes like Cowlitz.

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1. Impose Deadlines

A fundamental problem with the process is that there are no deadlines by which Interior must decide whether to acquire trust title to a parcel of land. Fee-to-trust and reservation proclamation applications typically languish at Interior for years before the agency takes final action. The Committee should consider imposing milestone deadlines by which Interior must move fee-to-trust petitions and reservation proclamations through the process. Such deadlines are particularly important to my Tribe, since we are unable to develop any meaningful opportunity for self-support without a land base. Deadlines would also significantly contain costs by lessening the time in which these applications can become political footballs. Imposition of deadlines would also be consistent with other regulatory requirements. For example, IGRA imposes a 45-day deadline for Interior to approve a tribal-state gaming compact and a 90-day deadline for NIGC to approve a tribal gaming ordinance. The compacting and ordinance approval processes, while not perfect, have at least worked to provide all parties with timely decisions.

2. Promote Efficient Administrative Review

In most cases, particularly where an acquisition is for gaming, the glacial pace and excessive costs are largely attributable to the BIA's unwieldy procedures for compliance with NEPA. BIA takes the position that most gaming acquisitions will require an Environmental Impact Statement (EIS) to comply with NEPA. Rather than conduct the environmental review work itself, the Bureau contracts this work out and it also requires the Tribe to pay the contractor. The cost of the Cowlitz EIS will exceed *one million dollars*. Under the circumstances, our Tribe has no real choice but to turn to outside investors just to cover the cost of the BIA's environmental documentation, which is but one of many steps in the fee-to-trust application process.

In addition, the Bureau follows redundant, inefficient procedures for review of NEPA and other documents submitted during the fee-to-trust process, which further contribute to the excessive cost and delay of gaming acquisitions. For example, both the BIA Regional Office and Headquarters independently review the NEPA documentation, and the review is done sequentially rather than simultaneously. As a consequence, the review takes at least twice as long, because the Regional Office completes its review and submits comments to the BIA's EIS contractor, and then Headquarters goes through the exact same exercise. In addition, Headquarters' comments sometimes conflict with those made by the Region, which results in additional time spent to resolve differences and make further edits. This prolonged back and forth could easily be curtailed by having BIA Headquarters and the Region perform simultaneous reviews, or better yet, by designating one or the other as the single authority responsible for the review. This streamlined approach would force the Bureau to resolve internal conflicts early in the process and make the editing process more efficient, and would result in the conservation of both tribal and agency

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resources. In a perfect universe, the Bureau would also pay for its own NEPA compliance work, thereby reducing the extraordinary pressure on poor tribes like mine to find outside funding.

3. Promote Coordinated Review

With respect to establishing a tribal land base, the Cowlitz Tribe is at an extreme disadvantage. No land is set aside for FAP tribes like mine, and certainly no federal funds have been dedicated to procuring a land base for us. Tribes recognized by federal legislation benefit from legislative language which mandates that Interior take certain lands into trust for the tribe and declares that such lands are the tribe's reservation. In contrast, Interior is addressing the Cowlitz request for trust land in a piecemeal fashion, using the cumbersome, prolonged administrative process designed for the off-reservation acquisitions of existing, landed tribes rather than the less complicated process for on-reservation acquisitions. Further, Interior will only proclaim a reservation under the authority granted by 25 U.S.C § 467 after it has acquired trust title to the property. This bifurcated process only serves to extend the amount of time of uncertainty for the tribe, state and local community. This uncertainty translates to increased costs as interested parties attempt to influence each separate process. This uncertainty also means that my Tribe must continue to function for a longer time without the very asset - trust land - that is so critical to developing economic opportunities and self-sufficiency for the Tribe and its members.

The separate fee-to-trust and initial reservation proclamation processes also result in a significant duplication of efforts. For example, in the fee-to-trust acquisition process, Interior examines both the "need" and "purpose" for the tribe's proposed trust lands. This consideration overlaps significantly with the "need" and "rationale" for securing reservation status for the trust land that is part of BIA's reservation proclamation analysis. In addition, as a practical matter, the Bureau would be in a much better position to recommend that land be taken in trust for purposes of gaming, and make a determination that the land is eligible for gaming as an initial reservation under IGRA, if it would concurrently consider whether the land should be proclaimed a reservation.

Similarly, BIA could better determine its ability to discharge any additional responsibilities resulting from acquisition of a parcel of land in trust if it made a service area designation prior to consideration of the fee-to-trust application. Unfortunately, BIA requires that we make a separate application for a service area designation after completing the acknowledgment process, rather than designating an area at the time the tribe is acknowledged. Again, this results in a longer wait and a duplication of efforts, because BIA examines evidence of "community," *i.e.*, a substantial number of members living within a defined geographic area, in its acknowledgment process, which is closely related to its review of whether the land will serve a significant number of tribal members in the service area designation process. By combining these processes or at least performing them concurrently, Interior could deal with closely related issues in a more efficient and comprehensive fashion.

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Moreover, as a matter of equity and fundamental fairness, it only makes sense that if Interior acknowledges a tribe, it should expeditiously establish a land base from which the tribe can operate its government and provide for its members. The Cowlitz Indian Tribe was acknowledged over three years ago, and submitted its application for trust land the very same day, but we likely are another three years away from having any land taken into trust. Congress could remedy this inequitable situation by requiring Interior to consolidate or at least simultaneously review trust applications and reservation proclamations, and to designate service areas at the time a tribe is acknowledged. Alternatively, Congress could require Interior to establish an expedited process for the acquisition of some reasonable initial amount of land that automatically would become the Tribe's reservation, so long as those lands are located within the area that serves the Tribe's present membership.

CONCLUSION

The present fee-to-trust and reservation proclamation procedures inflict real hardships on the Cowlitz Tribe, as well as other similarly situated FAP tribes. Tribes that were recognized prior to 1988 enjoy significant advantages regarding economic development because they had an established reservation before Indian gaming made land acquisition controversial, and those tribes have not had to "carve out" reservation lands from often-hostile local communities. Tribes recognized by Congress rather than through the administrative FAP process also have significant advantages over my Tribe, because those tribes almost always have statutorily-mandated land acquisition authority in certain counties designated by Congress as the service area. Conversely, the Cowlitz Tribe, after expending all its resources to get through the acknowledgment process, essentially is being forced to start from scratch and complete layer after layer of duplicative, complicated and expensive administrative procedures to obtain even a very modest land base from which we can provide for our members. And not only my Tribe, but all tribes suffer from the lack of deadlines in the process, as well as Interior's cumbersome and inefficient review procedures. In closing, the Cowlitz Tribe would like to offer its services to this Committee as it examines the land into trust process.

We thank you again for the opportunity to provide this testimony.

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TESTIMONY OF DAVID CROSBY
BEFORE THE
U.S. SENATE COMMITTEE ON INDIAN AFFAIRS

May 18, 2005

Mr. Chairman and members of the Committee, thank you for inviting me to testify today on the important matter of the acquisition in trust of lands by the Bureau of Indian Affairs (BIA) for federally-recognized Indian tribes. This is an issue of significant importance to me and the community in which I reside – Santa Ynez Valley, California – as our region is experiencing first-hand the problems of tribal trust land acquisition and economic expansion related to casino gaming.

My Interest in the Trust Land Process

Before addressing the topic of this hearing, I should explain why I am appearing before this Committee today.

Although I am a professional musician, I have long been involved in political and social issues, including the civil rights, anti-war, anti-nuclear, Live Aid, and Tibetan Freedom movements. I have been fortunate to be involved in these movements with other musicians and artists, and through them, I have learned the importance of activism.

One of the constant themes in my activism has been the support of social causes and the rights of disadvantaged people against improper governmental action. The Indian tribes of this country fall into that category, and I consider myself a champion of their rights. Their mistreatment by the federal government is one of the darkest chapters of American history, and certainly racism against Native Americans continues today. These are problems that I know this Committee takes seriously, and I support your efforts to solve them.

The specific topic of this hearing, however, is one in which federal Indian policy has veered off into a direction that is creating a new set of problems and a new form of divisiveness. I am speaking of the problems caused by taking land into trust in circumstances, and under procedures, that do little to address the problems confronting Indian tribes and much to drive a wedge between local communities and their tribal neighbors. This occurs when the trust land process is used primarily as a mechanism to evade environmental requirements, community land use plans, state and local taxes, and the rules and regulations that govern other residents and citizens of a region.

I am speaking not of the establishment of tribal reservations or the acquisition in trust of land necessary for a tribe to achieve and maintain autonomy and self-sufficiency. I am instead speaking of the circumstances where trust land is a tool used to enable parties to build developments antithetical to the rules and principles that shape the character and quality-of-life of a region and represent the values that the residents of such an area share. This problem is especially severe in a situation such as the one we are experiencing in the Santa Ynez Valley, where the extraordinary revenues generated by Indian casinos enable the purchase of land almost anywhere. When such land is taken into trust, it can then be developed without regard to state and local environmental and land use standards. While this issue is of great concern to me personally, I am aware that it is a problem elsewhere in the country, which is the reason for this hearing today.

The Santa Ynez Valley Issue

As noted at the outset, I live in an area called the Santa Ynez Valley. This beautiful region is in northern Santa Barbara County. It is surrounded by the Santa Ynez Mountains, and consists of farms, vineyards, and small communities. It presents ecological values of great importance, including wildlife habitat, parks, and historic properties. These values make the Valley a special place, a fact recognized by the Santa Barbara County plan for the Santa Ynez region, which was developed after a detailed and lengthy public review process. That plan protects the Valley for the long-term so it will remain one of the most pristine, scenic, and ecologically-valuable areas in the State of California, if not the country.

Our Valley is also home to the Santa Ynez Band of Chumash Indians, the members of which have long called the Valley their home. Today, we are neighbors, but the relationship between the Tribe and the non-Indian residents of the community has become strained due to the current trust land acquisition process and the potential expansion of casino gaming in the Valley. The Chumash Tribe has an existing reservation that supports a highly successful casino and resort. We respect and support the Chumash Tribe's efforts to achieve economic success for its members, develop a strong tribal government, and further tribal self-determination. We also congratulate the Tribe for its tremendous success in attaining these goals through the development of its casino and resort on its reservation lands.

The community groups of which I am part, however, are concerned with the Chumash Tribe's additional development efforts for land outside of its reservation. Our groups support efforts to work cooperatively with the Chumash Tribe to provide for the long-term protection of the special values of the Valley that we all share in common and desire to preserve. We feel that the Tribe, the State of California, our local governments, and the Valley's citizens can and must work together toward this

goal by respecting each others rights, while honoring the current plan that is in place for the Valley.

Recently, actions by the Tribe and BIA have threatened to undermine that goal. Those actions involve off-reservation trust land expansion fueled by the Tribe's tremendous gaming revenues, including expansion that could involve additional casino gaming operations in locations outside the Chumash Tribe's current land base to the detriment of the local community. The Chumash Tribe has made clear that it intends to expand its trust lands so that it can undertake development, which very well could be inconsistent with the current land use plans that protect the environment and bucolic character of the Valley from run-away development. This process is starting to unfold.

In January, BIA agreed to accept into trust 6.9 acres of land for the Tribe outside of its existing reservation, across the highway from the casino. The Tribe claims that it will use the land for a cultural center, administrative offices, parking, and shops. While local citizen groups are comfortable with this proposed development because such use is consistent with the Valley plan, we are concerned that once the land is in trust the Tribe will use it for something else, including possibly casino expansion.

In February, the Chumash Chairman indicated that the Tribe would enter into an agreement with the County in which it would adhere to the plans it identified to the BIA to justify the trust acquisition. The Tribe additionally agreed to refrain from using the land for gaming purposes. Although we offered our own version of such an agreement to facilitate the process, the Tribe has still not acted upon its Chairman's commitment. The Tribe's failure to execute the promised agreement with the County forced citizen groups to appeal the BIA decision.

Although the BIA and the Tribe have tried to dismiss this appeal before the issues it raises are addressed, the Interior Board of Indian Appeals has granted the request for an extension to see if it is possible for an agreement to be reached. The answer to that question rests with the Tribe and the County, which remain in negotiation over this agreement. Unfortunately, the public has been excluded from this process.

But it is not only the Tribe's 6.9-acre trust acquisition request that has caused Valley citizen groups to act. Of greater concern is the potential spread of trust lands throughout the Valley. Trust land acquisition results in the removal of the land from the County's jurisdiction, renders local land-use plans that protect the Valley inapplicable, and diminishes the tax base that supports the County's critical services. Trust land acquisition puts a strain on our community by adding the burdens

associated with development, which are quite substantial particularly when gaming is involved, without the offset typically associated with the tax revenues generated by the development.

BIA refuses to address this issue just as these concerns are being realized. The Tribe has now proposed yet another trust land request for 5.8 acres, which is located adjacent to the 6.9-acre request now under appeal. This request was not developed in cooperation with the local governments or community. In addition, the Tribe has refused to say what the land will be used for or why it is necessary to have the land placed in trust. These two trust land requests could very well be the precursors of a Tribal strategy of applying incrementally to the BIA to have more and more land taken into trust and developed for any purpose.

Our concerns are heightened by the Tribe's past negotiations with Mr. Fess Parker to develop his 745-acre parcel of land in the heart of the Valley. Mr. Parker is considering transferring the land to the Tribe so that the Tribe can apply to the BIA to have the land placed in trust. Trust status is critical to the proposal, because Mr. Parker's goal is to develop the land in a manner prohibited by under the current County land use plans. Trust status is necessary to circumvent the Valley's existing protections. As recently as a few months ago, the Tribe and Mr. Parker were envisioning a major resort with a large number of homes, as well as possibly a casino.

Mr. Parker has, in fact, attempted to develop the land for several years. His plans conflict with local land use standards. Placing the land into trust would make it possible to do an end-run around the rules that bind all residents of the Valley and businesses. The Tribe, of course, benefits by obtaining a substantial chunk of prime real estate in the Valley, where trust status would allow it to undertake development not allowed on non-trust land. While the exact nature of Parker's plans and his negotiations with the Tribe remain unclear, the mere fact that a mechanism exists under federal law where this could be allowed demonstrates the need for stronger standards.

As described above, I have a long career of supporting social causes and the rights of disadvantaged people against improper government action. The Indian tribes of this country fall into this category. The threat we are confronting in the Santa Ynez Valley, however, has very little to do with tribal rights. It is instead a question of governmental integrity and the ability of our laws to control otherwise prohibited development made possible by the trust land process. We cannot have in place a system that enables any party, no matter what its origin, to undermine the fabric of a local community by circumventing important land use planning protections and evading a revenue collection structure that is fair to all people. Backed by the great wealth from casinos, many tribes can buy land anywhere they want. This land can

then be used to create new developments that generate greater wealth, even if at odds with state and local laws. Limits must be established. Current BIA rules, along with the government's hands-off approach to tribal trust land requests, fail miserably in this regard.

Recommendations

I therefore support the efforts of Congress to strengthen the rules governing trust land expansion. The tribes and BIA must be required to disclose the full extent of their plans. Once economic self-sufficiency has been achieved, they should live by the same rules that apply to non-Indian citizens. Tribes should be allowed to become as wealthy as they want, but there must come a point where land cannot still be available to place into trust. Land should be taken into trust only when truly needed to promote tribal self-sufficiency. Any land taken into trust should be limited to the proposed uses indicated by the tribe in its application, and those uses should be required to be consistent with state and local requirements. Revenues should be returned to the community commensurate with the burdens it must bear. If this plan is followed, the kind of long-term cooperative relationship I am personally committed to bringing to the Santa Ynez Valley will be possible.

Thank you for this opportunity to express my views and your careful consideration of these remarks.

BRIEFS

Dow 64 points lower; Nasdaq down 32 points

NEW YORK — Stocks fell Wednesday after three days of gains as investors dealt with the likelihood of interest rates rising significantly higher than expected when the Federal Reserve meets later this month.

Oil prices seem to be stabilizing after reaching 21-year highs in recent weeks, but inflation remains larger. Some investors may have been taking a cautious approach ahead of the Labor Department's monthly report on wholesale prices, an important inflation gauge.

The Dow Jones industrial average declined 64.08, or 0.6 percent, to finish at 10,340.44.

The broader gauges also closed lower. The Nasdaq composite index fell 32.92, or 1.6 percent, to 1,990.41. The Standard & Poor's 500 index shed 10.85, or 1 percent, to 1,151.33.

May Department Stores to buy Marshall Field's

MINNEAPOLIS — May Department Stores Co. announced Wednesday that it will buy the Marshall Field's department store chain from Target Corp. as part of a deal worth $3.24 billion.

The move strengthens May's presence in the Midwest, giving it 62 Marshall Field's stores — many of them in Chicago, Detroit and the Twin Cities. The company already operates 438 department stores, including Lord & Taylor and Filene's.

The deal allows Target to focus more on its flagship stores, where growth has far outpaced Marshall Field's for several years. Target also is selling nine Mervyn's stores in the Twin Cities as part of the deal. Mervyn's is Target's San Francisco-based mid-priced chain.

Verdict against Philip Morris upheld by court

SALEM, Ore. — A state appeals court Wednesday reaffirmed an $80 million verdict against cigarette maker Philip Morris in the case of an Oregon janitor who died of lung cancer.

The U.S. Supreme Court had ordered the Oregon court to reexamine the 1999 verdict to ensure it was not unconstitutionally excessive under new standards for punitive damages.

The state court concluded that the award was justified because Philip Morris knowingly marketed a harmful product for decades.

The family of Jesse D. Williams accused Philip Morris of concealing the dangers of smoking. Williams picked up the habit in the 1950s while in the Army and later smoked three packs of Marlboros a day. He died in 1997 at age 67.

Ex-Symbol Technologies CEO declared a fugitive

NEW YORK — The indicted former CEO of a Long Island technology company was declared a fugitive Wednesday after his lawyer said federal prosecutors for months would not return to the United States to face arraignment on fraud charges for egregious accounting practices.

Tunes Ramadorie, the former president and chief executive of Symbol Technologies Inc., was believed to have returned to his native Croatia from England, where he had been living since leaving the company two years ago, prosecutors said.

Prosecutors asked a judge to cancel Ramadorie's arraignment Thursday on securities fraud and other charges, and a warrant for his arrest was issued in the United Kingdom, said Robert Nardoza, a spokesman for U.S. Attorney Roslyn Mazzola. The arraignment scheduled on the court's calendar, but the defendant was not expected to show up, Nardoza said.

IBM documents submitted in Oracle antitrust trial

SAN FRANCISCO — Technology giant IBM Corp. has calculated that it would lose millions of dollars in software sales if Oracle Corp. succeeds in its year-old quest to buy PeopleSoft Inc., according to evidence submitted Wednesday in a key antitrust trial.

Oracle submitted the confidential documents as part of an effort to question the credibility of an IBM software executive called to testify by the Department of Justice, which is seeking to block Oracle's $7.7 billion bid for chief business software rival PeopleSoft.

Nancy Thomas, a top executive for IBM Business Consulting Services, largely supported one of the government's main arguments that only Oracle, PeopleSoft and Germany-based SAP are equipped to sell complex accounting and personnel software to the nation's largest companies.

— The Associated Press

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or
Michael D. Corey
(818) 760-3280
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FROM: David Crosby
(June 16, 2005 Stockholm, Sweden)

This is the enclosure with the questions:

1. The BIA testified that local communities are able to participate in the land into trust process.

Did you participate? If so, did the BIA consider and respond to your comments???.

We did try to participate by asking for a full environmental impact report (this land is believed to have contamination on it)?the BIA responded by largely ignoring our requests and granted the tribe an EA.

Did the BIA indicate that the lands recently taken into trust would be eligible for gaming???.

The BIA have indicated that land into trust for this tribe could be used as the tribe wishes.

2. You noted that the Chumash Tribe had indicated a willingness to enter into an agreement with the County for the land recently taken into trust, but an agreement has not been reached.

Have any reasons been given for not reaching an agreement????.

We have been notified in the press by County Counsel that the County and the Tribe will not negotiate in public, and that there is to be no public participation. It will be agreed upon in secret. However, a week prior, at a County Supervisors hearing with Tribal Chairman Vincent Armenta, they claimed they had reached an ?historic agreement.? When we asked to see the written document, we were told there wasn't one. We then submitted a written agreement with the legal help of Perkins Coie containing only what the County and Tribe had orally agreed to do at this hearing, hoping to have the County and Tribe sign it, so that what the tribe said it would do with the property could be enforceable. They refused to sign it, the agreement was due in April, then May, now June and there is still no written document. This has forced our community organizations to file our own appeal without our county's support. We were told by Tribal Chairman Armenta at that hearing that the tribe would never waive sovereign immunity, or agree to work within what the law requests all citizens to abide by, in regards to zoning laws, permitting laws and environmental impacts. It is possible this could be the hang-up.

3. You stated that "land should be taken into trust only when truly needed to promote tribal self-sufficiency."

Would you consider the need for additional housing for tribal members to be needed for tribal self-sufficiency? What about a health clinic???.

If additional housing is needed for tribal self sufficiency, they have already received Federal Grant funding for this, and are now requesting more Federal Grant money. This tribe currently receives (from casino profits) over $30,000.00 per month per member (over $300,000.00 per member per year) so their need for housing is questionable. Also, they built a new health clinic less than three years ago with Federal Grant funding. They then decided they could make a larger casino, hotel and parking garage if they tore down the new clinic and moved it and rebuilt it (again with Federal Grant funding) which they did do.

Would you be opposing the Chumash Tribe's land into trust applications if they agreed that it would not be used for gaming??????

We have no problem with Tribal members buying more land, as long as they have to abide by all laws every citizen has to abide by when obeying zoning, permitting and environmental laws. Our only experience with this tribe has been watching helplessly as they built a casino, parking garage and hotel, while destroying the Santa Ynez River (already classified with the EPA as an endangered and impaired waterbody) ignoring all rules and regulations that the rest of this community obey. We have no way to trust that the Chumash Tribe would keep an agreement to not use it for gaming. In fact, Chairman Armenta has said in Tribal minutes that this tribe can have two casinos. The blueprint plans which were drawn up between the Chumash tribal Chairman and Fess Parker clearly stated...CASINO #2? on it's pages.

ISSUE PAPER

Resolving Trust Land Disputes in the Santa Ynez Valley

Background: Recent actions by the Santa Ynez Band of Chumash Indians have created a strong outcry of opposition and legal action by residents of the Santa Ynez Valley in Santa Barbara County, California. The situation involves an aggressive effort by the Band to expand its reservation through trust land acquisition requests that have been designed to remove land incrementally from state and local jurisdiction. The result is a classic example of a tribe that has already achieved considerable success and self-sufficiency through Indian gaming trying to take advantage of the trust land process to escape governmental regulation.

The Band is one of the most successful gaming tribes in California. It runs the highly profitable Chumash casino, located on its 138.95-acre reservation in the midst of the beautiful Santa Ynez Valley. The 158-member Band has achieved a high degree of economic and governmental success and self-sufficiency as result of the casino. In fact, it is estimated that its members each receive payments of $325,000 per year from casino revenues.

Despite its economic success, the Band has been the subject of strong criticism and oversight for irregularities in the management of its casino. A feature story published in the LA Times last winter highlighted problems such as the Chairman of the Band, Vincent Armenta, committing 11 violations of tribal gaming law policy, as well as the employment of at least seven current and former commissioners with convictions for robbery, theft, and assault with a deadly weapon. This exposé resulted in a critical review of the Band's gaming operation by the NIGC.

The Band has made no secret of its desire to expand its land holdings in a manner that exempts them from all state and local regulation. Minutes from tribal meetings reveal the intention of the Band's Chairman to push through incremental trust land acquisitions in such a way that the tribe takes control over key commercial and development property in the Valley. (See Attachment 1.)

The Band's first acquisition request received BIA approval in January when 6.9 acres of land were taken into trust. BIA conducted only an EA on this transaction and declined to consider the likely development by the Band of other parcels of land and future trust requests. This trust land request was opposed by the County and the general public.

After the BIA decision and prior to the IBIA appeal deadline, the Tribal Chairman agreed to enter into an intergovernmental agreement (IGA) with the County to address the key issues of concern. Based on that commitment, the County decided not to appeal. Concerned about the prospects for uncontrolled development of the land and the need to appeal the BIA decision to help force the IGA, four local citizen groups filed a notice of appeal with IBIA. They expressed support for an IGA, however, and prepared a draft agreement for that purpose. To date, three months after the appeal deadline, negotiations continue on the IGA. The citizens groups received an extension of the appeal briefing deadline based on the hope that an acceptable IGA would be executed. The Tribe and BIA nonetheless have attempted to dismiss the appeal on standing grounds before the case could be heard on the merits. That motion has been stayed as well.

Soon after the BIA decision on the 6.9 acres, the Band surprisingly filed another trust land request. This request covers 5.8 acres and includes a number of parcels. It is adjacent to the reservation and across the State highway from the 6.9 acre parcel. This marks another attempted "stepping stone" expansion of the Band's trust land holdings. Although the land is prime development property, the Tribe has asked BIA to process the trust request on the basis of "no change in use" from the parcel's current undeveloped status. This would allow for BIA review under a NEPA categorical exclusion and with no public review. The 5.8 acre request confirms the concern of citizen groups that the Band is seeking to place land into trust one step at a time to avoid subjecting its long-term development plan to NEPA review, which would assess the cumulative effects of the acquisitions, or scrutiny by the State, local governments, and the public. The Band is negotiating to purchase more land in this location, presumably as part of this plan. (See Attachment 2.)

In addition to these trust land actions, the Band was in negotiations as recently as last summer with local developer Fess Parker to enter into an agreement to make it possible to develop Parker's 745-acre parcel in a manner contrary to the County land use plan. Parker has long sought to develop this parcel, but he has not been able to do so without violating the County plan. As a result, Parker has been negotiating with the Band on the theory that the land could be taken into trust to avoid the County plan. The current status of the Parker-Chumash negotiations is not known.

SUMMARY

Current Status: The 6.9-acre trust land decision is stayed pending appeal. The appeal itself is stayed until July 27 to see if an IGA is developed. Negotiations for an IGA on the 6.9 acres continue. The 5.8-acre request has been filed with BIA pursuant to a request to process the application based upon a "no planned development" scenario. The Band is known to be negotiating with for other property purchases in the area, presumably for future trust acquisitions.

Problem: The Chumash Band is seeking to expand its trust lands incrementally without regard to concerns of the local government and community. It is proceeding with the next request even before fulfilling its commitment to enter an IGA on the first decision and even though the main concern with the recently completed request was the potential for cumulative effects and additional fee-to-trust applications. The current request would be processed with even less environmental review and limited comment.

The Band is systematically seeking to piece together clearly related trust land requests through incremental applications in a manner that avoids sufficient environmental review by BIA. The initial request for 6.9 acres remains non-final due to the appeal. BIA therefore is obligated to place further action on the 6.9 acre request on hold and consider it in connection with the new 5.8 acre request.

Opportunity and Requested Action:

This is an opportunity for the policy level of the Department to facilitate a long-term resolution of a situation that stands to become more conflicted in coming years. The Assistant Secretary should take jurisdiction over the 6.9-acre appeal in order to create the time and circumstances to achieve a full review of tribal expansion plans and an agreement with the County and local communities on the terms of such expansion. BIA should be directed to consider both proposals together, and the Band should be requested to reveal its long-term development plans, all of which should then be considered through an EIS. BIA should encourage the development of a long-term IGA to govern all Tribal land use development activities and achieve consistency with local land use plans and concerns about loss of revenue and increasing burdens on local government.

Written Testimony for the U.S. Senate Committee on Indian Affairs
Presented by Mike Jandernoa
Wednesday, May 18, 2005

Good morning. Thank you Chairman McCain and members of the Senate Indian Affairs Committee for the opportunity to testify today.

My name is Mike Jandernoa. I'm from Grand Rapids, Michigan, and I am the former Chairman and CEO of Perrigo, a pharmaceutical company headquartered in Allegan County with sales of $1.4 billion and 2,500 employees in the county. I also serve on the Board of the Michigan Economic Development Corporation, which focuses on keeping jobs stateside in our new global economy. My concerns about keeping American business competitive informs my testimony today as the Chairman of 23 is Enough, a Michigan-based group opposed to casino proliferation.

I want to commend the chairman and members of this committee for their leadership and foresight in tackling an issue that has been ignored for much too long; an issue that has a direct impact on our global competitiveness, manufacturing productivity, and the revitalization of our core cities.

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

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

My message to you today is that IGRA and its associated land in trust process is outdated, broken, open to manipulation by special interests and in desperate need of immediate reform. It has unfairly and inappropriately fostered an industry that creates enormous wealth for a few select individuals and Las Vegas interests at the expense of taxpaying families, small businesses, manufacturing jobs, and local governments. My plea to you is that you study these issues in depth, and that you impose an immediate moratorium on any further casino expansion pending the results of your study. Twenty-three casinos in Michigan is more than enough. And so is the $18.5 billion this nation already spends in American Indian casinos. Congress needs to get its arms around this while it still can.

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

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

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

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

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

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

Our research further demonstrates that casino gambling has a negative trickle down effect on manufacturing productivity through increased absenteeism, tardiness, bankruptcies, and gambling-related illness. As a nation, we must do everything we can to protect Michigan's remaining manufacturing jobs through increased productivity and quality. Any marginal adverse impact on productivity or quality further accelerates the loss of jobs and impedes our manufactures ability to compete in a global marketplace.

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

I want to explain for you my own personal journey on this issue because I believe it demonstrates the urgent need for you to act swiftly and decisively to stop casino proliferation, to study the issues thoroughly, and then to craft a new solution that takes into account the new realities of the Native American gambling business as it exists today. The existing laws and regulatory tools are not working. We cannot afford to let casinos proliferate while this study goes on because the costs will be too high.

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

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

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

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

As this Committee knows, any major new federal project—and that is what this casino will be if the federal trust process goes forward—must complete an Environmental Impact Statement

("EIS"). The only way a project can avoid this requirement of the law is by demonstrating that there is no conceivable way in which the project will have a significant impact on the host community. The Bureau of Indian Affairs made this finding for the Gun Lake project—erroneously in our view—in early 2003.

On February 10, 2003, the Grand Rapids Chamber objected to the finding and to the Environmental Assessment that supposedly supported it. At a minimum, the Chamber urged the BIA to complete a full scale EIS for the project. Incidentally, a tribe promoting a casino project in Battle Creek, about 70 miles or so from the Gun Lake project, is now completing a full scale EIS after a Judge Penfield Jackson here in Washington rejected the Environmental Assessment the BIA had relied upon to evade the EIS requirement in that case. But at Gun Lake, the BIA persisted in its refusal to proceed with an EIS for the Gun Lake project, and just a few days ago—on Friday the 13th of May, no less!—published its decision to proceed with a trust acquisition for the Gun Lake tribe.

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

Of course, the BIA-approved study did not consider the associated economic hemorrhage for the entire region, as shown by the Anderson study. It will now be necessary for citizens like me, who are determined to spare my community the negative effects of this casino project, to resort to litigation, as citizens have done elsewhere in my State and throughout this Country. I do not think this is what Congress had in mind when it adopted IGRA almost 20 years ago for a then struggling Native American casino industry.

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

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

that other businesses have to incur. Somewhere along the way, the good intentions of Congress have been hijacked, and it is time for this body to re-assert control over this process.

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

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

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

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

First, every state and several of the federally elected official in West Michigan wrote to the BIA opposing Land-in-Trust for the proposed Gun Lake casino. Yet the project is going forward.

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

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

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

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

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

In summary, IGRA is broken, outdated, and after 17 years without review or updating, needs significant overhaul and reform. I urge this committee to take immediate action to impose a moratorium on all land-in-trust applications, including the Gun Lake Tribe's land acquisition, until a thorough debate and comprehensive review is conducted and IGRA is updated and reformed to address the following concerns:

Specifically, I submit the following recommendation for reforms to the Land-in-Trust application process and other IGRA related issues:

1. **Mandatory requirement of a comprehensive, regional Economic, Environmental, and Social Impact Statement for all Land-in-Trust applications.** The Tribes should be required to account for and project the regional economic, social, and environmental impacts of a proposed casino. Indicators could include job creation/loss, business investment creation/loss, absenteeism, productivity, tardiness, bankruptcy rates, crime rates, divorce rates, abuse/neglect rates, and overall rate increase of problem/addicted gamblers.

2. **Mandatory reporting and full disclosure of financial and legal records of non-tribal casino management companies.** With a growing number of tribal casinos declaring bankruptcy and record level of fines for improper conduct being assessed to casino management companies, full disclosure should be mandatory on all financial and legal records and issues.

3. **Local government, state legislative, and gubernatorial approval for land in trust.** Congress should amend IGRA to require that a Governor must concur in all cases before state lands are put into trust for the purposes of gambling. There should also be a provision that requires the support of the state legislature and affected local units of government before land is removed from the tax rolls. Mechanisms such as this will go a

long way to restoring the general rule Congress established in 1988 against casino gambling on newly acquired trust land.

4. **Local and statewide voter approval of any Land-in-Trust application for the purposes of Class III casino gambling**. In Michigan, precedent was first set in the local and statewide vote on the Detroit casinos, and then in 2004, Michigan voters established a public mandate by requiring a local and statewide for any casino-style expansion. Tribal casinos were exempt because of federal constitutionality issues. The federal law should follow Michigan's lead and apply the same voter approval standards to tribal casinos.

5. **Clarification of Class II gaming to eliminate abuses and loopholes for "electronic bingo games'**. In order to get around the compact requirements of IGRA, many tribes and their non-Indian sponsors have turned to "gray games" to open or expand a casino. Class II gaming allows bingo to be played on tribal lands even without a state-tribal compact. Slot machines, however, are a Class III device and require a compact. Manufacturers of slot machines have now created electronic bingo games that look and feel like a slot machine, but that the gambling industry is trying to pass off as allowable Class II bingo. The Class II loophole has created a difficult situation for states either trying to halt the expansion of casinos or regulate them in a responsible manner. Like Chairman McCain, I recognize that the NIGC is trying to address this problem, but frankly it cannot wait. NIGC does not have the resources to reign in this problem. Indeed, it lacks the resources to effectively regulate an expanding $18.5 billion industry, much less take on this added regulatory burden. Congress needs to re-assert its express intent to forbid slot machines of any kind—whether tagged with a "bingo" name or not—in the absence of a valid state compact

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

23 is Enough!
Stop Casino Expansion in Michigan
161 Ottawa Ave. NW, Suite 411F, Grand Rapids, Michigan 49503
Phone: (616) 235-9380 x14 • Fax: (616) 235-9381

MEMORANDUM

To: The Honorable John McCain
From: Mike Jandernoa, Chair, 23 is Enough
Date: June 16, 2005
Re: Response to Questions

Thank you again for the opportunity to testify before the U.S. Senate Indian Affairs Committee at the oversight hearing on Taking Land in Trust on May 18, 2005.

Per the request in your June 1, 2005 letter, I am writing to respond to the committee's questions. If you have additional questions or would like more information, please contact me at 616-732-1771.

Written Responses:

1. Question: In your testimony you reference research showing increases in local crime, divorce, and bankruptcy from Indian gaming. *If a casino in Gun Lake will increase crime, why does the Deputy Sheriffs Association support the Tribe's efforts?*

   Answer: The short answer is their support is preceded by the promise or allure of money to cover and exceed the increased costs associated with gambling-related crime. Michigan is in a state of fiscal crisis and as state government continues to cut revenue sharing dollars, local governments and law enforcement agencies are turning to other revenue sources to support their operations.

   Law enforcement agencies in Michigan acknowledge the increase in crime and gambling-related costs associated with casino developments. In the case of the Detroit casinos, the costs have actually exceeded the amount of revenue sharing paid out by the casinos for local services because many within the city of Detroit bought into the big promises of increased revenues and big numbers made by the casinos. The City of Detroit is now running a $1.25 million deficit for police, fire, and gambling-related costs above and beyond the percent of revenue the city receives for those same services. These costs do not even begin to factor in the unaccounted costs for increased divorce rates, bankruptcies, and addictions among other social ills related to gambling (*see enclosed Detroit News article, May 2, 2004 "Casinos Cost Detroit $1.26 million"*).

   Moreover, the Department of Interior does not require an impact study of social or economic impact costs to assess the cost/benefit of casinos and local governmental services.

2. The Tribe seems to have a significant number of local chambers of commerce and other groups supporting its efforts.

   Question: *Why do you think these groups support the Tribe?*

   Answer: The local chamber endorsements have everything to do with the influence and promises of money. An economic impact study completed by the Anderson Economic Group (AEG) shows that a casino project may have an economic benefit to those areas within a 10-mile radius of the proposed casino. However, any benefits to a few local businesses actually come at the expense of the surrounding communities due to their loss of jobs and economic activity. Jobs in the surrounding communities are adversely impacted in two ways. First, jobs are displaced with local communities losing the jobs that are added to the casino (i.e. wait staff, cooks, bartenders, hosts, etc.). Second, additional jobs are lost due to gambling-related absenteeism, tardiness, distraction and other issues that negatively impact productivity and quality. The study concluded that the proposed Gun Lake tribal casino would have a net economic loss to the region as a whole, particularly in the larger metropolitan areas.

   The AEG study was done after most of the chambers in the outlying communities had been blinded by the bright lights and big money promises of the wealthy casino owners and made their decision to support the proposed casino. However, unlike the Grand Rapids Area Chamber of Commerce, these outlying chambers did not thoroughly research and/or conduct their own studies on the cost benefits of a proposed casino. This is why after thorough review and an independent economic impact study was completed, the following key business advocacy organizations have made public their opposition to the proposed casino: Grand Rapids Area Chamber of Commerce, Southwest Michigan First (Kalamazoo Economic Development Corporation), the Grand Rapids Downtown Development Authority, Grand Action, the Allegan Farm Bureau, and other groups are opposing the Gun Lake casino.

   In the case of the Kalamazoo Chamber of Commerce support, the Tribe has enticed support with suggestions of contracts and cash pledges. One such example is the $100,000 gift from the tribe to the Chamber. Bill Johnston, chairman of the Kalamazoo Economic Development Corporation, a sister organization to the Kalamazoo Chamber, raised these issues in a very pointed letter dated August 17, 2004 to the Chamber president, John Long (see enclosure). Notably, the Gun Lake Tribe has actually threatened not to do business with any business or organization that is a member or affiliated with casino opponents, particularly members of the Grand Rapids Chamber of Commerce.

   In the city of Detroit, significant promises were made regarding new hotels, new restaurants, and new economic activity from the Detroit casinos. As was reported in a *Detroit Free Press* article on July 1, 2004, five years after the casinos were opened, beyond the walls of the actual casinos, there has been very little spin off (*see enclosed Detroit Free Press article, "Were 3 Casinos Worth the Risk?")*

Question: *Would you support the Tribe's land into trust application if it did not include plans for a casino?*

Answer: Under the current federal tribal gaming law, we would be reluctant to support the Tribe's land-in-trust even if it did not include plans for a casino because precedent shows that several other tribes have obtained land in trust without plans for a casino and later amended their plans and received approval to build a casino. Across the nation, there are communities and local and state governments that have been frustrated and disappointed because of changes made after the land in trust process and the fact that they were powerless to stop it.

In the case of the Gun Lake Tribe, we have seen multiple examples of the Tribe made promises and entered into formal contracts with businesses, and in the end chose not to honor the agreements using the cloak of sovereign immunity to avoid enforcement of the contracts. One example is the lawsuit filed by Sungold Entertainment and its parent corporation, Sungold Gaming International Ltd., in 1999 for more than $447 million. The suit sought damages from the Gun Lake Band of Potawatomi Tribe's repudiation of its contractual agreements, which had promised Sungold would be granted the exclusive rights to manage any future casinos operated by the Tribe, and would receive a percentage of casino revenues for a term of years, in exchange for financial assistance provided by Sungold that would assist the Tribe in its efforts to obtain the necessary acknowledgment of tribal status by the United States Department of Interior. However, based on the Tribe's claims of sovereign governmental immunity from lawsuits, the case was dismissed (See enclosed articles).

Another example occurred in 2002 with a lawsuit brought by Kean- Argovitz Resorts of Michigan against the Gun Lake Band of Potawatomi after the Tribe had reneged on its promises and contractual agreements to pay Kean-Argovitz to manage its planned casino. The suit says the firm agreed to advance the Tribe about $80,000 a month for administrative and legal costs, and as much as $100 million more to buy a site and build a facility. In return, the Tribe was to give Kean-Argovitz exclusive rights to manage the casino and hotel for five years, receive a percentage of net revenue and repay loans at market value. Once again, the Tribe claimed sovereign immunity and the case was dismissed (see enclosed U.S. District Court Opinion and Penasee Globe article, "*Spurned Casino Management Firm Sues Gun Lake Tribe*"). These are just two examples that show that although a Tribal group may promise one thing, these very promises and/or contracts are not binding.

Moreover, it must be noted that the Gun Lake Band's application to take land into trust for a proposed casino is in direct conflict with the Band's earlier promises to its own members and the federal government. In 1993, Gun Lake Band leadership, in a letter to the Assistant Secretary of Indian Affairs, admitted that the tribal council had agreed to pursue federal acknowledgement for the Gun Lake Band only on the condition that "there would never be casinos in our Tribe" (*See* Exhibit, *BIA, Historical Technical Report on the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan, Inc.*, at 79).

In fact, the tribal council agreed to pursue federal acknowledgement only by including the following prohibition on gambling in the tribe's constitution: "The Gun Lake Band . . . is the only Indian Tribe in the State of Michigan which has decided not to sacrifice the future of its membership to gaming interests and the changes to traditions in the community that gaming could bring." *See id.* The constitution also included the following more specific prohibition on gambling: "The Elder's Council may exercise such further powers as may in the future be delegated to it by members of the tribe, or by the Secretary of the Interior, or any other duly authorized official of the State or Federal Government, or any federal statute, or regulation, except the development of casino gaming enterprises (class III) in those counties where the population of [the Gun Lake] Band Tribal members exceeds (20) percent of the Tribe's total membership. The proviso limiting certain forms of Tribal casino gaming enterprises near the heart of the Tribal community shall not be altered by future Elder's Council decisions or subsequent Constitutional amendments" (*Id.* at 113 n.194). Thus, the current land-in-trust application is in direct conflict with the promises made by the Gun Lake Band at the time it sought federal acknowledgement.

3. The Department informs us that there is opportunity for local communities to participate in their land into trust determinations?

   Question: *Did you participate in the Department's process?*

   Answer: Yes, we attempted to participate in the process, but the issues that we raised and backed up with solid economic data not only were completely ignored, but worse yet, under current law are deemed irrelevant according to responses given to us by the BIA. Through the Community Partnership for Economic Growth, we submitted testimony to the BIA as part of the land into trust determinations along with the results of an independent economic impact study conducted by the Anderson Economic Group, but this too was deemed irrelevant.

   The BIA also ignored the opposition, issues and concerns raised by the Michigan Congressional Delegation (Congressmen Peter Hoekstra & Vernon Ehlers, see enclosed Congressman Hoekstra's letter) along with every West Michigan State Senator and Representative, including those from Allegan County, as well as several other organizations such as the Kent County Commission, the Downtown Development Authority, the Allegan Farm Bureau, and many township officials.

   However, the key language and determination requirements that is flawed relates to "local communities" and the lack of a comprehensive regional approach toward economic, social, and environmental impacts.

   Question: *Did the BIA respond to any comments you submitted?*

   Answer: In a letter to Grand Rapids Chamber president Jeanne Englehart dated October 12, 2004, the Acting Deputy Assistant Secretary at the Department of Interior acknowledged that economic and social impacts are not part of analysis for the determination process. Unfortunately, the federal law is outdated and only requires a very narrow environmental assessment of land use and traffic patterns as opposed to a complete regional environmental, social, and economic impact study of a proposed casino development.

March 13, 2003

Market and Economic Impacts of a Tribal Casino in Wayland Township, Michigan

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Executive Summary

PURPOSE

Anderson Economic Group undertook an assessment of the impact that a proposed tribal casino in Wayland Township would have on Michigan's economy. This study complements our critical review of the economic impact study submitted to the Bureau of Indian Affairs (BIA) by the Match-E-Be-Nash-She-Wish Tribe, also know as the Gun Lake Band of Potawatomi Indians.

This report, commissioned by the Grand Rapids Area Chamber of Commerce, is intended to provide a realistic look at the economic impact of the casino. Anderson Economic Group limits its analysis to the economic and market issues involved with the development of the subject casino. We refrain from taking a side for or against casino development or gaming.

METHODOLOGY

Our analysis can be broken into two main parts. First, we begin by assessing the market for the Wayland Township Casino that the Gun Lake Band proposes. Then, we produce an economic model to simulate the impacts of the casino operations. Below is a summary of our methods used to complete each step.

Assessing the Market for Casinos

We incorporate the rigorous analytical techniques and data standards that we use in market studies for other industries into our casino impact study methodology. Although we recognize that no approach can ever model the market with complete accuracy, our methodology introduces a level of analytical thoroughness that exceeds that of other studies we have reviewed.

We begin by conducting a comprehensive analysis of the competitive casino market in Michigan and Northern Indiana. We use the same methodology to assess the market areas of all competitive casinos, including Wayland, and consider the effect that each casino will have on population groups included in the Wayland project's market area. A careful analysis allows us to distinguish market impact due to the Wayland Township project from impact attributed to one of its competitors.

We run our analysis under two competitive scenarios. Scenario One accounts for competition from existing casinos. Scenario Two accounts for competition from existing casinos, as well as new facilities in New Buffalo and Emmett Township. For each of these scenarios, we estimate the following figures:

1. Gaming expenditure at the Wayland casino (projected Wayland revenue);
2. Increase in total casino-gaming expenditure due to the introduction of the Wayland facility; and

3. Cannibalization of revenue from other casinos due to the introduction of the Wayland facility.

A detailed description of the methodology and conclusions from the market assessment are included in "Market Assessment" on page 8. In this section, we also include maps of the Wayland Township trade area, and the trade areas of its competitive casinos.

Determining Economic Impact

We use a sophisticated economic model to estimate the sources of casino revenues, the uses of the casino revenue, and related expenditures by out-of-state visitors traveling to the casino. The model also includes construction expenditures made initially on the facility. This particular model is adapted from the fiscal and economic impact model and related methodologies we have developed for analyzing other projects.

The model is implemented in a mathematical and simulation software environment that allows us to predict, over numerous periods, the impacts of different variables, as well as allowing different variables to interact with each other. For example, we can allow casino revenue to grow over time, while taking into account that growing casino revenue implies similarly increasing displaced income in other industries.

The model schematic, in graphical form, and data inputs are presented in the appendix.

Defining Economic Impacts

Our firm has rigorously completed, and critiqued, numerous economic impact analyses. We depart from many other practitioners by insisting on a specific, conservative, and realistic definition of "economic impact." We define economic impact as *bona fide,* new economic activity directly or indirectly caused by the subject development. In calculating the effects, we take into account both benefits and costs. In particular, we subtract from the total benefit figure any reductions in economic activity due to displacement or substitution effects.

The resulting findings are much more conservative, and realistic, than many reported analyses that fail to subtract costs, ignore substitution effects, or exaggerate benefits.

In reporting our analysis, we also identify key assumptions, describe our methodology, and identify in the text any important factors that cannot or were not quantified in our analysis.

SUMMARY OF FINDINGS

Market Assessment Conclusions

Table 1 summarizes the revenue projections from our market analysis for the two scenarios described in the methodology. The table includes projections for the total casino revenue, and the sources for this revenue. Our results also show the amount of the casino revenue that is redirected from non-casino gaming activities, compared to the amount that is redirected from expenditure at other casinos.

TABLE 1. Summary of Market Analysis Results

Variable	Scenario One[a]	Scenario Two[b]
Total Wayland casino revenue	$161,930,028	$91,207,822
Revenue from expenditure shifted from other industries	$92,163,963	$42,387,576
Expenditure shift rate	57%	46%
Revenue from *cannibalization* of other casinos' probable revenue	$69,766,065	$48,820,246
Cannibalization rate	43%	54%

a. Assumes competition from existing casinos in Detroit, Mount Pleasant, Manistee, Traverse City, Leelanau Peninsula, and Michigan City (IN).

b. Assumes competition from existing casinos, plus proposed casinos in New Buffalo and Emmett.

Based on our analysis, we find that:

- In neither scenario is the expected revenue figure for the Wayland Township casino as high as the revenue figure reported by the tribe to the BIA.
- The projected Wayland Township casino revenue under Scenario Two is 46% below the revenue projection expected by the Tribe based on the market analysis it submitted to the US Bureau of Indian Affairs. This difference calls into question the financial viability of the casino's business plan as proposed.
- Between $42- and $92-million of the casino's projected revenue will be redirected from expenditure on non-casino-gaming goods and activities. Between $49- and $70-million will be redirected from expenditure at other casinos. These figures represent losses in other areas of the economy that must be accounted for in the economic impact analysis.
- The majority of casino revenue will come from Michigan residents under either scenario. These expenditures will displace income to persons in other industries, particularly entertainment, travel, food, and lodging.

Economic Impact Conclusions

The following tables show the net economic impact of opening the proposed Wayland casino by region. Table 2 compares the net economic benefit to Allegan County to the net economic loss to the rest of Michigan. Table 3 further breaks down the economic effect by region.

TABLE 2. Summary of Net Economic Benefit, ($Millions) Allegan County compared to rest of Michigan

Region	2004	2004 to 2014
Allegan County	97.5	1,185.9
Michigan (except Allegan)	(123.5)	(1,503.5)
Michigan Net Benefit (loss)	(26.10)	(317.57)

TABLE 3. Summary of Net Economic Benefit, by Region ($Millions)

Region	2004	2004 to 2014
Allegan County	97.5	1,185.9
Barry County	(6.0)	(73.6)
Kalamazoo County	(4.4)	(53.7)
Kent County	(49.7)	(605.2)
Ottawa County	(12.3)	(149.2)
Northern Michigan	(15.3)	(185.9)
Middle Michigan	(24.1)	(293.2)
Southeast Michigan	8.1	98.7
Other Southwest Michigan Counties[a]	(19.8)	(241.4)
Michigan Net Benefit (loss)	(26.10)	(317.57)

a. Berrien, Branch, Calhoun, Cass, St. Joseph, and Van Buren Counties.

Based on our analysis of net economic benefit, we find that:

- The areas outside of the immediate development area will experience a net economic loss due to the casino. This results from shifting local consumer expenditures to the casino, and away from other businesses in areas such as Kalamazoo, Ottawa and Kent Counties, and the Lakeshore.[1]
- Wayland Township and Allegan County as a whole will experience a net positive economic impact from the proposed casino. In 2004 we expect the

impact to the county economy to be $97.5 million. This figure includes payroll, return on investment, payments made to members of the tribe, purchases, economic spin off, and other economic activity. The benefit will likely be concentrated on the communities directly surrounding the casino. Some portions of the county economy, including the Lakeshore, may lose as economic activity is shifted away from other businesses. See Table 2 on page 4.

- The net benefits experienced by Allegan County will come at a cost of $123.5 million in 2004, and $1,503.5 million between 2004 and 2014, to the rest of the State of Michigan. See Table 2 on page 4.
- Kent County will experience the largest economic loss due to the opening of the Wayland casino. This is because much of the expenditure that otherwise would be directed to the Grand Rapids area economy without the casino, will be spent at the new casino in Wayland Township. Kent County will experience a net economic loss of $49.7 million in 2004, and $605.2 million between 2004 and 2014. See Table 3 on page 4.
- The overall net economic effect to the entire State of Michigan will be a loss of $26.1 million in 2004, and $317.6 million between 2004 and 2014. The loss represents a net transfer in economic activity outside of the state due to out-of-state payments to investors and management companies, purchases, and other expenditure that greatly exceed the expected revenue from out-of-state visits to the Wayland casino. See Table 3 on page 4.
- This overall net impact includes reasonable "multiplier" effects caused by new and displaces expenditures in Michigan, including payroll, purchases, and tourism-related expenditures by out-of-state visitors.

In addition to measuring the change in total net economic benefit to the State of Michigan and specific regions, we also determined the effect that the proposed casino would have on the State in terms of jobs lost or gained. Table 4 on page 6 shows the impact of the proposed Wayland Township casino on employment in Michigan.

1. Here, 'Lakeshore" refers to Lake Michigan coastal communities such as Holland, Saugatuck, South Haven, and Grand Haven.

TABLE 4. Economic Impact to Michigan Jobs[a]

Year	Total Jobs Gained[b]	Total Jobs Lost	Net Change in MI Employment
2004	3,173	4,912	(1,738)
2005	2,416	5,010	(2,594)
2006	2,464	5,110	(2,646)
2007	2,513	5,212	(2,699)
2008	2,564	5,316	(2,753)
2009	2,615	5,423	(2,808)
2010	2,667	5,531	(2,864)
2011	2,721	5,642	(2,921)
2012	2,775	5,755	(2,980)
2013	2,830	5,870	(3,039)
2014	2,887	5,987	(3,100)

a. These figures represent a difference in annual jobs. For example, if the casino were opened, we expect there to be 2,864 fewer jobs in the economy by 2010.

b. Total jobs gained and lost include direct, indirect, and tourism induced jobs. Total jobs gained in 2004 includes 805 construction jobs, although construction will likely be spread out over multiple years.

When we analyze changes to employment, we find that:

- Temporary jobs created through the construction of the casino will reduce the initial negative impact of the casino on Michigan employment. Through construction and the first year of operation, the casino will result in a net decrease of 1,738 Michigan jobs, compared to a net decrease of 2,594 to 3,100 jobs per year in the ten years following construction.
- The casino will result in the creation of between 46 and 56 tourism-related jobs. We consider tourism-related jobs to be those jobs created through the expenditure from out-of-state visitors. This results in a minor overall effect on the economy.
- To support one job, it requires more expenditure at a casino than at the average non-casino establishment. This is because a large portion of the casino expenditure is directed (1) out of state, and (2) to uses that have a lesser spin-off effect on the economy.

For detailed tables and figures displaying the inputs and outputs of our economic model, please see "Appendix A: Model Inputs and Results" on page 31 and "Appendix B: Figures" on page 41. Additionally, "Appendix C: Model

Schematic" on page 45 graphically outlines the model used in calculating economic impacts.

Cautions in the analysis

While our market study and economic impact analyses were completed using a rigorous methodology, it is based on a number of assumptions that should be considered when reviewing the results. These cautions are summarized in "Cautions in the Analysis" on page 25.

Market Assessment

REVIEW OF GENERAL METHODOLOGY

The market assessment involves the analysis of market characteristics to determine (1) demand for the proposed facility in terms of visitors (customers) and (2) potential revenue. The basic steps involved in the analysis of a casino's market include:

1. Define relevant trade areas (the areas from which the casino will draw visitors).
2. Determine the gambling population within these trade areas based on the percentage of the adult population that will likely visit a casino annually.
3. Using a figures for the average number of casino visits by each casino visitor, determine the total number of casino visits per year.
4. Distribute the total projected annual casino visits between the subject casino and its competitors by using estimated market penetration or capture rates.
5. Determine the casino's annual revenue, using per-visit revenue (casino "hold") estimates, based in part on distance of the visitor from the casino.
6. Identify expenditure shifts from other activities and purchases, and cannibalization of revenue from other casinos.

We incorporate the rigorous analytical techniques and data standards that we use in market studies for other industries into the generally accepted casino impact study methodology. Although we recognize that no approach can ever model the market with complete accuracy, our technique introduces a level of analytical thoroughness that we have not seen in other casino impact studies.

We run our analysis under two scenarios. Scenario One accounts for competition from existing casinos. Scenario Two accounts for competition from existing casinos, as well as new facilities in New Buffalo and Emmett Township. For each of these scenarios, we calculate the following figures:

1. Annual Wayland Casino gaming visits;
2. Gaming expenditure at the Wayland casino (projected Wayland revenue);
3. Increase in total casino-gaming expenditure due to the introduction of the Wayland facility; and
4. Cannibalization of revenue from other casinos due to the introduction of the Wayland facility.

Our economic impact analysis uses the resulting factors as input variables in the model (see "Economic and Fiscal Impact Assessment" on page 20).

DEFINING MARKET AREAS

The technique used to define market areas differs widely. As a guide to determine the extent of a trade area, some analyses use distance rings; others use drive-time analysis; and others define a trade area based on political boundaries. Some of the analyses incorporate multiple trade areas for the subject casino, and some analyses extend this approach to consider multiple trade areas for each competitor.

Of all these approaches, the best analysis is the one closest to the actual market. This usually means using a reasonable methodology that can be applied to all of the competitive casinos in the area. Furthermore, it means acknowledging the overlap in market areas between multiple casinos. The use of drive times in the market area definition provides a better guide than the use of linear distances, as drive times provide an indication of both distance and travel time, which helps account for the cost to gamblers of traveling to a casino.

Wayland Township Casino Trade Areas

We define primary, secondary, and tertiary market areas for the proposed Wayland Township casino. These represent drive-time regions of 30 minutes, 1.5 hours, and 2.5 hours. The drive time analysis used to define these regions was completed using our in-house geographic information system (GIS). It was completed using the current network of roads, and assumes that drivers will adhere to the speed limit during their travels.[2] Our market areas are presented in "Map 1: Wayland Township Trade Areas" on page 11.

After defining the drive-time regions, we collect data on all block groups that fall within the areas.[3] The use of block groups instead of a larger geographic regions allows for more precise market areas. Through this technique, we calculate demand for each of the 2,968 block groups located in the proposed casino's trade areas, and then aggregate the numbers to determine the demand for larger geographic areas, such as counties or states.

Accounting for Visitors from Outside the Trade Areas

In our assessment, we limit Wayland Township market area to a 2.5 hours drive time. This does not indicate that we believe no one from outside of the casino's tertiary market area will gamble at a new casino in Wayland Township. How-

2. The definition of a market area using these parameters is based on our methodology used in market assessments for other industries. We adopt this method to account for the unique characteristics of the casino market. The drive times used in the analysis are based upon generally accepted travel distances for regional tourism markets, and similar in scope to the regions from which other studies have reported that customers are drawn. For example, see: Indiana University School of Public and Environmental Affairs, "Indiana State Gaming Commission Study," 1999.

3. Block groups are the smallest geographic regions defined by the US Census Bureau.

ever, gamblers that drive over 2.5 hours to Wayland will be offset by the loss of Wayland-area gamblers to casinos that are farther than 2.5 hours away.

Given that many other Michigan casinos are located in "destination" locations, we feel this assumption to create conservative trade area definitions. For example, non-gambling tourism draws to Traverse City, Leelanau Peninsula, Petoskey, St. Ignace, Detroit, New Buffalo, and other locations may enable casinos in these locations to attract more gaming visits from the Wayland trade area than our model predicts.[4]

Competitive Casino Trade Areas

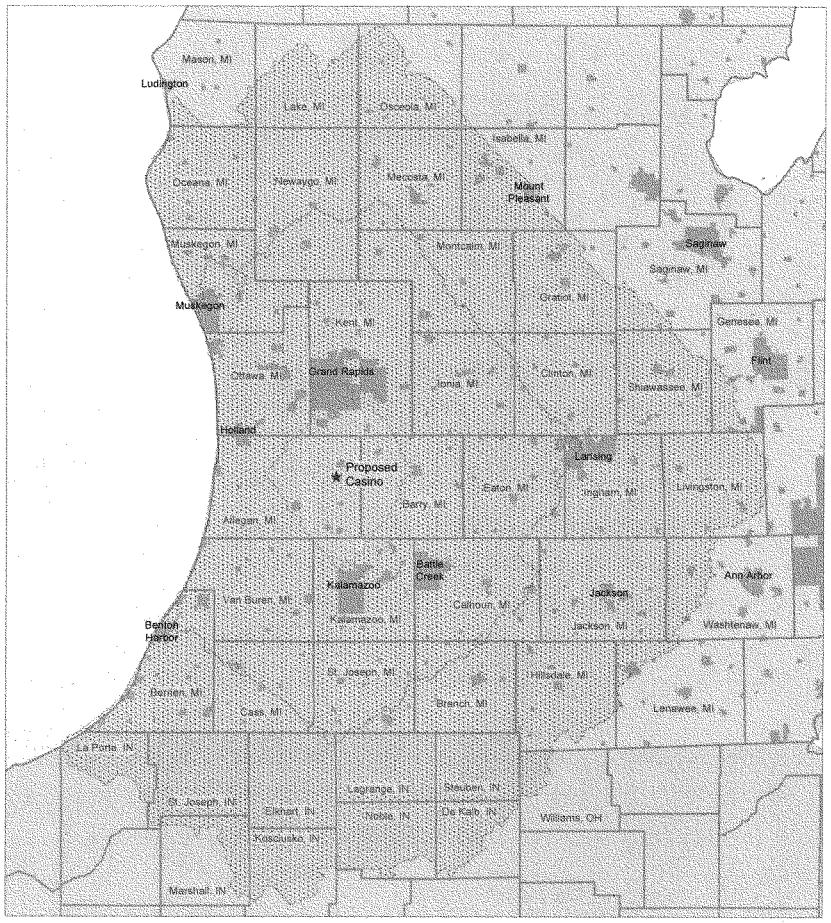
We also define primary, secondary, and tertiary market areas for each of the proposed casino's competitors using the same drive-time analysis that we use for the subject development. Competitive casinos have at least one trade area that overlaps one or more of the proposed casino's trade areas.

Using this approach, we find that a Wayland Township casino will compete with the existing casinos in Mount Pleasant, Manistee, Suttons Bay on the Leelanau Peninsula, Traverse City, Detroit (3 casinos), and Michigan City (IN), as well as planned casinos in New Buffalo and Emmett Township.

"Map 2: Competitive Casinos, Overlap of Influence Regions" on page 12 shows the overlap between the trade areas of competitive casinos. They are divided between two layouts to simplify the display of the information.

4. Although Allegan County includes a relatively tourist-rich Lakeshore, we do not consider Wayland Township to serve as a "destination" location. The time involved with travel between the Lakeshore and Wayland Township will prevent the casino from taking advantage of the existing tourism base.

Map 1. Proposed Casino Trade Areas



Primary Market Area
30-minute drive time

Secondary Market Area
90-minute drive time

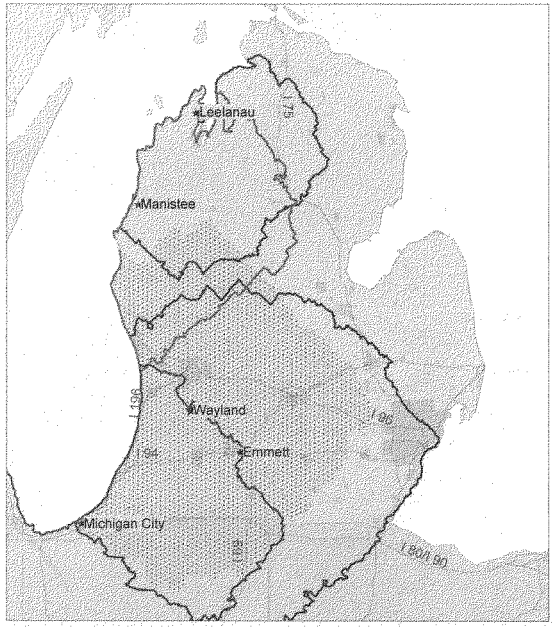
Tertiary Market Area
150-minute drive time

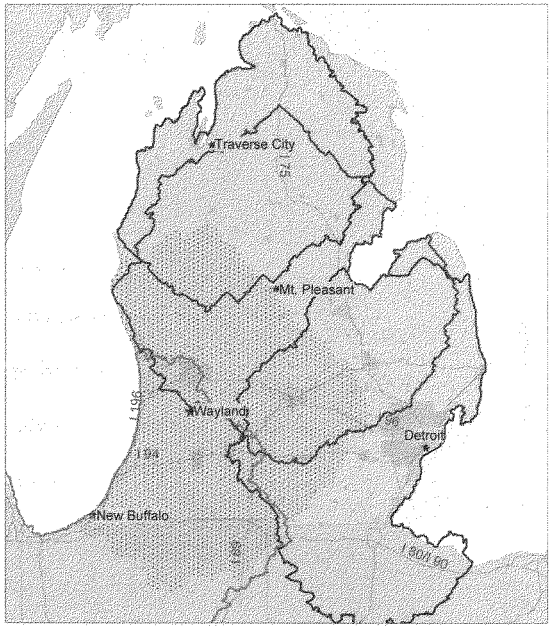
Population Center

County

Source: Anderson Economic Group
Generated: 12-Feb 2003
www.AndersonEconomicGroup.com

Map 2. Competitive Casinos: Overlap of Market Areas





Source: Anderson Economic Group
Generated: 12-Feb 2003
www.AndersonEconomicGroup.com
* Indicates proposed casinos

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Tertiary Market Areas by Casino Location

- Michigan City
- Manistee
- Leelanau
- Emmett*
- Wayland*

Tertiary Market Areas by Casino Location

- Traverse City
- Mt. Pleasant
- New Buffalo*
- Detroit (3 Casinos)
- Wayland*

ESTIMATING CASINO DEMAND

Calculating Total Casino Visits

For each block group, we calculate total casino visits based on the adult population, its propensity to gamble, and the average annual number of casino visits per gambler. This estimation includes the following steps:[5]

1. Collect population data for each block group to determine the population greater than 21 years of age.[6]
2. Calculate the number of adult gamblers in each block group by multiplying the adult population by the percentage of the adult population that attend a casino annually. We estimate that 40% of Michigan's adult population gambles at a casino annually.[7]
3. Calculate the total number of casino visits per block group by multiplying the number of casino gamblers by the average number of visits per year. We assume that, on average, gamblers closer to a casino will go to a casino more often than gamblers located farther away from a casino. This assumption reflects reasonable market behavior, not just in the casino industry, but in other industries as well.

   We account for the correlation between proximity to a casino and gaming frequency by determining the average number of casino visits based on the highest-level casino trade area in which a block group is located. If a block group is located in any casino's primary market area, we estimate that the average gambler within that block group will visit a casino 10 times per year. If its highest-level trade area is a secondary market area, we estimate that the average gambler will visit a casino six times per year. For tertiary market area casinos, the average number of visits is reduced to three.[8]

   Table 1 on page 14 shows the average annual number of casino visits by the highest-level trade area in which a population group is located. Because the cost of visiting a casino increases with distance to the casino, gamblers far-

5. We used assumptions presented in the Gun Lake Tribe's submission to the Bureau of Indian Affairs, (Michigan Consultants, "Updated Economic and Community Impact Analysis: Allegan County Native American Casino," October 2002) unless we had other sources we believed were significantly more accurate.
6. We use 2006 projections provided by Applied Geographic Solutions based on Census data and growth trends.
7. 40% is based on the figures reported by the Gun Lake Tribe in its submission to the Bureau of Indian Affairs. However, we believe that this is likely a liberal representation of the market. We further discuss the use of this number in our "Critical Review: Gun Lake Band of Potowattami Indians Environmental Impact Study; Economic and Community Impact Analysis," which was submitted to the BIA on Monday, February 10, 2003.
8. The average annual gaming visits shown in Table 1 on page 14 are adopted from the average numbers of 10, 5, and 3 used by KPMG in their assessment of similar projects. Because the Tribe's submission did not account for the relationship between distance and gambling frequency, we did not find its frequency assumptions reasonable.

ther from the casino are less likely to visit the facility as frequently as gamblers closer to the casino.

TABLE 1. Average Number of Casino Visits by Highest-Level Trade Area

Variable	Primary	Secondary	Tertiary
Annual Visits per Gambler	10	6	3

Applying Market Share Between Casinos

We define the trade areas for each casino by the Census block groups they include. For each block group we then determine all casino trade areas of which it is part. For example, a single block group may be included in Wayland Township's primary market area, Emmett's secondary market area, and the tertiary market areas of New Buffalo and Michigan City.[9]

We then determine the market share that each casino pulls from each block group. In order to determine the portion of a block group's casino visitors that will likely go to each casino, we apply assumptions regarding penetration rates and market shares. Table 2 shows the penetration rate assumptions that we use in determining the market share that is attributed to each of the competitive casinos, including Wayland.

TABLE 2. Penetration Rate Analysis

Relevant Market Areas	Primary	Secondary	Tertiary
Primary Only	100%		
Primary, Secondary	80%	20%	
Primary, Tertiary	95%		5%
Primary, Secondary, Tertiary	76.8%	19.2%	4.0%
Secondary Only		100%	
Secondary, Tertiary		63.5%	36.5%
Tertiary Only			100%

We use the rates from the table to determine the penetration that a casino in each of the trade areas have in each block group. These percentages must be weighted if there are multiple casinos within each category. For example, if a block group falls within the primary market area of one casino, and the tertiary market area of a second casino, the primary and tertiary market area casinos would capture 95% and 5% of the market respectively. However, if the block

9. Block group inclusion in a trade area definition is based on the location of the block group's geographic centroid. The small size of the block group compared to a trade area enables us to closely adapt the actual drive time analysis to our data sources. Any discrepancy to the resulting population figures is insignificant.

group falls within the primary market area of one casino, and the tertiary market area of three casinos, the percentages must be weighted to account for multiple trade area overlap. The total non-weighted penetration rate for the block group would be 110% (95% + 5% times three casinos). In order to account for this, we divide each of the penetration rate percentages by 110%. Therefore, the primary market area casino would capture approximately 86.4% of the market, and each of the three tertiary casinos would capture approximately 4.5% of the market.

To determine the number of visits that a block group's population makes to each casino annually, we multiply its total annual casino visits by each casino's local market penetration. For the purposes of our analysis, we calculate the number of visits to the Wayland casino separately, and aggregate the visits to other casinos into primary, secondary, and tertiary market area categories.

Calculating Casino Revenue

After determining the number of visitors that travel to casinos from each block group, we calculate total casino expenditure by block group, as well as casino expenditure (i.e., revenue) at the Wayland Township venue. We do this by assigning an average casino hold figure to each visit.[10]

We assume that the amount of money that a gambler spends at a casino increases with the distance that the gambler traveled to attend the facility. The same behavior is seen in a variety of other examples. For example, people that live far away from a retail mall are likely to shop less frequently, but purchase more items every time that they do travel to a mall.

Table 3 shows the assumed average casino hold based on which of the casino's market areas the gambler traveled from to attend the casino.[11]

TABLE 3. Average Casino Hold by Visitor Trade Area

Variable	Primary	Secondary	Tertiary
Average Casino Hold by Visit	$40	$50	$65

In each block group, we multiply the average hold figures by the number of casino visits attributed to casinos in the respective market areas.[12] This provides a total casino expenditure figure for the block group.

10. Average casino hold refers to the net casino revenue per gaming visit. We also refer to it as "customer loss" or casino "revenue."

11. The average hold figures are adopted based on the numbers presented in the tribe's impact assessment: Michigan Consultants, "Updated Economic and Community Impact Analysis: Allegan County Native American Casino," October 2002.

To determine expenditure at the Wayland Township casino, we multiply the total number of casino visits likely directed to the proposed casino by the average Wayland casino hold for the market area in which the block group is located. The sum of expenditure at the Wayland casino from all block groups gives total projected revenue for the casino.

MEASURING SHIFTS IN EXPENDITURE AND REVENUE

We run our analysis under two scenarios to account for different levels of potential competition. Scenario One accounts for competition from existing casinos. Scenario Two accounts for competition from existing casinos, as well as new facilities in New Buffalo and Emmett Township. For both of these scenarios, we calculate the following revenue figures:

1. Total market-area expenditure on casino gaming given no Wayland casino;
2. Total market-area expenditure on casino gaming given the entrance of the Wayland casino;
3. Gaming expenditure at the Wayland casino.

Based on the resulting figures, we estimate the portion of the proposed Wayland Township casino's estimated revenue that is redirected from (1) non-casino-gaming expenditure, and (2) casino-gaming expenditure at other facilities.

To measure the amount of new casino expenditure that the introduction of the Wayland project creates, we estimate the difference in total casino expenditure that results from the introduction of the Wayland casino. The increase in casino expenditure represents a shift in expenditure away from expenditure on other activities, purchases, and investments.

We determine the amount of the Wayland Township casino's proposed revenue that is pulled away from other casinos by comparing the projected revenue for the Wayland casino with the increase in casino expenditure that results from the introduction of the Wayland facility. The difference in these figures show the amount of the proposed casino's revenues that is "cannibalized" from expenditure at other casinos. Without the market entrance of the Wayland casino, this revenue will be directed to casino gaming at other venues.

12. A "primary market area casino" refers to a casino with a primary market area that includes the subject block group. A "secondary market area casino" refers to a casino with a secondary market area that includes the subject block group. A "tertiary market area casino" refers to a casino with a tertiary market area that includes the subject block group.

ANALYSIS RESULTS

Our technique introduces a level of thoroughness that we have not seen in other market studies for casino developments, and adopts the analytical standards we employ in market studies for other industries to the unique characteristics of a casino development.

We evaluate the market for the proposed casino under two scenarios. Scenario One accounts for competition from existing casinos. Scenario Two accounts for competition from existing casinos, as well as new casinos in New Buffalo and Emmett Township. Table 4 summarizes the result of our analysis.

TABLE 4. Summary of Revenue Results

Variable	Scenario One[a]	Scenario Two[b]
Total Wayland casino revenue	$161,930,028	$91,207,822
Revenue from expenditure shifted from other industries	$92,163,963	$42,387,576
Expenditure shift rate	57%	46%
Revenue from *cannibalization* of other casinos' probable revenue	$69,766,065	$48,820,246
Cannibalization rate	43%	54%

a. Assumes competition from existing casinos in Detroit, Mount Pleasant, Manistee, Traverse City, Leelanau Peninsula, and Michigan City (IN).

b. Assumes competition from existing casinos, plus proposed casinos in New Buffalo and Emmett.

Highlights from the assessment include:

- Without competing casinos in New Buffalo and Emmett, the Wayland casino revenue will likely exceed $161 million per year of casino operation.
- The projected Wayland Township casino revenue under Scenario Two is $91 million, 46% below the revenue projection expected by the Tribe, based on the market analysis it submitted to the US Bureau of Indian Affairs. This difference calls into question the financial viability of the casino's business plan as proposed.
- Between $42 and $92 million of the casino's projected revenue will be redirected from expenditure on non-casino-gaming goods and activities. Between $49 and $70 million will be redirected from expenditure at other casinos. These figures represent losses in other areas of the economy that must be accounted for in the economic impact analysis.

Results by Region

In the following section of the report, we measure the economic impact of the casino on specific counties and regions in the state. To prepare for this, we

aggregate our revenue results for the regions analyzed in the economic impact assessment.[13]

Table 5 shows the results of the analysis for Scenario One, which accounts for competition from existing casinos.

TABLE 5. Regional Revenue Results (given competition from existing casinos)

Region	Total Wayland Revenue	From Expenditure Shift	From Shift in Casino Revenue
Total Wayland trade area	$161,930,074	$92,163,956	$69,766,118
Allegan County	$8,770,557	$5,642,740	$3,127,817
Barry County	$4,976,145	$3,874,668	$1,101,477
Kalamazoo County	$13,571,973	$9,658,084	$3,913,889
Kent County	$44,298,352	$28,207,001	$16,091,351
Ottawa County	$12,469,084	$9,788,773	$2,680,311
Northern Michigan Counties[a]	$10,746,674	$7,492,264	$3,254,410
Middle Michigan Counties[b]	$17,462,969	$11,438,388	$6,024,581
Southeast Michigan Counties[c]	$3,338,337	$278,424	$3,059,913
Other Southwest Michigan Counties[d]	$20,805,301	$11,083,833	$9,721,468
Total Out-of-State	$25,490,682	$4,699,781	$20,790,901

a. Revenue contributing counties include Isabella, Lake, Mason, Mecosta, Muskegon, Newaygo, Oceana and Osceola.

b. Clinton, Eaton, Genesee, Gratiot, Ingham, Ionia, Livingston, Montcalm, Saginaw and Shiawassee Counties.

c. Revenue contributing counties include Hillsdale, Jackson, Lenawee, and Washtenaw.

d. Berrien, Branch, Calhoun, Cass, St. Joseph, and Van Buren Counties.

If we account for competition from new casinos in Emmett and New Buffalo, the aggregate numbers are reduced. The level of reduction to each figure

13. Only counties that are included in the proposed casino's market area contribute to the casino's revenue. However, when we assess the net economic impact on these regions, we account for benefits to all counties in the region. For example, although our market assessment shows that Hillsdale, Jackson, Lenawee and Washtenaw Counties are the only Southeast Michigan counties to significantly contribute to Wayland casino revenue, we include gross benefit to the Detroit area in our analysis of the overall effect on the region.

depends on the proximity of the region to the Wayland casino, existing casinos, and new casinos in Emmett and New Buffalo.

Basis for Regional and Economic Impact Analysis

We use the Wayland casino revenue estimates from each region to calculate economic impact in the next section. Our analysis calculated economic impact under both scenarios; however, our discussion concentrates on the assumption that the Wayland casino will enter the market with the existing casinos only (Scenario One).

If Wayland enters the market along with other new casinos, its overall revenue—and both its positive and negative effects—will be smaller.

Economic and Fiscal Impact Assessment

PROPERLY DEFINING "IMPACT"

The economic impact of any new enterprise includes:

- The direct effect of *new* local purchases and payroll of the enterprise;
- The indirect effects attributable to the additional activity generated as purchases and payroll and re-spent in the regional economy; and
- The indirect and direct effects of *displaced* or *substituted* expenditures.

Unlike many economic impact analyses, we consider only *new* economic activity in the net economic impact. Activity that merely replaces or displaces other activity—purchases from one store that displace others—is subtracted out.

PROPER USE OF "MULTIPLIERS" FOR INDIRECT EFFECTS

Our analysis avoids the common errors that plague most "economic impact" analyses. For this analysis, we are careful to describe our use of economic "multipliers" in the model. We do so to illustrate the appropriate use of the multipliers.

Impact Analysis Avoids Common "Multiplier" Errors

This approach is much more conservative, and more accurate, than the common method of simply multiplying direct expenditures by a "multiplier" and ignoring all competitive and distributional effects. Our analysis of the Gun Lake Band's economic impact report filed with the Bureau of Indian Affairs (BIA) shows in some detail how taking all expenditures and multiplying them by two violates the assumptions under which impact multipliers are estimated.[14]

"Multipliers" in Economic Impact Analysis

Multipliers are appropriate for *bona fide* new economic activity in the state or region, and reflect the fact that a set of expenditures tend to be re-spent by their recipients, partially in the same region or state. Multipliers are not appropriate for activity shifted from one activity to another in the same region or state, because the displaced income would also be spent and re-spent regardless of the casino.

14. We excerpt in that report a number of sections of the US Bureau of Economic Analysis *RIMS II User Guide* in which the BEA explains the proper approach, and warns against including in the base of a multiplier analysis expenditures that are shifted from one activity to another. A complete copy of the report ("Critical Review: Gun Lake Band of Potawatomi Indians Environmental Impact Study; Economic and Community Impact Analysis," which was submitted to the BIA on Monday, February 10, 2003) is available online at http://www.AndersonEconomicGroup.com

Appropriate Multipliers on New or Displaced Income

While "multipliers" are commonly misused, there is an appropriate place for them in a correctly-performed economic impact analysis. In this analysis, we apply a multiplier to the following expenditures:

- The wage and salary earnings of casino employees in the State of Michigan
- The expenditures on purchases made in the State of Michigan for the operations of the casino.
- Expenditures made by out-of-state visitors on other goods and services while in the State of Michigan.
- The displaced income of Michigan residents, who shift their expenditures from other household goods and services to casino expenditures.

The only logically-consistent use of multipliers is to apply them to *both* "new" and "displaced" expenditures. This means applying multipliers to lost expenditure in other areas of the state, as well as new expenditures in Wayland Township.

Expenditures Not Multiplied

Some expenditures were not multiplied, because they were not likely to be respent in the same manner as payroll or purchase expenditures. These include profit distributions, gaming tax revenue, and management fees.

CONSTRUCTION ANALYSIS

Our analysis properly segregates construction from operational activity. However, any construction analysis at this stage is speculative, because: (1) the actual facility plans are not available; and (2) our market analysis indicates that the likely revenue to the facility, if we assume that two competing facilities will open in the region, will be far less than that stated in the tribe's economic impact analysis. This calls into question the financial viability of the project.

Should construction take place, the economic impact is likely to be positive for Michigan, and for Allegan and the surrounding counties, for the following reasons:

- The source of the funds for construction would likely be largely from out-of-state investors, or from financial intermediaries that draw on out-of-state funds.
- Much of the construction expenditure—though not all—would be made in Michigan.
- Should construction begin in the current economic climate, there would be relatively little substitution or displacement of other construction projects in the region.

METHODOLOGY AND MODEL

We use a sophisticated economic model to estimate the sources, the uses of the casino revenue, and related expenditures by out-of-state visitors traveling to the casino. The model also includes construction expenditures made initially on the facility.

This particular model adapts the methodologies we have developed for analyzing the impact of other projects, including:

- The expansion of the Detroit-Wayne County Port;
- Major industrial installations in various regions of the state;
- Work stoppages and strikes in the airline, marine transportation, and automotive industries; and
- New retailers in various states, and in the Caribbean Basin.

Implementation of the Model

The model is implemented in Matlab and Simulink, which is a mathematical and simulation software environment developed by Mathworks, Inc.[15] This environment allows us to predict, over numerous periods, the impacts of different variables, accounting for complex interaction among the variables. For example, we can allow casino revenue to grow over time, while taking into account that growing casino revenue implies changes to the displaced income in other industries.

The model schematic is presented, in graphical form, in the appendix.

OUTLINE OF MODEL

Below, we describe each of the major building blocks in the model. These building blocks (or "subsystems") are illustrated in the schematic in the appendix.

1. Gaming Revenue
   We first estimate gaming revenue, based on the results of the market assessment. This generates casino revenue from various geographic areas for the entire period.

   In the schematic, gaming revenue is modeled by the box on the left. The outputs from the calculations in this subsystem are revenue from Michigan and non-Michigan sources.

2. Allocation of Casino Revenue
   Using the market demand to forecast total expenditures, we allocate expenditures based on likely expense categories for a casino enterprise. The largest allocation is for payroll, with smaller amounts for purchases, gaming and other taxes, management fees, and profits.

15. The Mathworks web site is at: http://www.mathworks.com.

In the schematic, allocation of casino revenue is modeled in the box to the right of the gaming revenue subsystem.

3. Impact of Expenditures
The various allocations of expenditures are further apportioned between in-state and out-of-state expenditure, and, when appropriate, multiplied to account for re-spending in the region's economy. In particular, payroll and purchases in the state are multiplied to account for this re-spending.

This is done in the two boxes shown on the schematic, to the right of the "allocation of gaming revenue" subsystem.

4. Displacement Effects
Using the same market demand variables that drove casino expenditures, we calculate displaced income from various geographic sectors. For revenue from residents of the state, we multiply them to account for the loss of re-spending of those dollars.

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In addition, non-Michigan revenue is multiplied by a factor that accounts for additional expenditure by those visitors in the state, nd this is then multiplied by an additional multiplier to account for re-spending from the tourism industry.

This subsystem is at the bottom of the schematic, below the "allocation of gaming revenue" subsystem.

5. Net Benefits
Finally, we take all spending in Michigan—including the re-spending estimated by using multipliers for payroll, purchases, and tourism-related expenditures in Michigan—and collect them in the "net benefits" subsystem. We subtract the displaced income from losses in other industries from these gross benefits to residents of the state to arrive at net benefits to the state.

Then, using county- and region-specific allocation factors, we estimate the amount of the gross benefit that accrues to residents of different counties and regions. These amounts are compared to the gaming revenue supplied by residents of these same areas to arrive at net benefit estimates for each county or region.

The net benefits subsystem is at the far right of the schematic of the model in the appendix.

ASSUMPTIONS

We use a number of input variables in our model, including:

- Revenue sources by county and region. These are described in the market analysis section of the report.
- Allocation factors for payroll, purchases, management fees, investor returns (including profits), gaming taxes, and other taxes. These were estimated on the basis of similar enterprises for which data are available.[16]
- Shares of the expenditures by the casino operation that would accrue to Michigan residents. These ranged from very high (for payroll), to 20% (for management fees).
- Plant and property data, which is speculative at this stage, and was not a significant factor in the conclusions of the analysis.
- Construction payroll, which again is speculative and not a significant factor in the conclusions of the analysis.
- Payroll, benefits, and other employment expenses, which includes average wages & payroll taxes, benefit ratios, and annual wage increase assumptions that are intended to reflect the average across both direct and indirectly affected jobs. As a simplifying assumption, we used these same factors for both "new" and "displaced" jobs.
- Impact multipliers, including those for payroll, purchases, and tourism-related expenditures. These are reasonably conservative, though properly reflect the actual re-spending that will occur from the expenditures for both new and displaced income.
- County and regional benefit and cost shares.
- Various simulation parameters, including the 2004-2014 time period. Given the relatively low inflation rate assumption, the starting date is not critical in the analysis. However, as discussed in the market demand analysis, the presence or absence of competing casinos in the region is critical.

These are summarized in the tables in the appendix.

16. The best available source was the *Annual Financial Statement Studies*, 2002-2003 edition, published by RMA (Risk Management Associates, formerly Robert Morris Associates). We primarily used the data for SIC 7999; (NAICS 48711 48721, 48799), which is for "entertainment, amusement, or recreation services," although the ratios for "coin operated amusements" are similar. Although we reviewed the data for "hotels," lodging is not a comparable enterprise to casino gaming. To the extent the facility, in future years, develops a substantial lodging and restaurant business, that portion of the impact could then be evaluated using data from the lodging and restaurant industries.

CAUTIONS IN THE ANALYSIS

We make a number of assumptions to simplify our analysis, and project future activities based on factors that cannot be known at this time. We identify below the most important cautions about the results of our analysis.

- As in any analysis of future economic activity, we assume baseline economic activity, residential patterns, road networks, and consumer preferences, as well as current laws. All of these factors will change, and some may change significantly.
- As noted in the market analysis section of the report, we do not know what competing casinos will open in the region. Furthermore, our analysis suggests that, should competing casinos in the region open, the proposed Wayland Township facility would likely not be feasibly, and may need to be scaled back in size and scope.
- A proper economic impact analysis accounts for both new and displaced income. Should the project be completed, however, the direct new jobs will be more visible to the observer than the displaced jobs.
- We made a simplifying assumption that the aggregate number of new and displaced jobs could be estimated using the same average salary and benefit figures. The actual pattern of new and displaced jobs will vary somewhat from this assumption.
- The casino operates for a full year, starting in 2004. We present information for the full year, even though the first full year may not start until after 2004. In reality, construction would precede operation, and would likely be included during the initial portion of the casino's first year of operation.
- We use multipliers in an appropriate manner. While the appropriate use is much more important than the size of the multiplier used, the size of the multipliers we use (for tourism, purchases, and payroll) are based on economy-wide analysis, using a number of strong assumptions. The actual multiplier effect will be somewhat different.

We make further simplifying assumptions about non-casino expenditures, including:

- Transportation expenses, in particular expenses for gasoline and gasoline taxes, on average pay for the cost of the service, including road maintenance. No additional benefit or displacement effects were included due to these expenditures.
- A good portion of the state gaming tax is used to pay for regulation of the industry.
- As the majority of the casino revenue comes from Michigan residents, the other state and local taxes (such as sales taxes and property taxes) can be ignored in the analysis. In reality, such taxes (especially property taxes that would have been paid by businesses that lost earnings due to substitution of casino visits) are likely to magnify the effect of the displaced income.

- The current use of the land generates no income tax or property tax revenue to the state, and the future use will not either. In reality, the current use generates some taxes, and the intended use would result in a tax-exempt status for much of the casino operations. This again makes the analysis conservative.
- The effect of federal income taxes can be ignored. In reality, federal income taxes would generate "leakages" from the state under both the current use of the land, and in any proposed casino development.

PROJECTED ECONOMIC IMPACT RESULTS

Using these assumptions and methodologies, and with the cautions mentioned above, we estimate the following economic impact for the State of Michigan, and for counties and regions within it. More detail regarding the projected impacts is available in this report's appendix, beginning on page 31.

The impacts discussed below assume competition from existing casinos only. If we assume that new casinos are opened in New Buffalo and Emmett, the gross benefits and losses due to the Wayland facility would be reduced. However, we found that the net effect of the new casino on the State of Michigan remained at a comparable level to the figures presented in the following results.

The following tables show the net economic impact of opening the proposed Wayland casino by region. Table 1 compares the net economic benefit to Allegan County to the net economic loss to the rest of Michigan. Table 2 further breaks down the economic effect by region.

TABLE 1. Summary of Net Economic Benefit, ($Millions) Allegan County compared to rest of Michigan

Region	2004	2004 to 2014
Allegan County	97.5	1,185.9
Michigan (except Allegan)	(123.5)	(1,503.5)
Michigan Net Benefit (loss)	(26.10)	(317.57)

State of Michigan

The casino enterprise will generate substantial new economic activity in the state, especially in Allegan County. Much of the casino payroll and purchases will be made in Allegan and nearby counties. Profits and management fees, however, will be split between Michigan and non-Michigan residents.

The majority of the casino expenditures will come from gaming losses by residents of the state. These losses ("revenue" to the casino) displace other expendi-

tures in the state, as well as savings of Michigan residents that they would use to make purchases in the future.

Therefore, the gross expenditures arising from the new casino would be $192.22 million in 2004, provided the casino operated for the complete calendar year. Subtracting the displaced income of Michigan residents, in the amount of $218.32 million from the gross expenditures, however, results in a net economic benefit of $-26.1 million in 2004. Between 2004 and 2014, the Michigan economy will lose more than $315 million as a result of operations at the proposed casino.

This negative net benefit means that, after accounting for all benefits and all costs, the operation of the casino enterprise will result in dollars flowing out of the state.

Effect by Region

Below we discuss the net impact by region.

TABLE 2. Summary of Net Economic Benefit, by Region ($Millions)

Region	2004	2004 to 2014
Allegan County	97.5	1,185.9
Barry County	(6.0)	(73.6)
Kalamazoo County	(4.4)	(53.7)
Kent County	(49.7)	(605.2)
Ottawa County	(12.3)	(149.2)
Northern Michigan	(15.3)	(185.9)
Middle Michigan	(24.1)	(293.2)
Southeast Michigan	8.1	98.7
Other Southwest Michigan Counties[a]	(19.8)	(241.4)
Michigan Net Benefit (loss)	(26.10)	(317.57)

a. Berrien, Branch, Calhoun, Cass, St. Joseph, and Van Buren Counties.

Kent County

Kent County residents are likely to generate a substantial amount of casino revenue, meaning that Kent will have a significant amount of income displaced from other industries. Given its nearby location and business centers, Kent should also account for some of the payroll and purchases.

Subtracting the displaced income from the additional payroll and purchases generates an estimated economic loss of $49.7 million in 2004 for Kent County residents for a full year of casino operation. This figure increases to a $60.6 million loss per year by 2014.

Allegan County

Allegan receives the largest share of the payroll, based on our assumption that a substantial number of casino workers will reside in the county. In addition, payments to the tribe are assumed to be made in Allegan County.[17]

Allegan residents are assumed to provide only a small portion of the gaming revenue. Therefore, the net benefit to the county is a fairly substantial $97.5 million in 2004.

Note that this net economic benefit will be spread very unevenly within the county. Owners of commercial real estate in the areas near the casino, and investors in the casino or royalty-earning members of the tribe, could benefit handsomely. Owners of competing entertainment venues on the Lakeshore, however, could actually lose business.

Kalamazoo County

Kalamazoo county residents will have a pattern similar to that of Kent County, in that they will make up a substantial amount of gaming revenue, and get a smaller share of the benefits.

We estimate a net economic benefit for Kalamazoo county residents of $-4.4 million in 2004. This figure grows to -$5.4 in 2014.

Other Areas of Impact

Our model also shows negative economic benefits to Ottawa and Barry Counties. These counties, along with Kent and Kalamazoo, are in immediate proximity with the Wayland township site.

Other areas of the State are also likely to lose economic activity as a result of a Casino development in Wayland Township. In 2004, the Southwest Michigan Counties of Berrien, Branch, Calhoun, Cass, St. Joseph, and Van Buren will see a combined net benefit of $-19.8 million; the Mid-Michigan Counties of Clinton, Eaton, Genesee, Gratiot, Ingham, Ionia, Livingston, Montcalm Saginaw, and Shiawassee will lose a combined $24.1 million; and the Northern-Mid-

17. Note our allocation of profit in-state and out-of-state is about 50-50. This figure is not precise, though, given that tribe members in the state will presumably invest some of the funds out of the state. Similarly, we assume investors in the casino management firms will reside partially out of state, with some in-state partners.

Michigan Counties of Isabella, Lake, Mason, Mecosta, Muskegon, Newaygo, Oceana, and Osceola will lose a combined $15.3 million.

In addition to Allegan County, our model reveals a positive net economic benefit to only one other area of the State. In 2004 we see a net benefit of $8.1 million for Southeast Michigan. This results largely because 1) given the distance from the area to the casino, we expect that only 2% of the casino's total revenues will come from residents of Southeast Michigan, and 2) as home to many of the State's businesses, we expect a significant portion of the casino's expenditures, 7%, to be directed to Metro Detroit businesses.

Impact to Michigan Jobs

In addition to measuring the change in total net economic benefit to the State of Michigan and specific regions, we also determined the effect that the proposed casino would have on the State in terms of jobs lost or gained. Table 3 shows the impact of the proposed Wayland Township casino on employment in Michigan.

TABLE 3. Economic Impact to Michigan Jobs[a]

Year	Total Jobs Gained[b]	Total Jobs Lost	Net Change in MI Employment
2004	3,173	4,912	(1,738)
2005	2,416	5,010	(2,594)
2006	2,464	5,110	(2,646)
2007	2,513	5,212	(2,699)
2008	2,564	5,316	(2,753)
2009	2,615	5,423	(2,808)
2010	2,667	5,531	(2,864)
2011	2,721	5,642	(2,921)
2012	2,775	5,755	(2,980)
2013	2,830	5,870	(3,039)
2014	2,887	5,987	(3,100)

a. These figures represent a difference in annual jobs. For example, if the casino were opened, we expect there to be 2,864 fewer jobs in the economy by 2010.

b. Total Jobs Gained and Lost include direct, indirect, and tourism in uced jobs. Total Jobs Gained in 2004 includes 805 construction jobs, although construction will likely be spread out over multiple years.

Temporary jobs created through the construction of the casino will reduce the initial negative impact of the casino on Michigan employment. During the first year of operation, the casino will result in a net decrease of 1,738 Michigan jobs, because our analysis assumes that construction will occur entirely in 2004, resulting in an additional 805 jobs gained during that year.

When we assume that the casino no longer supports temporary construction jobs, we see the net decrease in Michigan employment increase to a loss of 2,594 jobs in 2005. The net change in Michigan employment increases to 3,100 jobs by 2014.

By comparing these job figures with the regional sources-of-income data in Table 5 on page 18, we can infer that the change in jobs would be greatest in those counties that provide the most revenue. Therefore, it is likely that the majority of the job losses will come from Kent, Ottawa, and other counties in Southwest and Mid-Michigan. A very large majority of job gains will come into Allegan County, although the overall increase will be comprised of large gains around the casino, and smaller losses in the Lakeshore and other areas. Although we can fairly precisely define the county of residence of gaming patrons, we cannot define within similar precision the counties in which they spend their earnings. Therefore, we have not estimated county-by-county job loss figures.

The effect of the casino on tourism related jobs is minimal. We consider tourism related jobs to be those jobs created through the expenditure from out-of-state visitors. Our analysis finds that between 46 jobs in 2004 and 56 jobs in 2014 are created due tourism from out-of-state visitors. This results in a minor overall effect on the economy.

The results of our analysis show that it takes nearly twice as much expenditure at a casino to support the same number of jobs that average non-casino expenditure supports. This is because a larger portion of the casino expenditure is directed (1) out of state, and (2) to uses that have a lesser spin-off effect on the economy.[18]

18. We assumed that the average casino job pays the same as the average non-casino job in terms of wages and benefits, and that the multiplier effects for casino payroll, casino purchases, and displaced income in Michigan were all the same.

Appendix A: Model Inputs and Results

The following appendix contains:

Table A-1: Economic Impact Model Data

Table A-2: Economic Impact to Michigan

Table A-3: Gross Benefits to Other States

Table A-4: Net Benefits by County

Table A-5: Regional and County Shares

Table A-6: Economic Impact to Michigan: Jobs

Table A-7: Gaming Visits and Revenue Sources by County, Scenario 1

Table A-8: Gaming Visits and Revenue Sources by County, Scenario 2

Table A-1. Economic Impact Model Data

Allegan County Casino -- Base Case:

Variable Name	*Variables*	*Values*	
1. Gaming Revenue Sources	*Gaming Revenue from residents of:*	$millions	
Scenario 1			
out_of_state_rev	*Indiana, Ohio, Illinois, and other states*	$	25.49
allegan_rev	*Allegan County*	$	8.77
kent_rev	*Kent County*	$	44.30
kzoo_rev	*Kalamazoo County*	$	13.57
ottawa_rev	*Ottawa County*	$	12.47
barry_rev	*Barry County*	$	4.98
sw_mich_rev	*Southwest Michigan (Berrien, Branch, Calhoun, Cass, St Joseph and Van Buren counties)*	$	20.81
se_mich_rev	*Southeast Michigan (Hillsdale, Jackson, Lenawee and Washtenaw counties)*	$	3.34
mid_mich_rev	*Mid-Michigan (Clinton, Eaton, Genesee, Gratiot, Ingham, Ionia, Livingston, Montcalm, Saginaw and Shiawassee counties)*	$	17.46
n_mich_rev	*Northern Michigan (Isabella, Lake, Mason, Mecosta, Muskegon, Newaygo, Oceana and Osceola counties)*	$	10.75
Memo: Total Gaming Revenue		*$*	*161.94*
Scenario 2			
out_of_state_rev_2	*Indiana, Ohio, Illinois, and other states*	$	7.51
allegan_rev_2	*Allegan County*	$	6.17
kent_rev_2	*Kent County*	$	31.75
kzoo_rev_2	*Kalamazoo County*	$	6.46
ottawa_rev_2	*Ottawa County*	$	7.43
barry_rev_2	*Barry County*	$	3.17
sw_mich_rev_2	*Southwest Michigan (Berrien, Branch, Calhoun, Cass, St Joseph and Van Buren counties)*	$	7.99
se_mich_rev_2	*Southeast Michigan (Hillsdale, Jackson, Lenawee and Washtenaw counties)*	$	2.00
mid_mich_rev_2	*Mid-Michigan (Clinton, Eaton, Genesee, Gratiot, Ingham, Ionia, Livingston, Montcalm, Saginaw and Shiawassee counties)*	$	10.86
n_mich_rev_2	*Northern Michigan (Isabella, Lake, Mason, Mecosta, Muskegon, Newaygo, Oceana and Osceola counties)*	$	7.87
Memo: Total Gaming Revenue		*$*	*91.21*
1.a Units			
millions	*Revenue in units of millions US Dollars*	$	1,000,000
1.b Casino Revenue Displacement			
mi_casino_displacement	*Share of revenue displaced from other Michigan casinos.*		0.44
mi_casino_displacement2	*Casino Displacement, scenario 2*		0.54
Note: displaced casino revenue is treated the same as other displaced income in the impact analysis.			
2. Operations, Management, Gaming Tax, Profit			
rev_share_payroll	share of gaming revenue to payroll and employee expenses		0.55
rev_share_purchases	share of gaming revenue to purchases		0.15
mgmt_fee	Management Expenses, as share of gaming revenue		0.11
investor_share	Returns to investors and bondholders, as share of gaming revenue		0.09
gaming_tax_rate	State tax on gaming revenue		0.08
other_gaming_tax_rate	Other taxes as share of gaming revenue		0.02
audit check	*sum of shares must equal 100%:*		*1.00*

3. Michigan Shares

mi_purchase_share	*Michigan Purchase Share*		0.950
mi_mgmt_fees_share	*Michigan Management Fees Share*		0.200
use_share_gaming_tax	*Gaming Tax Use Share*		1.000
mi_profit_share	*Michigan Profit Share*		0.500

4. Plant and Property Data

initial_real_property_value	*Initial Real Property Value*	$	1,000,000
change_real_property_value	*Change in Real Property Value*	$	20,000,000
initial_personal_property_value	*Initial Personal Property Value*	$	100,000
change_personal_property_value	*Change in Personal Property Value*	$	10,000,000
real_growth	*Annual Growth Rate, Real Property*	%	2
personal_growth	*Annual Growth Rate, Personal Property*	%	1

Note: Proposed facility would be located on tax-exempt trust lands. See also note below on "construction".

5. Construction Payroll

construction_workers	*Number of Construction Workers, full-year FTE*		805
avg_annual_const_hours	*Average Annual Construction Hours*		2,080
avg_const_wage	*Initial Average hourly wage*	$	25.00

Note: No firm facility plans are available. Actual construction payroll could be significantly different.

6. Payroll, Benefits, and other Employment Expenses

mi_payroll_share	*Michigan residents' payroll, as share of casino payroll*	0.9
salary_job_direct	*Salary and payroll taxes, direct employment, FTE*	35,000
wage_growth	*Annual increase in wage and benefits costs*	0.02
benefit_rate	*Benefits and other employment overhead, as share of salary*	0.27

Memo:

Indirect and displaced jobs' salaries assumed, on average, the same as "direct" jobs.

7. Impact Multipliers

payroll_mult	*Payroll Multiplier*	1.60
local_purch_mult	*Local Purchase Multiplier*	1.60
tourism_mult	*Tourism Multiplier*	1.60
fed_tax_wedge	*Share of Michigan Earnings Foregone to Federal Taxes*	0.15
nonmich_nongame_spendingshare	*Non-Gaming Expenditures by Non-Michigan Residents, as share*	0.05

8. County-level Net Benefit and Cost Shares

county_shares_gain	*share of increased income to Michigan, for selected counties*	*See detail on sheet*
county_shares_displaced_income	*share of displaced income to Michigan, for selected counties*	*"county shares".*

Note: see "county shares" worksheet

9. Simulation Parameters

Tstart	*Model Start Time (year)*	2,004
Tstop	*Model Stop Time (year)*	2,014
Tstep	*Model Increments*	1

Table A-2. Economic Impact to Michigan: Income (in millions)

Years	Gross Benefit	Displaced Income	Net Benefit
2004	$ 192.22	$ 218.32	$ (26.10)
2005	$ 196.07	$ 222.69	$ (26.62)
2006	$ 199.99	$ 227.14	$ (27.15)
2007	$ 203.99	$ 231.68	$ (27.69)
2008	$ 208.07	$ 236.32	$ (28.25)
2009	$ 212.23	$ 241.04	$ (28.81)
2010	$ 216.47	$ 245.86	$ (29.39)
2011	$ 220.80	$ 250.78	$ (29.98)
2012	$ 225.22	$ 255.80	$ (30.58)
2013	$ 229.72	$ 260.91	$ (31.19)
2014	$ 234.32	$ 266.13	$ (31.81)
Total 2004 - 2014	$ 2,339.10	$ 2,656.67	$ (317.57)

Note: "Gross benefit" includes management fees, profits, payroll, purchases, and economic spin-offs in Michigan

Table A-3. Gross Benefits to Other States (in millions)

Years	Gross Benefit, Non-Michigan	Gaming Revenue Non-Michigan
2004	$ 25.10	$ 25.49
2005	$ 25.60	$ 26.00
2006	$ 26.11	$ 26.52
2007	$ 26.64	$ 27.05
2008	$ 27.17	$ 27.59
2009	$ 27.71	$ 28.14
2010	$ 28.27	$ 28.71
2011	$ 28.83	$ 29.28
2012	$ 29.41	$ 29.87
2013	$ 30.00	$ 30.46
2014	$ 30.60	$ 31.07
Total 2004 - 2014	$ 305.44	$ 310.18

Note: "Gross benefit" includes management fees, profits, payroll, and purchases to non-Michigan residents. No spin-off effects have been calculated for out-of-state expenditures.

Table A-4: Net Benefits by County

$millions

Years	Allegan	Kent	K'zoo	Ottowa	Barry	SW Mich	SE Mich	Mid Mich	N Mich
2004	$ 97.5	$ (49.7)	$ (4.4)	$ (12.3)	$ (6.0)	$ (19.8)	$ 8.1	$ (24.1)	$ (15.3)
2005	$ 99.4	$ (50.7)	$ (4.5)	$ (12.5)	$ (6.2)	$ (20.2)	$ 8.3	$ (24.6)	$ (15.6)
2006	$ 101.4	$ (51.7)	$ (4.6)	$ (12.8)	$ (6.3)	$ (20.6)	$ 8.4	$ (25.1)	$ (15.9)
2007	$ 103.4	$ (52.8)	$ (4.7)	$ (13.0)	$ (6.4)	$ (21.1)	$ 8.6	$ (25.6)	$ (16.2)
2008	$ 105.5	$ (53.8)	$ (4.8)	$ (13.3)	$ (6.5)	$ (21.5)	$ 8.8	$ (26.1)	$ (16.5)
2009	$ 107.6	$ (54.9)	$ (4.9)	$ (13.5)	$ (6.7)	$ (21.9)	$ 9.0	$ (26.6)	$ (16.9)
2010	$ 109.8	$ (56.0)	$ (5.0)	$ (13.8)	$ (6.8)	$ (22.3)	$ 9.1	$ (27.1)	$ (17.2)
2011	$ 111.9	$ (57.1)	$ (5.1)	$ (14.1)	$ (6.9)	$ (22.8)	$ 9.3	$ (27.7)	$ (17.5)
2012	$ 114.2	$ (58.3)	$ (5.2)	$ (14.4)	$ (7.1)	$ (23.2)	$ 9.5	$ (28.2)	$ (17.9)
2013	$ 116.5	$ (59.4)	$ (5.3)	$ (14.7)	$ (7.2)	$ (23.7)	$ 9.7	$ (28.8)	$ (18.3)
2014	$ 118.8	$ (60.6)	$ (5.4)	$ (14.9)	$ (7.4)	$ (24.2)	$ 9.9	$ (29.4)	$ (18.6)
Net Benefit 2004-14:	$1,185.9	$ (605.2)	$ (53.7)	$ (149.2)	$ (73.6)	$ (241.4)	$ 98.7	$ (293.2)	$ (185.9)

net benefits include additional payroll and purchases (with indirect effects); net of additional gaming revenue paid to casino (with indirect displaced income).

Table A-5: Regional and County Shares

Scenario 1	revenue [a]	*county_shares_displaced_income* (as share of Mi gaming revenue)	*county_shares_spending* (as share of Michigan spending) [b]
out_of_state_rev	$ 25.49	n/a	
allegan_rev	$ 8.77	6%	58%
kent_rev	$ 44.30	32%	11%
kzoo_rev	$ 13.57	10%	9%
ottawa_rev	$ 12.47	9%	4%
barry_rev	$ 4.98	4%	1%
sw_mich_rev	$ 20.81	15%	7%
se_mich_rev [c]	$ 3.34	2%	7%
mid_mich_rev	$ 17.46	13%	2%
n_mich_rev	$ 10.75	8%	1%
Memo: Total Gaming Revenue	*$ 161.94*	*100%*	*100%*
less: Non-Michigan rev	$ 25.49		
equals: Michigan rev	*$ 136.45*		

(a) Southeast Michigan includes purchases in metro Detroit area.
(b) Estimated based on population, industry, and geography
(c) Revenue figures based on market assessment scenario 1

Table A-6. Economic Impact to Michigan: Jobs

Years	Direct Operations		Total (Direct Operations, Indirect, Tourism, and Construction)		***Net Change in Michigan Employment (e)***
	Jobs Gained	Jobs Lost (c, d)	Jobs Gained (a, b)	Jobs Lost (c, d)	Jobs Gained less Jobs Lost (e)
2004	1,803	3,070	3,173	4,912	*(1,738)*
2005	1,839	3,131	2,416	5,010	*(2,594)*
2006	1,876	3,194	2,464	5,110	*(2,646)*
2007	1,914	3,258	2,513	5,212	*(2,699)*
2008	1,952	3,323	2,564	5,316	*(2,753)*
2009	1,991	3,389	2,615	5,423	*(2,808)*
2010	2,031	3,457	2,667	5,531	*(2,864)*
2011	2,072	3,526	2,721	5,642	*(2,921)*
2012	2,113	3,597	2,775	5,755	*(2,980)*
2013	2,155	3,669	2,830	5,870	*(3,039)*
2014	2,198	3,742	2,887	5,987	*(3,100)*

notes

a Construction assumed to occur entirely in 2004; actual construction will be spread over multiple years.

b Facility size is unknown, so construction estimate is not precise.

c Consumer expenditures per job, and average salary and overhead, and income multipliers assumed the same for both new (casino-related) and displaced jobs

d Direct and indirect jobs include all casino-related employment from payroll and purchases in Michigan.

e Net change is the difference between total new jobs (direct operation, indirect, tourism and construction) gained, and total jobs lost, for the State of Michigan.

TABLE A-7: Gaming Visits and Revenue Sources by County, Competitive Scenario One

Competitive Market Made Up of Current Casinos Only

County	Gamblers 21+ years	Current Casinos (No Wayland, New Baffalo, or Emmett) Annual Total Casino Visits	Annual Total Casino Revenue	Current Casinos plus Wayland Annual Total Casino Visits	Annual Total Casino Revenue	Annual Wayland Visits	Annual Wayland Revenue
Totals	1,120,090	4,620,843	$ 262,985,005	5,594,170	$ 355,148,957	3,190,658	$ 161,930,074
La Porte, IN*	21,247	209,579	$ 8,426,440	209,579	$ 8,706,697	11,841	$ 769,732
St. Joseph, IN	76,656	459,966	$ 22,998,600	459,966	$ 25,516,937	167,888	$ 10,912,840
Elkhart, IN	53,700	316,059	$ 15,894,708	316,059	$ 17,591,969	116,192	$ 7,552,198
Steuben, IN	10,025	30,069	$ 1,954,368	30,069	$ 1,954,368	15,031	$ 877,184
Lagrange, IN	9,367	28,995	$ 1,857,702	28,995	$ 1,857,334	14,257	$ 926,698
De Kalb, IN*	8,406	25,222	$ 1,639,482	25,222	$ 1,639,482	12,613	$ 819,741
Noble, IN*	12,675	38,027	$ 2,471,898	38,027	$ 2,471,898	19,016	$ 1,235,949
Marshall, IN*	3,400	20,396	$ 1,019,760	20,396	$ 1,131,423	7,443	$ 483,876
Kosciusko, IN*	16,571	57,298	$ 3,497,016	57,298	$ 3,580,047	26,603	$ 1,729,172
Mason, MI*	658	3,950	$ 197,520	3,950	$ 219,148	1,442	$ 93,723
Lake, MI*	3,024	17,125	$ 1,024,472	17,125	$ 1,099,921	3,009	$ 195,647
Osceola, MI*	4,909	29,457	$ 1,733,217	29,457	$ 1,763,932	5,037	$ 327,372
Oceana, MI	7,858	37,726	$ 2,140,825	37,726	$ 2,235,220	11,449	$ 744,088
Newaygo, MI	14,090	48,109	$ 3,030,095	67,854	$ 4,033,364	27,220	$ 1,458,547
Mecosta, MI	11,416	68,492	$ 3,969,461	68,492	$ 4,050,276	15,132	$ 956,823
Isabella, MI*	13,341	128,049	$ 5,248,622	128,049	$ 5,425,103	8,279	$ 538,229
Saginaw, MI*	1,123	6,737	$ 400,801	6,737	$ 407,263	1,174	$ 76,292
Muskegon, MI	48,254	144,760	$ 9,409,686	264,896	$ 15,479,300	125,712	$ 6,432,245
Montcalm, MI	17,732	104,740	$ 5,317,547	106,402	$ 5,667,453	45,242	$ 2,557,225
Gratiot, MI*	11,022	88,405	$ 3,876,798	88,405	$ 4,119,190	14,458	$ 939,835
Kent, MI	164,429	495,239	$ 32,132,094	1,205,059	$ 50,339,095	1,017,839	$ 44,298,352
Genesee, MI*	6,204	35,208	$ 1,870,697	35,208	$ 1,928,570	5,002	$ 325,062
Ottawa, MI	68,212	204,141	$ 13,268,970	414,242	$ 23,057,748	249,383	$ 12,469,094
Shiawassee, MI*	19,331	64,026	$ 4,078,869	64,026	$ 4,092,248	12,414	$ 806,763
Ionia, MI	15,908	53,068	$ 3,378,230	101,456	$ 5,993,708	58,224	$ 2,922,694
Clinton, MI	18,652	90,387	$ 5,496,245	96,331	$ 5,894,633	18,720	$ 1,162,625
Livingston, MI*	39,553	237,323	$ 12,427,598	237,323	$ 12,944,468	32,976	$ 2,143,419
Ingham, MI	75,355	233,520	$ 15,036,519	285,983	$ 17,991,918	67,341	$ 3,899,687
Barry, MI	16,655	32,657	$ 2,122,770	129,525	$ 5,997,438	113,813	$ 4,975,145
Eaton, MI	30,242	90,714	$ 5,896,566	174,486	$ 10,579,796	52,168	$ 2,629,367
Allegan, MI	29,960	86,451	$ 5,619,042	244,452	$ 11,261,782	206,122	$ 8,770,557
Washtenaw, MI*	6,465	38,791	$ 1,951,699	38,791	$ 2,041,896	6,125	$ 398,143
Jackson, MI	46,189	173,150	$ 10,320,992	173,150	$ 10,459,215	32,711	$ 2,128,318
Calhoun, MI	38,791	113,432	$ 7,372,950	221,130	$ 13,105,802	87,080	$ 4,392,697
Kalamazoo, MI	68,422	205,280	$ 13,342,836	421,882	$ 23,000,920	276,819	$ 13,671,973
Van Buren, MI	21,413	92,548	$ 5,166,612	128,491	$ 6,818,274	73,953	$ 3,697,595
Berrien, MI	45,769	287,744	$ 14,059,280	287,744	$ 15,295,070	99,659	$ 6,202,134
Lenawee, MI*	2,846	9,429	$ 586,254	9,429	$ 590,555	2,198	$ 142,913
Hillsdale, MI*	12,224	35,974	$ 2,338,284	36,677	$ 2,383,992	10,326	$ 670,965
Branch, MI	13,431	39,364	$ 2,559,024	44,991	$ 2,835,040	23,495	$ 1,437,378
Cass, MI	14,677	83,229	$ 4,233,756	88,055	$ 4,721,745	38,764	$ 2,204,502
St. Joseph, MI	17,533	53,452	$ 3,448,836	90,440	$ 5,148,360	55,205	$ 2,870,995
Williams, OH*	888	2,565	$ 166,764	2,565	$ 166,764	1,283	$ 83,382

* Denotes that a portion of county is not included in the Wayland Township market area and is therefore not included in the county results depicted here.
Source: Anderson Economic Group market assessment

TABLE A-8: Gaming Visits and Revenue Sources by County, Competitive Scenario Two

Competitive Market Made Up of Current Casinos Plus the New Buffalo and Emmett Casinos

		Current and Proposed Casinos (No Wayland)		Current and Proposed Casinos plus Wayland			
County	Gamblers 21+ years	Annual Total Casino Visits	Annual Total Casino Revenue	Annual Total Casino Visits	Annual Total Casino Revenue	Annual Wayland Visits	Annual Wayland Revenue
Totals	1,120,090	6,365,803	$ 351,250,908	7,316,026	$ 392,778,195	1,879,971	$ 91,207,822
La Porte, IN*	21,247	209,575	$ 8,572,501	209,575	$ 8,706,697	1,934	$ 125,728
St. Joseph, IN	76,656	463,528	$ 24,636,114	463,528	$ 25,610,442	41,590	$ 2,703,262
Elkhart, IN	53,700	317,117	$ 16,904,961	317,117	$ 17,573,462	29,504	$ 1,917,821
Steuben, IN	10,025	60,137	$ 3,489,119	60,137	$ 3,577,649	6,346	$ 412,339
Lagrange, IN	9,367	56,211	$ 3,223,855	56,211	$ 3,311,574	5,813	$ 377,901
De Kalb, IN*	8,406	26,173	$ 1,687,994	26,173	$ 1,690,793	6,271	$ 407,466
Noble, IN*	12,675	38,987	$ 2,520,900	38,987	$ 2,523,727	9,473	$ 615,547
Marshall, IN*	3,400	20,396	$ 1,088,056	20,396	$ 1,131,423	1,863	$ 120,969
Kosciusko, IN*	16,811	97,298	$ 3,983,814	97,298	$ 3,993,648	11,966	$ 777,178
Mason, MI*	658	3,950	$ 197,520	3,950	$ 219,148	721	$ 46,862
Lake, MI*	3,024	17,125	$ 1,024,472	17,125	$ 1,039,921	1,608	$ 104,483
Osceola, MI*	4,909	29,457	$ 1,733,217	29,457	$ 1,763,832	2,518	$ 163,689
Oceana, MI	7,858	37,726	$ 2,140,925	37,726	$ 2,235,220	7,294	$ 474,006
Newaygo, MI	14,090	48,109	$ 3,045,511	67,854	$ 4,104,371	22,231	$ 1,198,865
Mecosta, MI	11,416	88,492	$ 3,994,432	88,492	$ 4,068,652	7,375	$ 496,186
Isabella, MI*	13,341	128,049	$ 5,277,847	128,049	$ 5,441,915	2,746	$ 178,483
Saginaw, MI*	1,123	6,737	$ 407,263	6,737	$ 411,008	500	$ 32,487
Muskegon, MI	48,254	144,760	$ 9,409,686	264,896	$ 15,847,560	101,161	$ 5,204,711
Montcalm, MI	17,732	104,740	$ 5,852,223	106,402	$ 5,965,495	27,132	$ 1,464,932
Gratiot, MI*	11,022	88,405	$ 4,119,190	88,405	$ 4,262,867	5,087	$ 330,632
Kent, MI	164,429	797,106	$ 47,312,365	1,265,069	$ 63,037,224	739,683	$ 31,753,948
Genesee, MI*	6,204	35,208	$ 1,928,570	35,208	$ 1,972,368	2,354	$ 153,086
Ottawa, MI	69,712	206,145	$ 13,399,230	412,282	$ 24,570,714	648,517	$ 7,425,816
Shiawassee, MI*	19,331	70,368	$ 4,446,810	70,368	$ 4,464,990	9,409	$ 611,538
Ionia, MI	16,908	93,533	$ 5,329,821	101,459	$ 5,662,547	37,460	$ 1,877,151
Clinton, MI	18,652	111,932	$ 6,572,661	111,932	$ 6,633,525	9,784	$ 594,307
Livingston, MI*	39,553	237,323	$ 12,828,107	237,323	$ 13,144,210	14,440	$ 938,564
Ingham, MI	75,355	452,107	$ 27,237,091	452,107	$ 27,225,748	49,964	$ 2,881,562
Barry, MI	16,856	108,530	$ 5,751,290	138,142	$ 8,410,288	74,598	$ 3,170,902
Eaton, MI	30,242	188,951	$ 11,119,964	188,951	$ 10,767,567	39,311	$ 1,980,841
Allegan, MI	29,967	158,727	$ 9,318,067	244,452	$ 11,817,499	147,392	$ 6,174,756
Washtenaw, MI*	6,465	38,791	$ 1,964,818	38,791	$ 2,034,889	2,444	$ 158,845
Jackson, MI	46,189	277,171	$ 15,047,322	277,171	$ 16,319,835	20,384	$ 1,324,638
Calhoun, MI	38,791	380,358	$ 17,030,620	380,358	$ 17,400,585	37,055	$ 1,870,294
Kalamazoo, MI	88,422	472,728	$ 21,990,708	484,054	$ 24,694,374	133,214	$ 6,458,927
Van Buren, MI	21,413	128,491	$ 6,728,929	128,491	$ 6,639,699	34,772	$ 1,738,719
Berrien, MI	45,769	308,386	$ 15,369,401	308,386	$ 15,826,755	27,078	$ 1,622,464
Lenawee, MI*	2,846	17,078	$ 999,137	17,078	$ 1,017,170	1,445	$ 93,888
Hillsdale, MI*	12,224	73,352	$ 4,354,670	73,352	$ 4,428,770	8,499	$ 422,455
Branch, MI	13,431	84,151	$ 4,750,070	84,151	$ 4,854,988	9,682	$ 595,083
Cass, MI	14,677	88,055	$ 4,572,759	88,055	$ 4,669,242	14,500	$ 790,337
St. Joseph, MI	17,533	105,199	$ 6,020,593	105,199	$ 5,899,624	26,468	$ 1,369,951
Williams, OH*	855	5,131	$ 297,723	5,131	$ 305,277	734	$ 47,724

* Denotes that a portion of county is not included in the Wayland Township market area and is therefore not included in the county results depicted here.
Source: Anderson Economic Group market assessment

Appendix B: Figures

This appendix includes:

Figure 1: Gaming Revenue Sources, 2004

Figure 2: State vs. Out-of-State Revenue, 2004

Figure 3: Gross Expenditures in Michigan Economy, 2004-2014

Figure 4: Net Benefit to Michigan Economy, 2004-2014

Figure 5: Net Benefit by County of Region, 2004

Figure 1. Gaming Revenue Sources, 2004

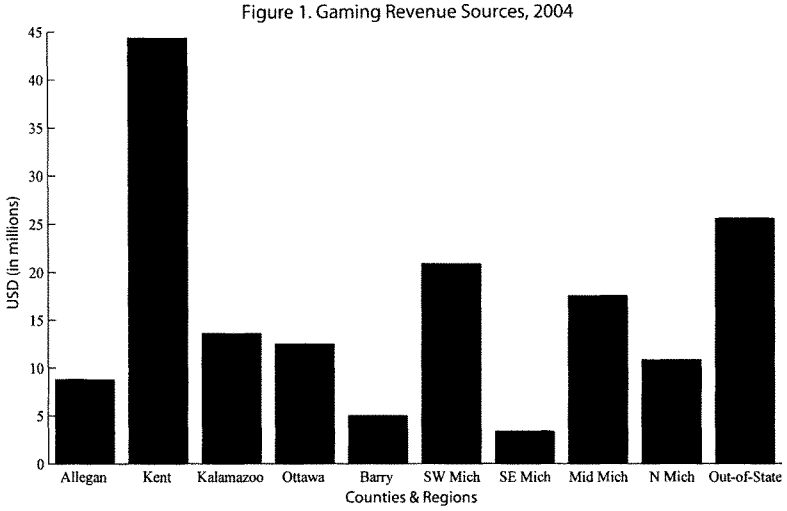

Figure 2. State vs. Out-of-State Revenue, 2004

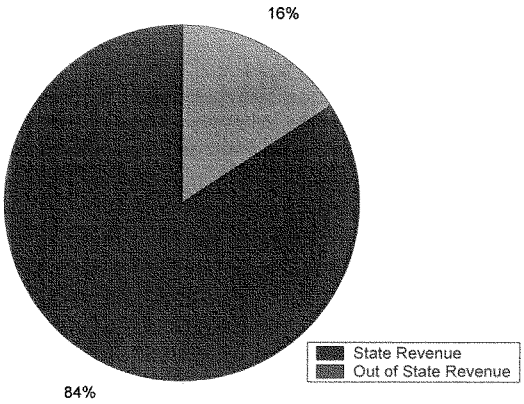

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Figure 3. Gross Expenditures in Michigan Economy, 2004-2014

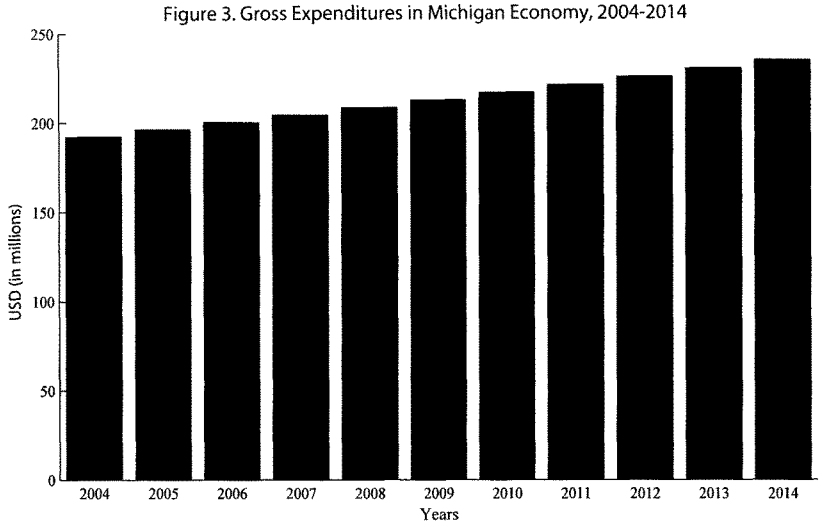
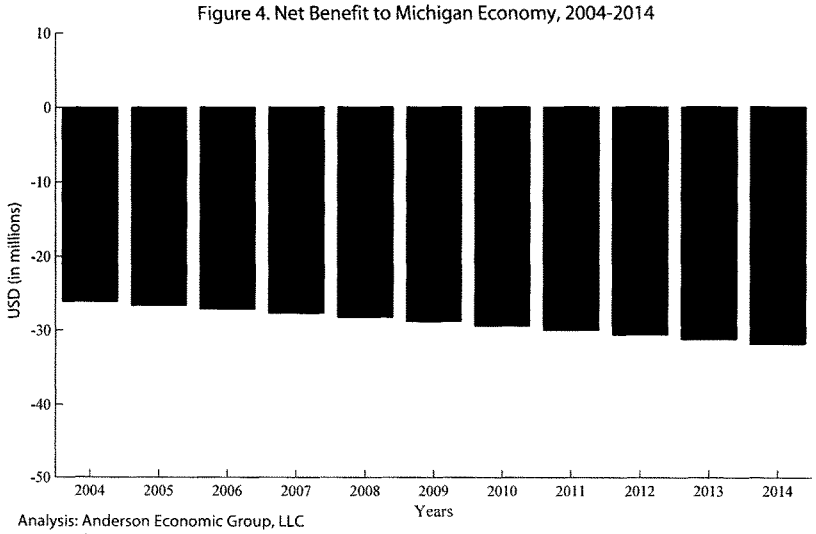


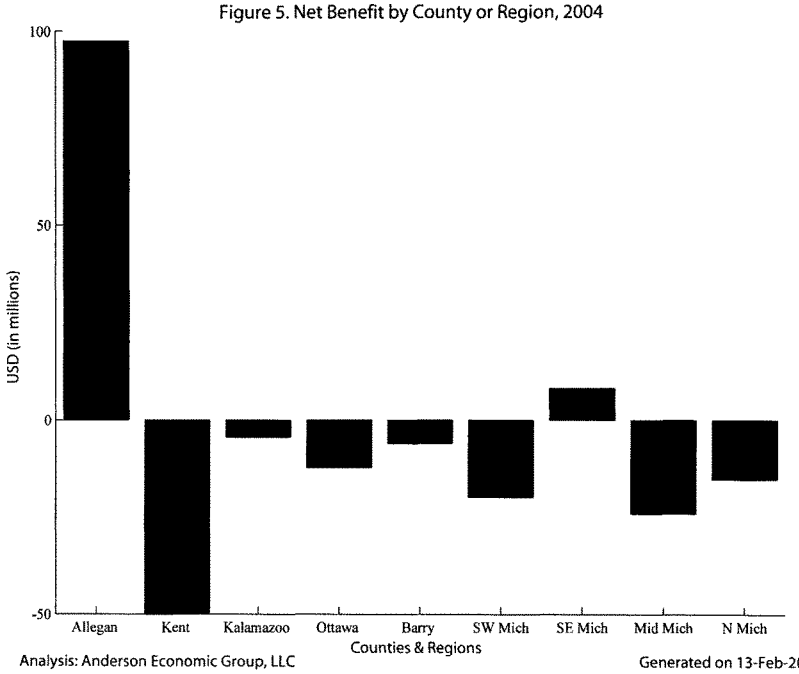
Figure 4. Net Benefit to Michigan Economy, 2004-2014



Analysis: Anderson Economic Group, LLC
Data: Anderson Economic Group, LLC

Generated on 13-Feb-2003

Figure 5. Net Benefit by County or Region, 2004



Analysis: Anderson Economic Group, LLC

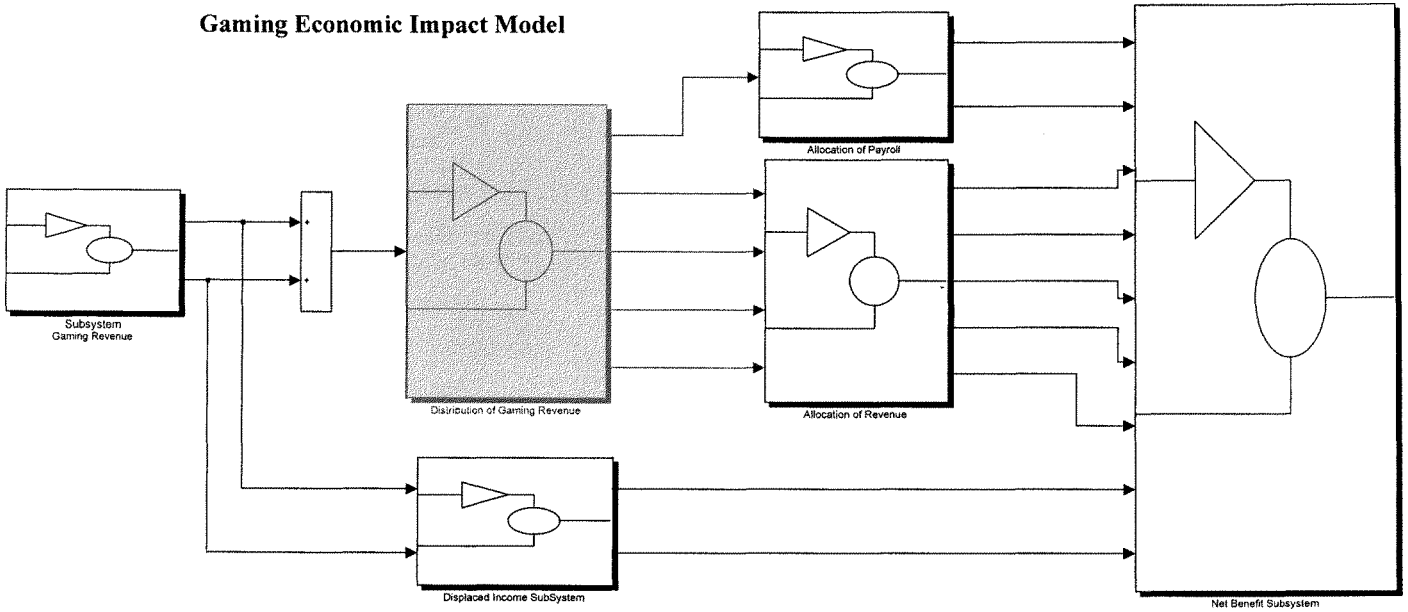
Generated on 13-Feb-2003

Appendix C: Model Schematic

Appendix C includes:

Simulink Model Schematic

Gaming Economic Impact Model



Local Economic Impact Model
Version 2.318, Modified 12-Feb-2003 17:38:01
Gaming Economic Impact Model.
The Revenue Module calculates the net gaming revenue from residents of different areas.
The Distribution module allocates the gaming revenue into the components of business expenses, management fees, taxes, and returns to investors.
The Payroll module further refines the estimates of payroll expenses.
The Displacment subsystem models displacement effects and multiplier effects.
"Patrick L. Anderson"

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About Anderson Economic Group

FIRM PROFILE

Anderson Economic Group, L.L.C. specializes in providing consulting services in economics, finance, public policy, and geographic market assessments. Our approach to work in these fields is based on our core principles of professionalism, integrity, and expertise.

We insist on a high level of integrity in our analyses, together with technical expertise in the field. For these reasons, work by Anderson Economic Group is commonly used in legislative hearings, legal proceedings, and executive strategy discussions.

Since our founding in 1996, our analysis has helped publicly-held corporations, private businesses, governments, and non-profit organizations. Our work has included markets throughout the United States, as well as in Canada, Mexico, and Barbados. Recent Anderson Economic Group clients include:

Governments

- State of Michigan
- State of Wisconsin
- State of North Carolina
- City of Detroit, Michigan
- Oakland County, Michigan
- Van Buren, Ionia, Barry, and Berrien Counties, Michigan
- Detroit-Wayne County Port Authority
- City of Norfolk, Virginia
- City of Fort Wayne, Indiana
- City of Big Rapids, Michigan

Businesses

- General Motors Corporation
- PG&E Generating
- Becks, North America
- SBC and SBC Ameritech
- The Detroit Lions
- Labatt USA
- Honda, Toyota, Mercedes-Benz, Lincoln-Mercury, and Ford dealerships or their associations

Nonprofit and Trade Organizations

- International Mass Retailers Association
- Hudson Institute
- Michigan Retailers Association
- Michigan Chamber of Commerce
- Telecommunications Association of Michigan
- Automation Alley
- American Automobile Manufacturers Association

Anderson Economic Group follows a quality assurance program based on the elements of ISO 9000. Among the quality assurance steps we insist upon are the use of a written methodology; documentation of important sources; file organization and retention schedules; proper summarization of technical work for use in public hearings or executive discussions; and high quality standards for written reports and graphics.

Our firm's web site, http://AndersonEconomicGroup.com, provides additional information about AEG, its services, and past projects.

PROJECT TEAM

This project team was led by Patrick L. Anderson, Principal, Anderson Economic Group. He has nearly twenty years of professional economics experience, including serving as the deputy budget director for the State of Michigan, chief of staff for the Michigan Department of State, and as an economist for two of Michigan's largest financial institutions, as well as a graduate fellow in the Central Intelligence Agency. He is the author of over 85 published monographs and articles, which have appeared in *The Wall Street Journal, Detroit News, Detroit Free Press, Crain's Detroit Business, Michigan Forward, American Outlook* and other publications.

Christopher Cotton and Scott Watkins served as coauthors of the report. Mr. Cotton, Consultant, has a background in economic development, market assessments, and Geographic Information Systems (GIS) analysis. He serves as AEG's lead market consultant, and has led the expansion of the firm's market assessment services. Mr. Watkins, Consultant and Director of Marketing and Administration at AEG, has a public policy and marketing background. He has experience on AEG projects involving economic development and market assessments.

Also contributing to the research and analytical portions of the project was Ilhan K. Geckil, Economist. Mr. Geckil assisted in the design of the economic impact model.

Summary

HarrisInteractive®

Harris Interactive is pleased to present the following summary of findings from the Western Michigan

he objectiv of this re earch is to gain a better understanding of public sentiment regarding the proposed tribal casino in Allegan County, Michigan and identify potential messages that are effective at influencing public opinions.

arris Interactive conducted a total of 601 telephone interviews April 27 47YH

ichigan cou ies of Allegan, Kalam zoo, -28, 2005 with likely voters in the Western Kent and Ottawa. The survey has a margin of error of ± 4.0 percentage points at the 95% confidence level. This means that if this survey were to be replicated 100 times, in at least 95 instances the results would be with fou n entage poi ts of the data reported.

he research ncluded a umber of k y measures on the proposed Gun Lake Tribe casino, in

in very hi h (93%).

should no ribe (59% ot

- A benchmark assessment of public sentiment regarding the casino;
- A battery of statements evaluating the impact of messages regarding the casino;
- A post assessment of public sentiment regarding the cas no; and
- Opinions on whether or not the Governor should negotiate a compact for the casino.

EY FINDINGS **09YK**

0% of voter aying each statement makes them less likely to suppo nst the c o, wit least

- eneral awar ess about the roposed tribal casino in y
- ppos tion to the proposed G n Lake Tri e casino o tpaces sup ort by a f fteen point margin (52% oppose, 37% support) in the benchmark indicator of support or opposition.
- The majority of voters interviewed feel Governor Granhol negotiate, 3 negotiat). *p931X%
-
- margin (64% pose, 33% support) in post indi ator of ca ino support or opposition. *p991Xp
- lightly mor than half of voters 52%) are c nsistently opposed to the casino -in-ten (31%) are consistently supportive of the casino.

DETAILED FINDINGS

GENERAL CASINO EXPERIENCE AND PERCEPTIONS

When asked about the number of casinos in the state, nearly half (47%) of Western Michigan voters feel there are too many casinos in the state. Ottawa County voters are more likely to indicate there are too many casinos (58%). Yet, while a plurality of Western Michigan voters feel there are too many casinos in the state, 38% feel there are just enough and one-in-ten (12%) feel there are too few (led by younger males).

PERCEPTIONS ON NUMBER OF CASINOS IN MICHIGAN					
	Total	Allegan	Kalamazoo	Kent	Ottawa
Too Many	47%	39%	40%	46%	58%
Just enough	413Y3	35%	45%	37%	5%
Too few	12%	22%	13%	13%	4%
Don't know/Refused	3%	4%	%	721Y2	4721Y4

However, while a plurality of Western Michigan voters feel there are to many casinos in the state, nearly three out of four (72%) Western Michigan voters interviewed indicate they have visited a casino in Michigan or elsewhere.

BENCHMARK INDICATOR OF PUBLIC SENTIMENT TOWARD THE GUN LAKE CASINO PROJECT

The majority of voters in Allegan, Kalamazoo, Kent and Ottawa counties (52%) are opposed to the proposed Gun Lake Tribe casino, including 39% who are strongly opposed, with 37% of likely voters supporting the project. There are significant regional differences in responses – Allegan residents are generally more supportive of the casino while Ottawa is most opposed, with Kalamazoo and Kent also opposed.

BENCHMARK PUBLIC SENTIMENT ON CASINO					
	Total	llegan	Kalamazoo	ent	Ottawa
Support	37%	50%	44%	37%	6%824Y2
Oppose	52%	7%	46%	51%	978Y86%

The core group of initial opponents to the casino include: females (35+ years old), Ottawa County residents, Republicans and conservatives. Conversely, the initial supporters tend to be: younger men (18-34 years old), Allegan residents, liberals and Independents.

REACTION TO CASINO S ATEMENTS 29YT 5YA

statements designed to garner opposition 75Y the 75Y Lake Tr be casino are effective—

support the sino, with at least 48% of voters *much less likely* to support the casino based on e 78% tement. Generally speaking, our past research indicates that message statements that garner at least 35% *much more* or *much less* sentiment are powerful messages.

The most effective messages in moving people to oppose the casino refer to the social implications on the community (divorce, crime, etc.) and past improper conduct by the casino developer. Three quarters (76%) of the respondents indicate they are less likely (much less or somewhat less) to support the casino after hearing these two statements. The following table indicates the percentage of voters who are less likely to support the casino after hearing the statements.

LESS LIKELY TO SUPPORT THE CASINO	Total	Allegan	Kzoo	Kent	Ottawa
result of improper conduct, Station Casino Inc., the developer and operator of the proposed tribal casino, recently paid more han $38 m llion in d mages and had their Missouri gamin license suspended	76%	249Y54%	175Y65%	76%	86%
National studies and statistics reveal that communities located within a 50 mile radius of a casino have significantly higher crime rates, divorce rates, personal bankruptcies, and gambling addictions	76%	52%	75%	76%	84%
An independent economic study estimates that the proposed casino will result in the loss of two jobs in surrounding communities for every one job created in Allegan County	73%	48%	72%	73%	84%
An independent economic impact study showed that while Allegan County would benefit from the proposed casino with new jobs and economic activity the [illegible] surrounding counties of Kent, Kalamazoo, Ottawa, and Barry would collectively lose 131 million dollars annually du 532Y31X obs and ec nomic activity	[illegible]	[illegible]	[illegible] less or 3%	[illegible]	0%
-related issues at the workplace	70%	48%	70%	70%	81%
The Gun Lake Tribe estimates an annual economic impact of 20 million dollars fr [illegible] percent of tax revenue to state and local government	58%	39%	659 1%	57%	72%
	51%	963 75%	45%	1%	64%

[illegible] even the positive messages of the casino's e[illegible]mpact draw a majority of [illegible]-county area saying they would be less likely to support the casino.

Alternatively, the most positive message making a case for the casino refers to the potential creation of new jobs (48% more likely to support the casino). Additionally, some Western Michigan voters indicate support of the casino project after learning about the financial impact on the local economy (41% more likely to support).

It is interesting to note, however, that at least 38% of voters are much less likely to support the casino even when they hear the positive statements making a case for the casino. As the table below shows, Allegan county residents are overall more likely to support the casino project and Ottawa residents are least likely to support the casino project.

More Likely to Support the Casino					
2789YA	Total	Allegan	Kzoo	Kent	Ottawa
The Gun Lake [illegible]ribe says he propose[illegible] casino w[illegible]ate 4,300 jobs	48%	63%	55%	48%	36%
The Gun Lake Tribe estimates an annual economic impact of 20 million dollars from indirect sales of goods and services in addition to the negotiated percent of tax revenue to state and local government	41%	61%	47%	42%	28%
Some experts say West Michigan manufacturing will become less competitive and suffer economic losses due to lost productivity from increased absenteeism, tardiness, and gambling-related issues at the workplace	27%	44%	26%	28%	17%
An independent economic impact study showed that while Allegan County would benefit from the proposed casino with new jobs and economic activity the surrounding counties of Kent, Kalamazoo, Ottawa, and Barry would collectively lose 131 million dollars annually due to lost jobs and economic activity	24%	56%	25%	22%	15%
An independent economic study estimates that the proposed casino will result in the loss of two jobs in surrounding communities for every one job created in Allegan County	24%	50%	23%	23%	15%
National studies and statistics reveal that communities located within a 50 mile radius of a casino have significantly higher crime rates, divorce rates, personal bankruptcies, and gambling addictions	22%	46%	21%	22%	15%
As a result of improper conduct, Station Casino Inc., the developer and operator of the proposed tribal casino, recently paid more than $38 million in damages and had their Missouri gaming license suspended	20%	41%	21%	20%	11%

INFORMED ASSESSMENT OF PUBLIC SENTIMENT TOWARD THE GUN LAKE CASINO PROJECT

To determine if the statements had an effect on likely voters in Western Michigan, we again asked them to indicate if they support or oppose the Gun Lake Casino project after they responded to the statements. As the following table indicates, exposure to the statements about the casino is very effective at increasing opposition to the casino. Specifically, the percentage of voters opposed to the casino increases from 52% in the benchmark indicator to 64% in the post-information assessment. While opposition to the casino increases, support falls from 37% in the benchmark indicator to 33% in the second assessment. The end result is a tremendous swing, increasing the opposition gap from fifteen percentage points to thirty one percentage points.

The statements on improper conduct by Station Casino, Inc. and the social impacts (divorce, crime, etc.) are the most powerful with initially undecided votes. Initial undecided voters are more likely Kent residents, earn less than $50,000 annually, Republicans, and conservatives. These initially undecided voters break 58% oppose, 22% support, and 20% still undecided on the informed assessment.

The table below illustrates the change from the pre-test to the post-test, highlighting the specific differences by county.

SUMMARY OF PUBLIC SENTIMENT ON THE CASINO					
	Total	Allegan	Kalamazoo	Kent	Ottawa
Initial Support	37%	50%	44%	37%	26%
Initial Oppose	52%	37%	46%	51%	66%
Benchmark Opposition Gap	+ 15	- 13	+ 2	+ 14	+ 30
Informed Support	33%	50%	40%	32%	23%
Informed Oppose	64%	44%	59%	64%	75%
Post-Assessment Opposition Gap	+ 31	- 6	+ 19	+ 32	+ 52

More than half of Western Michigan voters (52%) remained consistently opposed to the casino from the initial benchmark rating to the second assessment. Those voters who are consistently opposed to the casino are most likely to be:

- Females aged 35 +
- Ottawa County residents
- Less than $30,000 HH income

- Republicans
- Conservatives

Conversely, three-in-ten (31%) Western Michigan voters are consistently supportive of the casino. The voters who are consistently supportive of the casino are most likely to be:

- Allegan County residents
- Men 18-54 years old
- HH income of $75,000 or more
- Democrats
- Independents
- Moderates
- Liberals

In total, fifteen percent of Western Michigan voters became more opposed to the casino as a result of listening to the statements. These individuals are receptive to messages that explain why the casino should be opposed. The voters who are more opposed to the casino after responding to the statements are females between the ages of 35-54 and residents of Kent and Kalamazoo Counties.

GOVERNOR NEGOTIATION

Western Michigan voters were asked if Governor Granholm should negotiate a compact for the proposed tribal casino or not negotiate and stop the casino. The strong majority of voters (59%) say Governor Granholm should not negotiate with the tribe compared to 36% who believe she should.

Those most likely to believe Governor Granholm should not negotiate with the tribe are most likely to be: women (35+ years old), Ottawa County residents, Republicans, and conservatives. Conversely, those who want the governor to negotiate a compact for the casino are most likely to be: young men, Allegan County residents, Democrats, Independents, moderates and liberals.

GOVERNOR NEGOTIATE A COMPACT?					
	Total	Allegan	Kalamazoo	Kent	Ottawa
Negotiate with the tribe	36%	54%	40%	35%	28%
Not negotiate and stop the casino	59%	44%	53%	60%	71%
Don't know/Refused	4%	2%	7%	5%	2%

A Response to "A Critique of *Market and Economic Impacts of a Tribal Casino in Wayland Township, Michigan* by Anderson Economic Group"

by: Patrick L. Anderson, Principal

May 3, 2005

We recently received and reviewed "A critique of *Market and Economic Impacts of a Tribal Casino in Wayland Township, Michigan* by Anderson Economic Group," which was authored by Mr. Jonathon B. Taylor, and dated April 2004, though just recently released to the media.

Our review of this document was brief, for reasons that will be obvious when we describe its contents. Our observations follow.

Contents of the Taylor "Critique" Document

The majority of the content consisted of general advocacy of Indian Gaming. Mr. Taylor has spent some time working on behalf of Indian Gaming, and some time studying it. He apparently feels that any analysis that does not advocate Indian Gaming is suspect and contrary to fact, or at least to his opinion.

A smaller portion consisted of what could be called a polemic against our report. By "polemic," I mean repeated denunciation without providing a factual basis. This is clear from the choice of words, and from the lack of specifics.

The smallest portion consists of an actual critique of our study. We discuss this below.

No Actual Economic Analysis in Taylor Document

No part of the Taylor document includes a market study, economic impact study, or projections for revenue, employment, tax revenue, or other variables important to the community. It appears from the press clip we received from the April 21, 2005 *Kalamazoo Gazette* that such content was promised in press briefings arranged by proponents of the casino. The *Gazette* story even stated "the economic impact of a casino in the West Michigan area would likely be substantial, results of another study released at the [Kalamazoo] chamber this morning indicate." However, such content was missing from the document we reviewed.

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Response to Taylor Advocacy

As noted above, much of the Taylor document was an advocacy essay for Indian Gaming. This requires no comment on our part, as our report did not advocate for or against Indian Gaming. To the extent this advocacy essay was included in a "critique" document, it was done so in a misleading and incorrect manner.

Mr. Taylor has written a number of previous reports, all of which appear to support Indian Gaming. There is nothing wrong with supporting or opposing Indian Gaming, but there is something unsettling about a frequent and apparently professional advocate for Indian Gaming presuming to write an independent analysis.

Response to Taylor Critiques

To the extent the Taylor document includes actual criticism of our report findings or methodology, we respond below:

1. *First criticized finding does not exist in AEG report*

   The very first finding in the executive summary of the Taylor document criticizes our report for finding "shrinkage" in the economy. This is restated on page 3 as characterizing our report as saying "shrink the Michigan economy and destroy jobs."

   One would presume this would have been supported by a specific reference to a sentence, table, or paragraph in our report that states there would be "shrinkage" in some economic variable, in some geographic area. However, reviewing page 4-6, which are the pages cited in the Taylor document, reveals no use of the terms "shrink" or "destroy." Instead, the tables on that page show, for example, a $97 million *benefit* to Allegan County, and a reduction in earnings of $49 million in Kent County and $4 million in Kalamazoo.

   This is not "destroying" or "shrinking," this is shifting expenditures from businesses in one area to businesses in the other. As this is the economic motivation for the casino, it is difficult to understand how such a finding can be "contrary to common sense" or "against the grain." Simply put, if we were incorrect in this finding—if investors didn't believe people would travel there and spend their money—there would be no reason to build the casino!

2. *Criticism of Competitive Analysis Contrary to Basic Economics*

   Mr. Taylor criticizes in inflammatory terms ("wholly ungrounded," page 13; "flimsy," page 10; "garbage-in, garbage-out," page 2 and elsewhere) our use of market areas to analyze the likely effects of the proposed casino, and the assumption that there exists competition for consumer dollars between gaming attractions and other types of expenditures. However, the most basic law of economics is that consumers choose to spend their money on the goods and services they desire the most--and therefore choose not to spend the same dollars on something else. Incredibly, Mr. Taylor rejects this line of reasoning (at least for Indian Gaming) entirely:

   > "The cornerstone of the AEG forecast is the modeling of competition between the Wayland facility and other spending opportunities in Michigan (including casinos). If this component of the forecast is incorrect (it is), the whole structure crumbles (hence the deviation from common sense and systematic research)." [Taylor, page 10]

   At least here Mr. Taylor accurately captured our analysis. We assumed that consumers in Michigan could only spend their earnings once; we further assumed they would choose the

goods and services (including casino gaming) on which to spend their money. This means casinos compete with other venues.

As Mr. Taylor states, if this was not true, our entire analysis would be suspect. It would also mean that the last 200 years of Economics was wrong, and that every single microeconomics textbook should be discarded. It would mean we could all stop working, and simply spend the money we have on as many things as we want, without worrying about it running out. It's a fun concept, but it is not an economic critique.

3. *Criticism of Market Area Competitive Analysis Contrary to Taylor's Own Sources*

The use of market areas in our report--criticized in severe terms by Taylor (e.g. "fatally unreliable," page 10)--is not only consistent with the best professional practices, it is also the basis for research published by one of the authors cited by Mr. Taylor: W. E. Cummings. A quick Internet check confirmed that this firm used a very similar methodology in Iowa, although they called the areas "market catchement areas" rather than "market areas." (The report is at: http://www3.state.ia.us/irgc/Cummingsexhibits1-1.pdf.)

4. *One Valid "Criticism": Approximation Necessary to Estimate Location Effects*

The only valid, specific methodological critique we could find in Taylor's document appears in a figure illustrating the difference between a theoretical smooth curve and a stair-step approximation of such a curve. Certainly, stair-step approximations of curves are approximations of the curve, and it would be preferable--if possible--to use an exact curve.

However, it is not possible to do so, as data on consumer locations and income are aggregated by census tracts and other devices that form stair-step approximations. Therefore, as is amply evident in our report, we used an approximation. On a technical mathematical level, we note that the fundamental derivation of the area under a curve (the "Reimann Sum" and the "Reimann Integral") in Calculus comes from successive stair-step approximations to a curve.

5. *No Finding in Our Report Against Local Benefits of Indian Gaming*

Mr. Taylor repeatedly argues that Indian Gaming has benefited the local economies in other areas. He cites (and we did not check) a handful of sources that he says support this. They may support it; but we do not contradict it. Indeed, we found local benefits to the proposed casino. Thus, the advocacy essay serves no point in a "critique" document, and appears to exist only to motivate the unfortunate and inflammatory statements about our work.

Post-Analysis Observations

Given that our study was completed some two years ago, we acknowledge that economic and demographic shifts may not have occurred as assumed, and therefore advise against interpreting our results as matter-of-fact. However, our observation of the economy and demography of Southwest Michigan over the last two years is consistent with what we would have expected, and in many ways current trends only strengthen our findings, and even increase the negative impact that the proposed casino would have on the regional economy.

Development and revitalization efforts in two of the regions core cities, Grand Rapids and Kalamazoo, have strengthened. Work is underway in Kalamazoo on a $25 million project that will feature a 14 screen cinema, residential units, and 20,000 square feet of retail space. The Grand Rapids downtown has also continued to develop, expanding its entertainment district, and the

number of bars and restaurants available to citizens. If built, the Wayland Casino would certainly compete with these venues.

We also note that the region's economy, as well as the Michigan economy as a whole, has not grown as fast as the nation's. Unemployment remains among the highest in the nation, and many of the region's good paying manufacturing jobs have disappeared. Discretionary spending will suffer as a result, shrinking the market available to all entertainment providers, including casinos. Given this, the actual impact of the casino may be less than in a strong economy, both for good (less negative impact on region and state), and for bad (fewer jobs created and less tax revenue produced).

Conclusion

It is really unfair to call the Taylor document a "critique" of our study. It is, first, an advocacy essay for Indian Gaming; second, a polemic against any analysis that does not support it; and third, wholly unfounded and unnecessarily inflammatory in its statements about our work. A reader might have expected specific analysis contradicting our findings; instead, the reader finds inflammatory rhetoric. There are certainly important issues to be discussed regarding the proposed casino, but such an approach sheds no light and unnecessarily offends.

O L S H A N
O L S H A N G R U N D M A N F R O M E R O S E N Z W E I G & W O L O S K Y L L P

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June 8, 2005

BY FACSIMILE AND
OVERNIGHT COURIER

The Honorable John McCain
Chairman of the U.S. Senate Committee on Indian Affairs
241 Russell Senate Office Building
United States Senate
Washington DC 20510

Re: Empire Resorts, Inc.

Dear Senator McCain:

As general counsel to Empire Resorts, Inc. ("Empire Resorts"), it has come to our attention that on May 18, 2005, the United South and Eastern Tribes, Inc. ("USET") submitted a statement to the U.S. Senate Committee on Indian Affairs that contained a report prepared by the Oneida Indian Nation, dated May 13, 2005, entitled "Background on Developers involved in the Off-Reservation Land-into-Trust Proposals in New York State" (the "Oneida Report"). After having had a chance to review the Oneida Report and meeting with Empire Resorts, we would like to take this opportunity, on behalf of Empire Resorts, to formally respond to the numerous false and misleading accusations lodged against Empire Resorts and its affiliates in the Oneida Report.

Allegations of Existing Influence of Prior Management

On pages 2 and 3 of the Oneida Report, under the heading "Alpha Hospitality Executives Indicted for Bank Fraud," the Oneida Indian Nation sets forth a narrative of certain criminal acts that former officers and directors of Empire Resorts have either been convicted of or face indictment. This section then concludes with the statement that these individuals, at the end of 2004, retained a significant interest in Empire Resorts. As has been disclosed in numerous public filings by Empire Resorts with the Securities and Exchange Commission and the State of New York, each of Monty Hundley, Brett Tollman, Stanley Tollman, Sanford Freedman, James Cutler and Howard Zukerman have been convicted of or indicted for various acts of tax and bank fraud and were formerly affiliates of Empire Resorts; however, these individuals have no existing direct or indirect connection to Empire Resorts or any of its affiliates, nor do they individually, or collectively, hold a material interest in Empire Resorts.

460203-1

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On December 12, 2002, in an effort to eliminate any connection between Empire Resorts and these individuals, Empire Resorts, pursuant to a recapitalization agreement, (i) issued an aggregate of 336,496 shares of Series E preferred stock to each of (a) Bryanston Group, Inc., then Empire Resorts' largest stockholder (controlling 48% of Empire Resorts' voting stock) and controlled by Monty Hundley, Stanley Tollman, Brett Tollman and Beatrice Tollman (Monty Hundley's wife and Brett Tollman's mother), (b) Stanley Tollman and (c) Monty Hundley, in full satisfaction of an outstanding note and as deferred compensation, (ii) issued 1,394,200 shares of Series E preferred stock to Bryanston Group, Inc. in exchange for Bryanston Group, Inc.'s voting membership interest and preferred capital account in Catskill Development, L.L.C., then Empire Resorts' principal asset and the past parent of Monticello Raceway, and (iii) received a three-year option to redeem all or any portion of (a) the Series E preferred stock issued to Bryanston Group, Inc., Stanley Tollman and Monty Hundley and (b) Bryanston Group, Inc.'s 2,326,857 shares and Beatrice Tollman's 66,000 shares of Empire Resorts' common stock at a price of $2.12 per share. During this three-year redemption period, Bryanston Group, Inc. and Beatrice Tollman also granted Robert A. Berman, Empire Resorts' former chief executive officer, an irrevocable proxy to vote their shares of common stock, with full powers of substitution and revocation. On January 12, 2004, Empire Resorts redeemed all of Bryanston Group, Inc.'s and Beatrice Tollman's 2,326,857 and 66,000 shares of Empire Resorts' common stock, respectively, in exchange for a promissory note that was subsequently paid in full on July 26, 2004. Consequently, since July 26, 2004, Empire Resorts has had no obligations to any of Monty Hundley, Brett Tollman, Stanley Tollman, Sanford Freedman, James Cutler, Howard Zukerman or any of their affiliates, and the only interests Empire Resorts is aware of that any of these persons hold in it are shares of Series E preferred stock that constitute approximately 1.5% of Empire Resorts' current voting stock. While the Oneida Indian Nation characterized this holding of 1.5% as "a significant number of shares in Empire," this figure represents a nominal holding in what is a widely-held, publicly-traded company.

Thus, as described above, none of the individuals who were either indicted or convicted of tax and/or bank fraud have had any tangible influence or control over Empire Resorts since December 12, 2002, and Empire Resorts has gone through great effort and expense to separate itself from these individuals. Empire Resorts has also fully cooperated with the U.S. Attorney's office in all of Empire Resorts' dealings with either Monty Hundley, Stanley Tollman, Brett Tollman, Beatrice Tollman or Bryanston Group, Inc. Notwithstanding these facts, it should be pointed out that none of the tax and/or bank fraud allegations that these individuals have either been accused of or convicted of bear any relationship to their involvement with Empire Resorts. To the contrary, Empire Resorts and Monticello Raceway Management, Inc., Empire Resorts' wholly-owned subsidiary, are not under any investigation and became licensed New York State video lottery gaming agents in 2004 and have had their respective licenses to conduct pari-mutuel wagering repeatedly renewed by the New York State Racing and Wagering Board since 2002.

Allegations Against Racino Employees

On page 5 of the Oneida Report, under the heading "Racino Employees Currently Under Investigation," the Oneida Indian Nation states that high level managers of Mighty M Gaming, the video lottery terminal division of Empire Resorts, including the director of security and the director of purchasing, were under suspension for their alleged engagement in a kickback scheme with food service providers.

This description of the events that transpired at Mighty M Gaming with respect to this matter is both highly misleading and incomplete. Specifically, on February 2, 2005, the Director of Purchasing and Security, Ted Nigro, and his secretary, Melissa Vernola, were observed by another employee leaving Mighty M Gaming's premises with property believed to belong to Mighty M Gaming. At the same time, an internal investigation had begun concerning preferences and favoritism toward certain vendors by the Purchasing Department and allegations surfaced that the Surveillance Department of Mighty M Gaming had failed or was delinquent in reporting certain incidents to the New York State Police. Upon being made aware of these occurrences and allegations, Robert A. Berman, the chief executive officer of Empire Resorts at that time, immediately suspended each of Ted Nigro, Melissa Vernola and William DiGennaro, the Director of Surveillance, with pay, pending an independent investigation. On February 15, 2005 the Audit Committee of the Board of Directors of Empire Resorts engaged Morrison & Company, P.A. ("Morrison"), an unrelated third party, to perform an audit of Mighty M Gaming's operations with respect to these allegations. The Audit Committee also directed Morrison to work with the New York State Police in its investigation of the above issues.

On March 29, 2005, Morrison delivered a report to Empire Resorts that concluded, among other things, that:

- Mr. Nigro and Ms. Vernola did not remove items owned by Mighty M Gaming from the business premises on February 2, 2005. Mr. Nigro purchased the items he removed from the premises and provided receipts to prove that he paid for these purchases personally.

- There is no evidence of improper relationships or preferential treatment given to vendors by Mr. Nigro. Additionally, Morrison found no proof or indication of a kickback scheme with any vendors.

- The failure or delay of the Surveillance Department to report incidents to the State Police was largely due to: (i) a lack of communication between the Surveillance Department and the State Police and (ii) a lack of clear protocol for communication between the State Police and the Surveillance Department.

- During its investigation, no evidence of specific criminal or improper activity pattern or indication of such activity was apparent. Moreover, all questions that arose were answered to Morrison's satisfaction and Morrison found the actions of Mighty M Gaming personnel to be within a range of normal business activity.

A copy of the full report prepared by Morrison and summarized above is attached as Exhibit A to this letter.

Accusation of Link between Gambino Crime Family and Board

On page 5 of the Oneida Report, under the heading "Empire Chairman's Casino Linked to Gambino Family Gambling Operations," the Oneida Indian Nation states that in January 2005 the New York Racing Association announced it would end its broadcasting and betting arrangement with the Coeur d'Alene Casino, which is run by David Matheson, a member of Empire Resorts' Board of Directors, in connection with an 88-count indictment against several members of the Gambino crime family. The Oneida Report then goes on to imply that the Coeur d'Alene Casino knowingly took part in a tax fraud scheme with respect to how it received off-track bets and subsequently paid winnings. In reality, neither the Coeur d'Alene Casino nor Mr. Matheson are mentioned in the indictment referenced by the Oneida Indian Nation. In addition, we are unaware of either the Coeur d'Alene Casino or Mr. Matheson ever being accused of any acts of impropriety. Rather, the Coeur d'Alene Tribe has for twelve years operated a highly regulated gaming operation, and Mr. Matheson has served as its chief executive officer. Moreover, prior to holding this position for the Coeur d'Alene Tribe, Mr. Matheson served in the Central Office of the Bureau of Indian Affairs, holding a position of significant authority and responsibility which required that Mr. Matheson undergo extensive FBI background checks. Mr. Matheson has been granted top secret clearance as a result of those checks, and has subsequently undergone numerous other background checks, as required of his position in the Coeur d'Alene Tribe's gaming enterprise. Mr. Matheson's record and reputation are impeccable.

Why the New York Racing Association decided to terminate its relationship with the Coeur d'Alene Tribe is unclear to the Coeur d'Alene Tribe and Empire Resorts. In addition, it is the New York Racing Association, not the Coeur d'Alene Tribe nor Mr. Matheson, that in 2003 was investigated by the Office of the Attorney General of the State of New York, the New York State Police, the New York State Office of the Inspector General and the United States Attorney's Office for the Eastern District of New York for a multitude of crimes such as money laundering, illegal gambling, loan sharking and tax fraud. In addition, notwithstanding the decision by the New York Racing Association to suspend its relationship with the Coeur d'Alene Casino, the Coeur d'Alene Casino continues to receive simulcast horseracing signals from racetracks in California and 11 other states. To restore its relationship with the New York Racing Association, please note that Mr. Matheson, on behalf of the Coeur d'Alene Casino, has offered (i) to hire and pay for a neutral, third party to verify the identity of all telephone bettors and

(ii) to undergo annual reviews by an outside auditing firm to prove that its strict regulatory governance rules are diligently observed.

Accusation that Empire Board Members Conspired with Marcos Family

On page 5 of the Oneida Report, under the heading "Empire President and Directors Hid Marcos Family Funds," the Oneida Indian Nation states that Ralph Bernstein and Joseph Bernstein, each members of Empire Resorts' Board of Directors, and Morad Tahbaz, Empire Resorts' former president and a former member of its Board of Directors, operated a real estate company called New York Land Company that knowingly purchased $181 million in New York commercial real estate for Ferdinand Marcos and his family, hiding the purchases through a series of off-shore front companies to avoid U.S. taxes. This accusation constitutes a gross mischaracterization of the actions taken by Messrs. Bernstein, Bernstein and Tahbaz in this case. First, Mr. Tahbaz was never accused by any governmental agency, entity or court of any wrongdoing, whatsoever. Second, while the Oneida Indian Nation would like to characterize Joseph and Ralph Bernstein as being catalysts for the U.S. tax fraud that Ferdinand and Imelda Marcos were eventually charged with, it was Joseph and Ralph Bernstein who assisted the U.S. government's investigation, providing key evidence of the Marcoses' ownership of various properties in New York City.

Specifically, while Joseph and Ralph Bernstein were never accused of any wrongdoing in connection with the U.S. government's investigation of Ferdinand and Imelda Marcos, they were subpoenaed to testify before the House Foreign Affairs Subcommittee on Asian and Pacific Affairs in February 1986, at which time Joseph and Ralph Bernstein declined to testify, leading to a certification of contempt by the House of Representatives (Resolution 384, 99th Cong. 2nd Sess.). Subsequently, however, on April 9, 1986, at their request, Joseph and Ralph Bernstein appeared before the Subcommittee, at which time they provided documents and answered all of the Subcommittee's questions, without exception. Following this testimony, then Representative Steven Solarz, Chairman of House Foreign Affairs Subcommittee on Asian and Pacific Affairs, was cited in the Wall Street Journal (Eastern Edition) on April 10, 1986 as describing the testimony of Joseph and Ralph Bernstein as a breakthrough for investigators, as it proved that the Marcoses did, in fact, control a substantial real estate empire in the New York area (as such evidence had previously proved elusive to federal investigators). In addition, on May 22, 1986, Representatives Dante B. Fascell, Chairman of the Committee on Foreign Affairs, Solarz, William S. Broomfield, Ranking Minority Member of the Committee on Foreign Affairs, and Jim Leach, Ranking Minority Member of the Subcommittee of Asian and Pacific Affairs each signed a letter addressed to Joseph E. DiGenova, U.S. Attorney for the District of Columbia, requesting that the cooperation and testimony of Joseph and Ralph Bernstein on April 9, 1986 be taken into account in the pending grand jury proceedings with respect to the February 1986 contempt charge cited above. On June 9, 1986, Mr. DiGenova informed Joseph and Ralph Bernstein that the United States District Court Grand Jury that had been considering the February

1986 Contempt of Congress citation formally voted on June 5, 1986 not to issue an indictment with respect to that matter.

With respect to the Oneida Indian Nation's specific accusation that Joseph and Ralph Bernstein helped the Marcos family shelter real estate purchases from taxes, that is nothing more than a brief excerpt of the testimony that Joseph and Ralph Bernstein provided the House Foreign Affairs Subcommittee on Asian and Pacific Affairs on April 9, 1986. Joseph Bernstein explained how four of the New York City properties beneficially owned by the Marcoses were owned by foreign corporations, and that each foreign corporation was in turn held by three Panamanian corporations, each of which held a one-third interest. He further explained that the use of Panamanian firms shielded the Marcoses from New York state's gains taxes, which apply when someone owns more than 50% of an asset. As opposed to the image attempted to be created by the Oneida Indian Nation, Joseph and Ralph Bernstein did not state that they assisted the Marcoses in acquiring real estate in New York City as part of an illegal scheme.

Joseph and Ralph Bernstein have been subsequently investigated for taking part in any wrongdoing with respect to their relationship with Ferdinand Marcos and his family. Specifically, Joseph Bernstein, a licensed attorney in the State of New York, was formally investigated by the Departmental Disciplinary Committee of the New York Supreme Court, Appellate Division, First Judicial Department, in connection with his representation or involvement with the former government of the Philippines, Ferdinand and Imelda Marcos, the New York Land Company or related entities. On June 2, 1988, the Departmental Disciplinary Committee sent Joseph Bernstein a letter stating that such committee determined that there was no basis for taking action against Joseph Bernstein and, therefore, the matter was closed. In addition, more recently, each of Joseph and Ralph Bernstein has received licenses to be material beneficial owners of Monticello Raceway by the New York Racing and Wagering Board, which licenses have been renewed on an annual basis for numerous years.

In support of the above rebuttals, attached as Exhibit B are copies of the correspondence referenced above.

Mohegan Tribe Leaves USET

Empire resorts would also like to inform you that in June 2005, the Mohegan Tribal Council, the governing body of the Mohegan Tribe, voted to withdraw from USET and demanded an apology from its president, Keller George of the Oneida Indian Nation, after the Mohegan Tribe read Mr. George's remarks about the Mohegan Tribe and their development partner, Trading Cove Associates, in testimony Mr. George provided to the New York State Assembly, which testimony was substantially similar to the testimony USET provided to your committee on May 18, 2005.

Conclusion

In conclusion, we find the Oneida Report to be grossly misleading and laden with potentially actionable libelous claims. Moreover, we find it to be a waste of your time and ours to continue to have to refute these claims that the Oneida Indian Nation has now made before your committee, New York State authorities and the media. We hope that after reading this letter and the attached documents you will disregard the Oneida Report and view it as nothing more than an attempt to prevent Empire Resorts, or anyone else, from developing a Native American casino in the State of New York that might compete with the Turning Stone Resort & Casino, a Native American casino resort owned and operated by the Oneida Indian Nation. Please feel free to contact me should you have any questions or comments with respect to this letter.

Supreme Court, Appellate Division
First Judicial Department

Departmental Disciplinary Committee

MICHAEL A. GENTILE
Chief Counsel

HOWARD BENJAMIN
First Deputy Chief Counsel

SARAH DIANE McSHEA
Deputy Chief Counsel

ALAN S. PHILLIPS
JEANNE C. O'ROURKE
CLAUDIO B. BERGAMASCO

ROBERT P. WALSH
PATRICIA SMILLIE-SCAVELLI
SUSAN BROTMAN
MICHAEL D. SARNER
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ANDRAL N. BRATTON

41 MADISON AVENUE
NEW YORK, N.Y. 10010

(212) 885-1000

KIM D. RINGLER
Special Trial Counsel

November 6, 1986

PERSONAL AND CONFIDENTIAL

Joseph Bernstein, Esq.
29 West 57th Street
New York, New York 10019

Re: Docket No. 0670/86

Dear Mr. Bernstein:

It has come to our attention that you have been named as a party in litigation arising out of your representation or involvement with the former government of the Phillipines, Ferdinand and Imelda Marcos, and the New York Land Co. or related entities.

As a preliminary step in determining whether you may have committed professional misconduct in connection with any of these lawsuits, kindly send to my attention copies of the pleadings (complaints, answers, counterclaims, etc.) in all such suits whether or not they are currently pending. Please also advise me of the status of each such suit.

In addition, kindly provide a statement addressing the contempt of Congress charges voted against you, including a chronological account of the episode, its apparent resolution, and your explanation of your conduct leading up to the contempt citation.

Please provide these materials to me within twenty days from the date hereof.

You are advised that an unexcused failure to reply to this complaint constitutes "professional misconduct" independent of the merits of the complaint and will be treated accordingly by the Committee.

Very truly yours,

Kim Ringler

Kim D. Ringler

KDR:md

Supreme Court, Appellate Division
First Judicial Department

Departmental Disciplinary Committee

MICHAEL A. GENTILE
Chief Counsel

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41 MADISON AVENUE
NEW YORK, N.Y. 10010
(212) 685-1000

June 2, 1988

PERSONAL AND CONFIDENTIAL

Joseph Bernstein, Esq.
29 West 57th Street
New York, New York 10019

Re: Docket No. 0670/86

Dear Mr. Bernstein:

This is to advise you that following an investigation of the complaint proffered against you, the matter was submitted to the Committee for disposition.

The Committee has determined that there is no basis for taking action and, therefore, the matter has been closed.

Very truly yours,

Michael A. Gentile

MAG:DTB:md
cc Sheila Ginsberg Riesel, Esq.

DANTE B. FASCELL, FLORIDA, CHAIRMAN

LEE H. HAMILTON, INDIANA
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CHRISTOPHER H. SMITH, NEW JERSEY
CONNIE MACK, FLORIDA
MICHAEL DEWINE, OHIO
DAN BURTON, INDIANA
JOHN MCCAIN, ARIZONA

JOHN J. BRADY, JR.
CHIEF OF STAFF

Congress of the United States
Committee on Foreign Affairs
House of Representatives
Washington, DC 20515

May 22, 1986

The Honorable Joseph E. DiGenova
U.S. Attorney for the District of Columbia
3rd and Constitution, N.W.
Washington, DC 20001

Dear Mr. DiGenova:

On February 27, 1986, the House of Representatives adopted House Resolution 384, 99th Cong., 2d Sess., certifying the report of the contempts of Congress by Ralph and Joseph Bernstein, for them to be proceeded against in the manner provided by 2 U.S.C. SS 192 and 194. As detailed in that report, the Bernsteins refused to answer questions of the Subcommittee on Asian and Pacific Affairs regarding investments in the United States of Ferdinand and Imelda Marcos.

Subsequent to that certification, the Bernsteins asked to appear before the Subcommittee again in order, this time, to answer its questions. While the contempts at the original hearing were completed criminal actions which cannot be purged, the Subcommittee agreed to allow the Bernsteins to appear, and to notify the United States Attorney formally of such an appearance for his consideration in connection with the contempt certification. On April 9, 1986, the Bernsteins appeared before the Subcommittee, provided documents, and answered all of the Subcommittee's questions, without exception. We think the willingness ofthe Bernsteins to cooperate with our Committee should be taken into account in the grand jury proceedings.

We are enclosing a copy of the transcript of the April 9 hearing, and request that it be brought to the attention of the grand jury. In addition, we are providing for your information a copy of the civil case deposition that was taken in New York, in which a number of the same questions posed at the Subcommittee hearing were asked.

Please don't hesitate to contact us if we can be of any further assistance to you.

Sincerely,

DANTE B. FASCELL
Chairman
Committee on Foreign Affairs

WILLIAM S. BROOMFIELD
Ranking Minority Member
Committee on Foreign Affairs

U.S. Department of Justice

United States Attorney

District of Columbia

Judiciary Center
555 Fourth St. N.W.
Washington, DC 20001

June 9, 1986

The Honorable Dante B. Fascell
Chairman
Committee on Foreign Affairs
2354 Rayburn House Office Building
Washington, D.C. 20515

The Honorable William S. Broomfield
Ranking Minority Member
Committee on Foreign Affairs
2306 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Stephen J. Solarz
Chairman
Subcommittee on Asian and Pacific Affairs
1536 Longworth House Office Building
Washington, D.C. 20515

The Honorable Jim Leach
Ranking Minority Member
Subcommittee on Asian and Pacific Affairs
1514 Longworth House Office Building
Washington, D.C. 20515

Dear Gentlemen:

This is to advise you that the United States District Court grand jury which had been considering the February 27, 1986 Contempt of Congress certification involving Ralph and Joseph Bernstein formally voted on June 5, 1986, not to issue an indictment in this matter.

The grand jury heard testimony from various witnesses commencing on March 11, 1986. The last matters considered by the grand jury were the contents of your May 22, 1986 joint letter and its attachments.

We are pleased to have had the opportunity to work with Congressman Solarz and distinguished House Counsel on this matter.

Very truly yours,

JOSEPH E. DIGENOVA
United States Attorney
District of Columbia

cc: Robert P. Watkins, Esquire
Counsel for Messrs. Ralph and Joseph Bernstein

INVESTIGATIVE AUDIT REPORT

EMPIRE RESORTS, INC.

MIGHTY M GAMING

MORRISON & COMPANY
Certified Public Accountants

I. INTRODUCTION

Empire Resorts, Inc. (Empire) operates Mighty M Gaming at Monticello Raceway and Monticello Raceway in Monticello, New York. Monticello Raceway is a harness racetrack and Mighty M is a video gaming facility located in the Raceway grandstand. Empire operates the video gaming facility through Monticello Raceway Management Inc., a wholly owned subsidiary of Empire Resorts, Inc., d/b/a Mighty M Gaming (Mighty M). Following the approval of Monticello Raceway as a site for video gaming machines by the New York State Lottery Commission, Mighty M made $24,000,000 in renovations to the raceway grandstand. In early 2004, Empire began hiring staff in preparation for the opening of video gaming operations. On June 30, 2004, Mighty M opened Mighty M Gaming at Monticello Raceway.

New York State Lottery Regulations require that a video gaming facility maintain a Surveillance Department to conduct a 24-hour video surveillance of virtually the entire facility. The New York State Police serve as the investigative and enforcement arm of the New York Lottery Commission (Lottery Commission). In this capacity, they maintain offices at the Mighty M premises and monitor the same surveillance cameras as Mighty M's Surveillance Department.

On the afternoon of February 2, 2005 at approximately 3:30 pm, the Director of Purchasing and Security, Ted Nigro, and his secretary, Melissa Vernola, were observed by another employee leaving Mighty M's premises with property believed to belong to Mighty M. This observation was reported to the senior management of Empire, who requested a copy of the surveillance tape from the Surveillance Department to determine if Mighty M property had been removed from the premises in violation of company regulations. When the Surveillance Department failed to provide a copy of the tape in a timely manner, senior management went to the State Police office to observe the incident on the State Police tape. After reviewing the tape, Robert Berman, the CEO of Empire, suspended Mr. Nigro, Ms. Vernola and William DiGennaro, the Director of Surveillance, with pay, pending an independent investigation of the incident.

On February 15, 2005, the Audit Committee of the Board of Directors of Empire engaged Morrison & Company, P.A. to perform an internal investigation of this incident and to complete an investigation of the Mighty M Purchasing Department begun by Michael Steinhauer, the former Director of Internal Audit for Empire. The Audit Committee also directed our Firm to work with the New York State Police in their investigation of the above issues. Therefore, we investigated additional allegations made by the State Police concerning the operations of the Purchasing Department and the Surveillance Department. Specifically, we were engaged to investigate the following issues:

A. The removal of items from the premises on February 2, 2005 by Mr. Nigro and Ms. Vernola.

B. Alleged improprieties within the Purchasing Department, including:

   a. Alleged preference and favoritism toward certain vendors, including:

      i. Maines (food purveyor), and the possible personal benefit to Mr. Nigro from his relationship to Maines;
      ii. Helga Designs (uniform sales);
      iii. Woodruff Specialties (specialty items).

   b. Credits from Maines to Mighty M for overcharges;

   c. Use of photocopied signatures to approve Purchase Orders.

C. Alleged failure or delay of the Surveillance Department to report certain incidents to the State Police including:

   a. Failure to report the theft of an electric generator from an electrical contractor working for Mighty M;

   b. Failure to report individuals smoking marijuana in the parking lot;

   c. Failure to report individual(s) pouring liquor into different bottles of the same brand;

   d. Failure to report an incident in which a floor attendant was bumped and injured on the job;

   e. Failure to report a Floor Ambassador going into the west cage unaccompanied by a representative of the Surveillance Department;

f. General procedures for reporting incidents to the State Police.

D. Mr. DiGennaro entering the warehouse with a key that had not been signed for.

E. Mr. Nigro's Monticello Raceway Employment Application and New York Gaming License Application.

F. Internal Audit of the Purchasing Department.

The procedures utilized in the performance of our investigation of the above allegations are detailed as an Appendix to this document.

II. SUMMARY

With regard to the allegations, our findings are as follows:

A. Removal of Mighty M Property by Mr. Nigro and Ms. Vernola:

We found that Mr. Nigro and Ms. Vernola did not remove items owned by Mighty M from the business premises on February 2, 2005. Mr. Nigro purchased the items he removed from the premises and provided receipts to prove that he paid for these purchases personally.

B. Purchasing Department:

We found no evidence of improper relationships or preferential treatment given to vendors by Mr. Nigro or the Purchasing Department. Additionally, we found no proof or indication of a kickback scheme with any vendors. With regard to photocopied signatures, we found that Mr. Nigro did, in fact, photocopy signatures to complete paperwork for purchases made largely around the time of the opening of Mighty M. We have been furnished no evidence to suggest that photocopied signatures were used for prospective purchases but, instead, were used to complete the documentation for prior requisitions. We found no evidence that photocopied signatures were used to approve purchases that were overpriced or made for the benefit of Mr. Nigro.

C. Surveillance Department:

The failure or delay of the Surveillance Department to report incidents to the State Police was largely due to a lack of communication between the Surveillance Department and the State Police and due to a lack of a clear protocol for communication between the State Police and the Surveillance Department.

D. Warehouse Key:

According to the State Police, lottery regulations provide that the Director of Surveillance, Mr. DiGennaro, should not control a key to the warehouse. He was required to sign a key out in order to enter the warehouse. In the instance in question, Mr. DiGennaro advised us that he borrowed a key from Mr. Nigro in order to look for items in the warehouse.

E. Mr. Nigro's Mighty M Employment Application:

Mr. Nigro provided us with legal documentation to explain why he failed to disclose a prior conviction on his Mighty M Employment Application. In essence, his prior conviction was expunged and he was, therefore, not required to disclose the prior conviction. He did disclose the conviction on the Gaming License Application he filed with the New York Lottery Commission in order to provide complete disclosure even though this disclosure was not required. In addition, he did not disclose a work permit he held on the Mighty M Application because the application only asked for gaming licenses. He did disclose the permit on the gaming license because that application specifically asked for work permits as well as gaming licenses.

F. Internal Audit of the Purchasing Department:

We found no evidence that Michael Steinhauer, the Director of Internal Audit at the time, performed a formal audit of the Purchasing Department.

III. FINDINGS

A. The removal of items from the premises on February 2, 2005 by Mr. Nigro and Ms. Vernola:

We reviewed e-mails and conducted interviews concerning the removal of the items from the Monticello Raceway premises on February 2, 2005. Based on this analysis, we understand that the following occurred. At approximately 3:30 p.m., Mr. Nigro left the employee entrance of the building with his secretary, Melissa Vernola, carrying a briefcase and several boxes. Mr. Nigro and Ms. Vernola stopped at the security checkpoint and had their bags inspected by Alisha Taylor, the security employee on duty at the time. Mr. Nigro advised that he had receipts proving that he purchased all items contained within his briefcase and the boxes carried out that day. Items included T-shirts, beads, two (2) King cakes and Moon Pies for a Mardi Gras party he was hosting that evening. Mr. Nigro advised that one of the King cakes and the other items were purchased from an individual named Kent Partsch, an employee of Woodruff Specialties. According to Mr. Nigro, he asked Mr. Partsch to pick up these items as a favor when Mr. Partsch purchased similar items for himself. These were not items carried by Woodruff Specialties. Mr. Nigro provided us with a copy of the check paid to Mr. Partsch for $50.00. A copy of the check is attached as Exhibit A. The second King cake was ordered from Paul's Pastry Shop (Picayune, Mississippi) for $35.95. We have a copy of Mr. Nigro's HSBC checking account bank statement, which shows a debit memo of the $35.95 (Exhibit B) and the Paul's Pastry purchase order forms from Mr. Nigro's e-mails (Exhibit C). Investigator Scileppi also faxed us a copy of a receipt from Kent Partsch showing the purchase of these items. Mr. Partsch had sent a copy of the receipt to Anthony Bruno of the Internal Audit Department, and Mr. Bruno provided a copy to Investigator Scileppi (Exhibit D). Mr. Nigro also indicated that he purchased balloons for a few dollars at a local Party City store. Mr. Nigro purchased all these items with his own money for the Mardi Gras party he held at his condominium complex on February 2, 2005. Individuals from Monticello Raceway attended the party, including Mr. DiGennaro, Mr. Delaney and Mr. Aro.

As Mr. Nigro and Ms. Vernola were leaving the Monticello Raceway premises, an individual was returning and observed them leaving with these items. This individual advised Ms. Guarino,

the Administrative Assistant in the Monticello Raceway Internal Audit Department, of what she had seen in view of the Company's policy that no one is permitted to leave the premises with food. Ms. Guarino advised Mr. Kaniewski and Mr. Berman, who were both on the premises that day, of what had occurred and requested a clip of the incident from surveillance.[1] The Director of Surveillance, Mr. DiGennaro, met with Ms. Guarino and advised that he was busy and asked if he could make the clip the following morning. Ms. Guarino approved the submission of the clip in the morning.

The following morning, Mr. DiGennaro first stopped at the bank on his way to work. When he arrived at work at approximately 10:00 a.m., he met with individuals from ADT who were at the Monticello Raceway facility to work on the surveillance cameras. When Mr. DiGennaro arrived at work, he had received several phone messages from Ms. Guarino but did not immediately return them. He then went upstairs to see Mr. Delaney to bring him down to view the clip.

Mr. DiGennaro brought Hector Vazquez, Assistant Director of Security, with him to Mr. Delaney's office. When Mr. DiGennaro met with Mr. Delaney, he stated that he was going to get Ms. Guarino to review the tape. In response, Mr. Delaney advised Mr. DiGennaro not to contact Ms. Guarino because he, Mr. Delaney, was handling this matter for the Empire Board of Directors. On the way to the surveillance office, Mr. DiGennaro, Mr. Vazquez, and Ms. Guarino passed Mr. Aro's office. Mr. Aro was on the telephone and declined to accompany them to review the tape.

According to Investigator Scileppi, Mr. Kaniewski and Mr. Berman had visited him at approximately 9:30 a.m. on February 3 and inquired about other State Police investigations at Monticello Raceway. Both Mr. Kaniewski and Mr. Berman left, then returned to Investigator Scileppi's office at 10:30 a.m. Investigator Scileppi suggested that Mr. Berman call Ms. Guarino to see if Mr. DiGennaro had contacted her. Ms. Guarino advised that Mr. DiGennaro had not yet contacted her. At that point Investigator Scileppi stated that he had a copy of the video clip of the incident, which he played for Mr. Kaniewski and Mr. Berman. Later in the afternoon of the same day, Mr. DiGennaro, Mr. Nigro and Ms. Vernola were suspended.

[1] A clip is the relevant section of the surveillance tape recorded by surveillance cameras located throughout the Monticello Raceway premises.

We have been presented with receipts for all the items Mr. Nigro removed from the premises. Mr. Nigro had the items sent to the premises rather than his condominium because they were perishable and he had no means of maintaining them at his condominium. Because he had the items sent to Monticello Raceway, Mr. Nigro created confusion when he removed them, giving the appearance of removing property owned by Monticello Raceway from the business premises. As a result, a misunderstanding, such as the one that occurred, can happen. Nevertheless, Mr. Nigro has receipts for the items and he disclosed his purchases to the security guard. On his part, Mr. DiGennaro failed to handle this matter in a timely fashion. Nevertheless, he did bring Mr. Delaney to view the clip and Mr. Delaney advised Mr. DiGennaro not to contact Ms. Guarino.

B. Purchasing Department:

a) Alleged preference and favoritism toward certain vendors, including:

i. Maines, and the alleged personal benefit to Mr. Nigro by virtue of his position:
Mighty M ordered food from three (3) vendors, Maines, Ace Endico and Sysco, represented by Daniel Kagan, Jonas Seda and Michael Kreloff, respectively. With regard to concerns of improper relationships and kickbacks from food vendors, we interviewed the following people: Ted Nigro and Melissa Vernola of the Purchasing Department, Anthony Bruno and Michael Steinhauer of Internal Audit, Jim Piontek of the Receiving Department and Steve Seltzer, the Director of Food & Beverage. We also reviewed the September 2004 food bids and bid awards from the three (3) food vendors, Maines, Ace Endico and Sysco.

We found that, in September, approximately 88% of the bid awards went to the lowest bidder, spread among Maines, Ace Endico and Sysco. During our interview of Mr. Nigro, we reviewed the instances where the low bidder did not receive the bid award (approximately 12%) and found that he had valid reasons for awarding the bid based upon criteria other than price, including quality, packaging, brand name, etc. Steve Seltzer, the Director of Food & Beverage, confirmed that he made requests for certain items. In addition, we found that certain items on the bid sheet clearly indicate differences in brand name and pack size. Mr. Nigro stated that requests were often made for certain pack sizes or brand names which certain vendors could not supply.

Therefore, we found no evidence that Mr. Nigro or the Purchasing Department improperly granted bid awards to Maines.

We also reviewed all of Mr. Nigro's e-mails for the period June 2004 through February 2005. We found no confirmation that Mr. Nigro held a closer relationship with the sales representative at Maines, Daniel Kagan, than with other sales representatives, Michael Kreloff at Sysco or Jonas Seda at Ace Endico. After an assessment of Mr. Nigro's sent and received e-mails, we observed that Ace Endico and Maines were generally more responsive to questions by Mr. Nigro than Sysco. Additionally, Ace Endico and Maines responded with their respective bids in a more timely fashion than Sysco. Further, when sending monthly and weekly bid sheets, Mr. Nigro simultaneously sent the same e-mail to all vendors as opposed to individual e-mails. As a result, all three (3) vendors received bid sheets at the exact same time and no one vendor had the information before the others. Individual e-mails appear largely to have been sent only when a question arose concerning a previously shipped item. Mr. Nigro customarily copied Jim Piontek on all monthly bid orders. Mr. Piontek confirmed this procedure in an interview of him. We believe that a review of September's purchases supports a finding that there is no evidence of impropriety in the Purchasing Department's bidding process.

ii. <u>Helga Designs, Inc. - Casino Uniforms:</u>

On March 15, 2005, Senior Investigator Thomas Scileppi of the State Police supplied us with an analysis of uniform pricing, which was prepared in part by Anthony Bruno of the Internal Audit Department. Subsequently, we spoke to Mr. Bruno and obtained copies of Helga Designs, Inc. (Helga) initial purchase order dated April 15, 2004, and a revised price list from Helga's dated February 10, 2005. This analysis detailed the cost of uniforms for various alternative vendors, as well as analyzed the pricing differential between the April 2004 and February 2005 Helga Designs pricing. Additionally, the analysis delineated the individual uniform item and price. We prepared an analysis utilizing the initial purchase order quantity and the revised price list date - February 10, 2005. The total uniform cost based upon the revised 2005 price list approximates $89,478, resulting in a reduction of $10,396. Therefore, we investigated the reasons why Helga's pricing was higher in 2004.

Subsequently, we interviewed Regina Hensley, the Director of Marketing, who assisted in uniform purchasing decisions. Thomas Aro, the COO, and Regina Hensley had previous experience using Helga's for uniforms and were satisfied with Helga's products for timeliness and quality. We were advised that the uniform selection process commenced prior to the establishment of the Purchasing Department and pre-existed the employment of Theodore Nigro. Several Mighty M executives and department heads were involved in the uniform decision making, including Thomas Aro, William Delaney, Regina Hensley, Cliff Erlich and Mary Buckles. Theodore Nigro became involved after March 4, 2004.

According to Regina Hensley, they interviewed several vendors. After this lengthy process, they formed a consensus that Helga's uniforms were the best looking, the best fitting, and the best made. In addition, the uniforms purchased from Helga's were customized, not off the rack. Custom uniforms generally require approximately eight (8) to ten (10) weeks from initial order to delivery. The Company's goal was to have uniforms available on-site two (2) weeks prior to the grand opening (July 4th weekend). This time period would allow employee fitting to occur prior to opening. Mighty M had planned an early grand opening and, thus, uniform selection had already been determined in March 2004.

A review of Helga Designs' website identifies other casino uniform customers such as:

1. Bally's (3 locations);
2. Station Casino (2 locations);
3. Casino Magic (3 locations);
4. Harrah's Casinos (12 locations);
5. Isle of Capri Casino (2 locations);
6. Lady Luck Casinos (4 locations);
7. Players Island Casinos (4 locations);
8. President Casinos (2 locations);
9. Caesar's Palace (2 locations);
10. Trump Taj Mahal Casino (1 location);
11. Horseshoe Casino (1 location).

Mighty M placed the uniform order in April 2004 for a total purchase order cost of $99,874, of which $99,457 was considered to be custom order items.

We asked Regina Hensley to explain why the prices decreased between April 2004 and February 2005 on Helga's pricing list. Ms. Hensley offered the following as potential reasons:

1. The April 2004 order may have been considered a "rush order," thus, they may have billed the order at a higher price.

2. Customization and set-up charges may have been included in the April 2004 uniform costs. Now, set-up costs are satisfied and they can reduce future uniform prices.

3. Helga may have reacted to competitive forces which now exist but did not exist in 2004, i.e. other companies are now submitting competitive bids.

4. Helga may have anticipated Mighty M replacement uniform orders and developed a standing inventory level of certain items which are specific only to Mighty M Gaming.

Since the initial purchase, Mighty M has selected different uniform vendors and has availed themselves of better pricing.

iii. Woodruff Specialties:

With regard to Woodruff Specialties, it is alleged that Mr. Aro, Mr. Nigro and Ms. Hensley, Director of Marketing, placed pressure upon Mary Buckles, Gift Shop/Wardrobe Supervisor, to order from Woodruff. Additionally, Ms. Buckles stated that she had received pressure during December 2004 to retroactively sign a (June 2004) requisition order for goods from Woodruff even though she was not certain that she had actually received the items.

Concerning pressure to order from Woodruff, we interviewed Mr. Aro, Mr. Nigro, Ms. Hensley, Ms. Buckles and Ms. Vernola. Mr. Aro, Mr. Nigro and Ms. Hensley indicated that until recently, Woodruff was a small family-run operation (they have recently been purchased by a much larger company). All three (3) people indicated that they had done business with Woodruff for many years while working for the predecessor company to Empire, Alpha Hospitality. They further indicated that Woodruff's service was excellent, including delivery and handling, and that the products Woodruff held were sometimes difficult to find elsewhere. Because of the continuing good business relationship held with Woodruff, Mr. Nigro continued to order products from them.

Mr. Aro allegedly brought pressure on the staff to pay an outstanding bill from Woodruff. The implication raised by the State Police and Michael Steinhauer is that there was an improper relationship between Mr. Aro and Mr. Nigro with Woodruff with whom they had done business while working at Alpha Hospitality. Mr. Nigro analyzed the Woodruff charges as did Izora Jones of the Accounts Payable Department. They found that Ms. Buckles ordered items from Woodruff without going through the Purchasing Department. As a result, the Accounts Payable Department did not receive the paper work needed to make payment. Both Ms. Jones and Mr. Nigro determined that the paper work was not present for certain purchases. Ms. Buckles was asked to document her purchases from Woodruff. Ms. Buckles did not immediately address this request and, accordingly, an extended period of time passed. Ms. Buckles was able to ultimately confirm the receipt of certain merchandise from Woodruff, including bags and T-shirts, but was unable to confirm the total quantity of T-shirts received. Furthermore, this order may have been delivered prior to the creation of a centralized receiving location (currently in place). As stated above, Ms. Buckles ultimately confirmed that she had ordered and received the items.

In the interim, Woodruff refused to deliver a current order needed by Regina Hensley because they had a bill over ninety (90) days old due to Ms. Buckles' failure to follow procedures when she placed the order and because a centralized receiving process was not yet in place when the goods were received in June 2004. Woodruff refused to deliver the items Ms. Hensley needed pending payment of the old outstanding invoice. As a result, Regina Hensley appealed to her boss, Mr. Aro. Mr. Aro states, and his e-mails confirm, that he did intervene in this matter.

Woodruff overcharged and improperly charged Mighty M for freight and sales tax. Mr. Steinhauer has alleged that these charges indicate an improper relationship between Ted Nigro, Tom Aro and Regina Hensley with Woodruff. We disagree. Mr. Steinhauer prepared a schedule of inconsistent calculations of sales tax charged by Woodruff to Mighty M and of overcharges for freight. While Mr. Steinhauer's schedules accurately reflect these overcharges, they do not relate to the duties of Ted Nigro, Tom Aro or Regina Hensley. Before they approve invoices for payment, Accounts Payable should verify the accuracy of all bills including charges for freight and sales tax. Therefore, this issue needs to be addressed by Accounts Payable and we have been advised that the Accounts Payable Department now verified these charges prior to

approving an invoice for payment. These charges appear to be erroneous. Moreover, it is the responsibility of the Accounts Payable Department, not Mr. Nigro's Purchasing Department, to perform the reconciliation necessary to approve only benefit charges for payment. Other problems arose concerning the charging of freight and taxes. These had been investigated by the Accounts Payable Department and by the internal auditor.

Based on the above, we find no impropriety in the relationship between Tom Aro, Regina Hensley and Ted Nigro with Woodruff.

b) Credits from Maines to Mighty M for overcharges:

We addressed the issue of credits from Maines to Mighty M for overcharges by Maines. According to Mr. Nigro, Jim Piontek had determined that all three (3) vendors - Maines, Ace Endico and Sysco - had billed Mighty M in excess of the amount bid. This occurred specifically with perishable items such as beef, poultry, and vegetables - the prices for which fluctuate weekly. According to Mr. Nigro, the vendors typically agree to hold their prices on the items for the full monthly period bid. This informal agreement expired in September and the vendors began to change their prices. Therefore, for a period of time but most notably in September, the vendors changed their prices weekly while the bids were made monthly. Mr. Nigro advises that he subsequently switched to weekly bids for these perishable items. His e-mails confirm this. Mr. Nigro performed an analysis of the amounts bid versus those charged and negotiated credits with Maines. The final agreed upon credit was $1,200. Maines requested that they be allowed to provide the credit with food and they offered to pay $2,000 worth of food as opposed to $1,200 in cash, which seemed reasonable to Mr. Nigro. According to Mr. Nigro, the food used as credits was to be strictly for items being used by Mighty M on a regular basis and not samples, which would have been given to Mighty M for free in any event. This issue was being worked out between Mighty M's accountants, Mr. Nigro and Maines, but the process had not been completed when Mr. Nigro was suspended. We interviewed Anthony Bruno, Izora Jones from the Accounts Payable Department and the Controller, Mark Marasso, concerning this issue. We have requested documentation on this issue and have received no documentation to prove that Maines provided samples in lieu of product regularly used by Mighty M. Furthermore, Mr. Nigro did not control payment of invoices or credits against payments due. Therefore, all of his

work on this issue was subject to the final review of the Accounts Payable Department and Mr. Marasco as the Controller.

c) Use of Photocopied Signatures to approve Purchase Orders:

The allegation is that Mr. Nigro and his assistant, Melissa Vernola, photocopied signatures and pasted them onto requisitions in order to complete documentation for purchases. We investigated this matter and found that the situation arose when, pursuant to a change in Company policy, the Controller, Mr. Marasco, requested that purchases which had been made in the past, be fully documented; i.e. if the purchase order was missing a signature, the signature be obtained. This procedure does not appear to have been done for current purchases but only, as Mr. Nigro has adamantly stated, for items which had already been received months prior to the time the signatures were photocopied. Ms. Vernola also adamantly stated in our interview of her that any photocopied signatures were for items already paid for and received in the past. She also stated that this only happed on a few occasions. Mr. Nigro admits that what he did was wrong and he should not have photocopied the signatures. His explanation is that he became frustrated in his attempts to obtain complete documentation on these old items and, therefore, photocopied signatures and pasted them on the purchase orders. It should be noted that accounts payable personnel review all invoices and supporting documentation before approving payment. Mr. Nigro did not approve invoices for payment. Accounts payable personnel has advised us of no incident in which Mr. Nigro used photocopied signatures in order to obtain approval of a purchase order for an item that benefited him personally or for which they believe Mighty M overpaid. Based upon our interviews and everything we reviewed, nothing has come to our attention to indicate that the photocopied signatures were used for any reason other than to expedite compliance with a request from Mr. Marasco to document prior purchases. Mr. Nigro freely submits he made an error in judgment.

C. Alleged failure or delay of the Surveillance Department to report certain incidents to the State Police:

Investigator Scileppi raised issues concerning the cooperation of the Surveillance Department with the State Police and other issues as previously stated. We discussed these issues with Mr.

DiGennaro and subsequently obtained Investigator Scileppi's comments to Mr. DiGennaro's responses.

a. Failure to report the theft of an electric generator:

Issue – A generator owned by an electrical contractor working at Mighty M was stolen from the parking lot in September 2004. A pick-up truck was seen in the parking lot around the time of the theft, and it was assumed the pick-up truck had been used to take the generator. The foreman on the job advised Mr. DiGennaro of the incident, and Mr. DiGennaro did not report the incident to the State Police. Investigator Scileppi believes this shows a lack of compliance with the New York State Lottery Rules regarding reporting violations.

Response and Comment – On his part, Mr. DiGennaro responded that the situation with the generator was one of poor communication. Mr. DiGennaro wanted time to review what had happened. Later, the Mighty M staff found the same pickup truck in the parking lot. Mr. DiGennaro advised us that the State Police were notified and the individual who had taken the generator was later apprehended. Mr. DiGennaro said Investigator Scileppi was happy because the Monticello Raceway staff recovered the generator and found the individual who had stolen it. Mr. DiGennaro gave the impression that Hector Vazquez, Assistant Director of Security, had found the generator and then advised the State Police. On his part, Investigator Scileppi said the foreman stated that Mr. DiGennaro told him not to advise the State Police and that he, Mr. DiGennaro, would look into the matter. Three days passed before the foreman reported the matter to the State Police. Investigator Scileppi indicates that the State Police then completed the investigation. When asked in a second interview, Mr. DiGennaro advised that he did not tell the foreman to forego notifying the State Police, and that the incident was one of poor communication.

b. Failure to report individuals smoking marijuana in the parking lot:

Issue – At approximately 3:00 a.m. one morning, several individuals were observed by the surveillance cameras smoking marijuana in the parking lot. The State Police were not advised until 4:00 or 5:00 p.m. the following afternoon.

Response and Comment - According to Mr. DiGennaro, the surveillance operator and supervisor on duty at the time observed several individuals smoking marijuana in the parking lot. They made a clip of the incident and wrote a note to Mr. DiGennaro stating "D, you need to look at this." They then slid the folded sheet of paper with the CD of the incident under Mr. DiGennaro's office door. When Mr. DiGennaro arrived the next morning, these individuals had completed their shift and gone home. Mr. DiGennaro did not immediately realize the importance of what had happened because it was transmitted in an informal manner. He went about his normal workday, read the note and viewed the clip at approximately 3:00 p.m. After viewing the clip, he immediately advised the State Police of the incident. Investigator Scileppi felt that this was a reasonable explanation. Further, when a similar incident occurred approximately a week later, the State Police were notified immediately by the surveillance operators and Mr. DiGennaro was notified at home. The individuals were apprehended by the State Police.

c. **Failure to report individual(s) pouring liquor into other liquor bottles of the same brand:**

Issue – Bartenders were observed pouring liquor into different bottles of the same brand of liquor. Surveillance operators advised Mr. DiGennaro, but he never advised the State Police; although, this action is a violation of State alcohol and beverage regulations.

Response and Comment - Mr. DiGennaro states that he was advised of this fact but that he was unaware that this activity constituted a violation of law. Mr. DiGennaro was under the impression that a violation would occur if a lesser quality brand liquor was poured into the bottle of another presumably higher quality brand. On his part, Investigator Scileppi stated that the individual who advised Mr. DiGennaro of the violation had operated a liquor business in New York City and that he told Mr. DiGennaro of his knowledge of the liquor regulations and of his experience in the liquor business when he advised Mr. DiGennaro of the violation.

d. **Failure to report an incident which a floor attendant was bumped and injured on the job:**

Issue – A floor attendant was allegedly bumped on the floor and injured on the job. Mr. DiGennaro failed to report this incident.

Response and Comment - Mr. DiGennaro said that someone asked him to see if a floor attendant had hurt herself on the floor. Surveillance operators reviewed the tapes for that day and found nothing. A month later the State Police came to Mr. DiGennaro concerning the incident. According to Investigator Scileppi, the woman advised that she had approached Mr. DiGennaro and asked to have a copy made of the incident. At the time, Mr. DiGennaro said he would work on it. Emergency Medical Technicians treated the floor attendant for the incident and made a report. When she did not receive any information from Mr. DiGennaro, she went to the State Police approximately a month later and the woman complained that Mr. DiGennaro did not get back to her. Investigator Scileppi questions why Mr. DiGennaro did not get back to the woman and close out the incident.

e. **Failure to report a Floor Ambassador going into the west cage:**

Issue - Surveillance operators observed the Floor Ambassador going into the west cage without security. It was reported to Mr. DiGennaro that the Floor Ambassador was in the west cage. Mr. DiGennaro did not report this incident to the State Police.

Response - According to Mr. DiGennaro, the Floor Ambassador went in to the cage with the cage supervisor in order to work on malfunctioning computers. According to Mr. Nigro, with whom I also addressed the incident, it is not a violation for the Floor Ambassador to go into the cage so long as the cage supervisor is present. Security is only needed if money is an issue. Investigator Scileppi said he would check the regulations but he seemed satisfied with the response.

f. **General procedures for reporting incidents to the State Police:**

Issue - Mr. DiGennaro advised his operators and supervisors not to report anything to the State Police until he was notified. According to Investigator Scileppi, the State Police have sworn depositions that the individuals were so advised. The procedure is that the State Police is to be advised immediately if there is a violation of law.

Response - Mr. DiGennaro believes this is a matter of poor communication and that he never advised anyone to keep information from the State Police. He stated that his policy is to have

incidents reported to the State Police and to him simultaneously in order that he remains in the loop. He stated, "that statement really destroys me." He wishes to be advised as to who made the statements because he believes that is not what he said, but a misinterpretation of his statements.

When we contacted Mr. DiGennaro a second time to inquire further about certain issues, we again asked him whether or not he had specifically advised anyone to keep information from the State Police. As Mr. DiGennaro stated during our first interview of him, he said that his duties are outlined as, "Observe, record and report." He said he is aware of his duties and would have never advised anyone to withhold information from the State Police. He stated a second time that this is an issue of misinterpretation.

D. Usage of a warehouse key:

Issue - Mr. DiGennaro was observed on a surveillance tape using a key to open the warehouse door. As a Director of Surveillance, he should not have a key to the warehouse and is required to sign out a key. Further investigation revealed that he did not sign out a key.

Response and Comment - Mr. DiGennaro's response is that there was only one time when he went into the warehouse storage area with the key; although, he would often go into the warehouse when the door was unlocked and other individuals were in there in order to observe their activities. Mr. DiGennaro advised that in one instance he borrowed Mr. Nigro's key in order to look for the King cake. This was the only time Mr. DiGennaro got the key and went into the storage area. He believes this may be on the same day or just days before the King cake was removed from the premises. According to Investigator Scileppi, they have a clip of Mr. DiGennaro going into the warehouse with a key followed two (2) minutes later by Mr. Nigro going in with a key. They then left with Mr. Nigro carrying a box. According to Investigator Scileppi, both of them had their own keys. According to the clip, Mr. Nigro came out with a box, met with Chris Palmer, they talked and then he went out the employee entrance with the box.

We contacted Mr. DiGennaro a second time and again inquired about this incident. Mr. DiGennaro's account of the incident paralleled his original story. When asked if Mr. Nigro used another key to enter the warehouse, he stated that he simply couldn't remember if Mr. Nigro did, in fact, use another key to enter the warehouse. He does admit to borrowing a key from Mr. Nigro and that he did not sign out a key.

E. Mr. Nigro's Monticello Raceway's Employment Application and New York Gaming License Application:

Monticello Raceway's employment application asks whether the applicant has ever been convicted of a crime and whether the applicant has ever held a gaming license from any other jurisdiction. Mr. Nigro answered "no" to both questions. Mr. Nigro produced a letter from an attorney written in 1985 which transmitted a sealing order for a misdemeanor conviction, which is enclosed as Exhibit E. The letter advised Mr. Nigro that he did not have to disclose any conviction. The Lottery Application, on Page 21 of 57, states at 2, answer "no", "If any records relating to a charge, arrest or conviction have been expunged or otherwise officially sealed by a Court or government agency" (Exhibit F). When he filled out the Lottery Application, Mr. Nigro contacted a lawyer and family friend who advised him to make full disclosure. Therefore, he disclosed the conviction to the Lottery Commission. Mr. Nigro also answered the question, "have you ever been licensed by any racing or gaming commission," "no" on the Monticello Raceway application, but then answered that he had a permit on the Lottery Application on Page 16 of 57 (Exhibit G). He felt that he should answer the question "no" on the Monticello Raceway application because he never had a license; however, he did have a permit, which he disclosed on the Lottery application. Mr. Nigro also explained to us that in 1989, when he had a drug addiction, he wrote himself $14,000 worth of markers while he was working for the Opera House Casino in Nevada. The owner of the casino found what he had done and discharged him. However, the owner chose not report this incident to the police. Mr. Nigro paid the $14,000 back to his employer. At that time, he had an application for a gaming license pending before the Nevada Gaming Commission. After this incident, he withdrew his application.

Later, when he was working for Alpha Hospitality in Mississippi, he applied for a Mississippi gaming license in May 1995, as he indicated again on Page 16 of 57 of the New York License

(Exhibit G). He withdrew the Mississippi license application without prejudice because Mississippi was not going to give him the license based upon his past actions, specifically the incident with the markers. We advised Investigator Scileppi of all these facts. He stated, at the time, that he did not know if these incidents would be a bar to Mr. Nigro's obtaining a New York license, and that this decision is made by the Lottery Commission. Mr. Scileppi stated that his office only conducts the investigation and reports their findings.

Mr. Aro advised that he was aware of these incidents in Mr. Nigro's past when he hired him at Alpha in 1993 and then hired him in 2004 for Monticello Raceway. Mr. Aro told us that he did not advise anyone else of Mr. Nigro's background.

F. Internal Audit of the Purchasing Department:

We interviewed Michael Steinhauer, the former Director of Internal Audit, who advised us that he performed a formal internal audit of the Purchasing Department and found many suspicious items, which he documented in a three-ring binder, and which we have in our possession. Mr. Steinhauer specifically raised the issue of favoritism for Maines in the Purchasing Department based on his review of the bidding process. Mr. Steinhauer stated that he listed twelve (12) internal control deficiencies after performing a formal audit of the Purchasing Department. He also advised that he communicated these issues to Investigator Scileppi of the State Police, along with other concerns regarding Woodruff Specialties and Helga Designs.

In our analysis we found no interview notes or work papers with regard to an internal audit. Mr. Steinhauer said the notes would have been in the Internal Audit filing cabinet; however, we found no work papers beyond a three-ring binder, labeled, "Marketing Analysis." We interviewed Mr. Nigro and Ms. Vernola of the Purchasing Department and Anthony Bruno and Heidi Guarino from Internal Audit. Mr. Nigro and Ms. Vernola said they were never advised that the Purchasing Department was being audited; although, after Mr. Steinhauer left, he sent information to Mr. Delaney to be used in an audit of the department to be conducted by Mr. Delaney and Ms. Guarino. We also reviewed Mr. Nigro and Mr. Steinhauer's emails to each other. Based on our interviews of and our review of Mr. Nigro and Mr. Steinhauer's emails, it appears that no formal audit of the Purchasing Department was performed by Mr. Steinhauer.

At one point, Mr. Kaniewski raised questions to Mr. Steinhauer apropos the Purchasing Department and the Accounts Payable Department. It is our understanding that Mr. Steinhauer followed-up on these questions of Mr. Kaniewski concerning specific internal control violations. These questions were presented in an email from Mr. Kaniewski to Mr. Steinhauer.

Questions raised by Scott Kaniewski for follow-up Michael Steinhauer:

1. How do we know that items were paid from pre-billing invoices were actually received?
2. Why do we pay from copies of "pre-billing invoices" and not an invoice? How do we know the product was received?
3. On 4/8/04 we paid for mugs with no backup from Woodruff, simply a "Marketing Request."
4. The shipping charges seem quite inconsistent; we paid $1,122.58 to ship 500 compressed tee shirts on 6/18/04, and only 161.90 to ship 500 (uncompressed) tee shirts on 6/29/04. This is only one example of the inconsistencies with shipping, please review.
5. Why do we pay taxes sometimes, but not other times? Please review the tax amounts.
6. Why did we pay the deposit twice for 5,000 sun visors, invoice date of 5/12/04? ($1,375)
7. Please review the total payments for pens. It is unclear as to how many we received & paid for. –total of $11,873.00 for pens
8. Why do we make payment based simply on a marketing request, without backup of delivery & invoices?
9. Why did we pay the ½ down deposit for key tags twice, for invoice dated 5/12/04? ($1,975.00)
10. Why did we pay the ½ down deposit for business card case twice, for invoice dated 5/12/04? (3,372.50)
11. Have we really used/needed 1,125,000 cups for F&B? Same quote copy was used on two separate check requests in the amount of $9,812.50, one says to deliver check to Ted Nigro.
12. No paid invoices in the file for gift shop sweat shirts and tee shirts, only glassware.

Michael Steinhauer's responses to Scott Kaniewski are as follows:

1. No confirmation or shipping receipts were attached to the invoices. We need to do a physical inventory count to be sure everything arrived.
2. Many payments were made to "pre-billing invoices" and not invoices. We don't know if the products were received. No paperwork from Receiving was attached to invoices.
3. Signed purchase order in addition to a Marketing Request for mugs are attached.
4. There are many examples of inconsistent shipping, but question 4 is in error. There is a difference in shipping due to the amount of t-shirts ordered in this example. There were 5000 shirts shipped for the $1,122.58 charge. Item 4 states there were 500 shirts. An example of a shipping problem is shown in ref 24,30. Both for an order of 10,000 pens, but shipping charge billed to ref 24 is $75.25 and ref 30 is $225.
5. All pre-opening orders or "New Project" orders are tax exempt. Orders after opening day qualify for Empire Zone tax exemption for NY State sales tax, but are subject to 3.5% Sullivan County sales tax. Most invoices are wrong in regards to tax rates and paid anyway. Very few were corrected. See attached spreadsheet for tax corrections.
6. Double down payments are on ref. 1A & 2C. Ref. 28 is an invoice including a wrong tax corrected to another wrong tax and paid. This invoice was overpaid on tax and also paid a 50% deposit for the second time.
7. Since opening day 20,000 pens were purchased for a total of $8,980.10. There is no confirmation that they arrived. This is an excessive amount of pens.
8. This is a not in compliance with internal controls.
9. There are many "double down payments." Such examples are with key tags, sun visors, and business card holders. Each down payment has been paid twice for these items. In addition, the remaining balances were paid as if there was no problem. The over payment of these three items totals $6722.50.
10. Same as 9.
11. A signed par order called for one million cups, but only 2 orders were placed for 250,000 units each (500,000 total units). No formal invoice was used. Instead, the first and second order of cups used a hand written quote; one of which directs the check to be given to Ted Nigro. This is a not in compliance with internal controls.
12. As per Ted Nigro, the t-shirts and sweat shirts were given to Mighty M Gaming free of charge. However, no record of this exists. Another problem is that gift shop items are being taxed when they are supposed to be tax free because they are resale items.

Based upon the foregoing, we believe that no formal internal audit conducted with interviews, work papers or a report detailing internal control deficiencies was performed or issued.

As previously stated, we reviewed all of Mr. Nigro's emails for the period June 2004 to February 2005, as well as the Purchasing Department's September bid sheets. We performed these analyses over the course of one (1) week and found no evidence of improprieties, including

kickback schemes or any improper relationships with Maines. To complete this analysis, we conducted interviews, reviewed documentation and examined and evaluated bid sheet prices to bids awarded. In addition, in approximately two (2) days we assessed further allegations of preference to Woodruff Specialties and Helga Designs in the same fashion and found no evidence to support Mr. Steinhauer's assertions.

Further, with regard to Mr. Steinhauer's accusations concerning photocopied signatures, we found that Mr. Marasco requested that the Purchasing Department obtain signatures for previously purchased and paid for items. Mr. Nigro and Ms. Vernola admitted to photocopying signatures to document these previously paid for and received items.

Therefore, we found that Mr. Steinhauer performed an incomplete analysis of the Purchasing Department. Mr. Steinhauer said he spent four (4) to five (5) weeks investigating the Purchasing Department. In seven (7) days we concluded an investigation of the bidding process and payments due to Woodruff and reached the conclusion that there were no improprieties. Furthermore, the allegations, which pertain to payments, pertained to the Accounts Payable Department, not to the Purchasing Department. Lastly, as to the issue of credits, while Mr. Nigro could negotiate credits for overcharges, the credits were subject to the approval of the Controller, Mr. Marasco.

IV. CONCLUSION

In our investigation we found:

- Mr. Nigro personally paid for the items he removed from the business premises. Mr. DiGennaro did not respond in a timely manner to the request for the surveillance tape of Mr. Nigro and Ms. Vernola leaving the building. This led senior management to wrongly conclude that he intentionally refused to turn over the tape.

- We found no evidence of improper relationships or preferential treatment given to vendors by Mr. Nigro, and no proof or indication of any kickback scheme between Mr. Nigro and any vendor. We found that Mr. Nigro did use photocopied signatures to document prior purchases, but we found no evidence to suggest that photocopied signatures were used to make current purchases or that they were used to make purchases from which Mr. Nigro benefited personally or for which Mighty M overpaid.

- We found that there were explanations for the failure to report items to the State Police in a timely manner.

- Mr. DiGennaro advised us that he borrowed the warehouse key from Mr. Nigro. Investigator Scileppi was going to look into this matter further.

- We found that Mr. Nigro had documentation which explained the inconsistencies on his Mighty M Employment Application and his New York State Gaming License Application.

- We found that Mr. Steinhauer did not conduct a formal audit of the Purchasing Department and that he made unfounded allegations concerning kickbacks and improper relationships between vendors, Tom Aro, Regina Hensley and Ted Nigro.

By their nature, kickbacks and illegal activity are hidden; therefore, we cannot be 100% certain that criminal activity did not occur. In fact, no one can. Therefore, based on our investigation as detailed in Appendix A, and our findings explained in the body of our report, we found no

evidence of intentional wrong doing on the part of Mighty M employees. However, as explained throughout our report, there were clearly problems with communications between the Accounts Payable and Purchasing Departments and between the Surveillance Department and the State Police. Additionally, certain actions showed a lack of respect for internal control procedures. These include the Surveillance Department's consistent failure to report incidents in a timely manner and the use of photocopied signatures by the Purchasing Department. Moreover, many of the issues we investigated and most of the issues raised by Scott Kaniewski pertained to the Accounts Payable Department, not the Purchasing Department. As such, the lack of strong internal controls extended beyond the Surveillance Department and the Purchasing Department. Management is aware of these issues and is taking corrective action. Mighty M management commenced their revamping of internal controls and procedures in early December 2004. This effort was spearheaded by William Delaney and Mark Marasco. The Board of Directors adopted new internal control procedures in early February 2005, which they subsequently reviewed and made additional charges. They have also hired an outside consultant to review their internal controls. In addition, we found that the internal auditor, Michael Steinhauer, failed to conduct an independent review of the allegations. Instead, he made unsubstantiated allegations which compounded the tensions between Accounts Payable, Purchasing and Surveillance Departments of Mighty M, and the State Police.

Therefore, during our investigation, no evidence of specific criminal or improper activity pattern or indication of such activity came to our attention. Moreover, all questions which arose were answered to our satisfaction and we found the actions of Mighty M personnel to be within a range of normal business activity.

I:\Clients\Empire Resorts\Empire.Final.Report_3.29.05-1.doc

The above represents my true and accurate findings and conclusions to a reasonable certainty based on my investigation and expertise as described herein.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____

WILLIAM J. MORRISON, C.P.A./A.B.V.

Date:_____

I:\Clients\Empire Resorts\Empire.Final.Report_3.29.05-1.doc

Appendix A

Empire Resorts, Inc. - List of Information Reviewed by Morrison & Company, P.A.:

- Woodruff Specialties - Invoices / Purchase Orders / Requisition Forms;
- Helga's Designs, Inc.- Initial Purchase Order dated April 15, 2004 and Revised Price List - dated February 10, 2005;
- Maines Bids and Invoices - September 2004 - Submitted by vendor to Ted Nigro;
- Sysco Bids and Invoices - September 2004 - Submitted by vendor to Ted Nigro;
- Ace Endico Bids and Invoices - September 2004 - Submitted by vendor to Ted Nigro;
- Consolidated Bids Spreadsheet - September 2004 - Prepared by Ted Nigro;
- Internal audit analysis of food purchases (Maines, Sysco, and Ace Endico)- prepared by Anthony Bruno;
- Steinhauer "Audit" work product - "Marketing Analysis";
  - Woodruff Specialties - Purchase orders and Requisition Forms;
  - Steingart & Associates.
- E-mails in Theodore Nigro's mailbox (on Mighty M's network) specific to purchasing and bids - June 2004 through February 2005;
- Signature cards (supplied by State Police) used on Requisition Forms;
- Michael Steinhauer's responses to issues raised by Scott Kaniewski, CFO;
- E-mails in Michael Steinhauer's mailbox (on Mighty M's network) - specific to e-mails communicating with Empire Resorts audit committee. Searched for audit programs, work product or any correspondence regarding audit field work performed.

Empire Resorts, Inc. - Interviews Conducted by Morrison & Company, P.A.

Empire Resorts, Inc.

Robert Berman (CEO and Board Member)
Paul deBary (Empire Resorts - Board Member and Chairman of Audit Committee)

New York State Police

Thomas Scileppi (Senior Investigator - Monticello Raceway)
Linda Paul (Investigator - Monticello Raceway)
Lt. Daniel Hart (Video Gaming Unit - Officer-in-Charge)

Monticello Raceway Management Inc.

Thomas Aro (COO)
William Delaney (Vice President of Corporate Developments)

Accounts Payable Department and Internal Audit

Mark Marasco (Vice-President of Finance)
Heidi Guarino (Internal Audit)
Anthony Bruno (Accounting / Internal Audit)
Roxanne Rafferty (Accounts Payable)
Izora Jones (Account Payable Supervisor)
Michael Steinhauer (former Internal Auditor)

Purchasing Department

Theodore Nigro (Director of Purchasing, Security and Special Projects)
Melissa Vernola (Assistant to Theodore Nigro)
Jim Piontek (Warehouse Supervisor)

Surveillance Department

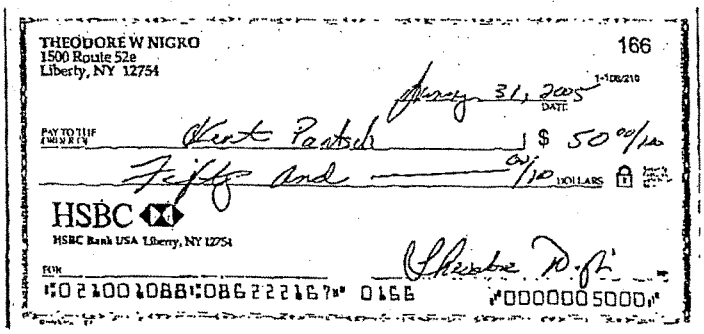
William DiGennaro (Director of Surveillance)

Other Miscellaneous Departments

Steve Setzer (Director of Food and Beverage)
Mary Buckles (Gift Shop Supervisor)
Regina Hensley (Director of Marketing)

003

HSBC Bank USA, N.A. - Image Archive


THEODORE W NIGRO
1500 Route 52e
Liberty, NY 12754

166

January 31, 2005
DATE

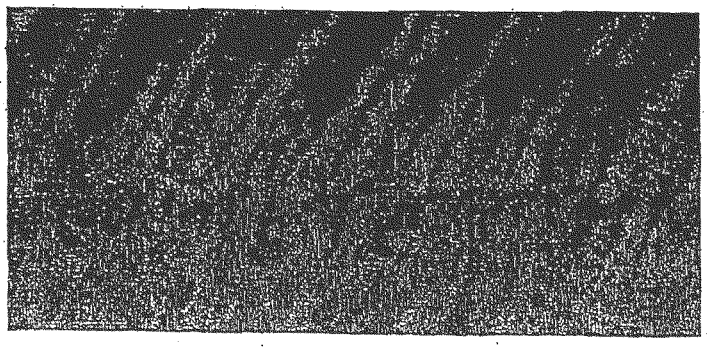
PAY TO THE ORDER OF Kent Parish $ 50 00/100

Fifty and 00/100 DOLLARS

HSBC
HSBC Bank USA Liberty, NY 12754

FOR

⑆021001088⑆086222167⑈ 0166 ⑈0000005000⑈



Account Number	Date Posted	Ind	Check Number	Amount	Sequence Number	Tran Code
00000000086222167	02/11/2005		0000000166	50.00	42679112	000166

HSBC

THEODORE W NIGRO

FREE CHECKING
Statement of Account
Account Number 086-22216-7

January 7, 2005 - February 4, 2005
Page 2 of 2

TRANSACTION DETAIL

DATE POSTED	DESCRIPTION OF TRANSACTIONS	CHECKS AND OTHER SUBTRACTIONS	DEPOSITS AND OTHER ADDITIONS	BALANCE
01/28/05	PURCHASE ON 01/27 AT 131 ROUTE 52 LIBERTY NY	42.51		3,971.77
01/31/05	PURCHASE ON 01/30 AT 131 ROUTE 52 LIBERTY NY	62.18		
01/31/05	PURCHASE ON 01/30 AT 1 N GALERIA DR SUITE 6 MIDDLETOWN NY	29.99		3,879.60
02/01/05	CHECK #0163	625.00		
02/01/05	PURCHASE ON 01/31 AT 131 ROUTE 52 LIBERTY NY	101.37		
02/01/05	PURCHASE MADE ON 01/30/05 AT PARTY CITY #504 MIDDLETOWN NY	52.06		
02/01/05	PURCHASE MADE ON 01/31/05 AT PAUL S PASTRY SHOP PICAYUNE MS	35.95		
02/01/05	PURCHASE MADE ON 01/30/05 AT DSW SHOE WAREH00291195 MIDDLETOWN NY	15.12		
02/01/05	PURCHASE MADE ON 01/30/05 AT ULTRA POWER LIBERTY NY	12.00		3,038.10
02/02/05	PURCHASE ON 02/01 AT 2547 WAL-SAMS MONTICELLO NY	88.62		2,949.48
02/04/05	PURCHASE MADE ON 02/02/05 AT CES MONTICELLO NY	46.29		2,903.19

ITEMS PAID ON THIS STATEMENT:

NUMBERED CHECKS:

#0156 .....625.00 #0158 .....74.50 * #0159 .....71.00 #0161 .....71.00 *
#0162 .....207.25 #0163 .....625.00

* GAP IN PAID CHECK SEQUENCE

OTHER ITEMS:

303.60	200.00	200.00	20.00
200.00	200.00	200.00	101.75
28.00	303.75	132.52	35.00
75.72	303.75	202.00	110.00
203.75	123.38	50.00	110.22
42.51	62.18	29.99	101.37
52.06	35.95	15.12	12.00
88.62	46.29		

Ted Nigro

From: paulspastry.com [sales@paulspastry.com] **Sent:** Mon 1/31/2005 10:09 AM
To: Ted Nigro
Cc:
Subject: order yhst-53492177413818-1452 from paulspastry.com
Attachments:

This email is to confirm the receipt of your recent order from Paul's Pastry Shop.

You can always find out the current status of your order by going to
http://order.store.yahoo.com/OS/stat?yhst-53492177413818+1452+916c43b6acd994bc270b

Date Mon Jan 31 09:09:03 CST 2005
Ship to Theodore Nigro
204 State Route 17B
Monticello NY 12701
US United States
845-794-4100 X 652
Home Phone 845-796-6415
Requested Delivery Date 02/02/05
Work Phone 845-794-4100 x652
Bill to Theodore Nigro
1500 State Route 52 East Suite I-245
Liberty NY 12754
US United States
845-796-6415
E-Mail Tnigro@empireresorts.com (emailed)
Via UPS Next Day Air Saver
Payment MasterCard

Name	Code	Qty	Each	Options
Medium King Cake	CINNAMON_CREAM_CHEES	1	35.95	Filling = Cinnamon Over Cream Cheese Seasonal = (none)

Subtotal 35.95
Shipping 0.00
Tax 0.00
Total 35.95

03/10/2005 THU 16:22 FAX 8458070073 001/001
Feb 07 05 04:48p Je Fer 251- -4831 p.1

FAX to 845-794-4110

Feb. 7th, 2005

Attn: Anthony Bavno

Please find enclosed as per our phone conversation this date, the packing list you needed for 1 Box shipped to Mighty M Gaming that arrived your location 1-29-05, to the attention of Ted Nykro.

Included in the box for Ted were:

1. King Cake
2. Moon pies
3. 2 Printed Tshirts
4. Assorted Beads
5. 2 Face Masks
6. Plastic Cups from my parade.

Ted purchased these items for his personal use, from me (Kent Pertsch) for a Mardi Gras theme party he was hosting. Ted paid for these goods with a personal check - Total amount was $50.00. I shipped to your address to ensure delivery. If I can be of any further help - please call.

Kent Pertsch
Woodcraft Sys. Inc.

Kent Pertsch

RAGGIO, WOOSTER & LINDELL, LTD.
Attorneys and Counselors at Law

RENO OFFICE
WILLIAM J. RAGGIO
CLINTON E. WOOSTER
MICHAEL P. LINDELL
RICHARD F. CORNELL
LESLIE A. RAGGIO

FIRST INTERSTATE BANK BUILDING
ONE EAST FIRST STREET
SUITE 1204-P.O. BOX 3137
RENO, NEVADA 89505
TELEPHONE (702) 329-6202

October 29, 1985

Mr. Theodore W. Nigro
6137B W. Oakey
Las Vegas, NV 89102

Re: The State of Nevada vs. Theodore W. Nigro, Defendant

Dear Ted:

Enclosed are two certified copies of the Order Sealing Record After Conviction in the above matter.

The Order is self-explanatory and you will note that copies have been ordered sent to the agencies indicated, which agencies also must seal any records in their custody and advise the court of compliance.

Under the provisions of NRS 179.285, except as provided in NRS 179.301, all proceedings recounted in the record are deemed never to have occurred, and you may properly answer accordingly to any inquiry concerning the arrest, conviction or acquittal and the events and proceedings relating thereto.

NRS 179.301 provides that the State Gaming Control Board and the Nevada Gaming Commission may inquire into and inspect any records which have thus been sealed if the event or conviction was related to gaming for purposes of determining suitability of any person to hold a state gaming license or work permit.

In your particular case, I do not feel you fall within this

RAGGIO, WOOSTER & LINDELL, LTD.
Attorneys and Counselors at Law

Mr. Theodore W. Nigro
October 29, 1985
Page Two

exception since the incident in no way is related to gaming.

Sincerely,

RAGGIO, WOOSTER & LINDELL, LTD.

William J. Raggio

WJR:lh
enc.

FILED

SEP 17 3 16 PM '85

CLERK

CASE NO. A242206

DEPARTMENT NO. IV C

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

* * * * *

IN THE MATTER OF THE APPLICATION OF THEODORE WRIGHT NIGRO FOR AN ORDER SEALING RECORDS

PETITION TO SEAL RECORDS

COMES NOW the petitioner, THEODORE WRIGHT NIGRO I.D. #152927, and petitions this Court for an Order sealing any and all records pertaining to the arrest(s) of said petitioner as follows:

7/9/80 Embezzlement - 9/11/80 amended to Acting without authority - fined $350.

It is your petitioner's belief that either no conviction has resulted from the above arrest(s), that a period of thirty (30) days has elapsed since the date the charge was dismissed or the date of the acquittal, or that the statutory time has elapsed

from the date of such conviction.

PETITIONER

630 South Fourth Street, #400
Las Vegas, Nevada 89101
Attorney for Petitioner

POINTS AND AUTHORITIES

N.R.S. 179.255, et seq.

Respectfully submitted:

630 South Fourth Street, #400
Las Vegas, Nevada 89101
Attorney for Petitioner

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

THEODORE WRIGHT NIGRO, being first duly sworn, upon his oath deposes and says:

That he is the petitioner in the above-entitled action; that he has read the foregoing Petition to Seal Records and knows the contents thereof; that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those he believes it to be true.

PETITIONER

Subscribed and sworn to before me this 11th day of September, 1985.

GENEVIEVE McDONALD
Notary Public-State of Nevada

RECEIPT of a copy of the foregoing PETITION TO SEAL RECORDS in the above-entitled matter is hereby acknowledged this 17 day of Sept, 1985.

ROBERT J. MILLER
District Attorney

By: Nadine Mulkey
D.A. Liaison

FILED

'85 OCT 29 P2:41

DONA C. JEPPSON, CLERK
RENO JUSTICE COURT
BY _____ DEPUTY

IN THE JUSTICE'S COURT, RENO TOWNSHIP

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

THEODORE W. NIGRO, and
THAD JOHN RUFFNER,

Defendants.

No. 55,754

ORDER SEALING RECORD
AFTER CONVICTION

The Petition of THEODORE W. NIGRO, having been filed herein seeking relief under the provisions of NRS 179.245, for sealing of a record of conviction of a misdemeanor, and the Court having duly considered same,

IT IS HEREBY ORDERED that all records of the said conviction which are in the custody of the Court or of any public or private agency, company or official in the State of Nevada, be and they hereby are, sealed, and that any criminal identification records of the Petitioner be returned to the possession of this Court.

IT IS FURTHER ORDERED that a certified copy of this Order shall be sent to the following: Washoe County Sheriff, Washoe County, Nevada; Washoe County District Attorney, Washoe County, Nevada; Sparks Police Department, Sparks, Nevada; Reno Police

Department, Reno, Nevada; C.I.I., Sacramento, California; Federal Bureau of Investigation, Reno, Nevada; Sparks Municipal Court, Sparks, Nevada; Reno, Municipal Court, Reno, Nevada; and Clark County Metropolitan Police Department, Las Vegas, Nevada.

IT IS FURTHER ORDERED that those agencies and/or offices located within the State of Nevada, upon receipt of this Order, advise the Court of their compliance and shall then seal this Order.

DATED this 29th day of October, 1985.

JOHN J. KADLIC
JUDGE OF THE JUSTICE COURT

I hereby certify the above and foregoing to be a full, true and correct copy of the Original now on file in the above entitled Court and Cause

Dona Jappson, Clerk Reno Justice Court

By C. Delgado 10/29/85
Deputy

CIVIL, CRIMINAL AND INVESTIGATORY PROCEEDINGS

The next question asks about any arrests, charges or offenses you, your spouse or your children may have committed. Prior to answering this question, carefully review the definitions and instructions which follow.

DEFINITIONS: For purposes of this question:

A. "Arrest" includes any detaining, holding, or taking into custody by any police or other law enforcement authorities to answer for the alleged performance of any "offense."

B. "Charge" includes any indictment, complaint, information, summons, or other notice of the alleged commission of any "offense."

C. "Offense" includes all felonies, crimes, high misdemeanors, misdemeanors, disorderly persons offenses, petty disorderly offenses, driving while intoxicated/impaired motor vehicle offenses and violations of probation or any other court order. Juvenile offenses that occurred within the most recent 10 year period are also included within the definition of "offenses."

INSTRUCTIONS:

1. Answer "YES" and provide all information to the best of your ability EVEN IF:
   - A. You did not commit the offense charged;
   - B. The charges were dismissed or subsequently downgraded to a lesser charge;
   - C. You completed a Pretrial Intervention (PTI) or equivalent diversionary program in other jurisdictions;
   - D. You were not convicted;
   - E. You did not serve any time in prison or jail; or
   - F. The charges or offenses happened a long time ago.
2. Answer "NO" IF any records relating to a charge, an arrest or conviction have been expunged or otherwise officially sealed by a court or government agency.

IMPORTANT

The New York State Division of the Lottery or its designee will make inquiries to establish whether the applicant has had any involvement with law enforcement agencies.

Failure to disclose any such involvement will be taken into account in assessing your character, honesty and integrity.

Initials SP Date 5/8/04

Rev 02/04/04

26. Have you ever applied in New York or any other jurisdiction for a license, permit, registration or other authorization to participate in a lawful gambling operation (including casino gaming, horse racing, dog racing, pari-mutuel operation, lottery, sports betting, etc.)? Yes X No ___

NAME & ADDRESS OF LICENSING AGENCY (INCLUDING COUNTRY, STATE, COUNTY OR MUNICIPALITY)	TYPE OF LICENSE, PERMIT, APPROVAL, OR REGISTRATION	DATE OF APPLICATION	DISPOSITION (GRANTED, DENIED OR PENDING)	LICENSE, PERMIT, APPROVAL OR REGISTRATION NUMBER
NEW YORK RACING AND WAGERING BOARD	TRACK MANAGEMENT	2/4/2004	PENDING	RECEIPT # 193051
MISSISSIPPI GAMING COMMISSION P.O. BOX 23577 JACKSON MS 39225	KEY EMPLOYEE	5/10/95	WITHDRAWN WENT TO BOARD	NONE
NEVADA GAMING CONTROL BOARD 1919 E. COLLEGE PKY. CARSON CITY NV 89706	KEY EMPLOYEE	3/92 (APPROX.)	WITHDRAWN WITHOUT PREJUDICE	NONE
NEVADA GAMING CONTROL BOARD 1919 E COLLEGE PKY CARSON CITY NV 89706	GAMING WORK CARD	7/1990 (APPROX)	GRANTED	NONE

Do you have any ownership interest or financial investment in any business entity applying to, or licensed by, the New York Lottery. Yes ___ No X

27. If yes, complete the following chart:

NAME OF BUSINESS ENTITY	NAME AND AMOUNT OF YOUR INTEREST/INVESTMENT	% OF OWNERSHIP IN TH BUSINESS ENTITY
N/A	N/A	N/A

28. Have any of the licenses, permits or certifications applied for, or held by you or your spouse, as identified in the previous question ever been denied, suspended, revoked or subject to any conditions in New York or any other jurisdiction? Yes X No ___

If yes, complete the following chart as to each denial, suspension, revocation or conditions:

TYPE OF LICENSE, PERMIT OR CERTIFICATE	NAME & ADDRESS OF GOVERNMENTAL AGENCY/ORGANIZATION	DATE OF DENIAL, SUSPENSION, REVOCATION OR CONDITION	REASON(S) FOR DENIAL SUSPENSION OR REVOCATION
GAMING WORK CARD	NEVADA GAMING CONTROL BOARD 1919 E. COLLEGE PARKWAY CARSON CITY, NV. 89706	OBJECTION TO WORK PERMIT. 11/14/1989 REMISSI DELETION OF OBJECTION DENIED IN JANUARY 1993	INCIDENTS RELATING DIRECTLY TO DRUG ADDICTION. FOR SPECIFICS SEE ATTACHED P.65 RECOMMENDATION OF HEARING OFFICER RELATING TO 12/1/92 HEARING ADOPTED BY THE GAMING CONTROL BOARD ON 1/19/93 AND THE NEVADA GAMING COMMISSION ON 1/28/93 APPLICANT HAS BEEN DRUG FREE FOR MORE THAN 15 YEARS AS OF THE DATE OF THIS APPLICATION

Initials ___ Date 5/3/04

Monticello Raceway

APPLICATION FOR EMPLOYMENT

Equal access to programs, services and employment is available to all person. Those applicants requiring reasonable accommodation to the application and/or interview process should notify a representative of the Human Resources

Position Applied for: PURCHASING — Date of Application: 3/4/04

Name: THEODORE W NIGRO — Social Security #: 530 44 1879

Address: ROUTE 17B P.O BOX 5013

City: MONTICELLO — State: NY — Zip Code: 12701

Telephone: 845 794 4100 x 478 — Mobile/Beeper/Other: — Email:

Have you been employed here before? If yes, give dates and positions [ ] YES [X] NO

Are you legally eligible for employment in this country? [X] YES [ ] NO

Date available for work: 3/4/04 — Desired Salary Range?

Type of employment desired: Full Time [X] Part Time [ ] Temporary [ ] Seasonal [ ]

Are you able to meet the attendance requirements of the position? [X] YES [ ] NO

Have you ever pled guilty or no contest to, or have been convicted of a crime? [ ] YES [X] NO

If yes, please provide date(s) and details

Have you ever been licensed by the any racing or gaming commision? [ ] YES [X] NO

If yes, please provide date(s) and details

Answering "yes" to these questions does not constitute and automatic bar to employment. Factors such as date of the offense, seriousness and nature of the violation, rehabilitation and position applied for will be taken into account.

Employment History

Starting with your most recent employer, assignments or volunteer activities, provide the following information:

From (MO/YR) | To (MO/YR) | Employer | Telephone #
Starting Job Title/Final Job Title | Street Address | City | State | Zip Code
Immediate Supervisor and Title | Summarize the nature of work performed and job responsibilities
May we contact for references? YES [ ] NO [ ] | Compensation Hourly [ ] Salary [ ] Start $ per Final $ per
Reason for Leaving | Commission $ (est) Bonus

From (MO/YR) | To (MO/YR) | Employer | Telephone #
Starting Job Title/Final Job Title | Street Address | City | State | Zip Code
Immediate Supervisor and Title | Summarize the nature of work performed and job responsibilities
May we contact for references? YES [ ] NO [ ] | Compensation Hourly [ ] Salary [ ] Start $ per Final $ per
Reason for Leaving | Commission $ (est) Bonus

From (MO/YR) | To (MO/YR) | Employer | Telephone #
Starting Job Title/Final Job Title | Street Address | City | State | Zip Code
Immediate Supervisor and Title | Summarize the nature of work performed and job responsibilities
May we contact for references? YES [ ] NO [ ] | Compensation Hourly [ ] Salary [ ] Start $ per Final $ per
Reason for Leaving | Commission $ (est) Bonus

From (MO/YR) | To (MO/YR) | Employer | Telephone #
Starting Job Title/Final Job Title | Street Address | City | State | Zip Code
Immediate Supervisor and Title | Summarize the nature of work performed and job responsibilities
May we contact for reference? YES [ ] NO [ ] | Compensation Hourly [ ] Salary [ ] Start $ per Final $ per
Reason for Leaving | Commission $ (est) Bonus

TED NIGRO
1500 STATE RT 52 EAST
SUITE B 319
LIBERTY N.Y. 12754

THEODORE W. NIGRO
224 Corinth Drive
Bay St. Louis, Mississippi 39520
(228) 469-9253

CAREER OBJECTIVE:

To obtain a position in management leading to top-level administration.

EXPERIENCE:

Interstate Distributor Co. Tacoma, Washington Covenant Transport Chattanooga, Tennessee	OTR Driver May 2002- February 2004

Positions held from June 1993 to January 2002 were the same company.

Ella Star Casino Miami, Florida (Alpha Hospitality)	VP/Director of Operations March, 2000 - January 2002
Tollman Hundley Hotels, Technical Services Orlando, Florida (Affiliate Alpha Hosp.)	Project Manager February 1998 - March 2000
Jubilee Inn & Suites (Alpha Hospitality) Greenville, Mississippi	General Mgr./Project Mgr. July, 1997 - February, 1998
Bryanston Marine (Affiliate Alpha Hosp.) Lakeshore, Mississippi	Vice President July, 1996 - July 1997
Bayou Caddy's Jubilee & Jubilation Casinos Lakeshore, Mississippi (Alpha Hospitality)	Director Of Operations November 1994 - July 1996
Bayou Caddy's Jubilee Casino Lakeshore, Mississippi (Alpha Hospitality)	Director of Support Areas May 1994 - November 1994
Bayou Caddy's Jubilee Casino (Alpha Hosp.) Lakeshore, Mississippi	Director of Purchasing June 1993 - May 1994
Nigro and Associates Las Vegas, Nevada	Project Manager/Superintendent/Customer Service June 1990 - March 1993
MYS Paint & Drywall Las Vegas, Nevada	Painter June 1989 - March 1990
Opera House Casino North Las Vegas, Nevada	General Manager January 1987 - April 1989
Opera House Casino North Las Vegas, Nevada	Slot Manager November 1985 - December 1986
Silver Nugget Casino North Las Vegas, Nevada	Floorman, Pit Boss, Shift Mgr. July 1982 - July 1985
J & T Video & Slot Inc. Reno, Nevada	General Manager July 1981 - July 1982
J & T Video & Slot Inc. Reno, Nevada	Service Manager December 1980 - July 1981
Silverbird Hotel and Casino Las Vegas, Nevada	21 & Roulette Dealer July 1980 - December 1980

Aladdin Hotel Las Vegas, Nevada	Director Hotel Operations January 1980 - July 1980
Sahara Hotel Las Vegas, Nevada	Director Hotel Operations Executive Asst. Manager May 1978 - January 1980

From 1970 to 1978, various positions were held at the Sahara Las Vegas and the Thunderbird Hotel in conjunction with Del Webb's Management Trainee Programs. These areas included front desk, housekeeping, purchasing, kitchen and maintenance operations.

Ella Star Casino

VP/Director of Operations	Transferred from Tollman Hundley Hotels to head casino operations in Miami, Florida. Bid and purchased all furniture, fixtures and equipment for this 4.1 million dollar project. Supervised boat build-out, installation of all furniture, fixtures and equipment, slots, table games and GSI computer systems. Pre-opening budgets, hiring, training and all phases of operations were under my supervision.

Tollman Hundley Hotels

Technical Services

Project Manager	Transferred from Jubilee Inn and Suites. Our office handled all budgeting and capital improvements on twenty hotels in seven different states. Technical Services handled all furnishing, project bidding and work crews.

Jubilee Inn & Suites

General Manager/ Project Mgr.	Responsible for construction of Jubilee Inn & Suites from breaking ground to final certificate of occupancy, negotiations with contractors, bidding, and executions of hotel build out on this 4.2 million dollar project. In conjunction with these duties, prepared Hotel for opening including hiring and training of all staff, ordering necessary equipment and supplies for opening.

Bryanston Marine

Vice President	Negotiated for offshore gaming in various locations within and outside the United States.

Bayou Caddy's Jubilee Casino

Director, Operations	Promoted from Director of Support Areas, Food & Beverage was added to my areas of control. By reviewing menus and working with the Executive Chef we reduced food cost of sales by 5%. Monitored all food and supply orders in all departments in order to maintain efficiency and reduced cost.

Bayou Caddy's Jubilee Casino

Director of Support Areas	Promoted from Director of Purchasing. Additional duties included housekeeping, maintenance and PBX. By

consolidating Maintenance and Housekeeping we were able to utilize one Director, and one shift manager for both departments resulting in a payroll savings of $187,000 annually.

Bayou Caddy's Jubilee Casino

Director of Purchasing

Gathered information for initial budget projections for Bayou Caddy's Jubilee Casino (40 million dollar project), and purchased all necessary items for the Casino opening. Set up controls and procedures for the purchasing department utilizing a requisition, purchase order system. Responsible for purchasing all equipment and daily supplies including gaming tables, ancillary equipment, food, beverage, office supplies, printing, chemicals, china, glassware and gift shop items. Warehouse pars were established and inventory taken four times weekly for control and reordering.

Nigro & Associates

Project Manager/ Superintendent

Field supervision, production and budget projections in all phases of residential construction were my responsibilities at Nigro & Associates. Project included Parkside South, a Subdivision of 78 homes, Legacy Highland, 82 Semi Custom Homes and R&R Plaza, 50,000 square foot office complex.

Opera House Casino

General Manager

Promoted from Slot Manager to direct control of Operations which included Slots, Food and Beverage, and Table Games. Reorganization of Slots and table games resulted in a 200% increase in net income. Instructed all appropriate staff so they would be current with Reg. 6 Regulations, supervision of over 130 Associates.

Opera House Casino

Slot Manager

Responsible for operation and maintenance of Slots. Enacted preventative maintenance program and weekly review of slot computer reports to assure proper percentage. Brought all procedures current with Reg. 6 Regulations.

Silver Nugget Casino

Shift Manager, Pit Boss Floorman

Oversee all areas of Casino operations, including daily and weekly scheduling. Supervision of over 50 associates, opening closing counts, estimates for profit or loss of shift, and authorization of Keno and Slot Jackpots.

J & T Incorporated

General Manager

J & T Incorporated opened in Reno during July 1981. Promotion from Service Manager. Responsibilities included structuring all operations for sales, promotions, collections and service. Staffing these areas, and ordering inventory necessary for operations.

J & T Incorporated

Reorganization of Service Department resulted in

Service Manager	an increase of efficiency by 50%. Installation of Video equipment and scheduling of personnel were included in my responsibilities.
Silverbird Hotel	21 and Roulette Dealer
Aladdin Hotel	
Director, Hotel Operations	Restructure of entire hotel operation was necessary due to an extreme lack of procedural controls. Responsibilities included front desk, public areas, housekeeping, recreational facilities and PBX. Front Desk was equipped with EECO computer system. Supervision of 500 Associates.
Sahara Hotel - Reno	
Director, Hotel Operations	Promotion from Executive Assistant Manager. During the first month of control, reduced payroll by $38,000 reflecting an increase in profit margin from 60.8% to 70%. Areas of responsibility included front desk, public areas, housekeeping, and PBX. Assigned to coordinate entire installation of IBM System III Front Desk point of sales computer. Supervision of over 300 Associates.
Sahara Hotel - Reno	
Executive Assistant Mgr.	Sahara Reno opened July 1, 1978. Responsibilities included structuring all operational procedures for front desk and room reservations, training of personnel to man these areas and ordering of all equipment necessary for hotel operations. Promotion from room clerk. Supervision of 100 employees.
MANAGEMENT TRAINEE PROGRAM:	
Sahara Hotel Las Vegas 1972-1978	Courtesy and expedient processing of customer services set the mood for an entire stay. Major responsibilities included daily front desk operation.
Thunderbird Hotel 1971 - 1972	Receiving and warehouse controls were part of my responsibilities in purchasing. Yield and quality controls were studied to insure proper amounts of delivered goods. Assumed control of department during purchasing agent's vacation.
Sahara Hotel Las Vegas 1970-1971	Administrative and inventory controls were stressed during my training in the housekeeping area.

THEODORE W. NIGRO
224 Corinth Drive
Bay St. Louis, Mississippi 39520
(228) 469-9253

CAREER OBJECTIVE:

To obtain a position in management leading to top-level administration.

EXPERIENCE: Positions held from June 1993 to January 2002 were the same company.

Ella Star Casino Miami, Florida (Alpha Hospitality)	VP/Director of Operations March, 2000 - January 2002
Tollman Hundley Hotels, Technical Services Orlando, Florida (Affiliate Alpha Hosp.)	Project Manager February 1998 - March 2000
Jubilee Inn & Suites (Alpha Hospitality) Greenville, Mississippi	General Mgr./Project Mgr. July, 1997 - February, 1998
Bryanston Marine (Affiliate Alpha Hosp.) Lakeshore, Mississippi	Vice President July, 1996 - July 1997
Bayou Caddy's Jubilee & Jubilation Casinos Lakeshore, Mississippi (Alpha Hospitality)	Director Of Operations November 1994 - July 1996
Bayou Caddy's Jubilee Casino Lakeshore, Mississippi (Alpha Hospitality)	Director of Support Areas May 1994 - November 1994
Bayou Caddy's Jubilee Casino (Alpha Hosp.) Lakeshore, Mississippi	Director of Purchasing June 1993 - May 1994
Nigro and Associates Las Vegas, Nevada	Project Manager/Superintendent/Customer Service June 1990 - March 1993
MYS Paint & Drywall Las Vegas, Nevada	Painter June 1989 - March 1990
Opera House Casino North Las Vegas, Nevada	General Manager January 1987 - April 1989
Opera House Casino North Las Vegas, Nevada	Slot Manager November 1985 - December 1986
Silver Nugget Casino North Las Vegas, Nevada	Floorman, Pit Boss, Shift Mgr. July 1982 - July 1985
J & T Video & Slot Inc. Reno, Nevada	General Manager July 1981 - July 1982
J & T Video & Slot Inc. Reno, Nevada	Service Manager December 1980 - July 1981
Silverbird Hotel and Casino Las Vegas, Nevada	21 & Roulette Dealer July 1980 - December 1980
Aladdin Hotel Las Vegas, Nevada	Director Hotel Operations January 1980 - July 1980
Sahara Hotel Las Vegas, Nevada	Director Hotel Operations Executive Asst. Manager May 1978 - January 1980

From 1970 to 1978, various positions were held at the Sahara Las Vegas and the Thunderbird Hotel in conjunction with Del Webb's Management Trainee Programs. These areas included front desk, housekeeping, purchasing, kitchen and maintenance operations.

Ella Star Casino

VP/Director of Operations	Transferred from Tollman Hundley Hotels to head casino operations in Miami, Florida. Bid and purchased all furniture, fixtures and equipment for this 4.1 million dollar project. Supervised boat build-out, installation of all furniture, fixtures and equipment, slots, table games and GSI computer systems. Pre-opening budgets, hiring, training and all phases of operations were under my supervision.

Tollman Hundley Hotels

Technical Services

Project Manager	Transferred from Jubilee Inn and Suites. Our office handled all budgeting and capital improvements on twenty hotels in seven different states. Technical Services handled all furnishing, project bidding and work crews.

Jubilee Inn & Suites

General Manager/ Project Mgr.	Responsible for construction of Jubilee Inn & Suites from breaking ground to final certificate of occupancy, negotiations with contractors, bidding, and executions of hotel build out on this 4.2 million dollar project. In conjunction with these duties, prepared Hotel for opening including hiring and training of all staff, ordering necessary equipment and supplies for opening.

Bryanston Marine

Vice President	Negotiated for offshore gaming in various locations within and outside the United States.

Bayou Caddy's Jubilee Casino

Director, Operations	Promoted from Director of Support Areas, Food & Beverage was added to my areas of control. By reviewing menus and working with the Executive Chef we reduced food cost of sales by 5%. Monitored all food and supply orders in all departments in order to maintain efficiency and reduced cost.

Bayou Caddy's Jubilee Casino

Director of Support Areas	Promoted from Director of Purchasing. Additional duties included housekeeping, maintenance and PBX. By consolidating Maintenance and Housekeeping we were able to utilize one Director, and one shift manager for both departments resulting in a payroll savings of $187,000 annually.

Bayou Caddy's Jubilee Casino	
Director of Purchasing	Gathered information for initial budget projections for Bayou Caddy's Jubilee Casino (40 million dollar project), and purchased all necessary items for the Casino opening. Set up controls and procedures for the purchasing department utilizing a requisition, purchase order system. Responsible for purchasing all equipment and daily supplies including gaming tables, ancillary equipment, food, beverage, office supplies, printing, chemicals, china, glassware and gift shop items. Warehouse pars were established and inventory taken four times weekly for control and reordering.
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Silverbird Hotel	21 and Roulette Dealer

Aladdin Hotel

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Sahara Hotel Las Vegas 1970-1971	Administrative and inventory controls were stressed during my training in the housekeeping area.

WILLIAM J. MORRISON, C.P.A.
Morrison & Company, P.A.
One Mack Centre Drive
Mack Centre II
Paramus, New Jersey 07652
201-265-2800

PROFESSIONAL CREDENTIALS:

Certified Public Accountant,
State of New Jersey
Certified Public Accountant,
State of Florida

EXPERIENCE:

William J. Morrison is president of Morrison & Company, P.A. He is a C.P.A. licensed in New Jersey and Florida and has over twenty years experience as an investigator and accountant. He has served as a Special Agent for the Federal Bureau of Investigation, an internal auditor and a Certified Public Accountant. He has served as an expert for the Superior Court and the Supreme Court of New Jersey.

Mr. Morrison has lectured to organizations such as *The New Jersey Institute Of Continuing Legal Education, The League of Municipalities,* and the *Bank Administration Institute*. He has also published articles for Fairshare and the Encyclopedia of Matrimonial Practice.

EDUCATION:

Bachelor of Arts - History
Boston College,
Boston, Massachusetts
Master of Business Administration
Fairleigh Dickinson University,
Teaneck, New Jersey

PROFESSIONAL DESIGNATIONS:

ABV - Accredited in Business Valuation,
American Institute of Certified Public Accountants
DABFA – Diplomat American Board of Forensic Accounting,
American College of Forensic Examiners

EXPERT TESTIMONY:

William J. Morrison has been qualified as a financial expert and has provided testimony in New Jersey and Florida.

PROFESSIONAL AFFILIATIONS:

American Institute of Certified Public Accountants
New Jersey Society of Certified Public Accountants
Society of the Former Agents of the Federal
Bureau of Investigation
Association of Certified Fraud Examiners
The American College of Forensic Examiners
The Institute of Business Appraisers, Inc.
American Society of Appraisers

STATEMENT BY

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

TESTIMONY
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

OVERSIGHT HEARING ON TAKING LAND INTO TRUST

May 18, 2005

Good morning, Chairman McCain, Vice Chairman Dorgan, and other members of the Committee. My name is James T. Martin, and I am the Executive Director of United South and Eastern Tribes, Inc. ("USET"). I am also a member of the Poarch Band of Creek Indians. Thank you for inviting USET to participate in this important oversight hearing regarding taking land into trust.

United South and Eastern Tribes, Inc. is a non-profit, inter-tribal organization that collectively represents its member tribes at the regional and national levels. USET represents twenty-four federally recognized tribes.[1] My testimony will focus on the most controversial aspect of land-into-trust activities, which involves off-reservation land-into-trust applications for gaming. As my testimony will explain, gaming considerations are driving much of today's off-reservation land-into-trust activities. And, non-Indian casino developers are responsible for much of what is currently wrong with some of the current off-reservation land-into-trust pursuits.

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

Over the past two years, USET has passed three resolutions opposing the activities of certain non-Indian developers and a handful of Indian tribes which seek to build casinos in states where the tribes have no reservation or right to exercise governmental jurisdiction.

Reservation Shopping and Indian Gaming

Congress enacted IGRA "to promote tribal economic development, tribal self-sufficiency, and strong tribal government."[2] The Act, for the most part, has

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[1] The members of USET are: The Chitimacha Tribe of Louisiana, the Seneca Nation of Indians, the Coushatta Tribe of Louisiana, the Eastern Band of Cherokee, the Mississippi Band of Choctaw, the Seminole Tribe of Florida, St. Regis Band of Mohawk Indians, the Miccosukee Tribe, the Penobscot Indian Nation, the Passamaquoddy Pleasant Point Tribe, and the Passamaquoddy Indian Township Tribe, the Houlton Band of Maliseet Indians, the Tunica-Biloxi Indians of Louisiana, the Poarch Band of Creek Indians, the Narragansett Indian Tribe, the Mashantucket Pequot Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), the Alabama-Coushatta Tribe of Texas, the Oneida Indian Nation, the Aroostook Band of Micmac Indians, the Catawba Indian Nation, the Jena Band of Choctaw Indians, the Mohegan Tribe of Connecticut, and the Cayuga Nation.

[2] 25 U.S.C. §2701(4)

accomplished those goals. Indian gaming has been described as "the only federal Indian economic initiative that ever worked." That is absolutely correct. Indian gaming has served as a critical economic tool to enable Indian nations to once again provide essential governmental services to their members, re-assert their sovereignty, and promote the goals of self-determination and self-sufficiency.

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

Today, the resources of Indian gaming operations are used to provide essential governmental services to tribal members. Indian nations across the country are using gaming revenues to invest in dozens of tribal member programs, including home ownership initiatives, tuition assistance for everything from private schools to post-doctorate work, health insurance for all tribal members, and access to top-notch health clinics.

We cannot calculate the intangible benefits of the impact such economic development has created, including the impact on the most important matter for an Indian nation – its human resources. Suffice it to say that in many situations, Indian governments have seen their members move from unemployment rolls to being gainfully employed.

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

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

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

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

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

So far, none of the out-of-state Indian tribes has obtained the necessary approvals to establish the casinos they are seeking. However, as there are proposals pending in 12 different states, there is quite a bit of collateral damage to other Indian nations and non-Indian communities from the activities generated by these efforts. And, if even one of these deals is approved, however, the floodgates for this kind of reservation shopping will open throughout the country.

The USET Resolutions against Reservation Shopping

We recognize that this issue is controversial and complicated. My organization has spent several years studying and deliberating all aspects of this debate. And we have received criticism from some quarters that we should not open up this can of worms. Some are concerned that our willingness to bring sunlight to this issue will hurt the overall efforts of Indian nations, the vast majority of whom are conducting their economic enterprises in an impeccable manner. However, after several years of thoughtful, respectful, and often pointed deliberations, we thought that this issue demanded action. Over the last two years, we have taken the following measures.

In February 2003, USET became the first Native American Indian organization to adopt a resolution voicing its opposition to "reservation shopping." The resolution opposed efforts by the Oklahoma Seneca-Cayuga Tribe to purchase land, assert jurisdiction, and develop a Class II bingo hall on land in Aurelius, New York. The resolution called on the U.S. Department of the Interior to clarify its policy against this activity.[4]

Later that same year, in October 2003, USET passed a second resolution which called on Congress to oppose the efforts of out-of-state tribes to govern land or establish casinos in different states.[5]

This year, USET adopted a resolution for the third time opposing reservation shopping.[6] The resolution includes the following admonition to Congress:

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[4] *Illegal Gaming by the Seneca-Cayuga Tribe of Oklahoma in the State of New York*, USET, Inc. Res. No. 2003:057, Feb. 6, 2003 (See attached Exhibit 1)

[5] *Illegal Efforts by Certain Indian Nations to Exercise Governmental Jurisdiction over Non-Tribal Lands*, USET, Inc. Res. No. 2004:012, October 23, 2003. (See attached Exhibit 2)

[6] *Reservation Shopping*, USET, Inc. Res. No. 2005:022, Feb. 10, 2005 (See attached Exhibit 3)

> Resolved that the USET Board of Directors calls upon the United States Congress to enact legislation that would prohibit, and oppose any legislation that would allow, individual Indian Nations or Tribes from establishing a reservation, acquiring trust land or exercising governmental jurisdiction in a state other than the state where they are currently located or at a remote location to which they have no aboriginal connection....[7]

Copies of all three of these USET resolutions are attached to this statement.

Summary of Proposed Tribal Migration across State Lines for Purposes of Gaming

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

Colorado

Cheyenne-Arapahoe Tribes of Oklahoma: In 2004, the consolidated Cheyenne-Arapahoe Tribes filed a 27 million acre land claim with the Department of Interior, claiming all of Denver and Colorado Springs. In exchange for dropping the claims, the Cheyenne-Arapahoe Tribes have proposed to develop a Las Vegas-style gaming facility near the Denver Airport. This proposal has met opposition from the state and federal representatives of Colorado. In late 2003, a developer sought to purchase 500 acres east of Denver, near the Denver International Airport, to create a reservation for the tribes.[8]

Georgia

Kialegee Tribal Town of Oklahoma: The tribe sought to move to Hancock County, Georgia to establish a casino and entertainment project. County officials were interested in the plan, because of extreme poverty in the county, but the previous Governor was opposed to casino gaming. The tribe also sought land in Texas and other parts of Georgia in the past.[9]

Illinois

Miami Tribe of Oklahoma: The tribe is seeking 2.6 million acres in east-central Illinois based upon a treaty from the 1800s. The tribe sued landowners in 2000, and dropped the lawsuit in 2002. The tribe has indicated it would agree to a casino in exchange for dropping the claim.[10]

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[7] *Id.*

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

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

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

Ho-Chunk Nation of Wisconsin: The tribe is seeking to build the largest casino in Illinois, which would be located in the Chicago suburb of Lynwood. There is strong opposition from the community, but the plan has been supported by Congressman Jesse Jackson, Jr. (D-IL). The proposed casino would be located approximately 296 miles from the tribe's current reservation.[11] The tribe has begun preparing their land trust application for the BIA, conducting impact studies. Once the studies are complete, the tribe will submit the reports as part of their application. [12]

Prairie Band Potawatomi Nation of Kansas: The tribe has sought a gaming compact with the Governor, which prompted the State's legislature to pass legislation that would require the Governor to get approval from the General Assembly before signing a deal with any Native American tribe. The Governor vetoed the bill, but the veto was overridden and has gone into law. The tribe was seeking land outside of Chicago for a casino.[13]

Indiana

Miami Tribe of Oklahoma: The tribe is negotiating with the state to put a casino in Gary, Indiana. The tribe has negotiated with the mayor of Gary since 2002. The tribe unsuccessfully attempted to place a casino in Terre Haute, Ind. as well. The proposed casino would be located approximately 610 miles from the tribe's current reservations.[14]

Kansas

Delaware Tribe of Oklahoma: The tribe signed with a California-based developer to help secure gaming rights near Kansas City, Kansas. A land claim is pending.[15]

Miami Tribe of Oklahoma: The tribe attempted to open a casino in Kansas in 1999, but the plan was rejected by the federal government.[16]

Wyandotte Tribe of Oklahoma: The tribe expressed interest in opening a casino in Edwardsville, KS, and U.S. Congressman Dennis Moore (D-KS) introduced legislation in 2002 to allow the casino. The Governor has expressed reservations with this plan.[17]

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[11] "Village opposes Lynwood casino," *Chicago Tribune*, November 19, 2004; "Weller will battle Ho-Chunk proposal," *Chicago Tribune*, August 28, 2004.
[12] "Ho-Chunk trying to bring boxing to Lynwood," *Northwest Indiana News*, April 23, 2005
[13] "Indian gaming law takes effect," *The Daily Chronicle*, November 20, 2004.
[14] "Tribe wins step in fight for N.Y. casino," *The Daily Oklahoman*, November 16, 2004; "Midwest Tribes See Big Payoffs in the East," *The New York Times*, March 24, 2003; "...the Oklahoma-based tribe, which has been negotiating to open a casino in northern Indiana, recently declared that the tribe has a legal claim to 100 percent of the land in [5] counties." "An obvious ploy," *South Bend Tribune*, July 2, 2002.
[15] "Delaware Indian tribes face long odds to win gambling effort," Newsday.com article, May 15, 2003.
[16] "Tribe aims for casino deal," *The Pantagraph*, Jan. 12, 2003.
[17] "Sebelius not sure she'll support tribal gambling plan," *Associated Press*, Jan. 25, 2003.

The tribe has a case pending before the 10th Circuit Court of Appeals, on which the fate of their Kansas City, KS casino depends. The casino was raided last year, and the casino manager was arrested, for operating a casino illegally.

"Kansas officials have challenged the land's de facto tribal reservation status since it was granted by the federal government in the mid-1990s. In August 2003, the tribe defied officials and opened the casino in several mobile building units parked beside the tribe's Huron Cemetery across the street from City Hall. When federal authorities last year appeared poised to overturn the land's reservation status, Kansas Attorney General Phill Kline ordered the casino shut down. The state seized 152 slot machines and about $500,000 in cash. The tribe sued, claiming the raid was a breach of tribal sovereignty."[18]

Maryland

Delaware Nation of Oklahoma: The tribe agreed to take over land in Anne Arundel County to create a landfill, run by a local development company. The tribe expressed interest in the land for establishing a high stakes bingo parlor, and if slots are approved by the state, offering those as well.[19]

New Jersey

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: The two tribes (which are separate entities recognized by the federal government) attempted to open a casino in 1999 in Wildwood, New Jersey, but state and local officials opposed the plan.[20]

New Mexico

Fort Sill Apache Tribe of Oklahoma: The tribe is considering building a casino in southern New Mexico, and might oppose plans by an in-state tribe, the Jemez Pueblo to build in the area as well.[21]

New York

Stockbridge-Munsee Tribe of Wisconsin: This tribe has offered to settle a land claim with the state in exchange for a casino in New York. The tribe has signed with a developer to build one of the planned Indian casinos in the Catskills. A

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[18] "Casino is renovating in hopes of reopening," *Kansas City Star*, May 7, 2005

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

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

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

Federal court is poised to drop the tribe's land claim against the state because it is not supported by the Federal Government. After years of opposing any governmental presence in New York by an out-of-state tribe, Governor Pataki agreed to give the tribe the right to establish a Las Vegas-style facility in the Catskills. On April 15, 2005, however, Governor Pataki withdrew his proposed legislation before the New York Legislature to approve the settlement agreement.[22] Nevertheless, the Stockbridge-Munsee Tribe of Wisconsin continues to push for a settlement that would include establishing a casino in New York.

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

The Seneca-Cayuga Tribe asserts that its participation in the land claim litigation involving the Cayuga Nation and the State of New York provides it with political jurisdiction over land in New York. Governor Pataki announced a settlement agreement with the Seneca-Cayuga on November 12, 2004, allowing the tribe to establish a Las Vegas-style gaming facility in the Catskills. On April 15, 2005, however, Governor Pataki withdrew his proposed legislation before the New York Legislature to approve the settlement agreement.[23] Nevertheless, the tribe continues to push for a settlement that would include establishing a casino in New York.

Oneida Tribe of Wisconsin: This tribe is a party to a land claim suit with the Oneida Nation of New York and the Oneida of the Thames Band. On December 7, 2004, the Governor announced an agreement with the tribe that will allow them to establish a Las Vegas-style gaming facility in the Catskills in exchange for the tribe dropping their land claim. On April 15, 2005, however, Governor Pataki withdrew his proposed legislation before the New York Legislature to approve the settlement agreement.[24] Nevertheless, the tribe continues to push for a settlement that would include establishing a casino in New York.

Ohio

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

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[22] "*Pataki Withdraws Five Casino Bill*," *GlobeSt.com*, April 26, 2005
[23] *Id.*
[24] *Id.*

officials in December or January. The tribe would need to enter into a compact with the state for the casinos.[25]

Pennsylvania

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: These two tribes declared a claim on 315 acres of land in Pennsylvania near Allentown after their plans for a casino on the New Jersey shore failed. The tribes are seeking to build a casino in exchange for dropping their claims. Governor Rendell has so far refused to negotiate with the tribes for a casino.[26]

Texas

Delaware Tribe of Oklahoma; Delaware Nation of Oklahoma: In addition to casino plans in New Jersey and Pennsylvania, these two tribes have attempted to build a travel plaza in Texas.[27]

Kialegee Tribal Town: Attempted to establish lands and gaming in Texas, but were rejected.[28]

The above-referenced activities are opposed by the majority of Indian nations, including the member-nations of USET. Consequently, we strongly urge the Committee to consider legislation that would address these reservation shopping activities by clarifying that Indian tribes cannot cross state lines to establish casinos in states where they are not currently located. As you know, in the House of Representatives, Chairman Pombo is considering legislation that would prevent an Indian nation from migrating across state lines to establish a casino

In 2002, Department of Interior Secretary Gale Norton expressed concerns that reservation shopping activities turn IGRA into a means of commercial viability rather than promoting gaming as a tool to strengthen tribal governments. She stated that, "[t]ribes are increasingly seeking to develop gaming facilities in areas far from their reservations, focusing on selecting a location based on market potential rather than exercising governmental jurisdiction on existing Indian lands."[29] If tribes are permitted to conduct gaming in different states far away from their recognized reservations, Secretary Norton's concerns will have been fully realized. There is no precedent for

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

[26] "2 Okla. tribes seek fortune in Penna.," *Philadelphia Inquirer*, July 7, 2003; "...two Delaware Indian tribes from Oklahoma want to reclaim 315 acres in the Lehigh Valley that they say were stolen from their Pennsylvania ancestors 200 years ago...Stephen A. Cozen, the Philadelphia lawyer representing the tribes, said the group is prepared to file a federal lawsuit to reclaim the land and pursue gaming unless they can reach an agreement with [Governor] Rendell to open a casino." (Source: "Indians seek N.E. Pennsylvania land for casino," *Philly.com* article, May 15, 2003.

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

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

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

these kinds of activities, and if allowed to continue, it will usher in a new era of "portable sovereignty" across the country.

Developer-Driven Deals

In addition, the Committee may want to consider amending IGRA to ensure that deals between developers and tribes are subject to federal scrutiny. Much if not all of the reservation shopping activities are developer-driven deals. The basic idea of IGRA was to protect the *governmental* rights of tribes over their lands while assuring regulation of casino gaming. But the proposed Indian casino deals highlighted earlier are not based on governmental rights. In these instances, Indian gaming is not being used as a tool by tribes to promote economic activities on their lands, it is being used as a tool by developers who simply need Indian tribes to make their deals for casinos work.

Let me give you a typical scenario for how the developers normally seek to gain approval for an Indian casino on behalf of an out-of-state tribe. First, the developer will extend a "carrot" to the state and local governments. The developer hires lobbyists who try and convince state and local officials that an Indian casino will benefit the state by creating jobs and economic activity. The developer will offer the state and local communities a cut of the proceeds of the Indian casino in exchange for state support. In most cases, these offers violate IGRA's prohibition against taxing Indian casinos. But the out-of-state tribes are willing to pay a tax because these ventures do not impact the enterprises where the tribes are currently located.

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

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

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

Attached to my testimony is a report from one of USET's members, the Oneida Indian Nation, which provides information obtained in the public domain about the development companies involved in the off-reservation land-into-trust proposals occurring in New York State. This report underscores the need for Congress to provide greater scrutiny to these developer-driven deals.[30] It appears from this report that in some cases, the developers purposefully construct their arrangements with tribes to circumvent the profit-sharing limitations in IGRA. In addition, it also appears that some of the developers would not be able to survive a federal background check if they were required to submit to one. At the very least, this report underscores that in many instances an Indian nation's best interests take a backseat to the interest of the developers and lawyers in securing a lucrative casino deal that will create an economic windfall for these non-Indian participants.

Conclusion

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

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

Indian gaming must benefit Indian tribes on their own lands, not make Indian tribes pawns in the hands of developers with dubious professional experience who want to move Indian governments around the country to establish casinos in states where these tribes do not now exist. In other words, Indian gaming should bring new economic opportunities to tribes on their existing lands—not bring new tribes into states where they are not currently located.

USET believes that the political activities and financial interests of these non-Indian developers need to be fully disclosed to the public. USET also supports the enactment of legislation which bars out-of-state tribes from exercising governmental jurisdiction in more than one state. This would likely require an amendment to Section 20 of IGRA prohibiting the approval of a land-into-trust application for land in a state

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[30] *See* Exhibit 4, "Oneida Indian Nation Report: Background on Developers in the Off-Reservation Land-into-Trust Proposals in New York State," May 18, 2005.

other than in the state where the tribe is currently located or in a remote location to which the tribe has no aboriginal connection.

USET appreciates the opportunity to present its views today before the Committee and to work together to bring about a solution to end reservation shopping. I am happy to answer any questions.

Exhibit 1

UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2003:057

ILLEGAL GAMING BY THE SENECA-CAYUGA TRIBE OF OKLAHOMA IN THE STATE OF NEW YORK

WHEREAS, United South and Eastern Tribes, Incorporated (USET) is an intertribal organization comprised of twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, the Seneca-Cayuga Tribe of Oklahoma is seeking to conduct Class II gaming activities in the State of New York; and

WHEREAS, the Seneca-Cayuga Tribe of Oklahoma has no recognized political or governmental authority in the State of New York; and

WHEREAS, the Seneca-Cayuga Tribe of Oklahoma has no established land claim in the State of New York over which it can legally exercise jurisdiction; and

WHEREAS, the introduction of Class II gaming activities by the Seneca-Cayuga Tribe of Oklahoma in the State of New York would be illegal and would violate the rights and jurisdiction of the Cayuga Nation of New York; therefore, be it

RESOLVED that the USET Board of Directors opposes the efforts of the Seneca-Cayuga Tribe of Oklahoma to acquire land, assert jurisdiction, and conduct any gaming activities in the State of New York; and, be it further

RESOLVED that the USET Board of Directors calls upon the Department of Interior (DOI) and the National Indian Gaming Commission, to oppose the efforts of out-of-state Indian nations conduct gaming in states where they have no recognized political jurisdiction and governance rights, and that the DOI express a clear policy precluding the exercise of governmental authority by any tribal nation in another state beyond its lawful jurisdiction.

CERTIFICATION

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present, in Arlington, VA, on Thursday, February 6, 2003.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly M. Wright, Secretary
United South and Eastern Tribes, Inc.

Exhibit 2

UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2004:012

ILLEGAL EFFORTS BY CERTAIN INDIAN NATIONS TO EXERCISE GOVERNMENTAL JURISDICTION OVER NON-TRIBAL LANDS

WHEREAS, United South and Eastern Tribes, Incorporated (USET) is an intertribal organization comprised of twenty-four (24) federally recognized tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and

WHEREAS, the Seneca-Cayuga Tribe of Oklahoma is seeking to conduct Class II gaming activities in the State of New York; and

WHEREAS, the Seneca-Cayuga Tribe of Oklahoma has no political or governmental authority in the State of New York; and

WHEREAS, the Seneca-Cayuga Tribe of Oklahoma has no land in the State of New York over which it can legally exercise any jurisdiction; and

WHEREAS, the introduction of Class II gaming activities by the Seneca-Cayuga Tribe of Oklahoma in the State of New York would be illegal and would violate the rights and jurisdiction of the Cayuga Nation of New York; and

WHEREAS, other out-of-state Indian nations have expressed their intent to purchase land in New York and in other states, take such land into trust, and assert the right to govern that land and conduct gaming thereon; and

WHEREAS, several Alaskan Native Villages and entities wish to acquire the right to purchase land in California, take such land into trust, and assert the right to govern that land or conduct commercial activities thereon; and

WHEREAS, Governor George Pataki, Senator Charles Schumer and Congressman Sherwood Boehlert intend to introduce legislation in Congress that would prohibit an Indian nation from acquiring land in a state other than the state where its reservation is located *unless* such land is taken into trust with the state's approval; and

WHEREAS, the exception created in the Pataki-Schumer-Boehlert proposal is contrary to existing federal law concerning the scope of a tribe's governmental authority and would invite numerous Indian nations to file out-of-state trust land applications, thereby creating conflicts among tribes and with state and local governments; therefore, be it

RESOLVED that the USET Board of Directors opposes all legislative proposals that would permit the Seneca-Cayuga Tribe of Oklahoma or any other out-of-state Indian Nation to acquire land or place land in trust in the State of New York for purposes of governing such land or conducting gaming thereon; and, be it further

RESOLVED that the USET Board of Directors opposes any legislative proposal that would permit Alaskan Native Villages and entities to acquire land or take land into trust in California, or in any state other than Alaska, for purposes of governing such land or conducting gaming thereon.

USET Resolution 2004:012

CERTIFICATION

This resolution was duly passed at the USET Annual Meeting and EXPO at which a quorum was present in Mashantucket, CT, on Thursday, October 23, 2003.

Keller George, President
United South and Eastern Tribes, Inc.

Beverly M. Wright, Secretary
United South and Eastern Tribes, Inc.

Exhibit 3

UNITED SOUTH AND EASTERN TRIBES, INC.

USET Resolution No. 2005:022

RESERVATION SHOPPING

WHEREAS, the United South and Eastern Tribes, Incorporated (USET) is an intertribal organization comprised of twenty-four (24) federally recognized Tribes; and

WHEREAS, the actions taken by the USET Board of Directors officially represent the intentions of each member Tribe, as the Board of Directors comprises delegates from the member Tribes' leadership; and

WHEREAS, certain Indian nations are attempting to acquire lands for purposes of establishing reservations at remote locations (reservation shopping), frequently in other states where they have no reservation or trust land status, no ancestral ties and no recognized governmental jurisdiction, for the sole purpose of pursuing gaming opportunities; and

WHEREAS, these certain Indian Nations, in order to secure gaming rights at distant locations, have offered to make agreements with state governments that would undermine the sovereignty and treaty rights of local Indian nations; and

WHEREAS, allowing Indian Nations or Tribes to migrate to distant locations for purposes of conducting gaming would: (a) create serious political tensions with local Indian Nations and municipal governments, (b) be contrary to existing federal policy regarding Tribal migration, and (c) violate the Indian Gaming Regulatory Act, as historically applied by the Bureau of Indian Affairs; and

WHEREAS, this "reservation shopping" is often promoted and financed by wealthy developers whose financial relationships with Indian Nations and Tribes are not disclosed and whose development plans are inconsistent with the intent of the Indian Gaming Regulatory Act; and

WHEREAS, USET is aware of the following examples regarding this issue:

- the Seneca-Cayuga Tribe of Oklahoma is seeking to engage in Class II and Class III gaming in the State of New York where it has no recognized governmental presence and is approximately 1,175 miles from its existing reservation; and
- the Oneida Tribe of Wisconsin is seeking to engage in Class III gaming in the State of New York where it has no recognized governmental presence and is approximately 920 miles from its existing reservation; and
- Stockbridge-Munsee Tribe of Wisconsin is seeking to engage in Class III gaming in the State of New York where it has no recognized governmental presence and is approximately 977 miles from its existing reservation; and
- the Ho-Chunk Tribe of Wisconsin is seeking to engage in Class III gaming in the State of Illinois where it has no recognized governmental presence and is approximately 296 miles from its existing reservation; and
- the Cheyenne-Arapahoe Tribes of Oklahoma are seeking to engage in Class III gaming in the State of Colorado where it has no recognized governmental presence and is approximately 710 miles from its existing reservation; and

USET Resolution 2005:022

WHEREAS, certain Indian Nations and Tribes located in Oklahoma are seeking to develop casinos in Ohio, Indiana, and Kansas—states where they have no recognized governmental presence and which are remote from their existing reservations; therefore, be it

RESOLVED that the USET Board of Directors requests the Bureau of Indian Affairs to adhere to its historical policy of opposing Tribal migration and enforcing the provisions of the Indian Gaming Regulatory Act that prohibit "reservation shopping" by Indian Nations for that purpose; and, be it further

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

RESOLVED that this in no way shall restrict or limit any Tribe's rights to finance or enter into a management agreement with any Tribe in their territory.

CERTIFICATION

This resolution was duly passed at the USET Impact Week Meeting at which a quorum was present in Arlington, VA, on Thursday, February 10, 2005.

Keller George, President
United South and Eastern Tribes, Inc.

Eddie L. Tullis, Secretary
United South and Eastern Tribes, Inc.

Exhibit 4

Oneida Indian Nation

REPORT:

BACKGROUND ON DEVELOPERS INVOLVED IN THE OFF-RESERVATION LAND-INTO-TRUST PROPOSALS IN NEW YORK STATE," MAY 13, 2005.

EMPIRE RESORTS

Empire Resorts, Inc., a New York-based development company formed in 2003 after the restructuring of Alpha Hospitality Corporation, entered into a casino development agreement with the Cayuga Nation of New York in mid-2000.[1]

Empire Resorts entered into a development agreement with the Seneca-Cayuga Tribe of Oklahoma in August 2004.[2] Prior to this current deal, the tribe had a development agreement, originally signed in August 2001, with Rochester-based developer Thomas Wilmot's company Caywil New York LLC.

Indian Gaming Commission Did Not Approve Empire Management Contract

On February 11, 2005, the National Indian Gaming Commission ("NIGC") sent a letter to the Cayuga Nation ("Nation") and Empire Resorts reaffirming that the commission could not approve Empire's management contract with the Nation because it did not comply with certain provisions of the IGRA and NIGC rules[3]. The contract, originally filed with the commission in April 2002, had first been ruled to be insufficient in January 2004. The NIGC letter explaining their January 2004 ruling cited 49 issues with the management contract that the commission found insufficient or of concern. Among the issues raised in the NIGC's January 2004 letter were provisions in the management contract that may have provided Empire Resorts additional compensation and reimbursement—including development fees and legal expenses—beyond the payment of 35-percent of the net revenues of the gaming operations, the maximum allowed under NIGC rules. Empire was also asked to provide explanation for the purpose of a $10,000 petty cash fund described in the management contract when the management contract had separate provisions to have $4 million in cash and coin on hand.

Empire Resorts has not filed an SEC 8-K—used to detail a "material event" for shareholders—regarding the NIGC's objections to the contract.

In the past two years alone, Empire Resorts has accumulated significant debt from loans obtained from institutional lenders and private placements of senior convertible notes, including a $3.5 million loan from The Berkshire Bank obtained in October 2003 and a $10 million credit facility from Bank of Scotland obtained in January 2005 by Empire subsidiary Monticello Raceway Management.[4] At least one of these debts has a contingency requirement for federal approval of the Empire Resorts' proposed casinos.

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[1] "Cayuga Tribe Enters Casino Sweepstakes," Associated Press, June 24, 2000.
[2] "Oklahoma Tribe Eyes Bigger Role in Catskills," Albany Times-Union, August 19, 2004; "Wilmot Secures Casino Deals," Rochester Democrat and Chronicle, March 16, 2002; Caywil New York lobbying disclosure forms, New York Temporary State Commission on Lobbying.
[3] Exhibit to Cayuga Nation's February 24, 2005 motion for temporary restraining order, The Cayuga Nation of New York v. Clint Halftown, et al., civ. 05- 195 (N.D.N.Y.).
[4] Empire Resorts January 13, 2004 SEC 8-K filing; January 13, 2005 Empire Resorts press release.

This report is based solely on public records sources, including lobby disclosure forms, professional directories, press coverage, corporate filings and litigation pleadings.

In July 2004, Empire issued $65 million in senior convertible notes that originally accrued an annual interest rate of 5.5 percent.[5] However, under the terms of issuance, the notes had a "trigger event" provision that required either the approval of the Cayuga Nation casino or the approval of Cayuga land-to-trust application by the end of July 2005, otherwise the annual interest rate on the notes would increase to 8 percent.

Cayuga Law Firm to Receive $60 Million Payment from Empire

Sonnenschein Nath & Rosenthal—the law firm representing the Cayuga Nation in its land claim lawsuit and its registered federal lobbyist—was to be paid $60 million in "contingency legal fees" by Empire Resorts, the developer for its proposed casino, following the successful completion of the Nation's land claim settlement, according to documents attached to pleadings filed by Cayuga Nation's federally recognized-representative Clint Halftown in federal court in Syracuse.[6]

Members of the Cayuga Nation filed the lawsuit against Halftown and other members of the Nation who had withdrawn the Nation from its November 2004 proposed land claim settlement with the State of New York seeking declaratory judgment against Halftown's representation of the Nation and the surrender of the Nation's financial records.

In December 2004, little over a month after the proposed land claim settlement, Halftown—in his capacity as federally-recognized representative of the Cayuga Nation—had notified Governor Pataki that the Nation had withdrawn from its land claim settlement with the state and that the Nation's development agreement with Empire Resorts would not be renewed when it expired at the end of 2004. However, according to subsequent pleadings filed by Halftown, Sonnenschein lawyers continued working with other members of the tribal council in relation to the Empire development deal. On February 10, 2005, Halftown terminated the Nation's legal contract with Sonnenschein through a letter from the Nation's counsel, according to Halftown's motion.

On February 15, three days after the complaint was filed, Halftown filed a motion to dismiss on grounds that he was the federally-recognized representative of the Nation. The motion cited the Nation's concern about certain allegedly unethical conduct of Sonnenschein, including its alleged receipt of payments from Empire Resorts while representing the Nation.

Alpha Hospitality Executives Indicted for Bank Fraud

In April 2002, Stanley Tollman, the former chairman and co-chief executive of Alpha Hospitality Corporation—the predecessor of Empire Resorts, was indicted on 22

[5] Empire Resorts November 15, 2004 SEC 10-Q, pp. 12-13.
[6] Exhibit to Cayuga Nation's February 24, 2005 motion for temporary restraining order, The Cayuga Nation of New York v. Clint Halftown, et al., civ. 05- 195 (N.D.N.Y.).

This report is based solely on public records sources, including lobby disclosure forms, professional directories, press coverage, corporate filings and litigation pleadings.

counts of bank fraud and tax evasion in federal court in Manhattan for allegedly defrauding several banks of $42 million while restructuring debt accumulated from his failed acquisition and operation of Days Inn.[7] Along with Tollman, five other current or former executives and board members of Alpha Hospitality were subsequently indicted—Tollman's son, Brett Tollman, the company's then-vice-president and a board member; James Cutler, a board member who had resigned in February 2002; Sanford Freedman, a former board member that had resigned from the board in 1998; Howard Zuckerman, who had resigned from the board in 1997; and Monty Hundley, a former board member who also resigned from the board in 1997.

In February 2002, two months before he was indicted, Tollman stepped down as Alpha Hospitality chairman and Robert Berman was appointed as president, CEO and chairman of the company[8]. Brett Tollman resigned in June 2002, less than a month after a grand jury was impaneled to hear evidence against him.[9] He was indicted in November 2002.

Tollman is a fugitive from justice and has not been arraigned.[10] Brett Tollman, who was originally charged with 14 counts of tax fraud and conspiracy, entered a guilty plea in September 2003.[11] He was convicted of two counts of tax evasion and sentenced to two years in prison in March 2004. In February 2004, Cutler, Freedman, Zuckerman and Hundley were found guilty in a jury trial.[12] Final sentencing is scheduled for early next month (April 7, 2005).

As of the end of 2004, Tollman and his family still owned a significant number of shares in Empire. The Tollman family's investment entity Bryanston Group owned 1.55 million shares and Stanley Tollman individually owned 152,817 shares of Series E preferred stock in Empire Resorts.[13] Bryanston Group and Tollman held 98.4 percent of this Series E stock. Through these shares, Bryanston Group and Tollman continue to hold a 1.6 percent voting interest in Empire.

Alpha Hospitality Had History of Regulatory Problems

Even prior to Tollman's indictment, Alpha Hospitality—the sole original investor in what is now Empire Resorts that had casino gaming experience—had a series of regulatory problems. For example, in February 1996, George Lindsay Baxter—then-former president of Alpha Hospitality's Bayou Caddy's Jubilee Casino—was convicted of attempted money laundering in federal court in New Orleans, after he attempted to run

[7] April 16, 2002 indictment, USA v. Hundley, et al., crim. 02-441 (S.D.N.Y.).
[8] Alpha Hospitality Corporation February 26, 2002 SEC 8-K filing; "Alpha Hospitality Increases Casino and Racetrack Interest," Business Wire, February 13, 2002.
[9] Alpha Hospitality Corporation June 26, 2002 SEC 8-K filing.
[10] "Wanted Businessman Hiding Out in London," BBC News, March 5, 2004.
[11] US Attorney's Office, Southern District of New York press release, September 8, 2003.
[12] US Attorney's Office, Southern District of New York press release, February 4, 2004.
[13] Empire Resorts 2004 10-K filing.

This report is based solely on public records sources, including lobby disclosure forms, professional directories, press coverage, corporate filings and litigation pleadings.

$200,000 of purported cocaine profits through the casino.[14] In December 1997, the same casino—Bayou Caddy's Jubilee—was fined $40,000 by the Mississippi Gaming Commission for a series of violations of management and accounting standards. Among these violations was $50,000 discovered on the boat that had not been recorded by the casino for at least two months[15]

Racino Employees Currently Under Investigation

In early-February 2005, three employees of Mighty M Gaming—the video lottery terminal division of Empire Resorts—were suspended by Robert Berman, Empire's CEO, for alleged involvement in a kickback scheme with food service providers[16]. Among the suspended employees were two "high-level managers," reportedly the director of security and the director of purchasing.

Empire Chairman's Casino Linked to Gambino Family Gambling Operations

In January 2005, the New York Racing Association announced it would end its betting and broadcasting arrangement with the Coeur d'Alene Casino, which is run by Empire Resorts chairman David Matheson, and nine other off-track betting outlets in connection with an 88-count indictment against several members of the Gambino family filed in federal court in Manhattan two weeks before. The indictment alleged that the members of the "Uvari Group" had acted as a front for individuals placing anonymous off-site bets, which were bundled by the group and routed through a number of off-track betting sites at a volume discount. While the group would pay out winnings to individuals who placed the bets, the indicted members of the family would allegedly claim the losses individually on their personal income taxes.

Empire President and Directors Hid Marcos Family Funds

Empire Resorts president Morad Tahbaz and directors Joseph and Ralph Bernstein operated a real estate investment company—New York Land Company—in the early 1980s that was identified by Congressional investigators as an investment entity used to hide family money of the deposed Philippine dictator Ferdinand Marcos.[17]

In April 1986, Ralph and Joseph Bernstein testified before the House Foreign Affairs Subcommittee on Asian and Pacific Affairs, headed by then-Congressman Stephen Solarz, that they had purchased $181 million in New York commercial real

[14] April 4, 1995 criminal information, February 14, 1996 judgment in USA v. Baxter, crim.95- 116 (E.D.La); "Fallen Casino President Going to Jail," New Orleans Times-Picayune, February 15, 1996.
[15] December 23, 1997 Mississippi Gaming Commission ruling, In Re: Alpha Gulf Coast, Inc. d/b/a Bayou Caddy's Jubilee Casino.
[16] "Racino Kickback Probe," Times Herald Record, February 12, 2005.
[17] April 9 and 17, 1986 testimony before U.S. House of Representatives, Foreign Affairs Subcommittee on Asian and Pacific Affairs, 99th Congress, 2nd Session (Report 99-462).

This report is based solely on public records sources, including lobby disclosure forms, professional directories, press coverage, corporate filings and litigation pleadings.

estate for Marcos, hiding the purchases through a series of off-shore front companies to avoid U.S. taxes.

Empire CEO's Offshore Company Organized Original Monticello Deal

Empire Resorts CEO Robert Berman was a managing director of Watermark Investments Limited, an offshore company domiciled in the Bahamas, from at least 1994 through 2000.[18] Watermark Investments was the investment entity that originally entered into the purchase agreement to acquire the Monticello Raceway property in early 1995 and later negotiated the original casino development deals with the Oneida Nation and St. Regis Mohawk Tribe.[19]

According to Catskill Development's October 1995 operating agreement, Watermark Investments had the largest membership interest in Catskill Development of all of the original investors in the project.[20]

ONEIDA TRIBE OF WISCONSIN

Since as early as 2001, when Manhattan-based investor Richard Fields escorted members of the Wisconsin Oneida on a tour of Sullivan County, the Oneida Tribe of Wisconsin began working with the developers that are now Power Plant Entertainment.[21]

Power Plant Entertainment was organized in Delaware in April 2000 as a partnership between Richard Fields' and Baltimore-based developer David Cordish's investment companies, Coastal Development LLC and Native American Development LLC.[22]

IRS Investigating Tax-Exempt Financing of Power Plant's Florida Casino

Avoiding the need for a NIGC approval of a management contract, Power Plant Entertainment entered into a development agreement and a "financial services contract" with the Seminole Tribe of Florida in 2000 to build two Seminole Hard Rock Casino & Resorts, which included Class-II gaming operations.[23] As part of the "financial services contract," Power Plant obtained "subsidized" financing for the tribe through a $389 million tax-exempt bond issue by Capital Trust Agency, a municipal authority based in Florida. Under the terms of the final version of the financial services contract between the developer and tribe, Power Plant would receive three-percent of the financing

[18] Empire Resorts website; Watermark Investments Ltd.'s September 13, 1993 corporate registrations with the Registrar General of the Commonwealth of Bermuda.
[19] "Arena" Newsday February 17, 1995; "Mohawks Enter Casino Picture" Syracuse Post-Standard September 27, 1995.
[20] Catskill Development LLC's October 27, 1995 operating agreement, op cit.
[21] "Wisconsin Oneida Eye Casino Land," Albany Times-Union, November 29, 2001.
[22] Power Plant Entertainment LLC (f/k/a CWF Development Fund LLC) corporate filings with Delaware Secretary of State, April 19, 2000 to date.
[23] "A Developer Bids on a Florida Fortune," Baltimore Sun, March 14, 2004.

This report is based solely on public records sources, including lobby disclosure forms, professional directories, press coverage, corporate filings and litigation pleadings.

obtained by the tribe—$11.7 million from the bond-issue—and 30-percent of the net revenues of the casino for a period of ten years.[24] (Under the provisions of IGRA, if Power Plant had entered into a management contract with the Seminoles for a Class II casino, the developer would only have been able to receive a portion of net revenues for between for at most seven years.[25]) Additionally, Power Plant would receive 30-percent of the net revenues of any non-gaming portions of the project (ie. the hotel and commercial space) for a period of 25 years.[26] Under the terms of the separate development agreement, Power Plant would receive a developer's fee of four-percent of total costs for the development projects.[27]

In December 2004, following a seven-month investigation, the IRS issued a preliminary determination that the tax-exempt financing of the two Seminole casinos developed by Power Plant Entertainment was improper.[28] A broader IRS investigation of Power Plant's additional developer and financing fees paid by the tribe from the money received from the bond issue is reportedly ongoing.[29]

Power Plant Investor Indicted for Tax Evasion

Robert Toussie, who provided almost $3 million to Richard Fields to invest in Power Plant Entertainment, was indicted in federal court in Central Islip on four counts of tax evasion in June 2004.[30]

Toussie's indictment reportedly was related to a broader investigation of Toussie and his son Isaac Toussie's alleged bank fraud and predatory lending related to their home building and development companies in New York City and Long Island.[31] In September 2003, Isaac Toussie was convicted of one count of fraud in federal court in Long Island for submitting falsified FHA loan applications for buyers of property he had developed.[32]

In January of this year, Toussie reportedly struck a deal in which federal prosecutors agreed to drop all charges and further investigations if he filed back tax returns and does not violate any laws in the next five months.[33]

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[24] April 2002 Capital Trust Agency bond prospectus, pp. 98-99.
[25] 25 U.S.C. 2711 §. 12
[26] April 2002 Capital Trust Agency bond prospectus, pp. 99.
[27] Ibid., pp. 103.
[28] December 2, 2004 IRS letter to The Capital Trust Agency.
[29] "IRS Seeks to Curb Financing Tactics Used by Cordish for Indian Casinos," Baltimore Sun, December 23, 2004.
[30] May 21,2004 complaint, Toussie v. Coastal Development, et al., New York County Supreme Court 2004-601540; June 1, 2004 criminal information, USA v. Toussie, crim. 04-523 (S.D.N.Y.).
[31] "Four Year Probe, Developer Faces Tax Charges," Newsday, June 3, 2004.
[32] USA v. Isaac Toussie, crim. 00-20/02-1356 (E.D.N.Y.).
[33] "Deal Is Struck in Toussie Case," Newsday, January 21, 2005.

This report is based solely on public records sources, including lobby disclosure forms, professional directories, press coverage, corporate filings and litigation pleadings.

In May 2004, one month before he was indicted, Toussie had sued Fields and Coastal Development in New York County Supreme Court for failure pay distribution payments for his 11-percent membership interest in Coastal Development, Fields' development entity that is a partner in Power Plant Entertainment. This case is ongoing.

Partner Rebuked by Tribe for Proposed Attempts to Ignore IGRA

In 1999, the Seneca Nation reportedly rebuked Power Plant partner Richard Fields' attempts to negotiate a development deal with the tribe after his promised development strategies included asserting so-called "super sovereignty" (ie. asserting a tribal sovereignty that precluded federal regulation of the tribe's gaming operations).[34] In July 1999, less than three weeks after his first meetings with tribal representatives, the Seneca tribal council passed a resolution formally declaring that it had not authorized any relationship with Fields and his business partners, sending letters to then President Clinton, Governor Pataki, the NIGC and the Department of the Interior.[35]

[34] "New Player Enters Talks on Seneca Casino," Buffalo News, June 27, 1999.
[35] "Senecas Quash Fields' Efforts to Enter Talks on Casino Deal," Buffalo News, July 2, 1999.

This report is based solely on public records sources, including lobby disclosure forms, professional directories, press coverage, corporate filings and litigation pleadings.

Senate Committee on Indian Affairs
Oversight Hearing on Taking Lands into Trust on May 18, 2005

Response to Written Follow-Up Questions
June 17, 2005

1. Have the USET member tribes noticed negative impacts on non-gaming land into trust applications that could be attributable to gaming land applications?

Answer: There seems to be general agreement among stakeholders that the controversy surrounding off-reservation land-into-trust acquisitions for gaming, especially those involving tribes seeking to move across multiple state lines, has created problems for all trust applications, including applications involving on-reservation fee land. In addition, informal discussions among lawyers at the Departments of Justice and Interior indicate that a few controversial gaming land applications and ambiguities in the Indian Gaming Regulatory Act ("IGRA") are diverting resources needed to process the more than two thousand trust applications, most of which do not involve gaming.

2. Your testimony is critical of so-called "reservation shopping" through assertion of land claims. Yet several USET tribes were able to successfully negotiate land claims that resulted in lands that were subsequently used for casinos.

How do you distinguish between these situations?

Answer: USET does not oppose restoration of lands as part of land claim settlement, or the use of some of the land for gaming. Recently, however, developers and tribes have used land claims, or the threat of land claims litigation, for the sole purpose of opening a casino. The sites of these land claims are often far and in a different state from the tribe's reservation, and they are chosen for their gaming potential, rather than because the land is needed to restore a tribe's homeland. There is an important difference between gaming on some of the land set aside for a tribe in a land claim settlement, and bringing a land claim solely for the purpose of setting up a casino in a desirable location. Congress never envisioned "gaming only" trust land, land that is taken into trust and made sovereign Indian land solely for the purpose of allowing a tribe to set up a casino.

When Congress adopted the Indian Gaming Regulatory Act in 1988 ("IGRA"), it restricted gaming on trust land that was not within a tribe's reservation.. It created a general prohibition on gaming on off-

reservation lands acquired in trust after October 17, 1988 by the Secretary of Interior. Section 20(a), 25 U.S.C. Section 2719(a). One of the exceptions to this prohibition is for lands taken into trust as part of the settlement of a land claim. Section 20(b)(1)(B)(i), 25 U.S.C. Section 2719(b)(1)(B)(i).

Since the enactment of IGRA, we are aware of only two land claim settlement agreements in the eastern region that has resulted in land being utilized for a casino: the Seneca Nation Settlement Act of 1990 (Pub. L. 101-503, Sec. 6, Nov. 3, 1990, 104 Stat. 1295) and the Mohegan Nation of Connecticut Settlement Act of 1994 (Pub. L. 103-377, Sec. 2, Oct. 19, 1994, 108 Stat. 3501).

Interestingly, the Seneca Nation Settlement Act does not authorize lands to be taken into trust. Instead, under the Act, land that the Seneca Nation intends to acquire is held in restricted fee status by the Seneca Nation. *See* 25 U.S.C. Section 1774f(c). Consequently, any lands it acquired pursuant to its land claim agreement for purposes of conducting gaming would not be subject to Section 20 of the IGRA, which relates to off-reservation land-into-trust acquisitions for gaming on lands acquired after 1988.[1]

With regard to the Mohegan Nation of Connecticut Settlement Act of 1994, the United States took title to lands on behalf of the Mohegan Tribe to be used as the *initial reservation* of the Mohegan Tribe. *See* 25 U.S.C. Section 1775b(a)(3). Consequently, the Secretary of Interior approved gaming on the Mohegan Tribe's land under Section 20(b)(1)(B)(ii) of IGRA, which provides an exception to the prohibition of gaming on lands acquired after October 17, 1988 when the lands are taken into trust as part of the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process.

Consequently, we are not aware that any USET member tribe has utilized the land claim exception under Section 20 of IGRA to establish an off-reservation casino.

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[1] Even so, in reviewing the proposed compact between New York State and the Seneca Nation, Secretary Norton explained that she was concerned about the increasing trend of proposed gaming ventures in areas far from existing reservations. She said:

> Tribes are increasingly seeking to develop gaming facilities in areas far from their reservations, focusing on selecting a location based on market potential rather than exercising governmental jurisdiction on existing lands. It is understandable that tribes who are geographically isolated may desire to look beyond the boundaries of their reservation to take advantage of the economic opportunities of Indian gaming. However, I believe that IGRA does not envision that off-reservation gaming would become pervasive.

Letter to Governor George Pataki, November 12, 2002.

Yet, as our testimony indicates, there is an increasing trend of non-Indian developers and Indian nations seeking to use the land claims exception in Section 20 of IGRA to establish an off-reservation casino.

The concern we raised in our testimony is that in at least twelve states, land claims or potential land claims are being used to promote an off-reservation casino *in a state other than where the tribe is currently located*. Even in the Seneca Nation example, the Seneca Nation has established a casino within the boundaries of the State of New York. Likewise, the Mohegan Tribe established a reservation within the boundaries of the State of Connecticut. None of the USET member tribes has sought to establish a casino in a different state from where it is currently located.

Overt reservation-shopping by tribes that seek to cross state lines is a threat to IGRA as well as to the trust land process, because it calls into question the right of tribes to operate casinos that are otherwise not permitted under state law. People can understand why tribes are exempt from state laws where their people live and the tribe governs, including why state gambling laws do not apply. But tribes that have reservations in other states that seek trust land for casinos seem to be cashing in on a special privilege, rather than exercising tribal sovereignty. When a tribe from Oklahoma or Wisconsin sets up a casino on a small parcel of land in New York, it looks and feels to most citizens no different from a casino set up by a gaming company. The fact that gaming companies are prominently involved in these projects only reinforces the impression that the developers are hiding behind the tribes to do things that are otherwise illegal.

To date the federal government has never approved an off-reservation casino in a state other than where the tribe currently resides. If such a precedent were approved, the floodgates would open of Indian nations seeking to move into different states where they can claim an aboriginal connection. There is no significant legal way to distinguish among a variety of competing tribes with similar claims to lands in different states.

Further, there is good reason why the federal government has never approved an out-of-state tribe moving to another state to establish a casino. The dynamics in such situations undermine key elements of existing federal Indian policy.

For example, a tribe located in Oklahoma that is seeking to establish a reservation in a different state will act differently than a tribe seeking to establish a reservation within the boundaries of the state where

it currently resides. The members of the tribe located in Oklahoma live in Oklahoma. Consequently, the tribe is willing to agree to terms in the other state that it knows will not impact its people in Oklahoma. The tribe will agree to waive its sovereignty, subject itself to state and local jurisdiction, and agree to extraordinary revenue sharing demands from the far away state. These concessions will not hurt the tribe's people in Oklahoma. However, these concessions significantly undermine Indian people and Indian governments located in the targeted state and who have been fighting to preserve their sovereignty.

In addition, the out-of-state tribe is not constrained by principles of comity that result from living next to non-Indian neighbors. With regard to an in-state Indian nation, the children of this nation likely go to school with their non-Indian neighbors. They go to the same stores. They worship in the same churches. This relationship will inform how each party relates to each other. The out-of-state tribe is not bound in this way. Decisions are made by a government located hundreds of miles away and in a different state.

We urge the Committee to eliminate the "land claims" exception under Section 20 of IGRA for tribes seeking to use the land claim exception to move across state boundaries. If this provision is left undisturbed, developers will continue to promote casino deals in lucrative markets in any state where an Indian tribe can claim an aboriginal connection.

Have any of the USET member tribes raised these concerns with the Department of Interior? If so, what was their response?

Answer: Beginning in 2002, USET and USET-member tribes have raised concerns with the Department of Interior about out-of-state tribes seeking to establish jurisdiction in states other than where they currently reside. In 2002, the Oklahoma Seneca-Cayuga Tribe ("Tribe") purchased land in Aurelius, New York and claimed jurisdiction over this land. The Seneca-Cayuga Tribe intended to construct a Class II high stakes bingo hall. Further, the Tribe asserted that because its gaming ordinance was not site-specific, it could operate the bingo hall without obtaining any additional federal approval. This activity prompted immediate reaction from the Cayuga Nation of New York, which strongly opposed the Seneca-Cayuga Tribe's effort.

As our testimony indicates, this activity resulted in USET becoming the first American Indian organization to adopt a resolution in February 2003 voicing opposition to "reservation shopping." The

resolution called on the U.S. Department of the Interior to clarify its policy against this activity.[2]

Later that same year, in October 2003, USET passed a second resolution which called on Congress to oppose the efforts of out-of-state tribes to govern land or establish casinos in different states.[3]

This year, USET adopted a resolution for the third time opposing reservation shopping.[4] The resolution includes the following admonition to Congress:

Resolved that the USET Board of Directors calls upon the United States Congress to enact legislation that would prohibit, and oppose any legislation that would allow, individual Indian Nations or Tribes from establishing a reservation, acquiring trust land or exercising governmental jurisdiction in a state other than the state where they are currently located or at a remote location to which they have no aboriginal connection....[5]

Pursuant to USET's established protocol, each of these Resolutions was delivered to Secretary Gale Norton. Each called on the Department to affirmatively prohibit this kind of reservation shopping.

In the fall of 2004 , USET sent a letter to Secretary Norton raising concerns with a new Department policy that the Secretary would no longer consider geographical distances in conducting a two-part determination under Section 20 of IGRA to determine if gaming can be conducted on off-reservation land-into-trust acquisitions. This letter called on Secretary Norton to refrain from implementing this policy until the Department conducted a full consultation with Indian governments pursuant to existing federal Executive Orders.[6]

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[2] *Illegal Gaming by the Seneca-Cayuga Tribe of Oklahoma in the State of New York*, USET, Inc. Res. No. 2003:057, Feb. 6, 2003 (See Exhibit 1 to USET's Written Statement)

[3] *Illegal Efforts by Certain Indian Nations to Exercise Governmental Jurisdiction over Non-Tribal Lands*, USET, Inc. Res. No. 2004:012, October 23, 2003. (See Exhibit 2 to USET's Written Statement)

[4] *Reservation Shopping,* USET, Inc. Res. No. 2005:022, Feb. 10, 2005 (See Exhibit 3 to USET's Written Statement)

[5] *Id.*

[6] This new policy was announced by the Principal Deputy Assistant Director of Indian Affairs in testimony before the House Committee on Resources in 2004:

> Therefore, while the trust acquisition regulations provide broad discretion, Section 20(b)(1)(A) does not authorize the Secretary to consider other criteria [i.e., geographical distances] in making her two-part determination, thus limiting her decision-making to that degree.

Oversight Hearing on Gaming on Off-Reservation Restored and Newly-Acquired Lands Before the House Comm. on Resources, 108th Cong. (2004) (statement of Aurene Martin, Principal Deputy Assistant Director, Indian Affairs, U.S. Dep't of Interior).

In addition, USET and USET member tribes have participated in numerous meetings with representatives of the Department of Interior on the subject of proposals of Indian nations and non-Indian casino developers seeking to establish casinos if different states.

We believe the Department of Interior has the authority to implement a policy that would address much of the reservation shopping problem. To date, the Department has declined to do so even though Secretary Norton has expressed concerns with off-reservation land-into-trust proposals

On May 20, 2005, the Department disapproved a proposed Class III gaming compact between Governor Kulongoski of Oregon and the Warm Springs Reservation of Oregon. The Compact would have regulated gaming on an off-reservation site that has not yet been taken into trust. This disapproval marked a reversal in policy when dealing with proposed compacts where a land-into-trust application is pending. In the past, the Department would approve a compact before land was taken into trust. This letter indicates that the Department will no longer do that.

The rationale for the disapproval is that IGRA authorizes the Secretary to approve a tribal-state compact between a tribe and a State governing land "on Indian lands of such Indian tribe." The letter points out that IGRA does not authorize the Secretary to approve a compact for the gaming on lands that "are not now, and may never be, Indian lands..."

The letter notes that the tribe must still undergo a rigorous application process under 25 CFR Part 151. And, the letter points out that IGRA also imposes a two-part determination before land can be taken into trust for gaming.

Some have surmised that the controversy over off-reservation gaming proposals played a role on the Department adopting this new policy.

On May 19, 2005, Congressman Frank Wolf sent a letter to President Bush asking for an immediate two-year moratorium on the opening of any more tribal casinos until Congress can thoroughly review the IGRA. He attached a Congressional Research Service memo, which he requested, detailing options the administration could take, including (1) withdrawing authority to recognize new tribes; (2) directing that regulations be issued for land acquisition for gaming purposes and that regulations be rescinded for issuing procedures for class III gaming in the absence of a tribal-state compact; and (3) directing the Attorney General to take certain steps to enforce laws against illegal Indian gaming operations. The letter references the a discussion draft circulated by Chairman Richard Pombo to

address "reservation shopping" but ads that an immediate moratorium is warranted until Congress fully considers such proposals.

3. Have the off-reservation proposals had any noticeable impact on the relationships your member tribes have with their respective states and local communities?

Answer: Off reservation gaming proposals from Indian nations located in other states have had a significantly detrimental impact on some of our member Indian governments. As indicated in our response to the first part of Question 2, an out-of-state tribe will is willing to agree to terms in the another state that it knows will not impact its people on its existing reservation. The tribe will agree to waive its sovereignty, subject itself to state and local jurisdiction, and agree to extraordinary revenue sharing demands from the far away state. These concessions significantly undermine Indian people and Indian governments located in the targeted state and who have been fighting to preserve their sovereignty. The Governor who is negotiating with the out-of-state tribe will ask the in-state tribe why it cannot be as "reasonable" as the out-of-state tribe.

4. You mention concerns that non-Indian developers may be driving some of the interest in off-reservation proposals.

What type of disclosures by developers do you suggest would address this concern while respecting the sovereignty of tribal governments?

Do you have any recommendations on how to provide appropriate Federal scrutiny of these speculative type arrangements?

Answer: The Committee may want to consider amending the IGRA to ensure that deals between developers and tribes are subject to federal scrutiny. Federal law has at times established mechanisms to safeguard an Indian nation from being victimized, especially where the Indian nation is economically susceptible to shady dealing. In the gaming context, the IGRA provides that a gaming management contract undergo federal scrutiny and approval. Basically, the IGRA limits the length of the term of a management contract and the fees for the management contract and requires that the key personnel survive a criminal background check.

These provisions are meant to protect an Indian government while respecting the sovereignty of the tribe. Unfortunately, it is easy to circumvent these protections since they only apply to management contracts. There are other key actors involved in casino deals that are not required to undergo federal scrutiny or whose financial dealings with

tribes are not constrained. In the casino proposal context, developers, lawyers and lobbyists may all have a significant financial stake in a project with revenue sharing components or financing components that are never disclosed. As the report USET attached to its written testimony indicated, some of these developers would be likely to fail a criminal background check. And, when management contracts, development fees, finder's fees, and financing fees are totaled, tribes may be paying well over 50 percent of its revenues to these non-Indian dealmakers. Consequently, the Committee should consider that financing arrangements, success fees, and any contract that requires a percentage of revenues be subject to federal scrutiny and limitations. Some of our member tribes have indicated a willingness to discuss the details of these kinds of deals in depth with the Committee to help it have a better understanding of what is involved and how to address these arrangements.

Match-E-Be-Nash-She-Wish
Band of Pottawatomi Indians
GUN LAKE TRIBE

David K. Sprague
Tribal Chairman

Federally Acknowledged
August 23, 1999

Service Area: Allegan, Barry,
Kalamazoo, Kent, and
Ottawa Counties

TESTIMONY OF
DAVID K. SPRAGUE
CHAIRMAN, MATCH-E-BE-NASH-SHE-WISH
BAND OF POTTAWATOMI INDIANS

BEFORE THE
MAY 18, 2005
COMMITTEE ON INDIAN AFFAIRS
HEARING
ON
TAKING LAND INTO TRUST

Good morning Chairman McCain, Vice Chairman Dorgan and Members of the Committee. My name is David K. Sprague. Since 1992, I have served as Chairman of the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians, also known as the Gun Lake Tribe. Our Tribal homeland and people have always been located in Western Michigan. Today, we sit before the Committee as a federally-recognized tribe, but also a "landless tribe" in the final stages of the administrative land into trust process where ultimately the United States will accept title to lands in Allegan County, Michigan on behalf of our Tribe.

The history of the eleven (11) federally recognized Indian tribes in the State of Michigan is unique. As you may be aware, the relationship between the United States and the Indian tribes in Michigan is wrought with failures by the United States to adhere to federal policies and treaties. As a result, several treaty tribes were left off the list of federally recognized Indian tribes. Some of those Indian tribes had to rectify the failure of the United States and were recognized through enacted legislation that was supported by this Committee. In turn, they have acquired trust land for their homelands where they now exercise self-governance and conduct economic development.

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Our Tribe has taken a different course; we applied for federal acknowledgment under the regulatory process administered by the Bureau of Indian Affairs ("BIA"). After seven (7) years in the process, we finally achieved federal acknowledgement as an Indian tribe in 1999. As a result of our "playing by the rules," the restoration of a homeland for our Tribe has been delayed longer than any other federally recognized Indian tribe in Michigan.

Pursuant to our federal acknowledgement, the Tribal government administers Tribal self determination programs and services, creates tribal jobs and has develops an administrative structure that is leading the Tribe toward the goal of self-sufficiency. Every day, despite our landless status, our Tribal Council exercises self-determination and makes decisions for the betterment of our people as a sovereign nation. For example, we have complied with the procedures of the Native American Housing Assistance and Self Determination Act to obtain financing for Tribal housing. We have also benefited from Tribal Priority Allocations (TPA) administered by the BIA, which are perhaps one of the most important resources for the development of tribal infrastructure. The TPA funding received to date has allowed us to operate our tribal government and has made our path to self determination a reality.

But TPA funding is inadequate. We must continue to strengthen our Tribe. Because of the inadequacy of the funding we had to make tough decisions. As you know Senators, government officials have to make tough decisions for the good of the people they represent. Therefore, as a self-governing body we decided to investigate the economic development option that Indian gaming provides under the Indian Gaming Regulatory Act ("IGRA") to help to our tribe exercise self-reliance. We negotiated agreements with our business partners, MPM Enterprises, LLP and Station Casinos, Inc., and moved forward pursuant to the process governed under the IGRA to establish a casino.

Our business partners are reputable and established companies and are in the process of complying with the National Indian Gaming Commission background investigation requirements. In fact, Station Casinos, Inc. has been licensed numerous times by the State

of Nevada to own and operate gaming facilities and has also been licensed by the National Indian Gaming Commission to manage the successful Thunder Valley Casino in Placer County, California, which is owned by the United Auburn Indian Community.

As you know, an Indian Tribe must accomplish three things in order to conduct Class III gaming in Michigan. First, it must be federally-recognized. Second, it must have a reservation or land held in trust by the federal government on the tribe's behalf. Third, it must have an effective gaming compact with the State of Michigan. Today, after years of hardship, we have nearly completed our journey to what we believe will be a better future.

History of Tribal Recognition

We have long and established ties to an area that is now Western Michigan. The Gun Lake Tribe descends primarily from the Pottawatomi Band, led by Chief Match-E-Be-Nash-She-Wish. Prior to European contact, the Gun Lake Tribe used and occupied lands in the Great Lakes area, in what is now known as present-day Michigan's Lower Peninsula. This is where we live today. In the late 1700s, the Gun Lake Tribe lived under the direction of Chief Match-E-Be-Nash-She-Wish at a village at Kalamazoo, which we called "Kekamazoo," and which is located near where Michigan Highway 43 crosses the Kalamazoo River. The village was described as being at the "head of the Kalamazoo River," or the area as far up the river as one could travel with loaded barges before the river became too shallow for travel.

In 1821, the Michigan Indian Tribes and the United States entered into the 1821 Chicago Treaty, under which the Indian tribes ceded all Michigan land south of the Grand River to the United States. Match-E-Be-Nash-She-Wish signed this treaty on behalf of the Gun Lake Tribe and secured, for the Tribe, a three (3) square miles of land at Kalamazoo. Today, downtown Kalamazoo and Western Michigan University's main campus are located approximately in the center of the three (3) square mile area, which was known as the Match-E-Be-Nash-She-Wish Reservation.

Despite previous treaties between the United States and the Michigan tribes, and despite the huge amounts of land ceded, pressure continued on the Tribe to cede more land. In 1827, Match-E-Be-Nash-She-Wish agreed to cede his small reservation at Kalamazoo for an equal size land base adjacent to the Nottawaseppi Reservation near Mendon. However, the Tribe was never paid for the land cession, nor did they move to this location. Before the land could be surveyed and provided to Match-E-Be-Nash-She-Wish and his Tribe, all the major chiefs in southwest Michigan except Match-E-Be-Nash-She-Wish signed the 1833 Chicago Treaty, ceding their land rights to the United States. Then, to avoid a forced removal to Kansas as a "hostile" Band, the Match-E-Be-Nash-She-Wish Tribe moved north, first to Cooper, then to Plainwell, then to Martin, and finally to Bradley in 1839. Tribal members maintained a connection with the Kalamazoo area into the 20th century, as residents of the Bradley settlement would collectively move south to the Kalamazoo River during the summer months to camp, fish, and socialize. The United States never fulfilled its treaty obligation to make payment for the Gun Lake Tribe's Kalamazoo land cession.

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

Funding for the Griswold Colony had been set by treaty for 20 years. In 1855, the assistance provided by the treaty came to an end and a new treaty was made with the Tribe whereby they were granted outright ownership of lands in Oceana County near Pentwater, Michigan. The majority of the Griswold Indians took advantage of the provisions of the new treaty and moved northward, while a few families stayed behind. Within 10 years, however, most of the Griswold Indians had lost their lands in Oceana

County, and many returned to the mission grounds, which had not been disposed of, despite the fact that the work there had come to an end. The Indians lost their lands in Oceana County not to taxes, but because the patents to the lands were never delivered to those that held land certificates, and thus the land selection process in Oceana County was never legally completed by the United States government.

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

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

The Tribe had unambiguous previous Federal acknowledgment, which is demonstrated by treaties extending at least through the 1855 Treaty of Detroit with the Ottawa and Chippewa Indians of Michigan, to which the Tribe's chief was a signatory, through the 1870 date at which annuity payments under prior treaties were commuted, and through their inclusion on the Taggart Roll in (year). There was never an express congressional

legislation terminating the Tribe; the Tribe was simply passed over for a Treaty before treaty making ended in 1871.

Over one hundred years later, in 1992, the Gun Lake Tribe petitioned the Bureau of Indian Affairs for acknowledgment. In August of 1999, the Tribe was acknowledged as a federally recognized Indian Tribe, re-establishing their government-to-government relationship with the United States.

Since restoration as a federally acknowledged tribe, the Tribe has identified an area in Allegan County, within the Wayland Township, as a proposed site to place in trust for the benefit of its members. In fact, many of the Tribe's approximately 300 members currently reside in the Allegan area. The Tribe chose to remain in Allegan County because it is part of the Tribe's aboriginal lands and the land on which the Tribe has lived since 1839.

Land Taken Into Trust

After gaining federal acknowledgment in 1999, Gun Lake identified suitable land for economic development, with the intent to build a casino. The proposed site is located in an industrially zoned area. The location of the proposed casino facility lies between a highway and railroad tracks and will occupy an empty industrial building that was once used for the manufacture of lawn-care products. The Tribe submitted its fee to trust application pursuant to 25 C.F.R. §151 et seq., to the Minneapolis Area office of the BIA on August 12, 2001.

As part of the fee to trust application to take land into trust for gaming purposes, the Tribe and the BIA conducted an Environmental Assessment in satisfaction of the requirements of the National Environmental Policy Act (NEPA). Our Tribe is highly sensitive to our environment and the natural world. That is why we have made every effort to be extraordinarily cooperative and responsive to the BIA during the agency's

determination of whether our casino project might pose a significant impact on the environment of West Michigan.

As you know, the federal regulations require compliance with the NEPA. Compliance with NEPA is achieved if an Environmental Assessment (EA) of the proposed project results in a Finding of No Significant Impact, to the environment by the BIA —often referred to as a FONSI. However, NEPA requires that if the BIA finds that a project has a *significant* impact on the human environment, an Environmental Impact Statement must written by the agency.

Over a three (3) year period, beginning in mid-2002, the Tribe worked closely with the Regional Office of Bureau of Indian Affairs environmental resources experts to produce an Environmental Assessment ("EA"). The Tribe prepared several revisions of the EA following comments from both the BIA and the public. During an extensive and atypically long 75-day public comment period, as compared to the normal 30 day comment period (November 2002 – February 2003), Michigan citizens and local government officials submitted over 300 letters with project comments and concerns to the BIA. Each public comment, as reflected in the administrative record, was painstakingly reviewed by the BIA. In the end the EA examined everything from the projects' effects on the water supply to traffic, and from effects on animals in the surrounding area and air quality. In addition, since such great scrutiny is placed on casino projects, the EA examined the effects of secondary development over a period of time resulting from the casino and its operations and examined whether the Tribe should explore alternatives to this project.

After an exhaustive review of the evidence and the extensive public comment, the BIA concluded that a FONSI was appropriate, and with this finding of *no* significant impact, an EIS is not required. The BIA issued the FONSI on February 27, 2004, over 14 months ago. Since then the Tribe has been waiting for the BIA to issue a Notice of Intent to take the land into trust for the Gun Lake Tribe. No regulation or law provided for such a

delay. Only last Friday, May 13, 2005 did the BIA finally publish in the Federal Register its intent to place the land in trust.

Gaming Compact

Finally, before the Tribe can conduct Class III gaming, it needs a gaming compact with the State approved by the Michigan legislature. Eleven (11) federally recognized Tribes in Michigan have gaming compacts that were negotiated by former Governor John Engler, and subsequently approved by the Legislature. Currently, 23 Indian gaming casinos are operating in the State of Michigan.

On December 5, 2000, the Tribe submitted a Class III Tribal Compact to the Legislature. A resolution passed the House and the Senate. The Compact was approved in both chambers and was ordered enrolled and presented to the Governor. On December 30, 2000, Governor Engler wrote a detailed letter declining to sign the approved Compact due to a perceived personal conflict, and urged incoming Governor Granholm to sign the Compact. Since that time, the Tribe has worked diligently with Governor Granholm. We are hopeful that the Governor will sign the Compact now that the BIA has published the Notice of Intent to place the land in trust for the Tribe.

The Project is Widely Supported

Gun Lake's project has received broad support from the neighboring communities. Throughout this process, no state or local governmental entity has objected to the proposed acquisition. As part of the public comment period for the Environmental Assessment, the BIA received letters supporting the Tribe's proposed land acquisition and development from the following groups/individuals:

- Kalamazoo Chamber of Commerce

- Kalamazoo County Convention and Visitors Bureau
- Wayland Township
- International Brotherhood of Electrical Workers
- City of Wayland
- City of Allegan
- Barry County Economic Alliance
- Gun Lake Area Chamber of Commerce
- Allegan County Health Department
- Wayland Area Chamber of Commerce
- Plainwell Chamber of Commerce
- Plumbers/Pipe Fitters Union
- Dorr Township
- Barry County Area Chamber of Commerce
- Allegan County Board of Commissioners
- Wayland City Police
- Deputy Sheriff's Association of Michigan
- West Michigan Economic Alliance

The support is truly gratifying and greatly welcome, but should come as no surprise given the fact that the Gun Lake Casino is expected to bring 4,300 new jobs to the area, as well as local supplier purchases, local and state revenue sharing, a proven recreational attraction, and other economic development to a very economically depressed area.

I wish to sincerely express my appreciation for the honor and privilege of having been invited to present testimony to Committee today. I am happy to answer any questions you have of me.

Finding of No Significant Impact

Proposed Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians
Gaming and Entertainment Facility In Wayland Township, Allegan County, Michigan

Based on the December 2003 Environmental Assessment (EA) for the Proposed Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Tribe) Gaming and Entertainment Facility located in Wayland Township, Allegan County, Michigan and corresponding mitigation measures, I have determined that implementation of the proposed fee-to-trust acquisition, a federal action by the Bureau of Indian Affairs, will have no significant impact on the quality of the human environment. Therefore, in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, an Environmental Impact Statement will not be required.

This determination is supported by the following findings:

1. Federal and state agencies and the public were involved in identifying environmental issues related to the proposed action. *See* EA Appendices A, C, F, G, I, K, L, N and P. The EA contains a list of agencies, tribal governments and individuals that were contacted. *See* EA Chapter 6, Consultation and Coordination. The EA also contains responses to specific comments and describes revisions to the EA in response to comments. *See* EA Appendix Q.

2. Alternative courses of action were developed in response to environmental concerns and issues related to the proposed action. *See* Chapter 2, Alternatives. The EA discloses the environmental consequences of the proposed action and the no-action alternative. *See* EA Chapter 4, Environmental Consequences. The EA assesses compliance of the alternatives with applicable environmental mandates, and includes information that supports a finding of no significant impact.

3. The EA describes protective mitigation measures that will be levied to protect the human environment, particularly public safety and water quality. *See* EA Chapter 5, Mitigation Measures. The EA describes permitting processes and other enforceable mechanisms that are in place to ensure that the Tribe completes mitigation measures to protect key resources. *See* Chapters 4 and 5, and EA Section 1.1.1.

4. The EA finds that the proposed action will not jeopardize federal or state-listed threatened and endangered species because such species do not occur on the proposed site. *See* EA Section 4.3.3 and EA Appendix C. The U.S. Fish and Wildlife Service and the Michigan Department of Natural Resources concur with this finding. *See* EA Appendix I. The proposed action is in compliance with the Farmland Protection Policy Act, and will not result in the conversion of federally designated Prime and Unique Farmland. *See* EA Section 4.6.4 and EA Appendix G.

5. The EA finds that the proposed action is in compliance with the National Historic Preservation Act, and that no historic properties will be affected under the proposed action. *See* EA

Section 4.4. The State Historic Preservation Officer concurs with this finding. *See* EA Appendix L. Should undiscovered archeological remains be encountered during project ground-disturbing activities, work shall be halted in the area of discovery and the artifact shall be professionally evaluated. *See* EA Section 5.4.

6. The EA finds that impacts to public health and safety will not be significant. *See* EA Sections 4.5, 4.6, and 4.7. The EA contains agreements that commit the Tribe to pay for law enforcement and fire protection services that would be required under the proposed action. *See* EA Appendix A. Further, the Tribal-State Gaming Compact contains revenue sharing provisions that will be used as mitigation to help fund governmental infrastructure and services that would be impacted by the proposed action. *See* EA Appendix P (Comment Letter NN). The EA describes enforceable mitigation that will sufficiently reduce traffic impacts to a minimum. *See* EA Sections 4.6.1, 5.6.1 and EA Appendix D. The EA also finds that the proposed action is in compliance with the Clean Air Act and the National Ambient Air Quality Standards (NAAQS). *See* EA Section 4.6.2. Because the proposed action would be located in an attainment area for all of EPA's current priority pollutants, a general conformity determination is not required. The EA also describes mitigation of water quality impacts made enforceable through the EPA permitting process. *See* EA Sections 4.2 and 5.2.2.

7. The EA finds that the proposed action will not be located in a floodplain, and will not intensify downstream flooding risk in compliance with Exec. Order No. 11988 (Floodplain Management). *See* EA Section 4.2.2. The EA also finds that the proposed action will not adversely impact wetlands, and that the proposed action will be in compliance with Exec. Order No. 11990 (Protection of Wetlands) and Section 404 of the Clean Water Act. *See* EA Section 4.3.1. A Part 303 permit from the Michigan Department of Environmental Quality will ensure that impacts to wetlands located adjacent to the proposed trust acquisition site along 129th Avenue are minimized and are in compliance with state wetlands statutes. *See* EA Section 5.3. Discharge limitations contained in a National Pollutant Discharge Elimination System permit will ensure that wastewater impacts to water quality from the on-site wastewater management system will not be significant. *See* EA Sections 4.2.3 and 5.2.2.

8. The EA analyzes the cumulative impacts of the proposed action and finds that they will not be significant. *See* EA Section 4.8. The EA categorizes three geographic areas where indirect growth is reasonably foreseeable, and finds that induced growth will occur, but that its effects will not be significant. *See* EA Section 4.9.

9. The EA finds that the proposed action would improve the economic and social conditions of the Tribe by meeting the purpose and need for the action identified in EA Section 1.3. *See* EA Section 4.5. The EA also finds that the proposed action will benefit the local economy by creating jobs and increasing local spending. *See* EA Section 4.5.1 and EA Appendix H. The EA finds that the proposed action is in compliance with Exec. Order No. 12898 (Federal Actions to Address

Environmental Justice in Minority Populations and Low Income Populations) because the proposed action will cause no disproportionately high adverse impacts specific to minority or low-income populations. *See* EA Section 4.5.5.

Aurene M. Martin
Principal Deputy Assistant Secretary - Indian Affairs

2/27/04
Date

GUN LAKE GAMING & ENTERTAINMENT FACILITY

FINAL ENVIRONMENTAL ASSESSMENT

December 2003

Lead Agency:
United States Department of the Interior
Bureau of Indian Affairs
Midwest Regional Office
Henry Whipple Federal Building
One Federal Drive, Room 550
Ft. Snelling, MN 55111

Cooperating Agency:
National Indian Gaming Commission
1441 L Street, NW 9th Floor
Washington, D.C. 20005

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SUMMARY SHEET

GUN LAKE GAMING AND ENTERTAINMENT FACILITY ENVIRONMENTAL ASSESSMENT

This Final Environmental Assessment (EA) has been prepared in accordance with the Bureau of Indian Affairs' (BIA) National Environmental Policy Act (NEPA) Guidelines (30 BIAM Supplement 1) and the National Indian Gaming Commission's (NIGC) NEPA guidelines. These policies and guidelines require the BIA, NIGC, and the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake Tribe or Tribe) to collectively comply with NEPA and applicable law as mandated by the Council on Environmental Quality (CEQ) for proposed actions that may affect the environment. The BIA circulated a Draft EA in November 2002 to the public and government agencies for comment. The BIA received and reviewed numerous comments during the 75-day public comment period that ended on February 10, 2003. Representative comment letters and responses are attached to this Final EA in **Appendices P** and **Q**. Public and agency comments were carefully considered in the preparation of this Final EA.

PROJECT DESCRIPTION

The Proposed Actions consist of the conveyance of a 146-acre site (project site or site) from private ownership into federal trust status by the BIA for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians pursuant to Section 151 of Title 25 of the Code of Federal Regulations (C.F.R.), the approval of a management contract by the NIGC between the Tribe and a casino management company, and the resulting development of a 193,500 square foot casino on-site. The project site is located in Wayland Township, Allegan County in southwest Michigan. The casino would be located primarily in an existing single story industrial building that will be converted for casino use. The trust action would shift jurisdiction over land use matters on the site from Wayland Township and Allegan County to the Gun Lake Tribe and the federal government, except as otherwise agreed. It is the intent of the Tribe to negotiate such agreements. For instance, the Tribe has signed agreements with the Allegan County Sheriff's Office and the City of Wayland by which they will provide general law enforcement and fire protection services to the project site. Wayland Area Emergency Medical Services has communicated the intent to provide emergency medical services for the project site. In addition, Wayland Township has expressed interest in "work(ing) as a partnership with the Gun Lake Tribe to create economic opportunities within the Township" (see **Appendix A**).

FEDERAL LEAD AGENCY UNDER NEPA

United States Department of the Interior
Bureau of Indian Affairs
Midwest Regional Office
Henry Whipple Federal Building
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FEDERAL COOPERATING AGENCY UNDER NEPA

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APPLICANT

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UPDATED ECONOMIC AND COMMUNITY IMPACT ANALYSIS

ALLEGAN COUNTY
NATIVE AMERICAN CASINO
OCTOBER 2002

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Jacob Miklojcik, President

CHAPTER ONE
INTRODUCTION

PURPOSE

The Match-E-Be-Nash-She-Wish Tribe (also referred to as the Gun Lake Band of Pottawatomi) has attained full recognition from the federal government. The Tribe has announced the intention to take land into trust in Wayland Township in Allegan County. A modern gaming facility is planned for the property, utilizing a building that was previously used for industrial purposes. This report reviews the economic and other impacts most likely to occur in the area after the casino opens. This document serves as one section of the overall set of information submitted to the federal government.

The document updates a similar report prepared in the autumn of 2000, and then updated in 2001. None of the concepts and key findings in the earlier reports have been significantly altered. The additions primarily involve the following:

- Updates to demographic statistics utilizing the continued release of 2000 Census information.
- An updated review of other gaming options (competition).
- Updated state, county and regional employment figures.
- Further information pertaining to job creation efforts in the county.
- Additional clarity on the plans for the facility.

Michigan is presently host to 17 Native American casinos and three "commercial" casinos in Detroit, plus there are hundreds of Native American and commercial casinos in other states. The experience in the host counties where these other facilities are located provides a strong foundation of historic information to consider in evaluating the likely impacts of an Allegan casino.

KEY ASSUMPTIONS

Facility characteristics

The report assumes the facility is located on the announced site in Wayland Township. The casino will operate the popular electronic games of chance (often referred to as "slots") and the typical table games. It is assumed that the facility includes restaurants, lounges, and a small gift shop/retail area, with on-site parking for approximately 3,500 cars.

As the market figures detailed in the report will justify, it is expected that the facility will house approximately 2,500 electronic games of chance, up to 60 table games, and a poker area.

Full operation and phasing

The impacts presented here are based upon full operation of the facility. For convenience, this is viewed as occurring during the third year after opening. It may happen much sooner. Even if the facility is opened in phases, some impacts would be realized during the first year. Indeed, various economic impacts will be occurring even before the facility opens, stemming from the dollars brought to the area during construction.

Competition

The analysis assumes that there will be 19 Native American casinos operating in Michigan at the time of opening (17 existing, plus one in Berrien County and one in Calhoun County), plus 3 commercial casinos in the City of Detroit. It also assumes that slot machines are not allowed at racetracks or taverns. The competitive situation is further reviewed in following Sections.

Economy

The analysis assumes a reasonably strong Michigan economy, although not one possessing the extremely vigorous attributes of the late 1990's. A continued recession would not be expected to substantially diminish the job creation and public revenues that the casino is likely to provide. Indeed, even if the present recession cuts deeper and does restrict casino revenues, the jobs and public revenues created by casino would prove to be even more important to the Allegan economy, because of recessionary impacts on other employers.

Local agreements

Typically, Native American casinos in Michigan operate under written compacts with the Governor of the State of Michigan. Written agreements with local governmental entities are also signed in some locations. For this report, it is assumed that the eventual final compact/agreements that will be signed by the Tribe will be similar in scope and content to the most recent state compacts signed by four tribes in 1998. This includes language that governs the amount of payments to local and state government, and how local dollars are disbursed.

The Gun Lake Tribe has already entered into discussions and agreements with local agencies regarding various issues. These are discussed in other sections of the overall federal submittal.

FORMAT OF STUDY

The report is divided into six Chapters. This first introduces the report and assumptions. The second Chapter provides a statistical review of Allegan County and information involving the region. These data sets are used as reference points for the impact analyses.

Chapter Three develops a market scenario for the facility. It uses prudent assumptions and an explicit methodology to develop customer and revenue figures for a casino facility in Allegan County.

Chapter Four utilizes the customer and revenue scenarios to develop a profile for the total employment that would be created. The new jobs include on-site employment, off-site employment (both from customer spending and contracting by the casino with local companies), and induced employment (created by the sequential rounds of employee spending). The Chapter also provides a scenario for the revenue payment figures generated, based on the model established by the most recent Native American/State Compacts.

Chapter Five reviews the impacts the jobs will create on population and housing in the county and region. Chapter Six reviews a variety of impacts that are not solely economic in nature (although all impacts in some fashion do relate to economics).

CHAPTER TWO
ALLEGAN COUNTY BACKGROUND INFORMATION

PURPOSE

This Chapter establishes a statistical base for the analysis provided in following chapters. Statistical reference points are provided for Wayland Township, Allegan County, and in some instances the region. The U. S. Census Bureau has released significant additional portions of the 2000 Census data during the past year; this information is used to update the previous impact study. In a few instances somewhat less current data must be used.

WAYLAND TOWNSHIP AND ALLEGAN COUNTY KEY DEMOGRAPHICS

Key year 2000 data points from the Census Bureau for Wayland Township and Allegan County are provided in **Table 2-1**.

TABLE 2-1
KEY POPULATION DEMOGRAPHICS FROM 2000 CENSUS
WAYLAND TOWNSHIP AND ALLEGAN COUNTY
Source: Bureau of the Census

	Wayland Township	Allegan County
Total Population	3,013	105,665
Median Age	34.9	35.2
% 65 years and over	8.6%	11.1%
% One race-White	96.4%	93.5%
Total Households	1,053	38,165
% Family Households	78.3%	74.4%
% Married couple family with own children under 18 yr.	33.4%	29.0%
% Non-family households	21.7%	25.6%

For clarity, it is noted that Wayland Township is distinct from the City of Wayland. The City has a population of approximately 4,200.

The population density for Allegan County is approximately 128 persons/square mile, compared to the state average of approximately 175 persons/square mile.

REGIONAL POPULATION

The region experienced growth during the 1990s, although this may be abating with the recent economic decline. The 2000 Census population figures for Allegan and adjacent counties are provided in **Table 2-2**. Included also is the 1990-2000 population percentage change. The regional population has been growing faster than the remainder of Michigan.

TABLE 2-2
ALLEGAN AND ADJACENT COUNTIES
POPULATION AND GROWTH 1990-2000
Source: Bureau of the Census

County	Population 2000	Pop. Growth 1990-2000
Allegan	105,665	16.7%
Barry	56,755	13.4%
Kalamazoo	238,603	6.8%
Kent	574,335	14.7%
Ottawa	238,314	26.9%
Van Buren	76,263	8.9%
Total	**1,289,935**	**14.6%**
MICHIGAN	9,938,444	6.9%

Allegan and the adjacent counties represent approximately 13% of the Michigan population. As following data will exhibit, unemployment levels in the county and region have increased significantly during the past three years. This likely has stalled population growth.

HOUSEHOLDS, HOUSING, AND TENURE

As exhibited, there were 38,165 households in 2000 in Allegan County, constituting an average of 2.77 persons per household. The national trend has been towards a decline in the average number of persons per household; and year 2000 Census data suggests that this trend has held true in Allegan County.

TABLE 2-3
KEY HOUSING CHARACTERISTICS FROM 2000 CENSUS
WAYLAND TOWNSHIP AND ALLEGAN COUNTY
Source: Bureau of the Census

	Wayland Township	Allegan County
Total Population	3,013	105,665
Total Housing Units	1,169	43,292
Vacant housing units	116	5,127
Homeowner vacancy rate	0.8%	1.6%
Rental vacancy rate	12.8%	7.7%
Units for seasonal, recreational or occasional use	81	3,154
Owner occupied %	92.2%	82.9%
Median value of owner-occupied units	$118,500	$115,500
% Of population 5 years and over in different house in 1995	37.2%	42.1%
% Of households moved into unit 1990 to March, 2000	60.4%	62.3%

As exhibited in the table, the 2000 Census reported that of the 43,292 housing units in Allegan County, 7.3% are classified as being for *"seasonal, recreational, or occasional use."*

The number of building permits for single-family homes has averaged approximately 500 per year during the 1990s, with the level even higher in the late 1990s.

Less than three-fifths of the Allegan population age 5 and above were reported by the 2000 Census as having lived in the same structure five years earlier. Over one-fifth (21.1%) had lived in a different county or state. In terms of the primary *"householder"*, over 62% had moved into the present residence since 1990. The area is clearly accustomed to change.

HOUSEHOLD INCOME

The median household income in the County for 2000, as reported by the Census Bureau was $45,813; this was above the figure predicted earlier by the economic model used by the Census Bureau. This is above the State median. The median household income in Wayland Township was $46,853 in 2000.

The Census Bureau determined from 2000 Census data that 7.3% of the Allegan population lived below the poverty level. The Census Bureau also determined from 2000 data that 19.1% of the families with a "female householder, no husband present" lived below the poverty level. Both these percentages are likely higher now given the major rise in unemployment during the past two years).

LAND USE AND AGRICULTURE

Allegan County has 829 square miles of land area. The western border embraces 25 miles of Lake Michigan shoreline. Allegan has been known for farming (including orchards), although agriculture now represents a small role in the area economy.

According to the 1997 United States Census of Agriculture, in 1992 there were 1,429 farms, totaling 246,403 acres. In 1997 there were 1,337 farms totaling 236,936 acres. Farm employment, including proprietors, represented approximately 5.5% of total employment in Allegan in 1998, and a much smaller proportion of total wages. Land in farms decreased in Allegan by 4% from 1992 to 1996. The number of full-time farms decreased by 15% during the same period. The market value of agricultural products sold, however, increased by 33% between 1992 and 1997.

SCHOOLS

Public schools in Allegan County have experienced a modest growth in student enrollments in recent years. Figures reported by Standard & Poor's School Evaluation Service for the Michigan Center for Educational Performance and Education are provided in **Table 2-4**.

The reasons for the level figures, in the face of an increasing population, relates to family size, graying of the population, and the popularity of private schools. It is clear that the basic administrative structure of the system can adjust to increase in student population created by the jobs generated from the casino. This is discussed further in the new housing scenario segment. Typically, due to the manner in which state funding provides a base amount per pupil, and the growth of Charter schools, public school districts in Michigan actively compete for and recruit new students.

TABLE 2-4
HEADCOUNT ENROLLMENT FOR DISTRICTS WITHIN ALLEGAN COUNTY INTERMEDIATE SCHOOL DISTRICT
SOURCE: Standard & Poor's for the Michigan Center for Educational Performance & Information

	1997	1998	1999	2000	2001
Allegan	2,985	2,941	2,926	2,992	3,004
Fennville	1,581	1,601	1,562	1,690	1,677
Gagnes No. 4	27	26	30	33	26
Hopkins	1,323	1,318	1,376	1,370	1,384
Martin	825	814	771	776	762
Otsego	2,445	2,423	2,426	2,423	2,427
Plainwell	2,660	2,702	2,766	2,767	2,778
Wayland Union	2,995	3,157	3,277	3,174	3,172
Total	**14,841**	**14,982**	**15,134**	**15,225**	**15,230**

The Michigan Center for Educational Performance & Education and Standard & Poor's publish a figure for the percentages of students eligible classified as *"Economically Disadvantaged"* in 2001 for each district. The numbers for the eight districts in the Allegan Intermediate School District are provided below:

Allegan.....25.8%
Fennville 54.9%
Ganges No. 4.....n.a.
Hopkins.....17.1%
Martin.....19.5%
Otsego.....20.4%
Plainwell 14.6%
Wayland Union 16.2%

The figures show the significant proportion of children classified as *"Economically Disadvantaged"* and need the area has for additional economic opportunity.

EMPLOYMENT

Table 2-5 compares the Allegan County data for July of the most recent seven years. Between July of 1999 and July of 2002, the number of unemployed in Allegan County increased by 2,550.

TABLE 2-5
EMPLOYMENT TREND SERIES TABLE FOR ALLEGAN COUNTY
JULY OF EACH YEAR, 1996-2002
Source: Michigan Dept. of Career Development

Category	1996	1997	1998	1999	2000	2001	2002
Civilian Labor Force (Place of Residence)	52,800	55,075	56,050	57,800	59,275	59,375	60,000
Employment	51,000	53,525	54,350	56,475	57,650	56,475	56,125
Unemployment	1,800	1,550	1,700	1,325	1,600	2,900	3,875
Rate	3.4%	2.8%	3.0%	2.3%	2.7%	4.9%	6.5%

The increase in unemployment in Allegan is notable, but the regional figures are even more significant. Allegan County is located within the Grand Rapids-Muskegon--Holland Metropolitan Statistical Area (MSA), along with the counties of Kent, Muskegon, and Ottawa. The calculations published by Michigan Department of Career Development, Employment Service Agency are exhibited in **Table 2-6**. The unemployment rates are substantially higher than the late 1990s.

TABLE 2-6
TREND SERIES TABLE FOR THE GRAND RAPIDS-MUSKEGON-HOLLAND MSA
(ALLEGAN, KENT, MUSKEGON, AND OTTAWA COUNTIES)
JULY OF EACH YEAR
Source: Michigan Dept. of Career Development

Category	1996	1997	1998	1999	2000	2001	2002
Civilian Labor Force (Place of Residence)	571,600	591,300	600,700	623,200	635,100	636,500	643,400
Employment	544,600	569,200	578,300	601,300	611,300	598,700	595,000
Unemployment	27,000	21,600	22,100	21,900	23,800	37,900	48,500
Rate	4.7	3.7	3.7	3.5	3.7	5.9	7.5%

The MSA experienced **an increase in unemployment of 24,700** between July of 2000 and July of 2002. Statewide, unemployment increased by over 150,000 during the same two year period.

The need for the new employment is evident by the figures. The region clearly has the capacity to absorb the new employment created by the casino and any spin-off employment at other employers induced by the casino. The supply of employees is greater than the total demand from other employers competing in the labor pool.

Additional information is provided on other efforts undertaken by Allegan County to attract employment in a latter section of this report. Specific new employment estimates created by the casino are provided in a later section of this document.

The Michigan Economic Development Corporation (MEDC) reports that over 48% of the Allegan workforce works outside of the county. This is far higher than the figures for Ottawa and Kent counties. The personal income enjoyed by Allegan residents is clearly dependent upon the economies of other counties.

EMPLOYMENT COMPOSITION WITHIN ALLEGAN

Information developed by the Bureau of Economic Analysis, U.S. Department of Commerce, and made available by the MEDC provides a closer look at the composition of employment within Allegan in **Table 2-7**.

TABLE 2-7
EMPLOYMENT & EARNINGS BY INDUSTRY
ALLEGAN COUNTY—2000
Source: Michigan Economic Development Corporation

PERSONAL INCOME	(In thousands of $)
Total personal income	2,805,307
Non-farm personal income	2,768,020
Farm income	37,287
Per capita personal income (dollars)	26,447
EMPLOYMENT	**Number of Jobs**
Total in county	53,972
Wage & Salary	41,650
Proprietors	12,372
Farm employment	2,912
Non-farm Employment	51,060

TABLE 2-7 CONTINUED

COMPONENTS BY INDUSTRY	Employment	Earnings ($ thousands)
All Private	46,136	1,347,985
Ag. services, forestry, fishing, other	739	9,547
Mining*	0	0
Construction	3,434	134,631
Manufacturing	17,916	771,200
Transportation/Utilities	1,474	51,044
Wholesale Trade	1,591	48,085
Retail Trade	8,482	122,147
Fin./Ins./Real Estate**	0	0
Services	9,775	170,775
Government/gov. enterprises	4,924	170,359

* Mining provided 162 jobs during 1999.
** These are the official figures from the MEDC website for this line item; they are likely incorrect, the category averaged approximately 2,200 employees in previous years.

The totals emphasize the importance of manufacturing, trade, and services to the Allegan economy. It is notable that farm employment and income are less significant comparatively than several other sectors of the local economy.

Table 2-8 offers the most recent Michigan Economic Development Corporation list of the largest manufacturing sector employers in Allegan. Some of the firms have experienced recent layoffs and thus their figures may be overstated.

TABLE 2-8
LARGEST MANUFACTURING EMPLOYERS IN ALLEGAN COUNTY
Source: Michigan Economic Development Corporation

Company	Location	Employees
Perrigo Co.	City of Allegan	4,000
Haworth Inc.	Holland	3,000
Murco Inc.	Plainwell	850
Prince Corp.	Holland	650
Parking Hannifin Co.	Otsego	600
S 2 Yachts, Inc.	Holland	500
Pullman Industries	Pullman	400

Major private non-manufacturing employers include Kmart Corporation, Campbell Soup Company, and Pipp Community Hospital.

Allegan was the home to 172 employers classified as *"accommodation & food services"* in calendar 2000. This tends to suggest that off-site spending by casino customers (estimated later in the report) is most likely to occur at existing enterprises and structures rather than new.

TOURISM

Tourism is important to the Allegan economy, particularly in the western towns on the Lake Michigan shoreline. Tourism is also a valuable contributor to the regional economy. **Table 2-9** provides information from Michigan State University on estimated tourism spending. Data pertaining to Kent and Ottawa counties are included as well as for Allegan. For reference, the table also provides the data for five counties that host Native American casinos.

TABLE 2-9
TOURISM SPENDING IN MICHIGAN---1997 ($Millions)
COMPARISON OF AREA COUNTIES WITH CASINO HOST COUNTIES
Source: Michigan State University

	MOTEL	CAMP	SEA-SONAL HOME	WITH FRIENDS & REL.	DAY TRIPS	TOTAL TOURIST $	POPU-LATION 1997	TOURISM $ IN COUNTY PER RES.
MICHIGAN	$2,708	$361	$1,042	$2,181	$938	$7,230	9,779,984	$ 739
Allegan	9	15	11	22	5	63	100,585	626
Kent	165	5	6	120	56	354	541,458	654
Ottawa	40	10	7	49	16	123	219,940	559
KEY HOST COUNTIES								
Chippewa	49	6	23	8	13	101	37,915	2,664
Grand Trav.	133	6	16	16	38	209	72,901	2,867
Isabella	54	1	4	13	15	86	57,691	1,491
Leelanau	26	4	20	4	7	62	18,826	3,293
Mackinac	121	4	20	2	31	178	11,079	16,066
HOST TOTALS	$383	$21	$83	$43	$104	$636	198,412	$ 3,205

The figures exhibit that tourism is an important component of the regional economy, although the figures are not overwhelming. It is also interesting to note the much higher attracted *$ per resident* figures for the casino host communities, although it is not implied that the casinos are the sole reasons those areas attract much greater tourist spending than the Allegan area.

MEDIA COVERAGE OF ECONOMIC PROBLEMS

The tables exhibited the rise in unemployment that has occurred in the region in recent years----an increase of over 22,000 individuals in the Metropolitan Statistical Area during the past two years. The concern this has brought to the region has been the subject of a numerous media articles. For perspective, a few are noted below, along with key excerpts.

Holland Sentinel, web posted July 31, 2002
"Unemployment rates rising, Allegan; Ottawa County numbers reflect layoffs; graduated not finding work"

Allegan and Ottawa counties' jobless rates both hit 5.9% for June, compared with 4.2 percent in June of 2001 and 5.1% in May. Allegan's jobless rate jumped from 4.4 percent in June 2001 and 5.2 percent in May.

The greater Grand Rapids area, which includes Allegan, Kent, Muskegon, and Ottawa counties, suffered even worse, as its unemployment rate rose to 7.2%, up 1.9% from last June.

Over the past two years, the Grand Rapids-Holland-Muskegon area has been hit by thousands of layoffs in the automotive and office furniture industries.

Grand Rapids Press, Posted Sunday, October 6, 2002
"Office furniture layoffs bring opportunity for some, lower wages for others"

For every worker who landed on his or her feet in the pats 18 months, others continue to look for jobs, or wait for the ax to fall. Thousands more survive on fewer hours and without the hefty bonuses once paid...

The region's diverse economy masks some the impact. But the job losses ripple across the landscape, washing over merchants and other businesses that benefit from workers paychecks.

Smigel is among the 10,000 office-furniture workers—enough to fill Van Andel Area-who lost their jobs during the industry's worst downturn.

One estimate places the economic impact at nearly $1 billion.

According to a study by the W. E. Upjohn Institute for Employment Research in Kalamazoo, the loss of 10,000 production workers in the office-furniture industry indirectly eliminates 10,000 jobs in other sectors.

Grand Rapid Press, Sunday, February 17, 2002
"Lines of the times: Job fair draws a crowd"

She joined more than 3,000 other West Michigan job seekers at the DeltaPlex in Walker on Saturday at the Mega Employment Expo.

The attendance of the job fair is a reflection on a recession that has cost more than 10,000 West Michigan workers their jobs in the past year, including 400 white collar workers furloughed at Herman Miller and Steelcase Inc. last week.

The workers at the employment expo represent just a fraction of the 35,700 people looking for work in West Michigan. The total is up from the 18,600 during the same period last year.

COUNTY AND STATE EFFORTS TO ATTRACT JOBS TO THE REGION

It is useful to place the casino in the context of the very active efforts of Allegan officials, and other state and regional programs, to attract new employers to the county and region. The existing public policy priority to attract jobs is evident.

A leading agency in the effort is the Allegan County Economic Development Alliance (ADEDA). This nonprofit organization has the stated mission *"to further the economic development and social welfare of Allegan County with specific emphasis on promoting and assisting the growth and development of business concerns."* The Alliance has members from government, business, education, finance, medical, public utilities and individuals. ADECA works in partnership with the Allegan County Area Work Force Center, and West Michigan Regional Planning Commission, as well as state level agencies.

The Alliance also is involved in the operation of the Allegan County Economic Development Corporation that has the capability of assisting in the financing of job producing projects.

Within the County, seven cities and townships have created Downtown Development Authorities to assist business development in those areas. The cities of Allegan City, Otsego, and Plainwell each have established a Brownfield's Authority to development abandoned, undeveloped or under-utilized properties possessing environment contamination concerns.

A variety of companies has been directly aided through tax abatements and other assistance provided by or approved by local governments and the State of Michigan. A prominent example is the incentives package the Michigan Economic Development Corporation agreed to offer Perrigo Corporation to bring about the construction of a new R&D facility in Allegan. Perrigo will investment $1.2 million in a new building and $400,000 for furniture and equipment. A total of 25 jobs were promised to be added during the next five years. In return, the MEDC awarded Perrigo a Single Business Tax credit of up to $395,000 over a 10-year period. The City of Allegan also proposed local tax abatement worth $241,900 over 12 years.

This material simply elaborating that Allegan is actively seeking new employment.

CHAPTER THREE
MARKET AND CUSTOMER SCENARIO

PURPOSE

In order to estimate community impacts it is necessary to develop a baseline scenario concerning the level of business and the number and location of customers. The discussion in this Chapter delineates development of base market figures that will then be used as a foundation for the economic impact projections.

COMPETITION OVERVIEW

Gaming alternatives

The casino would be the first within one hour of Grand Rapids, but significant competition does exist. A summary of wagering alternatives includes:

- 17 Native American casinos in Michigan.
- 2 Native American casinos in final planning and approval stages, one in Calhoun County and one in southern Berrien County.
- 3 "interim" casinos in the City of Detroit.
- Over 10,000 lottery outlets statewide.
- Horsetrack wagering.
- Internet wagering (over 800 sites).
- Riverboats in northern Indiana and Illinois.
- Trips, particularly charter planes, to Las Vegas and Atlantic City.
- Caribbean cruiseships.
- Windsor and other Canadian gaming outlets.
- Illegal betting, particularly on sports.

Casino competition

Prime competitors

For the needs of this report, the Native American casinos are of most relevance. There are four casinos (2 open, 2 scheduled to begin construction within the next 12 months) that merit particular attention when considering the market potential of an Allegan facility.

1. Soaring Eagle Casino, Mt. Pleasant.
2. Little River Casino, Manistee.
3. Planned casino in New Buffalo, Pokagon Band of Potawatomi.
4. Planned casino in Emmett Township (east of Battle Creek), Huron Nottawaseppi Band of Potawatomi.

Capsule summaries of the facilities are provided below. The distances to major markets, and how these compare to a location in Allegan, are detailed in a following segment.

Soaring Eagle Casino, Mt. Pleasant

The Soaring Eagle has become one of the largest casinos within the United States. Official revenues are private, but based on payments made by the casino to state government it is likely that total gaming revenues exceeded $400 million during 2000. The casino offers approximately 4,300 slot machines and 85 table games, using over 200,000 square feet of gaming space. There is a steakhouse and buffet restaurant adjacent to the main gaming area. The complex includes a hotel with conference rooms and an entertainment/event hall (seating approximately 3,000).

The complex is located a few miles from US 27, a major highway for vacationers heading to northern Michigan. The site for many years was the southernmost of any casino in Michigan. This changed in 1999 with the opening of the first Detroit casino. The opening of other Native American casinos in Michigan, closer to population centers and travelers from other states, will be providing significant competitive pressure.

A latter segment of the report further compares the Soaring Eagle historical results with the projected revenues for the Wayland Township casino.

Little River Casino, Manistee

An interim facility opened in July of 1999, with a first expansion completed in December of that year. An expansion begun in 2001 has recently been completed, including the addition of an on-site hotel. Before the expansion, the limited gaming area housed approximately 830 electronic games and 20 tables. The expanded facility has several restaurants. The casino is located on US-31, north of the City of Manistee. Official records are not available, but based upon formula contributions made to local government; it is reasonable to assume that the casino realized gaming revenues of over $80 million during 2000.

Planned casino in New Buffalo Township, Pokagon Band of Potawatomi

The Pokagon Band is in what they believe to be the final stages of receiving federal approval for their land in trust application. A compact has been signed with Michigan Governor John Engler. News releases suggest the facility will have approximately 2,000 electronic (slot) machines plus table games. The announced site is one mile from the Indiana border. There is significant competition in the region from Indiana and Illinois riverboat casinos, but the New Buffalo Township would be the closest landbased facility serving South Bend and the remainder of northern Indiana as well as the Chicago southern suburbs. Various state and federal actions will influence the official opening date, and a formal target date has not been announced.

Planned casino in Emmett Township (east of Battle Creek), Huron Nottawaseppi Band of Potawatomi

The Band also has filed applications with the federal government and has signed a compact with Michigan Governor John Engler. Media statements suggest that construction is planned to commence during 2001. The site is a few miles east of Battle Creek, and not far from the junction with I-69. If constructed as planned, it will be the nearest competition to an Allegan facility. Press reports place the target size at approximately 1,800 electronic games and an appropriate number of table games.

Comment on increasing competition

In 1998, there were approximately 7,000 slot machines at the existing Native American casinos in the entire State of Michigan. Within a few years, if development matches the intended schedules, the number will exceed 20,000. This includes those at previously existing casinos, the machines added in Detroit, the Manistee and Petoskey casinos, plus those anticipated at the pending casinos in New Buffalo Township and Emmett Township.

There are many reasons to believe that the market can accommodate the growth, particularly from casinos located near population centers. The gaming market was significantly underserved in the past, thus creating an exodus of Michigan dollars during trips to casinos in Canada, Indiana, Las Vegas, and other gaming venues. There are also millions of dollars bet illegally each year by Michigan residents. Essentially, the initial casinos that opened in Michigan were almost a guaranteed success, regardless of location or business acumen. Competitive issues were not a major consideration---this has now changed.

Even though there will be a high level of competition, the location of the Allegan casino provides for a clearly competitive venue. Various site attributes and competitive distances to markets are discussed below.

Comparative distances to key competition

A prime consideration in developing projections for revenue and employment are the comparative distances to other casinos from major population centers. Casinos compete in a variety of manners, but location is a prime determinant of where a casino consumer will decide to visit. **Table 3-1** provides distances from various key cities in Michigan to a series of casinos.

TABLE 3-1
COMPARATIVE DISTANCES TO COMPETING CASINOS
(In highway miles)

City (centered on City Hall)	CASINO LOCATION (EXISTING OR PROPOSED)						
	Wayland Township	Emmett Township (Calhoun County)	New Buffalo T. (Berrien County)	Soaring Eagle Ca. - Mount Pleasant	Little River Casino - Manistee	Turtle Creek C.- Williams-burg	Motor City Casino - Detroit
Grand Rapids	19	67	112	85	127	150	153
Kalamazoo	35	22	81	141	178	202	136
Grand Haven	44	100	106	111	100	176	183
Battle Creek	46	2	101	120	192	215	116
Muskegon	67	107	120	108	89	156	195
Lansing	78	50	154	67	191	185	86
Flint	127	111	209	91	191	187	62
Ann Arbor	133	74	173	126	257	238	41
Birmingham	155	122	220	138	235	234	15
Traverse City	159	216	253	107	60	8	256
Chicago	165	171	71	271	271	327	282

The Wayland site has a locational advantage in serving the Kent County market. It will also be significantly closer to Muskegon and the Grand Haven area than any of the identified casino competitors. From the City of Kalamazoo it will only be a few minutes further than the Emmett Township casino. Many northern and western Kalamazoo County residents may find the Allegan site more convenient.

The Lansing market will be particularly competitive. Most Lansing area residents will find the travel times to Emmett Township, Wayland Township, and Mt. Pleasant to be fairly similar (from 50 to 75 minutes). Grand Rapids traffic may create a slight negative for the Allegan casino. Residents of suburbs west of Lansing may find that Wayland Township is actually a shorter drive than Mt. Pleasant or even Emmett Township. Residents south and southwest of Lansing will find the Emmett Township several minutes closer. Residents North of Lansing will likely find the Soaring Eagle more convenient.

The Allegan casino will be within a reasonable travel range for southeastern Michigan consumers (2-3 hours), although there will be competition that is much closer. Yet, a significant number of potential casino customers from that area may also have other reasons to be travelling to the western Michigan area.

The Chicago market also is within a reasonable drive time. Competition will be intense, but the size is so substantial that capturing even a small percentage would produce important revenue additions for the Allegan casino.

Possible Grand Rapids casino

There have been media reports regarding a group of Native Americans in Grand Rapids (Grand River Band of Ottawa Indians) that are in the process of applying for formal recognition from the federal government. The group has mentioned an interest in bringing a small casino into the City of Grand Rapids. There are many steps that must be achieved before this could occur. Such an eventuality is not included in the market and competition assumptions used in this study.

Attraction of customers from distant areas through multi-purpose trips

The distance table focused upon trips with the express intent of visiting a casino. An Allegan location also possesses the potential to attract casino customers who are involved with trips for other purposes as well as a casino visit. First of all, there are millions of travelers on I-96, I-94, or US 131 that are passing through the general area on the way to distant destinations. This group forms a market segment of interesting potential.

There is also a market segment formed by the large number of visitors to Grand Rapids or to the beaches of western Allegan County and Ottawa County. The availability of the evening entertainment option provided by the casino is compatible with this base of individuals already interested in visiting the area. There are also a significant number of seasonal homeowners in the region that form another market segment of potentially significant size.

Coupled with the existing attributes of the region, there is also the potential for the facility/area to evolve into multi-day destination for longer-distance visitors. This potential market, which would take several years to cultivate, is not included in the base scenario developed in this Chapter.

MARKET SCENARIO FOR AN ALLEGAN CASINO

Methodology

The following steps are used to develop the scenario:

- Consider total adult population in relevant geographic areas.
- Determine any special subgroups of customers.
- Generate a figure representing the total number of annual casino visits in the relevant market.
- Generate a figure for the market share garnered by the Allegan casino thus generating a figure for the total number of annual customer visits.
- Develop dollar amount estimates for consumer gaming expenditures per visit for each geographic component of casino patrons.
- Generate an estimate for gaming revenues at the casino.

The foundation figures for the customers and the revenues will be utilized to generate the job creation (on-site and off-site) and gaming tax revenue estimates that are detailed in Chapter Four.

Total applicable market

The first step is formulation of figures for the overall applicable market. The primary factor is the adult population in various geographic groupings. The population figures are provided in **Table 3-2**. In some instances, there may be some difference in the final, adjusted, figures to be published by the Census Bureau, but such differences would be minor.

The age group 21-75 is chosen because it represents a convenient core. Some individuals older than 75 will no doubt visit the casino. The total contribution to casino revenues of this group, however, is small.

The gaming age minimum to be enforced (whether 18 or 21) has not yet been announced, although even if younger than 21, the revenue contribution from this age cohort would be small.

Table 3-2 exhibits that while Allegan itself is a not a large county in terms of population (even after factoring growth during the last decade) it is located in a region with a substantial population base. It also introduces the importance and potential impact of attracting customers from outside of the region.

TABLE 3-2
POPULATION GROUPS BASED UPON DISTANCES TO COMPETITION

GROUP #	COMPETITIVE DISTANCE DESCRIPTION	COUNTIES	POPULATION 21-75
1	Host County	Allegan	65,512
2	Allegan casino is much closer	Barry, Kent, Ottawa	569,030
3	Closer to Allegan or about the same	Ionia, Kalamazoo, Muskegon, Newaygo	321,281
4	Closer to Emmett, within 2 hours of Allegan	Branch, Calhoun, Eaton, Hillsdale, Ingham, Jackson, Washtenaw	678,646
5	Closer to New Buffalo, within 1.5 hours of Allegan	Berrien, Cass, St. Joseph, Van Buren	218,390
6	Closer to Mt. Pleasant, within 2.5 hours of Allegan	Clinton, Genesee, Gratiot, Montcalm, Saginaw, Shiawassee	549,426
7	Southeastern Michigan	Livingston, Lenawee, Macomb, Monroe, Oakland, Wayne	2,756,057
8	Special Groups (not included above)	Primarily from longer distances; components described separately	n/a

Group 8 includes special categories of potential casino customers, namely:

- Visitors to the casino from the existing tourism base.
- Pass-through travelers on I-94, I-96, and US 131 from greater distances that choose to stop at the casino.
- Customers from beyond 2.5 hours.

This grouping will be discussed in greater detail in following sections.

In **Table 3-3** population totals are used to derive figures for the total number of annual casino visits from each geographic grouping. The *"% that visit casino"* and *"average # of visits"* figures are based upon results and studies from other markets and are cross-checked against published information regarding the number of casino visits now occurring annually in Michigan.

TABLE 3-3
TOTAL CASINO VISITS IN RELEVANT GEOGRAPHIC GROUPS

GROUP #	COMPETITIVE DISTANCE DESCRIPTION	POP. AGE 21-75	% THAT VISIT CASINOS	AVE. # OF VISITS	TOTAL VISITS TO MI. CASINOS
1	Host County	65,512	40%	9	235,843
2	Allegan casino is much closer	569,030	40%	8	1,820,896
3	Closer to Allegan or about the same	321,281	40%	8	1,028,099
4	Closer to Emmett, within 2 hours of Allegan	678,646	40%	9	2,443,126
5	Closer to New Buffalo, within 1.5 hours of Allegan	218,390	40%	8	698,848
6	Closer to Mt. Pleasant, within 2.5 hours of Allegan	549,426	45%	9	2,225,175
7	Southeastern Michigan	2,756,057	45%	11	13,642,482
	TOTAL IN ABOVE GROUPS	5,158,342			22,094,469
8	Special Groups for Allegan (not included in the above)	n/a			182,500

As has been introduced, there will be competition for the customers. It is only necessary for Allegan to attract a reasonable share, using prudent business planning and cost control, in order to be successful.

Table 3-4 displays the calculation for the next two key steps in the methodology. The visits within each group are factored by a projection of the Allegan market share for each group in order to arrive at the scenario for total visits to the Allegan casino. The customer visit totals for each of the eight groups are then multiplied by figures representing the average casino hold for visits in each of the groups. The distance traveled to the casino influences the hold, or casino win.

TABLE 3-4
GENERATION OF SCENARIO FOR ALLEGAN CASINO
CUSTOMER VISITS AND GAMING REVENUES

GROUP #	COMPETITIVE DISTANCE DESCRIPTION	VISITS TO MICHIGAN CASINOS	ALLEGAN MARKET SHARE	ALLEGAN VISITS	$ AVE. CASINO HOLD	GAMING REVENUES
1	Host County	235,843	65%	153,298	40	6,131,923
2	Allegan casino is much closer	1,820,896	60%	1,092,538	45	49,164,192
3	Closer to Allegan or about the same	1,028,099	40%	411,240	50	20,561,984
4	Closer to Emmett, within 2 hours of Allegan	2,443,126	25%	610,781	60	36,646,884
5	Closer to New Buf. within 1.5 hours of Allegan	698,848	25%	174,712	50	8,735,600
6	Closer to Mt. Pl., within 2.5 hours of Allegan	2,225,175	10%	222,518	65	14,463,639
7	Southeastern Michigan	13,642,482	2%	272,850	75	20,463,723
8	Special Groups (not included above)	182,500		182,500	74	13,505,000
	TOTAL ALLEGAN CASINO VISITS			**3,120,436**		**$169,672,946**

It is reiterated that the figures are based upon stabilized operation of the casino, probably occurring during the third full year of operation. There may be a spike in revenues and visits when the casino first opens, or conversely, there may be a slow ramping up of services and revenues throughout the first year. In any event, it is most appropriate for economic development planning to consider the point of stabilized operation.

Two figures generated in **Table 3-4** are central to the remaining discussions of the impact analysis:

Total annual customers 3,120,436
Total annual gaming revenues $169,672,946

It is notable that Allegan residents themselves represent less than 5% of the visits and approximately only 3.6% of the gaming revenues. Moreover, a portion of these visits generated from Allegan, and the related spending, would otherwise be directed to casinos in other venues if a casino did not exist in the county. The local percentages will be discussed again in other sections.

Notes on comparison to the Soaring Eagle

A highly detailed methodology was used to develop the market capture figures. The assumptions regarding the competition were clearly stated. Indeed, the attainment of the $169.7 million in annual revenues would represent an impressive achievement for the tribe, and will create a significant number of jobs on and off site (discussed further in a following section). Yet, the Soaring Eagle figure of over $400 million in revenue remains unavoidably beguiling. It is thus useful to elaborate on why a comparable figure should not be expected for the Wayland Township facility. The reasons fall into the following primary categories:

1. The Soaring Eagle held a virtual monopoly in the legal gaming market in mid and southern Michigan.

For several years, the Soaring Eagle was the only casino south of Traverse City. It was the closest to approximately eight million Michigan residents, plus those in Ohio. This allowed development of name recognition allowed growth and financing of its facility. At one time, the Soaring Eagle accounted for more than one-half of all electronic games of chance in Michigan (approximately 4,000 out of a total in the vicinity of 7,500).

2. The Soaring Eagle has a much larger facility than proposed for the Wayland Township site.

The Soaring Eagle has more than 200,000 square feet of gaming space, far more than will be accommodated by the existing building and land at the intended Wayland Township site. The Soaring Eagle also has a large luxury hotel, conference center, and entertainment hall. The Wayland Township facility will not have these other amenities.

3. It is assumed that casinos will have opened both in Emmett Township and New Buffalo before the opening of the Wayland Township facility.

Together the two facilities will bring between 4,400 and 5,000 new electronic games of chance into the gaming supply column, along with approximately 80 to 120 table games. The methodology used to arrive at the $169.7 million scenario for the Wayland Township casino accounted for this competition. The competition from these sources and other forms of supply makes it unlikely that any new facility could achieve the results previously achieved by the Soaring Eagle.

4. Existing casinos have undertaken major expansion in recent years, with more planned.

The Little River Casino in Manistee has recently completed a major expansion, including the addition of a hotel. The Turtle Creek casino near Traverse City is presently undergoing a large increase is size. The temporary casinos in Detroit have recently received approval to begin the construction of their permanent facilities (although court challenges to this growth are still pending). The supply of electronic games of chance at other Michigan casinos when the Wayland Township casino opens will likely exceed 20,000. This is corresponds to the less the 4,000 total that the Soaring Eagle competed against when the facility was achieving such enviable success.

It is also mentioned that the riverboats in Indiana and Illinois are now allowed to offer open boarding, thus becoming more competitive with land based casinos.

All of the above factors were incorporated into the revenue estimation methodology. The $169.7 million figure is reasonable. It is unlikely, however, that the record levels once attained at the Soaring Eagle will be achieved at the Wayland Township site.

NON-GAMING SPENDING SCENARIO

The visitor grouping and visitation levels serve as a basis to develop scenarios for non-gaming spending, both on-site and off-site. These estimates are needed for the employment figures that are provided in the following chapter. At the base of the calculations is the primary assumption that the core of the market will be "daytrippers", individuals that visit the casino and either return home the same day or travel on to another location.

On-site spending

Plans for the facility, in addition to the gaming and administration areas, are limited to a buffet restaurant, one or two smaller restaurants, a sports bar, lounge, and a small gift/retail shop.

The analysis uses the figure of $10 for the average non-gaming amount spent on-site by casino visitors. This generates a non-gaming, on-site revenue figure of $32 million. The amount exhibits that the non-gaming areas are designed not to be extensive. The total non-gaming on-site figure equates to less than 16% of total on-site revenues.

Off-site customer spending

Casino visitors also spend significant sums off-site. It is common for casino visitors to spend money in the general vicinity (yet off-site) on dining, beverages, and retail. For some, expenditures will be made off-site on lodging and entertainment. Gasoline purchases are also common, although the location of the purchase (locally or nearer to home) is difficult to project.

There are also other areas of potential new spending, such as increased convention business and companions of casino visitors, that are not readily quantifiable but merit consideration in the discussion of potential economic benefits for the region. The further the distance the visitor travels to the casino the greater the likelihood that they will spend money outside the facility, and within the general geographic area.

Spending in area on food, beverage, lodging and retail

In **Table 3-5**, average per visitor off-site spending factors are utilized for each of the geographic groups to derive a scenario for total new off-site spending from food, beverage, lodging and retail.

The table does not include spending that stems solely from a shift within the area. An example of excluded spending would be an expenditure by a Kent County resident at a restaurant after a casino trip that would still otherwise have been made at another time in the region even if the casino did not exist.

The term "Allegan Area" is used to include all of Allegan and Kent counties, southern Ottawa county, western Barry County, and northern Kalamazoo County.

TABLE 3-5
NON-SHIFTED OFF-SITE SPENDING IN ALLEGAN AREA

GROUP #	DESCRIPTION	CASINO VISITS	AVE. NON-SHIFTED OFF-SITE $/VISIT	TOTALS
1	Host County	153,293	0	-
2	Allegan casino much closer	1,092,538	$5	5,462,688
3	Closer to Allegan or about the same	411,240	$8	3,289,917
4	Closer to Emmett, within 2 hours of Allegan	610,781	$10	6,107,814
5	Closer to New Buffalo, within 1.5 hours of Allegan	174,712	$10	1,747,120
6	Closer to Mt. Pleasant, within 2.5 hours of Allegan	222,518	$15	3,337,763
7	Southeastern Michigan	272,850	$25	6,821,241
8	Special Groups for Allegan (not included in the above)	182,500	$30	5,475,000
	TOTAL ALLEGAN AREA	**3,120,436**		**$32,241,543**

Other potential casino visitor spending in the area not included above

As previously introduced, there are varieties of other potential off-site spending categories that are not included in **Table 3-5**. For these items, providing even a broad estimate is not possible at this time. These categories include:

- Gasoline.
- Entertainment, tourism, and outdoor recreation.
- Companions of casino visitors who do not choose to go to the casino.
- Conferences/conventions attracted to the region due to the casino.
- Additional visits to area by seasonal residents.
- Retained spending otherwise leaving the area for other casino venues.

On the long-run, a prime determinant of the amount of dollars spent in Allegan and adjacent counties by casino customers will be the level of response of the business community in recognizing the opportunity and successfully working to attract off-site spending.

COMMENT ON EXPENDITURE SHIFTING

A reasonable concern when reviewing an economic impact analysis is whether spending and jobs are counted that stem from local shifting of dollars from a previous business to a new business, with no net gain. This analysis is careful to avoid inclusion in the impacts of shifted dollars. Furthermore, in that the actual amount of revenues from Allegan residents represents a minor part of overall revenues, the amount that might be considered to be created shifted spending is relatively small. Even these jobs may have otherwise been flowed to other counties by the gaming spending of Allegan residents at the non-local venues. Regardless, throughout the study special effort was made to be sure that any shifted dollars (even if minimal) would not be included in the totals for new jobs.

CHAPTER FOUR
EMPLOYMENT AND PUBLIC REVENUE IMPACTS

INTRODUCTION

At the foundation of economic development is the creation of new jobs. The casino has the potential to become one of the largest employers in Allegan County and the largest taxpayer to local governments. This Chapter utilizes the scenario developed previously to produce estimates of the total number of new jobs created due to the casino. A scenario is also developed for annual payments to local governments from electronic gaming (slot machine, video poker, etc.) revenues patterned after agreements in other Michigan communities.

MAJOR JOB CREATION COMPONENTS

An economic development project of this size and nature generates new jobs in the following manner:

- Direct
  - On-site (gaming and non-gaming).
- Indirect
  - From off-site spending by casino patrons at area businesses.
  - From goods and services purchased by the casino from area businesses.
- Induced
  - From the sequential rounds of spending by the employees in the groups above.

The employment creation totals for each of the categories are provided in **Table 4-1**. A brief discussion of each category is also provided.

Direct---on-site

This category includes all on-site employees. The positions not only include jobs involving gaming tables and machines, but also accounting, facility maintenance, security, food service, management and the many other categories of employment.

Based upon the revenue scenarios developed in the previous Chapter, it is estimated that the facility will require **1,826** full-time equated employees (FTEs). Each FTE represents one full-year of employment at 40 hours per week. In actual practice, some of the positions may be filled through the joint efforts of part-time employees, seasonal employees, and overtime.

The positions can be expected to be paid competitive wages. In most cases casinos provide health care insurance to employees. Given the increase in unemployment in the region, day care options likely have increased in the area. Yet, if the need arises, the casino should provide childcare (for all or some shifts depending upon employee demand) as well as other personal benefits. The childcare is solely for employees, and would not be available to customers.

TABLE 4-1
JOBS CREATED
(Full-time Equated Positions)

	ALLEGAN AREA		ALLEGAN COUNTY ONLY	
DIRECT ON-SITE		**1,826**		**1,826**
INDIRECT OFF-SITE				
* From customer spending	358		179	
* Subcontractors hired by casino	268		107	
SUBTOTAL DIRECT AND INDIRECT		**2,452**		**2,112**
INDUCED				
* Multiplier (times direct & indirect)	1.0		0.6	
* Induced employment		**2,452**		**1,267**
TOTAL EMPLOYMENT IMPACT		**4,904**		**3,380**

Indirect--from casino customer spending off-site

In the previous Chapter, estimates were made of the off-site spending by casino customers on food, beverage, lodging, and retail. In the previous Chapter, **Table 3-5** delineated an estimate of $32.2 million in annual off-site spending in the Allegan Area. Even this substantial figure did not incorporate potential off-site spending from categories that are premature to calculate at this point, yet could grow into major job creation opportunities. The base figure is used to develop an estimate of 358 new jobs in the Allegan Area, with 179 being located within Allegan County.

Indirect--from goods and services purchases by the casino with area firms

Casinos are major purchasers of goods and services. There is a wide range of needs. Examples of just a few of the types of firms include food distributors, beverage distributors, landscapers, printers, office supply firms, advertising agencies, security, and dry cleaners. It is estimated that approximately 20% of total revenues may flow into contracts for goods and services. For the scenario in this analysis, it is assumed that 60% of the contract dollars will flow to firms in the Allegan area. This will, however, be determined by the response of the business community. There is little question that the casino would prefer to maximize the use of local firms. Of the dollars that flow to area businesses, it is further assumed that 40% will remain in Allegan County. The assumptions and calculations arrive at estimates of 268 FTEs at Allegan area firms providing goods and services to the casino, with 107 FTEs located within Allegan County.

Direct and indirect subtotal

The total FTEs from the direct on-site jobs and indirect off-site job categories sum to 2,452 for the Allegan Area and 2,112 within Allegan County.

Induced employment (multiplier or ripple effect)

The employees filling the direct and indirect jobs create further economic activity through their own expenditures. These expenditures lead to additional new employment, which then results in successive rounds of economic activity. Economists term this impact the multiplier or ripple effect. Statistical multipliers are used to represent the overall economic and/or employment impact.

It is a reality that in too many instances excessive multipliers are used to make false promises regarding potential projects. For this analysis, a conservative approach is taken in the use of multipliers. The key for the Allegan situation is that the vast majority of direct spending will be new to the local economy. Only a small portion of the gaming spending is generated from residents. Moreover, the resident spending that does occur are likely dollars being retained in Allegan rather than leaving the area to casino venues elsewhere. Therefore, dollars captured for local employment are indeed new. Furthermore, these employees are likely to spend at least a portion of their income within the geographic area.

One of the most credible techniques for determining the multiplier effect has been developed and published by the federal ***Bureau of Economic Analysis, termed the RIMS-2 model.*** It is frequently used in studies assessing the economic impacts of tourism. For Michigan, the RIMS-2 model has calculated a multiplier factor of 2.075 for lodging and entertainment spending, 2.327 for eating and dining, and 2.244 for retail. The factors are multiplied by the direct spending to estimate the overall impact.

In this report, modest multipliers for the Allegan situation are utilized This reflects the fact that jobs from contractual spending were separately calculated, and the employment/housing pool analysis (in a later section) that finds that a significant number of the casino related positions may be filled by individuals who will continue to reside outside of the geographic area.

For the Allegan Area this report uses a multiplier of 2.0 (essentially this means multiplying direct and indirect employment by 1.0 to derive induced employment). A figure of 1.6 is selected for within Allegan County itself, reflecting a view that a significant portion of the off-site spending and contractor spending may flow to adjacent counties, particularly in the initial years.

Total job creation from this scenario

Summing the direct, indirect, and induced employment creation figures produce a total for the Allegan Area **4,904 FTEs**, with **3,380 FTEs** within Allegan County.

As noted throughout, the approach taken by local businesses to the new business opportunities will greatly influence the amount of off-site spending attracted to Allegan. In addition, the degree to which local governments decide to encourage or restrain growth though their Master Plans and zoning/permitting will also impact to what extent the growth opportunities are utilized. No unwanted growth is foreseen.

Construction jobs

An investment amount for the casino facility has not been published. Solely for elaboration purposes, a broad construction figure of $100,000,000 is chosen. This relates to approximately 830 person years of construction employment.

PUBLIC REVENUES

The most recent State Compact signed by four Native American tribes and Governor Engler dictates that 2% of electronic gaming (slot machine, video poker, etc.) revenues must flow to local governments. It is possible that the final compact signed by the Gun Lake Tribe may differ somewhat, but it is most logical for the purposes of this analysis to use the basic model that has been established. It must be considered unlikely for the amount that will flow to local communities to be less than that established in the existing compacts.

The gaming scenario developed in Chapter Three generated a gross gaming revenue figure at full operation during year three of $169.67 million. From experience at other Native American casinos and Indiana riverboats, it is reasonable to postulate that electronic gaming will represent in the vicinity of 82% of the total.

Table 4-2 utilizes the gross gaming revenue figure and the slot percentage figure to display the 2% revenue payments to local government and an 8% payment to the state.

TABLE 4-2
SCENARIO FOR LOCAL AND STATE GAMING TAX REVENUES
(Based Upon the Most Recent State Compact)

Projected Gaming Revenues	$ 169,672,946
Slot Percentage	82%
Projected Slot Revenues	$ 139,131,816
State Percentage (at 8%)	$ 11,130,545
Local Percentage (at 2%)	**$ 2,782,636**

The most recent compacts signed between Native American tribes and the State, which are assumed to serve as a model for the compact for the Gun Lake Tribe, calls for the distribution of the funds to be determined by a Local Revenue Sharing Board (LRSB). The language creates a 3-member panel composed of one person from the host Township (or City), one from the County, and one other from local government.

The Tribe does not influence how the revenues are distributed. If, solely for an example, the Township hosting the casino were to receive one-third of the dollars allocated by the Board, the annual payments under the scenario above would exceed $927,000. The Township would also be in the position to also benefit from the remaining $1.8 million that would be apportioned to the County and other public purposes.

The most recent Compact also requires that a minimum of one-eighth of the local funds flow to public safety services (this amount can be exceeded). Under the scenario, the minimum figure for public safety would be over $347,000 annually, with the LRSB having the option to direct even more dollars to public safety purposes.

There are also other public revenues that will be generated due to the casino. For example, any increase in hotel/motel usage would raise collections from lodging use fees. Greater property tax revenues would also be garnered from new or expanded businesses. Homeowners, however, are protected from having their own property tax payments increase above the rate of inflation by State law.

In Michigan, counties and local governments do not have local sales taxes. The state does have a 6% sales tax. Non-gaming spending attracted by the casino that would otherwise flowed to spending in other states (such as in Indiana counties with riverboat casinos) would to the generation of some additional state sales tax revenues. If, solely for descriptive purposes, if a round figure of $15 million is chosen to represent the proportion of the non-gaming spending that would otherwise not have been spent in Michigan, and all this was subject to the state sales tax, an incremental gain to state of $900,000 annually in state sales tax revenues would be achieved.

The additional spending from better employment by the individuals in the direct, indirect, and induced employment would also generate at the margin additional state sales, income, and sales taxes. Developing a formal estimate of the additional net figures is beyond the scope of this report. Wayland Township does not have an income tax on residents. This precludes taxing non-residents employees at local businesses.

CHAPTER FIVE
POPULATION, HOUSING AND OTHER COMMUNITY DEVELOPMENT IMPACTS AND CONSIDERATIONS

POTENTIAL GROWTH

The new employment and local business opportunities create an environment where growth may occur. Yet, as noted, the "supply" to meet the "demand" will be to a large degree controlled by local and county government. The zoning and minimum site size regulations, along with the capacity allowed and location of sanitary sewer and water lines, will affect the size and location of growth. There is no reason to believe that any unplanned growth will occur.

This Chapter develops scenarios for the sources of the employees, and the subsequent impact on housing demand. It also addresses other community development aspects.

POTENTIAL POOLS OF EMPLOYEES

Any model used to estimate change in population or housing created by the casino begins with a review of where the new employees will come from. Once a scenario is developed for the employees, the population and housing scenarios can be derived.

Categories

The potential pools of employees for the jobs created can grouped in the following manner:

- Allegan residents now working in other counties.
- From the ranks of the unemployed and expansion of the workforce, including part-time employment.
- Overtime.
- Employees who will commute significant distances to the casino; no plans to move into the county.
- Shifts from other employers in the County.
- Employees intending to move into Allegan if reasonable housing options are available.
- Employees in the jobs made available from intra-county shifts that will move into Allegan if reasonable housing options exist.

Each of the categories is briefly described below:

Allegan residents now working in other counties.

Over 48% of employed Allegan residents work outside of the county. This "bedroom community" effect in some ways is a compliment to the attractiveness of Allegan. It is also influenced by the cost of living of other areas and creates transportation and time resource costs. The dependency upon the economies of other areas is also a factor in why the casino will benefit the area.

It is likely that some residents will take jobs at the casino, or in the other jobs spawned off-site by the casino, as a preference to their current employment outside the county. In many cases the wages, and particularly the benefits, will be better, with better opportunities for advancement. For some, the new jobs will simply be more convenient than travelling further each day.

From the ranks of the unemployed and expansion of the workforce, including part-time employment.

Data in Chapter Two exhibited that the July unemployment rate for the Metropolitan Statistical Area in June of 2002 was 7.5. The overall number of unemployed in the four county region was reported to be 48,500, up from 23,800 in July of 2000.

Casino employment also has the potential to attract employees through expansion of the workforce. The "unemployed" classification includes only those actively seeking employment. These "discouraged workers" that do not show up in the unemployment figures provide an additional potential employment pool of the casino.

There are also individuals in seasonal or cash-only jobs not reflected in the unemployment figures that will be attracted to positions at the casino or at the indirect or induced jobs. This category also includes individuals taking second jobs in one of the positions created, perhaps on a part-time (moon-lighting) basis.

Overtime

It is common for a casino to utilize overtime, particularly for the skilled and somewhat unique positions directly involving the gaming operations.

Employees who will commute significant distances to the casino; no plans to move into the county.

A significant portion of the positions will be filled by residents of surrounding counties who will not (at least in the foreseeable future) be planning to move to Allegan. Employees filling the on-site positions are viewed as somewhat more likely to be attracted to moving into Allegan because of the higher wages and benefits at the casino positions compared to those in the off-site categories.

Shifts from other employers in the county.

There may be some shifting of employees from other employment in Allegan. Given that such a large percentage of Allegan residents work in other counties, this is not expected to be a large number.

Moreover, the number of unemployed in the region far exceeds the number of jobs created, thus there will be many others in the employment pool to fill any positions opened from shifts to casino related employment.

Employees intending to move into Allegan if reasonable housing options are available.

This is the core group that will create housing demand. For most, it will take several years to first begin work, determine the employment and operations do indeed hold long-term attractiveness, and then look for and find housing within the county. The assumptions used in the scenarios that follow attempt to avoid double-counting of this group with employees derived from the groups above.

Employees in the jobs made available from intra-county shifts that will move into Allegan if reasonable housing options exist.

Any shifts from other employers in the county will create openings. In a few instances, this will attract new employees for these positions who desire to move to Allegan. In that such positions will not be high paying (or otherwise the incumbent would not have left the job) this dynamic will be small.

EMPLOYEE SOURCE SCENARIO

In **Table 5-1** the total employment needs and the pools listed above are utilized, along with prudent assumptions, to develop a mid-level scenario for the distribution of new employees. This assumes a reasonable level of desire on the part of local governments to accommodate new housing. The estimates are not suggested as being firm predictions, but rather the reasonable outcomes given a variety of tangible and intangible factors. The scenario does not include any other housing trends exogenous to the casino.

TABLE 5-1
MID-RANGE SCENARIO
EMPLOYMENT POOL

JOB (FTE) ESTIMATE	Direct and Indirect		Induced		Individuals in Row Category
	2,208		1,324		
LABOR POOL	Proportion of column	# of Individuals	Proportion of column	# of Individuals	3,532
Allegan residents now working at jobs outside of area.	20%	442	15%	199	640
Unemployed, expansion in workforce, including part-time.	15%	331	20%	265	596
Overtime	5%	110	5%	66	176
Outside of Allegan who will commute for the foreseeable future	30%	662	40%	530	1,192
Subtotal	70%	1,546	80%	1,059	2,605
From shifts from Allegan employers.	10%	221	10%	132	353
From employees moving to Allegan (if housing supply exists).	20%	**442**	10%	**132**	**574**
Total from the above.	100%	2,208	100%	1,324	3,532
Employees filling county shifts workers that will move to Allegan.	10%	**22**	10%	**13**	**35**
New employees moving to Allegan		**464**		**146**	**609**

In order to exhibit flexibility and appreciation that there are many variables that will influence actual housing growth, the analysis also offers "low-range" and "high-range" scenarios. These figures are displayed in **Tables 5-2** and **5-3.** Each scenario uses the same total number of new jobs from the estimates generated in Chapter 4. The ranges stem from the use of differing assumptions for the various categories of employee sources.

TABLE 5-2
LOW-RANGE SCENARIO--EMPLOYMENT POOL

Job (FTE) Estimate	Direct and Indirect		Induced		Individuals in Row Category
	2,208		1,324		
Labor Pool	Proportion of column	# of Individuals	Proportion of column	# of Individuals	
Allegan residents now working at jobs outside of area.	20%	442	15%	199	640
Unemployed, expansion in workforce, including part-time.	15%	331	20%	265	596
Overtime	5%	110	5%	66	176
Outside of Allegan who will commute for the foreseeable future	40%	883	45%	596	1,479
Subtotal	80%	1,766	85%	1,125	2,892
From shifts from Allegan employers.	10%	221	10%	132	353
From employees moving to Allegan (if housing supply exists).	10%	**221**	5%	**66**	**287**
Employees filling county shifts workers that will move to Allegan.	10%	**22**	5%	**7**	**29**
New employees moving to Allegan		**243**		**73**	**316**

TABLE 5-3
HIGH-RANGE SCENARIO--EMPLOYMENT POOL

Job (FTE) Estimate	Direct and Indirect		Induced		Individuals in Row Category
	2,208		1,324		
Labor Pool	Proportion of column	# of Individuals	Proportion of column	# of Individuals	
Allegan residents now working at jobs outside of area.	15%	331	15%	199	530
Unemployed, expansion in workforce, including part-time.	10%	221	20%	265	486
Overtime	5%	110	5%	66	176
Outside of Allegan who will commute for the foreseeable future	25%	552	35%	463	1,015
Subtotal	55%	1,214	75%	993	2,207
From shifts from Allegan employers.	10%	221	10%	132	353
From employees moving to Allegan (if housing supply exists).	35%	**773**	15%	**199**	**971**
Employees filling county shifts workers that will move to Allegan.	15%	**33**	10%	**13**	**46**
New employees moving to Allegan		**806**		**212**	**1,018**

NEW HOUSING SCENARIO

The employee source projections provide a foundation for developing housing scenarios. **Table 5-4** exhibits the low-, mid-, and high-range scenarios. As stated throughout, local public policy will have an enormous impact on how many structures are actually built, and of what design.

TABLE 5-4
NEW HOUSING DISTRIBUTION SCENARIOS

	Low-range		Mid-range		High-range	
Total employees moving to Allegan	316		609		1,018	
Employees per housing unit	1.1		1.1		1.0	
Added unit base demand.		287		554		1,018
Served from vacancies and modifications to existing units.	10%	29	5%	28	0%	0
New unit demand.		258		526		1,018
Proportion within 15 minutes of casino.	60%		65%		70%	
New structure demand within 15 minutes		**155**		**342**		**712**
TYPE OF UNIT SCENARIOS						
	Low		**Middle**		**High**	
Single standing	45%	70	50%	171	55%	392
Condominium	15%	23	15%	51	15%	107
Apartment	40%	62	35%	120	30%	214

The mid-range estimate of 526 new units represents an increase of a bit over 1.2% in the Allegan housing stock. This is a significant figure in terms of being created by one project, but not overwhelming for planning or infrastructure. It will also require several years to evolve.

If the average household size for these new units in the mid-range estimate were 2.70, the total population increase equates to approximately 1,420 individuals, representing a total Allegan county population increment of less than 1.35%.

Schools Impacts

As Chapter Two detailed, student populations at public schools in Allegan County grew only slightly during the last decade (approximately 4%) even though population was increasing by over 16%. The specific reasons for the trend are not certain, although an increase in Charter and private schools, and a lower percentage of residents between the ages of 8-18 within the total population, are possible factors. Regardless, the results of the housing scenarios do not suggest that public schools will be facing major enrollment impacts due to the casino.

Even if growth is allowed and indeed does occur, it would take several years to evolve after the casino opened. Furthermore, if there is growth, state aid is guaranteed at the same level of funding per student---therefore dollars from the state school aid fund would increase proportionately with any increase in the number of public school students.

COMMUNITY DEVELOPMENT

Opportunity, planning and control

Even though the county is involved with a variety of programs to attract new businesses to Allegan, some residents may be concerned that the casino may create too much growth. The casino may create a demand for expanded housing and encourage businesses to expand. Local governments, however, will still possess the ability to manage the growth through permitting and zoning. No unplanned growth need occur.

Allegan County, according to U.S. Census, was home in the year 2000 to 372 *retail service establishments* and 172 *accommodation & food service* establishments. Therefore, revenue growth from off-site spending by casino customers is very likely to occur at already existing enterprises and structures.

Sewer and water

The sewer and water infrastructure and other environmental aspects are discussed in a separate component document of the overall submittal. Several segments of the housing, community development, off-site business analyses speak to the limits on indirect and induced growth.

Roads and traffic

Separate sections of the submittal detail road and traffic considerations. Given the location and design of the land use plan, there is strong reason to concur that the considerations will be addressed in full.

GENERAL BUSINESS ENVIRONMENT

New opportunities for other businesses

The employment scenario in Chapter Four discussed the off-site indirect and induced employment potentials created by the casino. The new dollars in the economy create revenue stabilization and growth opportunities for existing businesses. Any business expansion would occur at existing facilities or directed and limited to geographic districts that are zoned for commercial uses.

Attractiveness of area to non-casino businesses

Information has been supplied that exhibited that the land values in casino host communities in Michigan have increased faster than in the remainder of the state. Any increase in the overall economy tends to make an area more attractive to new businesses.

It is valuable to consider the recent experience in Detroit and Windsor, Ontario after their casinos were approved. During the period after approval of casino gaming in Detroit, both General Motors Corporation and Compuware Corporation have selected downtown Detroit as the location for their world headquarters. In Windsor, Chrysler Canada, after a nationwide search, announced Windsor was preferred for a new headquarters facility. It is not implied that these sites were chosen because of the casinos, but the gaming facilities obviously were not deterrents.

Casino impacts on property values elsewhere

The history from Michigan counties that presently host casinos is that land values increase. This is logical given that individuals may be seeking housing in the area, the added revenues for the business sector, the better net income realized by County residents deciding to work at one of the new jobs rather than jobs outside the county, and the major public payments made by the casino to local governments.

A statistical indicator of impacts on property value can be found through comparison of trends in the SEV in counties with casinos. Michigan State University publishes data on the SEV in each county in Michigan. **Table 5-5** compares the SEV trends between the years 1993 and 1999 for the entire state of Michigan with five counties that host the largest Native American casinos in the State. These casinos either located within the counties during the period or grew from tiny operations to major enterprises.

TABLE 5-5
TRENDS IN STATE EQUALIZED VALUATION---1993-1999
STATEWIDE AND KEY CASINO HOST COUNTIES
Data Source: Michigan State University

AREA	1993 Total SEV	1999 Total SEV	% Chg. 93-99 SEV (%)
ENTIRE STATE	167,507,478,809	261,002,177,463	**36%**
Chippewa	446,134,064	755,618,515	41%
Grand Traverse	1,559,346,875	2,719,016,666	43%
Isabella	632,402,030	1,036,301,595	39%
Leelanau	873,166,037	1,526,420,485	43%
Mackinac	405,786,322	674,576,213	40%
HOST COUNTY GROUP	3,916,835,328	6,711,933,474	**42%**

The data exhibits that total property values in casino host counties have performed impressively---well above the state average. Furthermore, the host county group figure was held down due to the loss by Isabella County of a key petroleum industry firm (and its SEV) that was totally unrelated to the casino. Interestingly, the growth in Allegan during the period was 43%, with the growth in Allegan, Kent, and Ottawa combined being 37%. It is not suggested that the casinos alone were the reason for the increase in the SEV. The data does challenge, however, concerns that a casino lowers area land values.

CHAPTER SIX
OTHER COMMUNITY IMPACTS AND CONCERNS

THE ECONOMY AND SOCIAL IMPACTS

This Chapter reviews various additional community impacts and considerations potentially created by the new casino. Key to the discussion is the reality that better overall local employment tends to benefit the quality of life of an area in many ways beyond higher paychecks. The task of assessing the community impacts in Allegan County is aided by the fact that 17 other Native American casinos already exist in Michigan. Hundreds of communities in other states host casinos. This Chapter references a sound foundation of historical information on what has occurred in these communities after a casino has opened.

An interesting aspect of casinos and new areas is that concerns may be voiced from both those that claim that the casino will not produce economic benefits and those that claim that the casino will be too successful and create too much growth. On occasion, the same critics argue from both extremes. In actuality, the findings from other areas exhibit that the casinos have been beneficial additions, but do not dominate an area.

The full operation scenario in the previous chapter estimated that the casino would be paying to **local programs and agencies** approximately $2.78 million annually from electronic games of chance revenues based upon the standard state compact (2% of EGC revenues to locals, plus an additional 8% to the state). The tribe is also prepared to provide a resolution pledging a 2% of EGC revenues to local programs and agencies in the event that a state compact is not entered into. These dollars will help assure a better community.

CRIMINAL ACTIVITY AND LAW ENFORCEMENT

No common agreement

Casino proponents and critics have often voiced opinions on the relationship between crime and casinos. A Google search of the words *"casinos crime rate impact"* yields over 6,000 hits. There is no agreement. When scrutinizing the issue, the extensive effort by the National Gambling Impact Study Commission, using figures supplied by the National Opinion Research Council, concluded that *"insufficient data exists to quantify or determine that relationship."* A later study by the Governmental Accounting Office reached a similar determination.

Many of the studies of the relationship between casinos and crime rates that have been conducted in other states (whether reaching "pro" or "anti" or "cannot determine" conclusions) may not be appropriate for Michigan in any event. The studies tend to look at regions where few gaming/casino options previously existed for area residences. As previously identified, Allegan area residents already have many gaming options, including 20 casinos in Michigan and riverboats just across the Indiana border

Crime "rates" and tourist areas

The official "crime rates" for residents of tourist areas and areas with a large number of seasonal homes can be unfairly overstated. The published *crime rate* for an area is typically calculated by dividing the number of crimes by the number of permanent residents. This methodology unfairly treats venues with a large number of visitors. A convenience crime at a tourist attraction against a visitor (such as purse snatching) is recorded as occurring within the host community and thus is included in the crime rate calculation as if the victim was a permanent resident. Yet, the residents of these towns may correctly view their community as safe; they might not even know the crime was even committed.

Orlando, home to Disney World and other tourist attractions, provides an interesting perspective. The December 18, 2001 edition of the **Orlando Sentinel** reported on a FBI study that found that of 16 cities of comparable size, Orlando ranked first in all crimes per 100,000 residents. The article reported, *"Many of the reasons for Orlando's high numbers are linked to the city being a tourist destination, experts say. First, the industry adds 150,000 visitors to the local population on any given day, and the FBI does not factor in the 'transient population' of any city when measuring crime rates."*

Comparison with experience in Michigan casino host communities

Even if the deficiencies in calculating crime rates are disregarded, the historic numbers for crimes in casino host counties in Michigan still compare favorably with other areas. This is a particularly important concept because the Michigan State Police crime figures encompass the total crime trends, rather than simply anecdotes pertaining to a few individuals.

Caution is appropriate when comparing crime frequency between areas due to the differences in demographics as well as other issues, such as the number of tourists. Moreover, an improved law enforcement may even lead to an increase in reported crimes because victims and witnesses becomes more likely to contact police if there is an abiding belief that an arrest and conviction will follow.

Even given the shortcomings of comparing crime rates, it still is of interest to contrast crime figures in the Allegan region with those counties that have been hosting the larger Native American casinos in Michigan. **Table 6-1** provides data from the Michigan State Police for the year 2000. The table includes the host counties for four larger Native American casinos. It also includes the four counties in the Metropolitan Statistical Area that Allegan County is part of, and the totals for the entire state. Exhibited are the totals for *"Index"* crimes (typically more serious), and *"Non-index"*. Three key subcategories of Index crimes are also exhibited *Aggravated Assault*, *Burglary*, and *Robbery*.

TABLE 6-1
COMPARISONS OF INDEX AND NON-INDEX CRIME TOTALS FOR 2000
Data Source: Michigan State Police

	Population	Index Crimes	Key Index Crimes			Non-Index Crimes	Index and Non-Index
			Aggra. Assault	Burglary	Robbery		
Casino Host Counties							
Chippewa	38,413	732	46	121	2	2,865	3,597
Grand Traverse	77,654	2,407	90	315	8	6,704	9,111
Isabella	63,351	1,764	70	288	8	5,422	7,186
Manistee	24,527	652	45	157	2	2,144	2,796
Subtotal	203,945	5,555	251	881	20	17,135	22,690
Per 1000 residents		**27.2**	**1.2**	**4.3**	**0.1**	**84.0**	**111.3**
Counties in MSA							
Allegan	105,665	1,779	162	410	8	5,625	7,404
Kent	574,335	24,916	1,999	4,690	740	47,622	72,538
Muskegon	170,200	5,833	286	882	31	20,672	26,505
Ottawa	238,314	8,200	511	1,182	121	24,709	32,909
Subtotal	1,088,514	40,728	2,958	7,164	900	98,628	139,356
Per 1000 residents		**37.4**	**2.7**	**6.6**	**0.8**	**90.6**	**128.0**
Entire State	9,938,444	40,11,873	35,481	69,073	13,512	708,239	1,120,112
Per 1000 residents		**41.4**	**3.6**	**7.0**	**1.4**	**71.3**	**112.7**

The rates of offences *"per 1000 residents"* are also calculated, using the Census figure for permanent residents in the denominator. Again, this technique might be unfair to casino host counties because their rates would be lower if the thousand of visitors to the casino were included in the population denominator. Nevertheless, the 2000 rates calculated for these communities compare favorably. The Allegan area MSA experienced a higher level of Index and Non-Index crimes in 2000 than the four casino host communities. The host communities also have an Index crime rate lower than the state average. These figures are not proof that casinos reduce crime; there are many other variables. Yet, the data does not infer that the presence of casinos increases serious crime.

It is not statistically sound to compare the crime rates for a small county between two different years because a single rash of occurrences can skew the totals. Yet, simply for context, it is interesting to note that in 1996, before the Little River casino opened in Manistee County, the State Police data for the county shows a *Robbery* total of 3, *Aggravated Assaults* total of 40, and a *Burglary* total of 157---figures almost identical to the 2000 totals (Table 6-1) after the casino opened.

A brief review of trends within Isabella is also useful. During the years 1994 to 1998, the Soaring Eagle casino grew from a relatively modest operation into one of the largest gaming venues in North America. The levels of change within four key categories involving violent crimes or a threat to injure are as follows:

Rape.....decrease of 29%
Robbery.....decrease of 38%
Aggravated assault.....decrease of 11%
Overall violent crime rate.....decrease of 18%

There are likely many reasons why the decrease occurred, and some other geographic areas may exhibit even larger decreases. Nevertheless, the Isabella trends again suggest that there is no evidence to believe that crime levels increase due to the presence of a Native American casino.

Indiana historical results in casino host counties

It is useful to also consider impacts in regions with similar demographics. In Indiana, eight riverboat casinos opened between 1995 and 1997 and a ninth in 1998. The **Indiana Gambling Impact Study Commission** retained the **Indiana University Center for Urban Policy** to provide statistical research into the community impacts of the riverboats. The final report, "*The Social, Fiscal, and Economic Impacts of Legalized Gambling in Indiana*" was published in 1999.
The report analyzed a variety of crime data for counties hosting casinos and the data for the remainder of the state.

In **Table 6-2** arrest data published by the Commission for casino counties is compared to non-casino counties.

TABLE 6-2
CHANGE FROM 1992 TO 1997 IN TOTAL ARRESTS
FIVE CASINO COUNTIES AND REMAINER OF STATE
Data source: Indiana Gambling Impact Study Commission

Type of Arrest	Change in "Casino Counties"	Change in Remainder of State
Disorderly Conduct	-49%	-15%
Public Intoxication	-30%	-11%
Driving under the influence	+11%	-30%
Offenses against families	+24%	+80%
Drug Abuse Violation	+11%	+108%
Fraud	-14%	+31%

The casino counties exhibited better improvements (or lower increases) than the remainder of the state in all but one of the categories. The sole exception was *"Driving Under the Influence."* Even in this category, 4 of the 5 five casino host counties experienced a decrease during the 5-year period. The sole exception, Lake County, is located on the Chicago border, and is host to or near six casinos in Indiana and Illinois. During the period, the Chicago was experiencing an increase in visitors, creating additional traffic. Heightened enforcement of drunken driving laws also may have been a factor. Interestingly, the Indiana Study found that in several categories the total number of arrests actually decreased after the casino opened. This may have been influenced by the improved local employment situation brought by casinos, although other factors may also have impacted the totals.

Paperwork and the cost of law enforcement and other services

Even though the Michigan and Indiana data does not suggest that serious crimes against residents will increase, it is still possible that local public safety agencies will experience an increased work load. There are less intense aspects of law enforcement that will need to be dealt with. A prominent consideration in this category stems from increased traffic. The site is near a major highway, yet it remains likely that traffic related will increase for local public safety agencies. This also includes the time at the scene and office paperwork involved with automobile accidents and breakdowns.

The possibility of additional local public safety expenses were part of the reason that the most recent compact between tribes and the State required that at least one-eighth of the 2% dollars flowing to local governments was required to flow to public safety services. If this same language is used for the Wayland Township facility, the scenario in Chapter Four suggests that a minimum of over $347,000 annually would flow automatically to Allegan public safety programs. The Local Revenue Sharing Board (called for in the standard state compact) that administrating the 2% funds could further increase the payments to public safety agencies, whether or not directly connected to actual expense impacts.

The tribe will be responsible for security on-site at the facility. Casinos are probably the most tightly monitored of any entertainment/tourism venue. These costs are entirely those of the casino operator. The site will not possess tribal housing. This significantly reduces the level of administrative agreements between the tribe and local public safety units, as compared to situations where the tribal lands host significant permanent populations.

The tribe has entered into an agreement with the Allegan County Sheriff's Office covering various law enforcement jurisdictional issues A copy of the agreement is included in a separate section of the overall application. This agreement is a sign that those most involved with local law enforcement are satisfied that the payments from the tribe will cover or exceed any increased expenses. If a state compact is not entered into, the financial portion of the agreement will be financed by the 2% payment agreement the tribe has pledged to make to local programs and services.

Similar types of agreements are being negotiated fire and emergency medical services agencies, and should be completed. The financing will be provided through the 2% payments in the state compact. If a state compact is not entered into, the financing will stem from the 2% pledge the tribe is prepared to make to local programs and agencies.

Police, fire, and EMS would be expected to be the most significant administrative and service expense areas. The 2% payments, whether from a standard state compact or a separate pledge made by the tribe for local programs and agencies provides for significant additional amounts to be available for other projects and purposes. It is again noted that major development projects in Michigan typically do not make special payments or guarantees, indeed, taxes for major employment creation projects often are abated.

ADMINISTRATION OF LOCAL (INCLUDING COUNTY) GOVERNMENT

There is also a cluster or administrative and paperwork expenses for the host community, as there would be with any new development. These likely will be less significant then the public safety area, but merit notice. Such items include revisions to the Master Plan, consulting services for reviewing future plans, policies, permits, and public meetings. In a similar vein, the County may also experience some miscellaneous administrative expenditures, for example, within the planning office. An exact expense total for these activities will depend upon the decisions of the Township and County. Moreover, some of these actions are undertaken periodically whether or not there is a casino. Overall, the additional costs would not be expected to exceed $150,000. This is far less than the local and county dollars expected from a standard state compact or a separate 2% of EGC payment from the tribe to local (including county) programs and agencies.

PROBLEM GAMBLING BEHAVIOR

Some critics may claim that the casino will create a tidal wave of new problem bettors among Allegan residents, thereby (in theory) creating social costs for county government. Historical data does not suggest such a problem will occur.

Rates of gambling addiction

The vast majority of casino patrons are normal citizens who choose a casino as a form of entertainment. Certainly though, there are members of society that possess compulsive gambling tendencies. Studies typically place the percentage of adults with the predisposition at between 1.1% and 2.2%, with perhaps one-half of that group actively involved in addictive gambling at any one time.

It is also a fact that individuals with addictive gambling tendencies are more prone to have other addictive or self-defeating habits (drugs, alcohol, excessive spending, anti-social behavior, etc.). Whether the gambling problem is a cause or an effect can be difficult, if not impossible, to determine.

Numerous wagering alternatives already exist

It is reiterated that the reality is that Allegan area residents that want to make a wager already have numerous opportunities. Whether legal wagering (lotteries, bingos, casinos, horse tracks) or illegal (bookmakers, private games, the Internet) many alternatives exist.

Indiana bankruptcy report

One of the activities of the research team for Indiana Gambling Impact Study Commission was an intensive survey of individuals filing for bankruptcy. The researchers found that of the 1,107 petitioners surveyed who filed non-business bankruptcy in 1999, only about half engaged in some form of entertainment-related gambling during the year before filing. Furthermore, even of this group, only a minority had even visited a riverboat. In the *"Conclusions"* segment of the "Gambling and Bankruptcy" section the researchers report:

> *"There is no evidence from this analysis that persons who file bankruptcy are more likely to engage in gambling or to have problems with gambling than a random sample of adults."*

It is also noted that in a 1999 study the United States Treasury Department reached the determination that any claim of a relationship between gambling and bankruptcy was "statistically weak."

Programs for those with problem gaming behavior

Regardless of ones views on the causes and magnitude of addictive gaming behavior, there is no question that there are members of society that do need and merit help with their problem betting. The new casino should be expected to provide financial support to programs that assist individuals with addictive behavioral tendencies.

It is common for Native American casinos in Michigan to contribute towards such programs. The programs funded by the casino will also be helping to address problem behavior that occurs with other forms of gaming. Internet sites and illegal bookmaking, obviously, do not fund such programs.

The Allegan facility should also be expected to utilize "responsible gaming" practices that are now common at most casinos. Some aspects include appropriate signage and other information about the availability of help for problem gamblers, and a service to prevent individuals from entering the casino who request such limits on their behavior.

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SECTION ONE
INTRODUCTION AND BACKGROUND

OVERVIEW

The November 2002 Draft Environmental Assessment (DEA) provided detailed information on housing potentially created/influenced by the new casino. There was also discussion of off-site spending by casino visitors, as well as the contractual spending by the casino. The DEA was supported by a study by Michigan Consultants, of Lansing, entitled *"2002 Updated Economic and Community Impact Analysis--Allegan County Native American Casino"* (hereinafter referred to as the "base" Michigan Consultants report).

On the following pages, this supplement offers updated information and additional analysis. Sections Two and Three focus on the most likely locations for new housing and commercial development potentially induced by the casino. Included in the analysis are considerations involving the capability of the existing infrastructure to serve any casino induced off-site construction, and the consistency of any casino induced housing or commercial buildings with the existing local Master Plans and zoning. The location scenario is then used in the revised Final Environmental Assessment (FEA) to assure consideration of any environmental impacts and how those impacts are addressed and mitigated.

Section Four of the supplement provides additional attention to three aspects of particular importance---public schools, public safety, and public revenues. These areas are addressed in several places in the DEA and FEA; this additional review consolidates and emphasizes previous information with updated data.

Section Five provides a response to a "critical analysis" of the base economic and community analysis submitted to the Bureau of Indians Affairs by Anderson Economic Group.

The narrative, calculations, and tables on the following pages are designed to flow in a logical and sequential manner. At various points, however, the reader is directed to information in the base 2002 Michigan Consultants report, or to the accompanying environmental documents and maps.

SECTION TWO
HOUSING LOCATION ANALYSIS

NOTES ON BASE HOUSING SCENARIO

The base Michigan Consultants 2002 report developed high, middle, and low range new housing scenarios. These scenarios are derived from projected direct, indirect, and induced employment created by the casino. The employment figures were the results of consideration of various market forces, gross customer spending, typical employee/revenue factors, and spending by the casino. The calculations were detailed in the 2002 report by Michigan Consultants, and referenced in the core submittal.

The scenarios provide a logical basis to analyze likely impacts from casino induced housing demand. The scenarios are not represented as formal predictions that such units will, indeed, be built. Demand does not mean supply. There are a variety of local, state, and federal regulations, as well as market forces that influence the magnitude of supply of new units and the locations.

The analysis by its nature is restricted to casino influenced demand. A broad definition is used, including not only the housing demand created by on-site employees, but also through employees at establishments benefiting from the off-site expenditures of casino patrons, off-site expenditures by the casino itself, and induced employment created by the expenditures of the individuals in the direct and indirect jobs. Yet, there are a multitude of other factors that will shape the future of housing in the region----the economy, interest rates, community plans, competitive prices in other regions, etc.

REVIEW OF HOUSING AND POPULATION WITHIN DRIVE TIME RADII

As detailed in the base Michigan Consultants report, the region has a significant population base. Allegan County is defined by the Census Bureau as being part of the Muskegon-Grand Rapids-Holland Metropolitan Statistical Area. This includes Allegan, Kent, Ottawa, and Muskegon counties. **Table 2-1** provides recent Census Bureau estimated population for each of these counties, plus the neighboring counties of Barry and Kalamazoo. As illustrated in the maps provided with this submittal, much of Barry is actually closer to the casino site than Muskegon, Ottawa, and northern Kent County. Parts of northern Kalamazoo County are also closer to the casino site than Muskegon or Ottawa.

TABLE 2-1
2002 ESTIMATED COUNTY POPULATION
Source: Bureau of the Census (released 4/17/2003)

County	Population
Allegan	109,336
Kent	587,951
Ottawa	245,913
Muskegon	171,765
Barry	57,943
Kalamazoo	241,471

Approximately 1.7 million individuals live within a 50-mile radius of the casino site (according to Census Bureau geocoding data, table generated by Michigan Consultants from software of SRC LLC.). It is useful to consider population and housing unit totals within various drive time radii. Data for 15-, 20-, and 30-minute radii are provided in **Table 2-2**. The population figures provide further evidence that the site is located in a substantial metropolitan area with a significant existing housing stock.

TABLE 2-2
POPULATION AND HOUSING STATISTICS---2000
WITHIN VARIOUS DRIVE TIME RADII FROM CASINO SITE
Source: United States Census Bureau, Table prepared by Michigan Consultants

	15 minute	20 minute	30 minute
Total Population	35,405	91,973	530,895
Population Density (per square mile)	146.6	208.5	508.5
Total Households	12,564	33,683	198,114
Total Housing Units	13,801	36,243	210,750
Owner Occupied Housing Units	77.6%	75.8%	61.6%
Renter Occupied Housing Units	13.4%	17.2%	32.4%
Vacant Housing Units	9.0%	7.1%	6.0%
Average Household Income	$54,476	$54,578	$51,645
Median Household Income	$48,306	$46,095	$41,807

Maps are provided with this submittal that further exhibit the area involved. Within approximately a one half-hour drive of the casino site resides a population of over one-half million and almost 200,000 existing housing units. The Census Bureau determined that there were almost 12,000 vacant units within the 30-minute radius. There thus already exists a significant amount of housing supply and options for individuals filling the positions created by the casino. This also means that numerous market forces have shaped the housing supply in the region and are likely to continue to do so.

The table also illuminates that between the 15 and 20-minute drive time the population and number of households is significantly greater than the level within 15 minutes. This is due to the development that has already occurred in the southern Kent area. It also may be viewed as a suggestive that many of jobs in the region have traditionally been in Kent, and not Allegan.

In terms of geographic size, the Census Bureau reports the official size of Wayland Township to be 33.5 square miles, and the size of the City of Wayland to be 2.9 square miles.

EMPLOYMENT TRENDS

The county and region have experienced a spike in unemployment. This influences the number of casino jobs filled by area residents, which in turn dampens any potential demand for new housing from new employees moving into the area. Recently released unemployment figures for February of 2003 are contrasted with those of February 2000 in **Table 2-3**.

TABLE 2-3
COMPARITIVE UNEMPLOYMENT
FEBRUARY 2000 TO FEBRUARY 2003
Source: Michigan Depart of Career Development

County	February 2000		February 2003	
	Unemployed	Rate	Unemployed	Rate
Allegan	1,875	3.3%	4,100	7.1%
Kent	9,600	2.9%	23,900	7.2%
Muskegon	3,500	4.3%	8,725	10.3%
Ottawa	4,050	2.9%	8,800	6.2%
Barry	1,125	3.4%	1,825	5.7%
Kalamazoo	3,475	2.7%	6,200	4.9%

The increased in Allegan alone is greater than the number of on-site jobs at the casino.

KEY COMPONENTS TO IDENTIFYING LIKELY DEVELOPMENT AREAS AND ALLOCATING POTENTIAL CASINO INFLUENCED NEW UNITS

A five-step approach was devised to provide a geographic allocation scenario for the new housing units potentially created by casino influenced demand.

A. Use the original study and figures as a base; identify core unit and outer core figures.
B. Identify available and appropriate land within appropriate drive times.
C. Identify postulates for allocating parcels to most likely areas.
D. Allocate housing with core area.
E. Allocate housing in outer core.

The new commercial building analysis provided in Section Three uses the same framework and land availability data.

The allocation of new structures within communities is based upon detailed information and a logical approach using input from individuals involved with area real estate and the professional experience of the consultants. It provides a parameter for environmental calculations and mitigation analysis. It is not a formal prediction of where casino employees will indeed reside in future years. These same "qualifier" statements are appropriate throughout

Step A: Consider base figures creating in mid-range housing scenario

For convenience, key data and tables summarizing the figures generated in the mid-range housing scenario in the Michigan Consultants' study are repeated in **Table 2-4**. Further discussion of the methodology is available in the base Michigan Consultants report, which is included in the Appendix to the Environmental Assessment.

TABLE 2-4
JOBS CREATED
(Full-time Equated Positions)

	ALLEGAN AREA		ALLEGAN COUNTY ONLY	
DIRECT ON-SITE		**1,826**		**1,826**
INDIRECT OFF-SITE				
* From customer spending	358		179	
* Subcontractors hired by casino	268		107	
SUBTOTAL DIRECT AND INDIRECT		**2,452**		**2,112**
INDUCED				
* Multiplier (times direct & indirect)	1.0		0.6	
* Induced employment		**2,452**		**1,267**
TOTAL EMPLOYMENT IMPACT		**4,904**		**3,380**

The "Allegan Area" was defined in the base Michigan Consultants' report on page 27 as *"including all of Allegan and Kent counties, southern Ottawa county, western Barry county and northern Kalamazoo County."*

Any major shortfall in obtaining the full year revenue target of $169.7 million or the customer visits figure of 3.1 million will likely result in fewer jobs created (and thus lower housing and commercial development scenarios). Similarly, surpassing the targets has the potential to increase jobs and housing. Other parts of the base Michigan Consultants report and supplements to this report further discuss the employment estimates.

The base study allocated the employment within various labor pools, based upon the employment situation then existing. The classifications are repeated in **Table 2-5**.

TABLE 2-5
EMPLOYEE POOL AND LOCATION SCENARIO

JOB (FTE) ESTIMATE	Direct and Indirect		Induced		Individuals in Row Category
	2,208		1,324		
LABOR POOL	Proportion of column	# of Individuals	Proportion of column	# of Individuals	3,532
Allegan residents now working at jobs outside of area.*	20%	442	15%	199	640
Unemployed, expansion in workforce, including part-time.	15%	331	20%	265	596
Overtime	5%	110	5%	66	176
Outside of Allegan who will commute for the foreseeable future*	30%	662	40%	530	1,192
Subtotal	70%	1,546	80%	1,059	2,605
From shifts from Allegan employers.	10%	221	10%	132	353
From employees moving to Allegan (if housing supply exists).*	20%	442	10%	132	574
Total from the above.	100%	2,208	100%	1,324	3,532
Employees filling county shift workers that will move to Allegan.	10%	22	10%	13	35
New employees moving to Allegan		464		146	609

The increasing unemployment in the county and region will likely tend to increase the Allegan pool available, thus reducing demand to import labor from other counties (and thereby potentially reducing new housing demand). It also means that the employee pool from the nearest counties (southern Kent, western Barry, and northern Kalamazoo) may be more robust. These individuals are less likely to move into Allegan solely because of a job at the casino than employees hired from more distant present residences.

In this supplement, the "mid-range" housing scenario will be used as the basis for the new housing demand calculations, even though arguments might be made to use the "lower-range" scenario. By taking this position, the analysis is deliberating a parameter for environmental calculations that takes into account housing several years into the future.

The base Michigan Consultants' report translated the employment estimates pertaining to Allegan into scenarios for potential housing demand. Again, demand does not necessarily mean supply will be provided, plus many events in the economy extraneous to the casino will also shape supply and demand. The scenario attempts to logically consider casino influenced housing. The mid-range figures are offered below:

Total employees moving into Allegan County	609
Employees per housing unit	1.1
Added unit base demand	554
Served from vacancies & modifications to existing (5%)	28
New unit demand	526
Proportion within 15 minutes of casino	65%
New structure demand within 15 minutes	342

The report also notes a low range of 155 and a high range of 712. Given the economy turndown, consideration was given towards using a base figure between the mid-range scenario and the low-range. It was decided, however, to continue use of the mid-range. This helps assure that potential environmental impacts are fully considered. It also takes into account that the economy may improve during the next few years.

The present unemployment trend may influence the speed of new development. For the purposes of this report, the projection is made that the new housing will occur during a five-year span after opening of the casino. Apartments will likely be impacted first, in that they serve a population with likely fewer ties to present residences (although they may have higher existing vacancy rates).

The base Michigan Consultants report also hypothecated the type of demand within the core area (within Allegan County and within approximately a 15-minute drive from the casino site). Three categories were listed:

Single standing	171
Condominium	51
Apartment	120

In most communities, the single standing classification includes both low density and mid-density units.

As an initial reference point, if we use typical "units per acre" factors allowed by Townships and cities in Allegan, and use for single standing units a more restrictive figure, a rough initial calculation of the land needed is generated. The figures are illustrated in **Table 2-6**, simply as an initial benchmark.

TABLE 2-6
INITIAL BENCHMARK CALCULATION OF ACRES NEEDED TO MEET POTENTIAL DEMAND IN CORE AREA*

Type of unit	Units in core area	Factors** (Max. units/acre)	Total Acres***
Single standing	171	2.42	71
Condominium	51	3.48	15
Apartment	120	7.75	16
Total	342		102

* Within Allegan County, within approx. 15 drive time of casino.
** Each community has different factors, as following tables will exhibit. The factors in the above table are representative figures in the sewer and water districts with the significant quantities of available land within sewer and water districts.
*** Rounded to the next highest integer.

Step B. Identify available and appropriate land within appropriate drive times in Allegan County

The next step in the methodology identifies the amount of land potentially available and appropriate to supply the parcels needed for the units. The following steps were taken:

- Identify water and sewer systems with components within approximately 15 minutes of the casino site.
- Identify zoning.
- Identify total land within water and sewer districts with appropriate zoning (some form of residential).
- Deduct tracts known to be developed.
- Calculate remaining area.
- Consider "unit per acre" requirements of community to determine "development potential" for the purposes of this analysis.

It is understood that a portion of the acres deemed here as "potentially available" may not be able to receive actual building permits due to problems such as wetlands, floodplains, endangered species, etc. Further consideration of such aspects is provided for specified areas in an accompanying environmental calculations document. The areas selected stem from the analysis that follows.

The Allegan county sewer and water systems of primary focus (those having at least a portion within a 15-minute drive time from the casinos sites) are as follows (distance is estimate to the edge based upon Mapquest calculations to specific sites within the district):

Wayland S&W	City of Wayland (extending into Leighton T.)	7 miles
Hopkins S&W	Hopkins (V), Hopkins Township	7 miles
Martin S&W	Martin Township	8 miles
Moline S&W	Dorr Township (extending into Kent)	10 miles
Greenlake S&W	Leighton T (northeast)	11 miles
Otsego/Plainwell	Otsego T. & Gunplain T, plus cities of Otsego and Plainwell	14 miles
Plainwell S&W	City of Plainwell	14 miles

The Moline Sewer and Water covers the largest geographic area.

Consistent with the manner in which the employment levels were calculated, only Allegan County parcels are included in the core area. Some parts of the Gun Lake Sewer and Water system in Barry County are located less than 10 miles from the casino. Barry and southern Kent are considered in the outer area analysis that is provided in a following section. Due to higher pricing and limited availability reasons, the Gun Lake Sewer and Water system is not viewed as a likely location for situation of the new housing created by the casino.

In the situation of the Otsego/Plainwell water and sewer district, parts are within 15-minute drive times, although portions will require a few minutes more. Given that the 15-minute target was not intended to be a strict limiter, the entire district was considered as appropriate for inclusion in the core area.

Table 2-7 provides the detailed elements for the areas for the Townships, Villages and Cities by residential zoning category. Acreage figures are approximations from county and community maps. Column (E) represents an estimate of acres now served by sewer and water lines. Column (F) represents the acres on water and sewer than have not already been developed.

The revised "acres available" figure and resultant unit calculations are presented in **Table 2-8**. The narrative stresses that the totals are definitely not predictions that all these acres will indeed be developed; this is solely a method to determine land supply availability.

TABLE 2-7
CORE AREA---RESIDENTIAL ZONED LAND
IN AREAS WITH WATER AND SEWER SERVICES

Category or Place	Zoning	Description	Total Acres	Acres With Sewer & Water	Undeveloped Land With Sewer & Water
(A)	(B)	(C)	(D)	(E)	(F)
TOWNSHIPS					
Dorr	PUD	PUD	0	0	0
	B-1	Residential	880	80	64
	B-2	Mobile Home	192	160	0
	B-3	High Density Res	0	0	0
Gunplain	R-2	Low Density Res	1408	288	192
	R-3	Med Density Res	608	0	0
	LR	Lake Res	640	0	0
	R-4	Mobile Home Park	272	0	0
Hopkins	R-1	n/a	2720	0	0
	R-1A	n/a	128	0	0
	R-2	n/a	160	0	0
	R-3	n/a	160	0	0
Leighton	R-2	Low Density Res	672	480	320
	R-3	Med Density Res	128	128	96
	PUD	Planned Unit Dev.	0	0	0
Martin	R-2	Low Density Res	176	64	48
	R-3	Med Density Res	128	128	128
Otsego	PUD	PUD	208	0	0
	RES-LDSF	Low Den. Multi-Fam	384	48	48
	RES-DSF	Med Den Multi-Fam	528	80	32
	RES - HD	High Density	160	160	144
	MH	Mobile Home	0	0	0
Watson	LRD	Lake Res District	3040	0	0
	R-2	Med Res District	3776	0	0
CITY/ VILLAGE					
Hopkins	R-1	Sin. Fam - Low D.	0	0	0
	R-2	Sin. Fam - Med. D.	192	192	192
	R-3	Multi-Family - High D.	64	64	0
	R-4	Mobile Home	0	0	0
Martin	R-1	n/a	0	0	0
	R-2	n/a	0	0	0
	R-3	n/a	80	80	80
Otsego	R-A	n/a	384	384	112
	R-B	n/a	512	512	0
Plainwell	R-1A	n/a	0	0	0
	R-1B	n/a	0	0	0
	R-1C	n/a	384	384	160
Wayland	LDR	Lake District Res	176	48	48
	R-1	Low Density Res	0	0	0
	R-2	Med Density Res	2000	208	144
GRAND TOTAL			20,160	3,488	1,808

TABLE 2-8
CORE AREA
THEORETIC UNIT POTENTIAL
(SOLELY FOR ALLOCATION GUIDANCE)

Category or Place	Zoning	Description	Approx Undeveloped Acres With Sewer & Water	Zoned Units/Acre	Estimated Unit Potential	Total Per Community
(A)	(B)	(C)	(D)	(E)	(F)	(G)
TOWNSHIP						
Dorr	PUD	PUD	0	2.9	0	186
	B-1	Residential	64	2.9	186	
	B-2	Mobile Home	0	4	0	
	B-3	High Density Res	0	3.63	0	
Gunplain	R-2	Low Density Res	192	0.4	77	77
	R-3	Med Density Res	0	3.48	0	
	LR	Lake Res	0	3.48	0	
	R-4	Mobile Home Park	0	7.92	0	
Hopkins	R-1	n/a	0	0.1	0	0
	R-1A	n/a	0	1	0	
	R-2	n/a	0	5.12	0	
	R-3	n/a	0	5.12	0	
Leighton	R-2	Low Density Res	320	2.9	928	1408
	R-3	Med Density Res	96	5	480	
	PUD	Planned Unit Dev.	0	0.5	0	
Martin	R-2	Low Density Res	48	5.5	264	968
	R-3	Med Density Res	128	5.5	704	
Otsego	PUD	PUD	0	4.5	0	1,414
	RES-LDSF	Low Den. Multi-Fam	48	1.42	68	
	RES-DSF	Med Den Multi-Fam	32	6.05	194	
	RES - HD	High Density	144	8	1,152	
	MH	Mobile Home	0	14.24	0	
Watson	LRD	Lake Res District	0	1	0	0
	R-2	Med Res District	0	5.13	0	
CITY/ VILLAGE						
Hopkins	R-1	Sin. Fam - Low D.	0	2.91	0	1,116
	R-2	Sin. Fam - Med. D.	192	5.81	1,116	
	R-3	Multi-Fam - High D.	0	10	0	
	R-4	Mobile Home	0	20	0	
Martin	R-1	n/a	0	0	0	400
	R-2	n/a	0	0	0	
	R-3	n/a	80	5	400	
Otsego	R-A	n/a	112	3.96	444	444
	R-B	n/a	0	6.05	0	
Plainwell	R-1A	n/a	0	3.63	0	968
	R-1B	n/a	0	4.45	0	
	R-1C	n/a	160	6.05	968	
Wayland	LDR	Lake District Res	48	1	48	1,164
	R-1	Low Density Res	0	2.9	0	
	R-2	Med Density Res	144	7.75	1,116	
GRAND TOTAL			1,808		8,143	8,145*

*Column F and G differ slightly due to rounding

In **Table 2-9**, the acreage figures generated from **Table 2-8** are summarized by zoning category, and thereby maximum units allowed, in order to establish a basis for allocation of the casino induced units. As noted above, it is expected that not all of these acres can actually be developed, and thus the unit total is solely a theoretic figure for planning and estimation purposes.

TABLE 2-9
THEORETIC UNIT POTENTIAL

Ranked by Relative Distance to Site of Primary S &W	Low density	Medium density	High density	Planned Unit Dev.	Lake Res.
Wayland City		1,116			48
Leighton T. (2 areas)**	928	480			
Hopkins T.					
Hopkins V.		1,116			
Martin T.	264	704			
Martin V.			400		
Watson T.					
Dorr T. (Moline S&W)	186				
Gunplain T.	77				
Plainwell City			968		
Otsego T.	68	194	1,152		
Otsego City		444			
Sub-totals	1,523	4,054	2,520	-	48
	8,145				

Step C--Allocation postulates

Any allocation by future location possesses an integral measure of uncertainty. It is certainly possible that parcels, even if seemingly ideal for a type of market demand, may be withheld by the owner or developer for his or her own business or personal reasons. The tribe itself does not control the land outside of the casino site.

Demand induced by the casino operates in a sea of events created by all the other housing development factors in the regional and national economy—interest rates, personal income, unemployment, etc. A community may also choose to place restriction growth by changing zoning if so deemed to be in the best interests of the community

Yet, logical postulates can be employed based upon the consultations with local real estate experts, local officials, the figures generated in the previous tables, and the experience of the consultants. A reasonable mission is to determine if there is sufficient capacity for the growth, ideally, more than sufficient capacity already zoned appropriately. If this proves so, the ultimate results of the projected allocation does not depend on any single parcel or even group of parcels, as long as surplus capacity is clearly identified and environmental impacts calculated.

The postulates employed to arrive at a logical allocation are the following:

- All mid-density and high density must be in areas with existing water and sewer services.
- For the purposes of the analysis, all low density will also be in areas with existing water and sewer (some exceptions may occur in future years, but for planning purposes this is the most logical assumption, and consistent with local and county plans).
- All units will be built in areas where allowed by already existing zoning (future requests for zoning changes cannot be termed infeasible, but adequate land was found to clearly exist within present zoning).
- No major areas within eastern Allegan County need to be eliminated solely due to higher land cost.
- Consumers likely will exhibit some preference for locations a shorter drive time to the casino entrance/exit on US-131.
- No single area will receive all the development.
- There are no particularly distinguishing differences between the candidate areas in eastern Allegan in terms of taxes, school systems, crime, public health etc. (although consumers will have their own tastes, such as preference to be closer to Grand Rapids to the north, Kalamazoo to the south, or Lake Michigan to west).
- Due to drive time considerations, development is viewed as being more likely near US-131.

STEP D: ALLOCATE HOUSING WITHIN CORE AREA

In **Table 2-10** the unit totals for the core area are allocated to the sewer and water districts in eastern Allegan, based upon the data in the previous tables and the postulates delineated above. The scenario is used in the FEA.

TABLE 2-10
HOUSING ALLOCATION SCENARIO FOR CORE AREA

Ranked by Relative Distance of Primary S&W to casino site	Primary Sewer and Water District	Single standing	Condos	Apart-ments
Wayland City	Wayland S&W	34	35	
Leighton T.	Wayland S&W and Greenlake S&W	18		
Hopkins T.	Hopkins S&W			
Hopkins V.	Hopkins S&W	17	16	
Martin T.	Martin S&W	34		
Martin V.	Martin S&W			40
Watson T.	None			
Dorr T.	Moline S&W	34		
Gunplain T.	Otsego/Plainwell S&W	17		
Plainwell City	Otsego/Plainwell S&W			40
Otsego T.	Otsego/Plainwell S&W	17		40
Otsego City	Otsego/Plainwell S&W			
Sub-totals		171	51	120
Total, all units		342		

Table Notes:

- Leighton includes a section of the Wayland S&W extending across Townships lines, plus the Green Lake W&S in northeast corner of Township.
- Otsego/Plainwell S&W extends across two townships and serves both cities
- Single standing allocated to both low density and medium density.

In **Table 2-11** the units are represented as land requirements according to the applicable local zoning.

TABLE 2-11
HOUSING ALLOCATION SCENARIO FOR CORE AREA BY MININUM ACREAGE NECESSARY

Ranked by Relative Distance of Primary S&W to casino site	Primary Sewer and Water District	Single standing	Condos	Apart-ments
Wayland City	Wayland S&W	11.72	4.52	
Leighton T.	Wayland S&W and Greenlake S&W	6.21		
Hopkins T.	Hopkins S&W			
Hopkins V.	Hopkins S&W	5.84	3.13	
Martin T.	Martin S&W	6.18		
Martin V.	Martin S&W			8.0
Watson T.	None			
Dorr T.	Moline S&W	11.72		
Gunplain T.	Otsego/Plainwell S&W	42.5		
Plainwell City	Otsego/Plainwell S&W			6.6
Otsego T.	Otsego/Plainwell S&W	11.97		5.0
Otsego City	Otsego/Plainwell S&W			
Sub-totals		96.15	7.65	19.6
Total, all units		123.4		

Table Notes: as in **Table 2-10**

The acreage figures and allocation areas are evaluated in the FEA. If for any reason one community or sewer & water district cannot accommodate the growth, a variety of other potential locations exist. Actual development is likely to occur in clumps, rather than as a consistent upward ramp. This is true by definition with apartments and condominiums, and likely the case that will be experienced with most single standing units.

Step E: Allocate housing in outer core

To the degree possible, it is useful to also consider the probable locations of new units in the "outer core." The sewer and water districts in the outer core are identified in the narrative, but can be thought of as areas with sewer and water outside of approximately a 15 minute drive time yet still within Allegan County, or outside of Allegan County yet within an approximately 30 minutes drive time. Given, that the geographic area becomes much larger, and thus the housing options are much broader, any scenario intrinsically possesses more uncertainty. The methodology follows the same sequence used for the units in the core area.

Units to be allocated

In the mid-range new housing distribution scenario, 184 units were allocated outside of the 15 minute core area, within Allegan County. It is not expected that a large number of new units will be induced at distances beyond 30 minutes--if individuals are going to move to new residence due to casino influenced employment, they are likely to move within a reasonable drive time of the casino. There will be some exceptions, plus the indirect and induced jobs are disbursed in the Allegan area. Therefore, in that there is some potential for development in the "outer core" it is valuable to address this housing component, even if the ultimate figures that materialize in future years represent only small portions of the housing stock in this wider radius.

Of the 184 units outside of 15 minute Allegan County core area in the original study, upon further analysis of maps, drive times, sewer and water, zoning, platted lots, etc, the scenario is revised to transfer a portion of these units to portions of southern Kent and western Barry. These sites are viewed as being no less likely than middle or western Allegan. Therefore, 92 of the new units are being defined as most likely located in southern Kent or western Barry, with the remaining 92 still in Allegan County. A shift of this relatively small magnitude, representing approximately 100 jobs (92 units, with 1.1 employees per unit) out of approximately 4,900, does not materially affect the economic impact conclusions in the base Michigan Consultants report or DEA.

In addition to the 92 units in Barry or Kent identified above, there may also be employees moving to these areas that were not included in the "moving into" Allegan base figure. In consideration of this possibility and the figures in the employment scenarios and unemployment tables, an additional 72 units are added for new units in the mapped areas in the southern Kent and western Barry counties. This brings the Barry and Kent allocation needs to 164 units.

Any unit projections beyond the outer core would be purely speculative. At that distance the number of new units will be very limited; there will be only a few instances where the construction of a new unit can be attributed to casino influenced demand.

Outer core developmental candidate areas

Sewer and water districts were identified that possessed drive times within 30 minutes of the casino site. Communities were identified in southern Kent County and western Barry and used as the candidate areas in **Table 2-12**, in the same manner that were used as candidates in the core area in **Table 2-7**.

TABLE 2-12
EXTENDED CORE AREA-- RESIDENTIAL ZONED LAND IN WATER AND SEWER AREAS AND CALCULATION OF THEORECTIC POTENTIAL UNITS (FOR ALLOCATION GUIDANCE ONLY)

Community	Zoning	Description	Approx Total Acres	Apprx. Acres with Sewer & Water	Approx acres Undeve-loped	Max units per acre	Theoretic Potential Units
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
TOWNSHIPS							
Byron	R-R	Rural Res	4304	0	0	1.4	0
	R-S	Suburban Res	1872	1872	624	2.42	1,510
	R-U	Urban Res	1040	1008	320	4.15	1,328
	R-D	High Density Res	304	304	0	7.92	0
	MFR	Multi Fam Res	80	80	32	5.81	186
	MF-PUD	MFR - PUD	720	144	0	7.0	0
	RU-PUD	Urban Res. - PUD	0	0	0	4.0	0
Caledonia	R-1	Low Dens. Sin. F.	1232	112	80	1.09	87
	R-2	Med Dens. Sin. F.	320	0	0	2.18	0
	R-3	Med Dens. Multi-F.	64	0	0	4.36	0
	PUD	PUD	1776	768	400	6.0	2,400
Gaines	R-1	Single Fam. Res.	7552	1040	384	3.1	1,190
	R-2	Res	11856	3360	1232	4.36	5,372
	R-3	Multi-Fam Res	672	224	128	11.62	1,487
	R-4	Mobile Home Park	1856	432	0	7.92	0
Orangeville			0	0	0	0	0
Thornapple	R	Res	176	0	200	4.0	800
	RR	Rural Res	176	0	140	1.0	140
Yankee Springs			0	0	0	0	0
CITY / VILLAGE							
Caledonia	R-1	Low Dens. Sin. F.	96	96	69	1.09	75
	R-2	Med Dens. Sin. F.	0	0	0	2.18	0
	R-3	Med Dens. Multi-F.	0	0	0	4.36	0
Middleville	RE	Res Estates	85	85	0	1.0	0
	R1	Low Dens Sin. F.	360	360	60	2.17	130
	R2	Med Dens Sin. F.	200	200	30	6.0	180
	R3	Molt. Fam. Res.	75	75	35	9.68	339
	R4	Mobile Home	70	70	0	7.92	0
	PUD	Planned Unit Dev	130	130	90	6.0	540
TOTALS			35,106	10,440	3,824		15,765

The potential supply far exceeds the numbers of the casino influenced demand. Yet, in order to assist in the evaluation of environmental effects, an allocation is provided in the following segment. A somewhat higher allocation for single standing units is used than in the focus area. An employee moving due to the new job, but choosing to locate outside of the immediate area, may be somewhat more likely to be in the market for single standing housing, rather than apartments. The belief being that a person interested in an apartment due to a new job will be more likely to chose a place closer to the job. In any event, given the land and options available, use of a higher apartment figure would not materially change the allocation.

Allocation of units in outer core

The same postulates as those used for the core area are used to allocate units in the outer core. Of prime importance are availability of properly zoned land, distance, and distribution among several districts.

Of the 92 units in Allegan County outside of the focus area, 46 are allocated to the outer edges of the City of Otsego. The sewer and water district serving the City of Otsego possesses land at the 15 minute point; although the further from the highway the drive times become extended. Thus, some units from the City of Otsego included in the "focus area", plus the 46 units in the outer core area that are discussed here.

The remaining 46 units expected in the outer core area of Allegan County (outside of the City of Otsego) would be located in the County's remaining 16 townships and cities. Given the large, disbursed area, and the small number of units (46), any suggestion on future location would be purely speculative.

Table 2-13 allocates the units in by community, with the acreage needs delineated in **Table 2-14.**

TABLE 2-13
ALLOCATION OF UNITS
IN EXTENDED CORE AREA

COUNTY AND COMMUNITY		TYPE OF UNIT			TOTALS
		Single Standing	Condos	Apartments	
Allegan	Otsego City	46			46
Kent	Byron Township	33			33
Kent	Gains Township	33	16	34	83
Barry	Thornapple Township	20			20
Barry	Middleville Village	12	16		28
	TOTALS	144	32	34	210

* Does not include 46 additional units in Allegan outside of core area, in the remaining 16 townships and cities; these are too disbursed to suggest a location.

The community allocation in Kent and Barry are logical selections based upon the postulates. The options far exceed the number of units that need to be allocated.

The allocation is translated into acreage in **Table 2-14.**

TABLE 2-14
HOUSING ALLOCATION SCENARIO FOR OUTER CORE AREA
BY MININUM ACREAGE NECESSARY

COUNTY AND COMMUNITY		TYPE OF UNIT			TOTALS
		Single Standing	Condos	Apartments	
Allegan	Otsego City	11.62			11.62
Kent	Byron Township	13.64			13.64
Kent	Gains Township	10.65	3.67	2.93	17.24
Barry	Thornapple Township	5.00			5.00
Barry	Middleville Village	5.53	2.67		8.20
	TOTALS	46.43	6.34	2.93	55.69

SECTION THREE
COMMERICIAL LOCATION ANALYSIS

PURPOSE

This Section develops a scenario for commercial construction stemming from increased consumer demand created by a casino in Wayland Township. The scenario provides a basis for considering possible environmental impacts that may accompany the new construction, and the mitigation of such impacts. The analysis is not a formal prediction that such development will indeed occur, only whether a sufficient level of new demand may ensue because of the casino. The actual "supply" of new buildings and businesses involves many factors extraneous to perceived or forecasted demand, in addition to non-casino related demand factors in the regional economy.

The methodology utilizes the following steps:

- From off-site spending by casino customers;
  - Assess off-site spending, based upon core impact study.
  - Distribute between lodging, food & beverage, and retail; note any other aspects.
  - Determine off-site lodging demand; review present supply.
  - Consider casino induced demand for new lodging.
  - Develop scenario for off-site restaurant demand (undertake similar steps to lodging).
  - Following steps similar to the above for retail spending.
- From spending by residents of new housing units;
  - Estimate total expenditures.
  - Compare to present supply.
  - Consider demand created for new enterprises/buildings.
  - If appropriate, allocate to geographic areas.
- Consider casino spending with subcontractors and vendors.
- Analyze commercial and industrial land available at the most likely locations for new commercial construction.
- Contrast and allocate demand to potential supply.

OFF-SITE SPENDING OVERVIEW

The base study estimated that there will be $32,241,543 in annual off-site sales in the Allegan Area in the categories of lodging, restaurants, and retail. The estimate was based on casino visits from various distances. The Allegan Area is defined as including all of Allegan and Kent counties, southern Ottawa county, western Barry County, and northern Kalamazoo County.

The economic analysis also offered a scenario which estimated that 179 of 358 jobs created by the off-site customer spending would be located in Allegan County. The core analysis did not attempt to enumerate all possible consumer expenditures, such as increased convention attendance in Grand Rapids or Kalamazoo.

Lodging

Total room nights

A chart has been developed that allocates the likelihood of overnight stays by casino visits from various locations. The locations match the area and distance groups in the core analysis. The table can be replicated for any federal submittal.

The total visits inducing overnight stays are 195,752. This figure needs to be translated into room nights. Three factors are involved--

- Number of casinos visitors per room---1.6 visitors per room.
- Proportion playing again the following day---1.33 (or one-third).
- Proportion of room nights at campgrounds or friends/relatives---15%.

Each of these factors has a range of likelihood, but together they are viewed as reasonable for a Midwest daytripper market and the distances involved. As the lodging supply figures will exhibit, even higher room numbers (which would be welcomed by area lodging establishments) are still accommodated by the environmental analysis.

The resultant room night estimate is 78,190. If the total price, including taxes, averages to $75 per room night, the total expenditure is $5,864,267.

Present lodging supply

A review of chain and individual lodging websites and lodging search engines were used to obtain an understanding of existing lodging within a convenient drive time of the casino site. The results identified 19 motels within 20 miles of the casino site. Spreading the radius approximately one mile further would bring in the many motels/hotels near the Kent County airport.

Using an average size of 100 rooms per motel/hotel, the total supply within 20 miles is 1,900, representing approximately 693,500 room nights. The 78,190 room night demand estimated above represents approximately 11% of total supply. A specific occupancy rate is not available, although it is reasonable to suggest that the figure for a area in the Midwest United States not in the downtown of a major city (such as Chicago) would at best be 70% (the figure is likely high, but even a figure of 80% would not alter the overall conclusions) This 70% figure leaves at least 208,000 room nights available within the 20 miles area. If the casino patrons used a total of 10% of total capacity, they would account for 69,000 room nights, covering almost the entire demand. A lower occupancy rate argues against the construction of a new hotel/motel.

This component only refers to motels/hotels within 20 miles. The off-site expenditure estimate includes all of Kent and Allegan, as well as parts of neighboring counties.

The number of rooms within a 10 minute drive of the casino site is somewhat limited in amount and variety. To be prudent, the environmental analysis considers that one new off-site hotel will be built within a 10 to 15 minutes drive time near an exit to US-131. This construction may not occur, but is viewed as a high end parameter from casino created room night demand. A modern, 100 room motel/hotel would add 36,500 room nights to the area supply. The most likely location is discussed in a following segment.

New restaurants from casino customer demand

An approach similar to the lodging analysis is utilized. Of the $26.4 million in off-site spending in the core analysis remaining after subtraction of the lodging figure, it is estimated that dining and beverage expenditures represent approximately two-thirds and retail spending approximately one-third. This is consistent with proportions in Atlantic City, which has a daytripper customer base. The overall off-site is also consistent with the proportions a study by Michigan State University found of Detroit casinos.

The $18 million in food and beverage spending will be accommodated by either entirely by existing establishments, or by a combination of existing and new.

An Internet search of "restaurants" within ten miles of the casino identified 33 establishments, primarily of the fast food and diner variety, but also including full service restaurants that serve alcohol. There were 84 identified within 12.5 miles, and well over 100 within 15 miles.

Various information points were used to develop a broad estimate of the unused capacity of the present establishments. The 1997 Economic Census reported that the 145 establishments in the three digit (722) category "food service and drinking place" realized $56.1 million, for an average of $387,000. Interestingly, in the more limited 4-digit category "limited-service eating places" the average for the 55 establishments was very similar, just under $387,000.

Published information on commonly know restaurants were considered to gain a sense of capacity potential. Wendy's International reports that their average fast food restaurant realizes approximately $800,000 in annual revenues. A report on Applebee's, a chain that provides sit down service and alcohol, has an average revenue per facility of approximately $2,000,000.

Solely for elaboration, we consider the 84 restaurants within 12.5 miles. If they have annual sales on average in the vicinity of $400,000 (slightly above the county average), it can be suggested that on average they possess at least the capacity to supply at least $600,000 on average (half way between present and the Wendy's average). The $200,000 per unit capacity equates to $16.4 million in unmet capacity---most likely a low estimate. Including establishment in the "Allegan Area" outside of 12.5 miles easily covers the capacity needs to meet the overall off-site food and beverage spending figure of $18 million. Use of differing factors does not change the conclusions, as elaborated upon below.

As with lodging, while the figures do not provide compelling reason to belief that casino induced off-site spending will cause the creation of new restaurants; such a reality cannot be eliminated. To assure the outer parameter is covered by the environmental analysis, a scenario is suggested that there will be construction of one fast food restaurant and one full service restaurant within approximately 10 minutes of the casino site on US-131.

The food and beverage consideration is again addressed in the analysis of demand created from the residents of the new housing.

Retail from casino customer demand

The scenario results in approximately $9 million in off-site retail spending by casino customs in the broad "Allegan Area." The 1997 Economic Census identified 365 "retail" establishments in Allegan County as a whole. The average store realized $1.75 million in gross sales annually. There are more than 100 retail establishments within 15 minutes of the casino site. There is little reason to believe that the addition of $9 million in total demand will directly cause the construction of new retail buildings. The retail consideration is discussed again below in the analysis of spending by the residents of the new housing.

NEW CONSTRUCTION INDUCED FROM SPENDING BY NEW RESIDENTS

Average spending

The core Michigan Consultants report developed a mid-range scenario with 342 new housing units within 15 minutes of the casino site, and an additional 184 in a more disbursed area. The present population and housing totals within 15 minutes and 30 minute drive times are exhibited in the new housing section.

To obtain general estimates for the future spending by the individuals in these units, the United States Department of Labor report "Consumer Expenditures in 2000" was consulted. The report includes various categories of location, age of prime wage earner, number of wage earners, etc. For our purposes here, the "Midwest" category is selected. The category in the year 2000 was determine to have had an average gross income before taxes of $44,377, and 2.5 persons per housing unit.

Table 3-1 provides the averages and multiplies each primary component by the number of potential new units in the core area to derive estimates of spending by these residents.

Table 3-2 exhibits the Allegan County totals from the most recently published Economic Census figures from the Census Bureau of # of establishments and gross sales in 1997, with a calculation of average gross sales per establishment.

TABLE 3-1
AVERAGE EXPENDITURES FROM NEW HOUSING UNITS WITHIN 15 MILE GENERAL RADIUS BASED UPON U.S. DEPT. OF LABOR REPORT "CONSUMER EXPENDITURES IN 2000"

SPENDING CATEGORY	AVERAGE $ / UNIT/ YEAR	$ TOTAL FOR 342 UNITS
Food at home	$2,933	$ 1,003,086
Food away from home	2,322	794,124
Housing	11,961	4,090,662
Alcoholic beverages	388	132,696
Apparel and services	1,917	655,614
Health care	2,172	742,824
Entertainment	2,040	697,680
Vehicle purchases (net outlay)	3,759	1,285,578
Gasoline and motor oil	1,352	462,384
Cash contributions	1,615	552,330
		$ 10,416,978

TABLE 3-2
AVERAGE SALES PER ESTABLISHIMENT IN ALLEGAN COUNTY
Source: Economic Census of the United States–1997

Description	# of establish-ments	$ Sales in 1997	Average $ Sales per establishment
All retail trade places	365	641,969,000	1,758,819
Automobile dealers	23	177,106,000	7,700,261
Grocery stores	39	141,007,000	3,615,564
Pharmacies	17	31,259,000	1,838,765
Gasoline stations	46	69,076,000	1,501,652
Gas sta. with convenience stores	32	49,956,000	1,561,125
Other gasoline stations	14	19,120,000	1,365,714
Clothing stores	18	6,070,000	337,222

Restaurant demand from new housing

The total "food away from home" spending is equivalent to less than one new restaurant. A portion of this spending would not necessarily occur within Allegan County (a significant portion in this category may occur during vacations). A portion would also be supplied by the present full-service, fast food, and taverns in the area.

Even though the incremental demand level is less than compelling for the construction of new restaurants, in the interest of thoroughness a scenario is used based upon the development of two new restaurants, one fast food and one full service being induced by the casino. A primary consideration is that potential customers, whether casino visitors or demand generated by new residents, will likely want the choice of either a fast food restaurant or a full service restaurant. It is further postulated that the most likely sites will be at the closest highway exist/entrances to the casino (assuming sewer and water). This is primarily to attract casino customers, but is also within the core area of new housing potentially induced. Given this potential new capacity (approximately $3 million assuming one fast food and one full service restaurant), this more than covers the increased demand previously identified from casino visitors and from the potential residents of the new housing.

Special consideration of gasoline stations

Seven "gas stations" were identified within six miles of the casino site, with many more within 20 minutes on the major roads. As **Table 3-2** exhibits, more than two-thirds of gasoline stations in Allegan are co-located with convenience stores. The core economic impact report did not estimate gasoline spending by casino patrons, in that the location was viewed as purely speculative to predict. There is little question that patrons from longer distances may be purchasing gasoline due to the casino trip, during which segment of the trip is, however, speculative. The second demand component, new demand from the new housing is not sufficient in itself to create demand for a new gas station.

After consideration of the possible spending totals for gasoline and convenience store items by both new area residents and casino customers, it is prudent to include in the environmental review the site for one new gasoline station, with convenience store. The primary reason would be the lure of potentially serving casino customers leaving the facility for the journey home. The site is thus likely to be within five miles of casino.

Other commercial establishments

For a new structure to be built, it is highly likely that the project's sales for the establishment(s) occupying the building will need to be significantly higher than the county average in 1997. This also assumes that present facilities are near capacity. Comparing the items in **Table 3-1** with **Table 3-2** suggests casino derived demand by itself will not result directly to the construction of new facilities. This does not mean the off-site spending by casino customers and the spending by new residents is trivial, only that present supply is adequate.

COMPETITION INDUCED CONSTRUCTION SEPARATE FROM CASINO INFLUENCED DEMAND

By its nature, this analysis reviews new demand influenced by the casino, and how that incremental spending in the may provide demand for additional commercial establishments. It is noted that other economic changes (unrelated to the casino) in the geographic area will likely eventually create growth. In addition, even if present capacity is more than sufficient, entrepreneurs may believe their concept or approach can attract sufficient customers that would otherwise use existing enterprises. In the restaurant field in particular it is common for new efforts to start even in areas that appear to be saturate, even in locations where previous establishments have failed. This aspect provides further value in using new constructions estimates that are beyond that involving casino-influenced spending.

BUILDING OF VENDORS/SUBCONTRACTORS

The core Michigan Consultants report included a segment reviewing the purchases of goods and services by the casino, and the jobs created. This is disbursed over a wide range of companies, from beer distributors to landscapers. The analysis hypothecated that 20% of revenues would flow to subcontracts, with 60% in the "Allegan Area", with 40% of that total being captures within Allegan County itself. This equates to 268 full-time equated positions in the Allegan area, and 107 within Allegan County.

Given that the positions are distributed over numerous types of companies, and very close proximity to the casino is not essential, there is no reason to believe that new construction will occur at new sites due to the spending by the casino itself.

CONTEXT OF SIZE OF DISBURSED AREA

The analysis has focused on the off-site demand by patrons within Allegan County, and on the 342 housing units in the focus area. As the core Michigan Consultants report identified, there will also be expenditures in the wider area (Kent county, western Barry County, northern Kalamazoo, and parts of Ottawa). The specific location of these expenditures is difficult to develop even a broad scenario for. Within 30 minutes of the casino site, according to estimates from Census Bureau figures, there exists a population of over 539,000, over 217,000 housing units, and over 23,000 "establishments."

SUMMARY OF NEW BUILDINGS/ENTERPRISES AND LOCATION SCENARIO

This analysis determines that it is appropriate to further consider the location and construction of four enterprises/buildings (with typical acreage needs):

- One motel (90 to 120 rooms)---(five acres).
- One full service restaurant--(one acre).
- One fast food restaurant---(one acre).
- One gasoline station with convenience store---(two acres).

The list suggests a land demand of nine acres for the facilities. The eventual acres may prove either smaller or larger, depending on cost, the site, and the preferences of the building and operator. As the analysis shows, the amount of available land near the highway ramps far exceeds the needs of these units.

In each case, it is logical to assume that the enterprise will desire to be located close to an entrance/exit to US-131. This is in part due to casino patrons, but also provides the best opportunity to serve the thousands of other travelers on the highway. It is also assumed that the strong preference would be for sites that are already zoned commercial, have ready access to electric power, and are near to or already served by sanitary sewer and water.

Five areas were identified near off-ramps in Allegan or southern Kent. **Table 3-3** exhibits the potential site supply. The table includes only acres currently zoned or Master planned as commercial. The "square feet potential" category is simply a guide for analysis; actual site specific issues may reduce the capacity per acre. Regardless, the amount available far exceeds the needs from the casino commercial induced growth, thus downward adjustments do not jeopardize the ability of the areas to accommodate the four commercial facilities and parking.

TABLE 3-3
OFFRAMP PROPERTY AVAILABLE
ZONED OR MASTER PLANNED COMMERCIAL

Location		Currently Zoned Or Master Planned Commercial Acres	Square Feet Potential
A	76th/184th streets, Byron Township, Kent County	182	1,820,000
B	100th Street, Byron Township, Kent County	332	3,320,000
C	142nd St, Dorr Township, Allegan County	300	3,000,000
D	135th St., Wayland Allegan County	57.8	578,000
E	113th St. Martin, Allegan County		
		871.8	8,718,000

* Reduced to make initial consideration of road and site constraints.

The data in the tables show land available and already zoned or Master Planned, far in excess of the commercial construction potentially induced by the casino. The sites are analyzed in further detail in the environmental supplement.

The theoretic potential is prior to any consideration of limitations created by wetlands, floodplains, or other environmental related factors. Areas identified as the most likely candidates for development are analyzed further in the environmental calculations document.

Any effort to Identify possible locations for commercial buildings, even those that at present are simply theoretic in nature, is fraught with problems. By its nature, if a site is identified as a target, the prices may rise, perhaps making another site more attractive. For our purposes here, a site scenario is suggested that place the **motel, fast food restaurant, and gasoline** station/convenience store near the Wayland offramp, and the **full service restaurant** near the Dorr off ramp. The total commercial acreage required for such facilities (assuming standard new design) amounts to approximately eight acres near the Wayland offramp and one acre near the Dorr offramp. In both cases land is far more than sufficient. The FEA further analyzes the characteristics of the sites.

SECTION FOUR
FURTHER INFOMATION RELATING
TO SCHOOLS, PUBLIC SAFETY, AND PUBLIC REVENUES

OVERVIEW

This document, coupled with the Draft Environmental Assessment, and supplementary environmental calculations, address a range of impacts. In some instances aspects are addressed in several documents. In this Section, three aspects seen as meriting further discussion in terms of consolidation of information are addressed. The aspects are K-12 public schools, public safety, and public revenues. In each instance, material was presented in other place s in the overall package of material prepared for the BIA process.

K-12 PUBLIC EDUCATION

Enrollment figures

In Chapter Two an allocation of potential new housing units induced by the casino was provided. A total of 342 units were described for the core area in eastern Allegan. As discussed, construction and occupancy of the units will likely span over several years after opening of the casino. It is useful to consider the relative impact on the school districts involved.

In Table 2-4 of the 2002 Michigan Consultants report, the official "headcounts" for districts within the Allegan County Intermediate School District (ISD) are provided. The ISD totals for the school years (beginning in September spanning into the next year) are as follows:

1997	14,841
1998	14,982
1999	15,134
2000	15,225
2001	15,230

The totals represent an increase of 389 during the five year period, or 2.6%.

Future students per new housing unit

A self-evident methodology does not exist for precisely predicting the number of new students that will enter the K-12 public school system because of new housing units induced by the casino. A series of figures, however, from the year 2000 Census for Allegan County can be utilized as benchmarks.

ALLEGAN COUNTY	2000 CENSUS
Total population	105,665
Population age 5 years and over	98,039
Population in same house in 1995	56,745
Households	38,165
Householder living alone and 65 & over	7,871
Occupied housing units	38,165
Owner occupied housing units	31,652
Renter occupied	6,513
Average hh. size of owner-occupied units	2.78
Average hh. size of renter-occupied units	2.40
School enrollment grades K-12	23,175

In the year 2000 there were 30,294 households in Allegan after exclusion of households with one person alone, age 65 and over. There were 23,175 students in K-12 public and private schools combined, for a ratio of .77 students per household. The Allegan County ISD had a total enrollment of 15,225 in the fall of 2000. The difference in ISD totals and county totals stems from private schools and some residents attending schools not within the ISD. If the ISD figure is divided by the 30,294 household figure, a ratio of 0.5 public school students per Allegan household is derived.

If we look solely at Wayland Township, there were 689 students in K-12, public and private schools in 2000. There were 1,053 total households, 995 after exclusion of households with one person living alone age 65 and over. The ratio was thus .69, although it is not known how many attended private schools.

Given that it might be expected that individuals moving into an area will likely be younger than the average existing householder, there is some reason to believe that these units may have an above average tendency to have school age children. It is unknown if there would be a preference for private or public schools.

Given the factors above, it is reasonable to suggest a ratio for estimation purposes of .75 students in K-12 public schools per housing unit induced by casino employment. This is an average, meshing those without children with those with one and more than one. The number is higher than a strict ratio of the present public school situation, but is viewed as appropriate given that the units represent individuals moving into the area and the desire to assure that low parameters are not used for the impact estimates. The following analysis also considered the results if an even higher benchmark ratio of 1.0 is utilized.

Chapter Two calculated that there are 342 new units being induced in the core area within Allegan, and 92 additional units in Allegan outside of the 15 minutes drive time core. Using the .75 ratio, these units represent an average of 326 new students, over an extended period (approximately five years) after the casino opens. The figure equates to a growth in the Allegan ISD of 2.1% (326/15,230). Even if a higher ratio of 1.0 is used for K-12 public school students, the resultant 434 total still represents less than 2.9% of present enrollment.

The largest concentration of core area units is within the Wayland Union School District. The District had an enrollment in the fall of 1999 of 3,277, in the fall of 2000 of 3,174, and in the fall of 2001 of 3,172. The units in Wayland Township (69) and Leighton Township (18) are in the Wayland Union Schools District. The units in Dorr Township (34) would likely also be in this district, although it is possible some might be located in the Hopkins District. Given the "schools of choice" system in Michigan it is at least possible that students from within one district might attend schools in another district; but for our purposes here, it is clearest to base the analysis on units within a district.

The 121 total induced units in this District represent 91 students if the 0.75 ratio is used and 121 if a 1.0 ratio is used. The 91 figure represents a 2.9% increase (over several years), and even the higher parameter of 1.0 represents only 3.8% over an extended period. It is merits note that Wayland Union Public School District enrollment declined 105 students from the fall of 1999 to the fall of 2001.

The Martin School District reported an enrollment of 762 students in the fall of 2001. With an estimate of 74 totals units (more than one-half at apartments), the District has the highest potential impact in terms of new students to present students. The 74 units represents 56 students if the 0.75 ratio is used (given the high apartment figure, a lower ratio of K-12 students could also be chosen).

Considered alone, the 56 students present a 7.4% increase, the district, however, has experienced a headcount decline of 63 between the fall of 1997 and the fall of 2001. Thus, the potential increase from the casino induced growth would leave the total still below the enrollment totals of only a few years ago.

The other districts in the core area, Hopkins Public Schools, Plainwell Community Schools, and Otsego Public Schools, all have "new student to existing student" ratios below the estimates for Wayland Union Schools. Otsego Public Schools, which potential would take in students from both the "core" and "extended core" areas has experienced a stagnated enrollment . The headcount figures for 2001 were 2,427, compared to 2,445 for 1997, a decline of 18.

The new student figures for districts outside of the core area tend to be small, due to the wider distribution and lower total units involved creating lower total new units in any school district. Gains Township, in Kent County, is in the position of potentially receiving the greatest potential enrollment increase induced by the casino (83 units, with a student figure at 83 if a higher 1.0 per unit is chosen). Three districts, Kentwood Public Schools, Caledonia Community Schools, and Byron Center Public Schools, have portions of the Township. Together the districts had an official K-12 headcount enrollment of 24,467 in the fall of 2001.

The State of Michigan now uses a "foundation" grant method for school funding, with the State being the primary source of operating funds. An amount is supplied to the district based upon enrollment. This means that schools tend to have an incentive to increase enrollment.

Major facility expansion and new buildings are typically financed through long-term bonds from voted property taxes within the limits of state law. The new housing units would be subject to all local property tax levies. The casino itself will be in the position to make significant payments to the local education needs. This is further discussed in a following segment.

One additional note, it is not an abnormal experience in Allegan for districts to deal with families that have recently moved. In the 2002 Census for Allegan county, it was determined that of those age 5 and above, than 55% had lived in a different housing units five years previous.

Letters of support from school officials.

Letters of support are in the official record from Thomas J. Tarnutzer, Superintendent of Wayland Union Schools and John VanNiewenhuzen, Superintendent, Allegan Public Schools.

ADDITIONAL PUBLIC SAFETY NOTES

As noted, the 2000 Census determined that Allegan County had 43,292 housing units, of which 38,165 were classified as occupied. The addition of 434 units (over approximately five years) represents a growth of 1.0% in the total number of units. In Wayland Township, the allocation from Section Two of 34 single standing units and 35 condos together represents a growth of less than 6% from the 1,169 units in the 2000 Census (an average of a little over 1% per year).

The units will require normal public safety services. As with schools, they will be subject to the normal property tax levies assessed by the County and cities and townships for operating funds.

A letter of support for the project has been submitted by Dan Miller of the Wayland City Police Department. An additional letter of support has been submitted by Larry Orlowski, Executive Director, and Deputy Sheriff's Association of Michigan.

The 2002 base report by Michigan Consultants (pages 34 and 35) discussed potential public revenues that would be derived locally and in the county through a compact patterned after the most recently agreed to Native American compacts in Michigan. It notes that at least one-eighth of the local dollars provided from "2% of electronic gaming" must flow to public safety. Based upon a revenue target of $169.7 million in gross gaming annually, with 82% derived from electronic games of chance, this equates $2.78 to be allocated to local agencies and needs. Of this amount, the one-eighth minimum for public safety equates to approximately $347,000 annually. Even if a lower gross revenue figure is realized, the dollars for public safety remain substantial.

The various public safety agencies and programs can also apply for additional funding from the millions of additional dollars to be allocated for projects within the county.

PUBLIC REVENUES AND MITIGATION

As introduced above, the 2002 base study by Michigan Consultants discussed public revenues on pages 34 and 35. Under the electronic games of chance revenue scenario at full operation, $2.78 million would be made available annually for local agencies and programs. The Band will not have influence over the allocation. In the most recent compacts, the funds flow to a Local Revenue Sharing Board, comprised of a representative from the host community, the county, and a third chosen by the other two.

These dollars possess significant potential to mitigate any unforeseen impacts and to improve the quality of life in the Township and throughout Allegan County.

It is noted here that the total property taxes billed for the property in 2002 was $84,655.51.

The landowners of new housing units or commercial buildings will also be paying property taxes. These dollars further support public safety and other services. The base 2002 Michigan Consultants study (page 44) demonstrated that property value growth in Native American casino host counties has compared very favorably with property value growth in non-host counties. Wayland area property values tend to be below those of Kent. Simply as a quick comparison, the Standard and Poor's calculated for the State of Michigan that the "property value per student" in Wayland Public Schools for the 2001 school year was $99,012. This figure is far below the southern Kent County figures of $196,225 per student in Byron Center Public Schools, $251,450 in Caledonia Community Schools, and $189,038 in Kentwood Public Schools.

SECTION FIVE
RESPONSE TO AEG *"CRITICAL REVIEW: GUN LAKE BAND OF POTTAWATOM IINDIANS ENVIRONMENTAL IMPACT STUDY: ECONOMIC AND COMMUNITY IMPACT ANALYSIS"*

OVERVIEW

Anderson Economic Group (AEG) submitted to the BIA a narrative self-described as a *critical review* or *critique*. In it, a series of broad assertions are made, and some figures offered without showing the subtotals or calculations. AEG fails to develop a case that there exists any specific conclusions, reference points, or methodology in the Michigan situation that refutes the overall projections made in the EA. The EA utilized a 2002 study by Michigan Consultants (hereinafter referred to as the "base" Michigan Consultants study). A case is not made that the base study is flawed, or that the BIA has failed to take into account the requirements of the law.

FORMAT OF THIS RESPONSE

This document first identifies the key items prepared in response to the AEG comments. We are very confident that each of their points is unproven, incorrect, or not relevant. The response then provides a review of the existing Michigan casino market. This updates the information in the core EA, and is seen as vital in understanding the context of the figures in the core EA. It also exposes the lack of a foundation in the AEG document for how their approach represents the existing Michigan situation.

This response then reviews each page in the AEG narrative. This is undertaken for thoroughness, although does create redundancy. The supplement then visits the summary portion of the AEG critical analysis, solely to reaffirm that all key items are addressed. At the conclusion of this document, additional comments and analysis are offered regarding the regional economics and benefits.

KEY ITEMS

The list below addresses what are viewed as either key shortcomings in the AEG comments, or refute specific criticisms made my AEG.

- The AEG document does not cite Michigan casino market information. Their material does not point to any information regarding the existing Michigan casino market that refutes any of the projections made in the EA. Considering that Michigan presently has three non-Native American casinos, and 17 Native American casinos (plus numerous other gaming options). This omission is viewed as a weakness in any assertions. Examples of key material are included in the narrative below, and are considered by Michigan Consultants in all casino studies.

- In terms of market analysis, AEG footnotes two casinos studies, neither in Michigan. One was prepared by KPMG for a proposed casino Moncton, New Brunswick Canada. The other is a report by Crowe Chizek for a proposed casino in Beloit, Wisconsin (actually, this is one of two studies of Beloit, a separate study performed by GVA/Marquette Advisors produced much higher revenue projections). Interestingly, neither of the studies cited by AEG was opposed to a casino. Published data considered by Michigan Consultants are discussed in the narrative below.

- The base 2002 Michigan Consultants report does, indeed, provide a methodology based upon Michigan information reflecting known aspects and amounts in the Michigan gaming market. The BIA does not need to endorse every specific figure in the projections, only that the methodology and figures are logical based upon existing data, experience, and the reasoned judgment of experienced professionals.

- This is apparently the first study in gaming field undertaken by AEG. Furthermore, AEG does not appear to have undertaken economic development work previously in the Wayland Township area, or in Allegan County. This inexperience does not disqualify the comments, just as those by ordinary citizens merit consideration. The lack of experience does, however, suggests a burden to cite appropriate published research, along with clearly showing fairness and thoroughness in their wide assertions opposing the casino.

- The AEG use of the acronym "NIGRA" instead of "IGRA" may be suggestive of the lack of experience in the field.

- The firm that undertook the base study used by the Band and analyzed by the BIA, Michigan Consultants of Lansing, has performed a series of gaming studies in Michigan and other states, both for communities and for gaming interests (additional information on past project appears in the narrative). The firm has also undertaken a variety of economic development projects in Michigan, including in western Michigan. There is also significant experience in the housing, transportation, and human services fields, all aiding the preparation of a solid document.

- At face value, the amounts projected for the casino, 3.1 million visitors and $169.7 million annually in gaming revenues, are hardly exorbitant considered the results already achieved by other casinos in Michigan and the Indiana riverboats.

- Interestingly, if the actual level of revenues and jobs achieved prove to be below the level projected in the DEA, as AEG contends, this serves only to suggest that the environmental impacts and mitigation analyses are addressing higher impact parameters than necessary.

- The AEG critique does not consider one a key economic impact scenario--that being if one or both of the proposed casinos in New Buffalo and Emmett Township open, but the Wayland casino does not. Of particularly relevance is Emmett Township site. It is less than 70 miles from Grand Rapids, accessed by major highways. Adding this scenario likely changes many the claims made by AEG in their own approach.

- The omission of the scenario where the Emmett Township casino opens but Allegan casino does not tends to question analytic intent of the AEG critical review.

- Even AEG appears to agree that the casino will be beneficially for the Band, Wayland Township, and suggests positive benefits for Allegan County.

- The figures offered by AEG appear to stem from a model that clearly under-represents existing gaming by Kent County area residents. Any under-representation of the present tends to invalidate impact projections from shifting of expenditures.

- The AEG figures appear to also under-represent total gaming now occurring in Michigan. Any model that inaccurately represents the existing situation cannot be reliable as a predictor of the future.

- The AEG critique spends significant time on the issue of proper multipliers. It is not clear that those used in the 2002 base report by Michigan Consultants are too high. Indeed, evidence is available that other studies by other firms and agencies use similar or even higher figures (examples are provided in the narrative that follows).

- AEG does not explain how their calculations are made or how conclusions are reached. As noted, even if for a moment the position is taken that their market totals for the casino are correct, that much of the revenue for the Allegan casino is a shift from within the Allegan region of money not otherwise leaving, then this means there would be fewer new jobs, spin-off businesses, housing, etc. Essentially, AEG is suggesting that the EA is reviewing higher impact parameters than necessary.

- The AEG figures seem to make extraordinary assumptions regarding the ability of Kent County to retain spending within its borders, whether or not a casino operates in Allegan.

- The AEG study seems to disregard the importance of intra-state tourism. A report entitled "Michigan 2001 Travel Summary" by D.K. Shifflet & Associates Ltd. reported that Michigan residents are the origins of 57% of tourism trips to Michigan destinations. The Detroit DMA alone represents the origin of 13% of all tourism trips to Southwest Michigan.

PRESENT MICHIGAN MARKET

It is useful to review key aspects of the existing market in Michigan to provide a context for the figures in the Band's submittal. Many of the figures were introduced in the original submittal to the BIA.

Gross gaming revenues

A calculation of gross gaming revenues at Native American casinos in Michigan in 2001 is supplied in **Table A.**

TABLE A
ESTIMATED MICHIGAN NATIVE AMERICAN GAMNG REVENUES--2001
(derived from Michigan Department of Treasury "2%" local payment figures)

	Tribe	2001 2% Payment	Gross Slots Base On 2%	Gross gaming estimate*
1	Bay Mills	488,297	24,414,850	29,774,207
2	Grand Traverse	1,915,279	95,763,950	116,785,305
3	Hannahville	632,746	31,637,300	38,582,073
4	Keweenaw Bay	326,366	16,318,300	19,900,366
5	Lac Vieux Desert	350,243	17,512,150	21,356,280
6	Little River	1,484,142	74,207,100	90,496,463
7	Little Traverse Bay	839,415	41,970,750	51,183,841
8	Saginaw Chippewa	7,150,869	357,543,450	436,028,598
9	SSMTCI	2,109,334	105,466,700	128,617,927
		15,296,691	764,834,550	932,725,061

* Using a factor for all of slots representing 82% of gross site gaming revenues.

The Little River casino in Manistee opened a major expansion in late 2002. The declining Michigan economy may have impacted the statewide totals for 2002 and what can be expected for 2003, although residents who decide to put off longer and larger-scale out-of-state trips may prove prone to spend entertainment dollars closer to home

Three commercial casinos operative in the City of Detroit. The revenue figures for 2002 are as follows:

Greektown	$ 327,603,597
MGM Grand	$ 394,981,693
Motor City	$ 402,513,543
2002 Total	$ 1,125,143,500

Casino Windsor in Windsor, Ontario, directly across from Detroit, realized more than $400 million ($US) in 2002, plus the Pt. Edward Casino in Sarnia, Ontario, and the casino in Sault Ste. Marie, Ontario, each directly across international bridges from Michigan, achieved revenues in the tens of millions.

The Blue Chip casino in Michigan City, Indiana, a few miles from the Michigan border, and reported in the press as a member of the Grand Rapid Chamber of Commerce, achieved revenues of over $200 million in 2002.

In addition to the "daytrip" market, Las Vegas is a major destination from Michigan airports, plus additional gaming occurs during cruise ship voyages and at other casino sites in other states beyond the Blue Chip.

Clearly, the Michigan "market" can be viewed as being at least two billion dollars annually (maybe well over). This is a vital context for the base analysis, and brings into serious question assertions in the AEG critical review. Essentially, as discussed in the base 2002 study and further in this analysis, area residents already spend significant sums at casinos, perhaps much higher than represented by AEG.

Visits

The number of visits is not officially published by any of the Native American casinos. The Detroit facilities on occasion publish a number, but the definition is not precise. The Indiana Riverboats, do have an admission charge, but even that data has the problem of individuals staying longer than one "boarding", and those who enter, leave, and return the same day.

Simply for reference, if it is postulated that if the average hold was $60/visit (defined as one visitor during one day), in a two billion dollar market this equates to over 33 million visits annually (a $70/visit figure equates to over 28.5 million visits). A portion of the visits to Michigan casinos come from out of state, but this may be more than offset by visits by Michigan residents to other casinos in other states and Ontario. The key point is that any model discussing the future casino market and potential casinos must consider this base.

PLAYER PARTICIPATION RATES

At the foundation of a casino market analysis are the frequency factors for adult casino visitation. There are two prime components, the number of adults that visit a casino at least once a year, and the average number of visits within this group. Even though different studies may use the term somewhat differently, the "participation rate" may be thought of as the multiplication of the "percent that visit a casino during a single year" by the "average number of casino trips for those that visit at least once." As an example, if 40% of adults in a certain region make at least one trip to casinos during a single year, with the average number of trips being 10, the resultant participation rate is 4.0.

The core Michigan Consultants base study provides a sequential methodology for representing the total adult population within 31 relevant counties, the projected percentage of adults that will be visiting casinos and the average number of visits. Varying percentages are utilized for creating an assessment of the total market contribution from each county. This information appears in a consolidate form in **Table 3-3** on **page 23** of the core report.

The position is held that the data used in the 2002 core study by Michigan Consultants fairly represents the total existing market. It is noted here that firm has completed a variety of studies for gaming groups and has its own models and factors for visitation. The projects have included the initial efforts and follow-up market analysis for the three casinos in Detroit, projects for five Native American tribes in Michigan (involving a variety of individual projects and potential casinos), and casino market analyses in other states. Engagements were performed both for tribes, casino developers, and communities. This experience and reputation are relied upon when developing analysis for all clients, including analysis of the Wayland Township site.

Most importantly, the Michigan Consultants calculations are cross-checked with public studies of casino visitation behavior (discussed below) and the known total revenues now in the market (discussed above). These are public reference points that can be used for validation of the Michigan Consultants' approach.

The AEG critical analysis mentions visitation rates, but uses only two studies as a base, one from Wisconsin, and one from New Brunswick, Canada. Most importantly, AEG does not demonstrate how the rates in those studies were derived, or how they represent the Michigan situation. This is also, apparently, the first AEG project in the gaming field.

Bear Stearns--Wisconsin and Minnesota markets

Wisconsin is particularly interesting because it has only tribal casinos (17 in 2002), and demographics generally similar to western Michigan. In the 2002-2003 report, Bear Stearns estimated the participation rate for Wisconsin citizen statewide was 4.0. It is not known if this is "40% visit during a year, and have an average of 10 visits" or some other combination.

Minnesota hosts 19 tribal casinos. The statewide participation rate calculated by Bear Stearns in their 200-2003 Almanac is 5.20.

These figures do not automatically apply to western Michigan, but do provide benchmarks from areas with similar demographics for consideration. They appear to be much higher than the factor AEG claims should be used.

Bear Stearns--Detroit/Windsor Market

Bear Stearns, in their 2002-*2003 North American Gaming Almanac*, presented estimates for the "participation rate" for the Detroit/Windsor market potential. The figures only apply to existing or potential visits to the three Detroit casinos and Windsor, and not all visits by residents (trips to casinos elsewhere). Their rate for 0-50 miles was 4.2, with lower rates for longer distances. They estimated the theoretic market for the 0-50 miles radius to 17.48 million annually, with 23.87 million being the theoretic total Detroit/Windsor market. They estimated a "gaming growth potential" of 22.4%, and a theoretic market size of $1.8 billion. It is not clear if a person visiting a casino twice in a single day, or multiple casinos in a single day, count as one visit or more than one visit.

Western Michigan University study

Western Michigan University prepared for the Michigan Department of Public Health a report *"A Survey of Gambling Behaviors in Michigan, 2001."* This is a follow-up to similar reports prepared in 1997 and 1999. The focus is on problem gambling, but the survey utilized by the researchers also provides insight into overall casino visitation. A sample was conducted of Michigan residents age 18 and below. The survey found that 60.6% of respondents reported they had visited a casino at least once during their lifetime, and 37.2% reported having visited at least once during the past year.

Marketing Resource Group

Marketing Resource Group of Lansing periodically published survey research pertaining to various issues and trends in Michigan. In the 2002 summer addition of "MRG Occasionally," results of a survey of Michigan voters found that 38% had visited a casino during the past year, and 24% had visited a "an Indian casino", and 15% had visited a casino in Detroit.

Notes on reference points

As introduced above, the benchmarks are important because the AEG critical revue, in producing broad figures on impacts, may have seriously under-represented the present usage of casinos by area residents. The net effect is to over-estimate the amount of new dollars that would be leaving Kent County that are not already doing so. In reality, substantial dollars are now leaving, but will have a better chance of being retained and redistributed in the region by an Allegan casino.

SPECIFIC ITEMS IN AEG REPORT

Sequence of analysis

For thoroughness, key comments in the narrative of the report (pages 8-26) are first addressed. Comments pertaining to the summary section of the AEG then follow. The specific figures and methodology in the AEG report are the focus of attention, rather than their random statements made without a reference point.

Page 6:

This is simply general statements on impact studies.

Page 7

The general statement is made that the Michigan Consultants 2002 base report has "exaggerated" results. Obviously, this statement is disagreed with. Yet, it is relevant to note that to any degree that economic impacts do prove to be lower than those in the 2002 base study, then any secondary environmental impacts would also be lower. The AEG study seems to be arguing that the DEA is analyzing and mitigating impacts that are beyond the level necessary.

Page 8 (top portion)

AEG makes market related criticisms without specificity on alternative approaches, or listing of other studies used by the BIA (or EPA) that demonstrate that commonly used methodologies and data bases exist that differ substantially from and are clearly superior to those used by Michigan Consultants.

Page 8 (bottom) and Page 9

The section starts claiming a *"General lack of justification"* but does not offer examples of better information. A complaint is made that the "percent of population age 21-75 that visit casinos" was not adequately explained and potentially is incorrect. The Michigan Consultants 2002 base study was indeed based upon public information, as well as the many studies the firm has conducted. Information provided above in the **Present Michigan Market** and **Player Participation Rates** sections verify the figures used in the base study.

AEG fails to show how the use of different factors better represents the Michigan market. Indeed, they do not provide any summary of the Michigan market, and how their factors represent the present situation. If their figures significantly underestimate present casino visitation in Michigan (which we believe) then any projections for the future from such factors are likely to reach incorrect conclusions for growth, shifting of expenditures, and total impacts.

The items obstensively listed at the top of page 9 in the AEG critique also tend to claim problems, yet they do not specifically identify figures that are better, or how any of their past work uses different numbers, or how the Michigan market is any way misrepresented by Michigan Consultants.

In the segment on page nine *"Applying proper technique"* they are kind enough to attempt to enlighten the reader on what is "clearly *more* appropriate." Yet they fail to do so. The terminology "Applying proper technique" is used in several locations in the critique, without clearly demonstrating how the methods better represent the Michigan market or even how AEG has used the methods previously in other gaming studies.

In AEG *Table* 2 they present factors claimed to be different than those used by Michigan Consultants. Again, the fatal flaw in the AEG material is that they do not show how the factors total to the reality of the Michigan market (they appear to significantly understate the market which now exceeds two billion dollars annually). This would not be a difficult exercise if their factors and approach were indeed superior. It would only require taking the factors, present population, and present casinos, and thus generate estimates that are close to the existing market totals publicly known.

Their variable *"% of adults that visit a casino per year"* varies slightly in the Michigan Consultants document, with 40% used by AEG. Again, AEG does not show how their figures better represent the Michigan situation, particularly western Michigan. In any event, Michigan Consultants uses 45% only in two areas rather distant from Allegan. The factors used by Michigan Consultants do not differ substantially from the Bear Stearns *"within 50 miles of Detroit"* figures, or other baseline information available.

AEG appear to claim that much smaller factors should be used for *"Average number of casino visits per gambler."* They provide no justified for such an assertion, and may simply be incorrect. Use of lower factors serves to underestimate the present Kent area market. For justification, they point to two studies, one in Beloit, Wisconsin, the other in Moncton, New Brunswick.

The Beloit study by Crowe Chizek was one of two contentious studies of the Beloit market. Interestingly, it is not unsupportive of the proposed casino there. AEG does not reference the other study of the Beloit market (performed by GVA/Marquette Advisors) that produces much larger market figures.

The study in Moncton, New Brunswick (which itself is only a projection made by KPMG) is an unusual choice (particularly as one of only two site specific studies). The AEG claim that a projection for an eastern Canadian maritime province is appropriate for the Allegan region is highly questionable. The map on page 31 of the Moncton study, showing the water surrounding much of New Brunswick, demonstrates the obvious the differences between that area and western Michigan.

Essentially, using factors in the Moncton projection for western Michigan is simply odd. We know of no statements from KPMG that suggest they feel their figures for Moncton apply to western Michigan.

AEG also footnotes a document by Adam Rose and Associates; but that report does not appear to address a specific market or provide specific visitation figures of its own.

The use by AEG of potentially artificially low present casino visitation figures, particularly for Kent County, creates a major flaw in their material. Kent, Allegan, and Barry counties together represent 7.85% of the state population (with Kent alone representing 6.1%) If additional counties touching Allegan (Kalamazoo, Ottawa, and Van Buren) are also included, the six county group represent over 13.7% of the state population. These counties must represent a significant portion of the Native American casino market and important portion of the market for the Blue Chip casino. The representation in the over $1 billion hold at the Detroit casinos is less evident, but certainly is not zero.

If simply a proportional calculation is made for Native American casinos in Michigan alone, the Barry, Allegan, and Kent market represent over $70 million annually alone (this does not include any spending from residents from these counties in Detroit casinos or Indiana or Illinois riverboats). It also does not include non-gaming spending during the trip to and from the casino and at the casino facility.

These are dollars leaving the area. The Allegan casino would retain this spending in the area, with a significant portion being redistributed through employment, purchase of goods and services, and public revenue contributions. The AEG analysis does not appear to fully take this dynamic fully into account. It is also the reason why underestimation of the existing market becomes such a key consideration, as well as relative impacts that may occur if the Emmett Township casino opens but the Allegan site does not.

It also merits notes that the Gun Lake Tribe itself, separate from casino spending, will be spending or investing revenues in the region on goods, services, housing, etc. There is no reason to believe that their investment and spending in the area will be different from other business operators in Allegan, Barry, or Kent counties,

For *Wayland Casino Market Share*, AEG claims their approach is more rigorous, yet this can be disputed. The Michigan Consultant report does address over 30 counties representing a majority of the state population, and offers capture rates based upon distance to competition. For *Average Hold*, the AEG figures do not appear to differ substantially with those used by Michigan Consultants.

Page 10

AEG makes the complaint of *insufficient consideration of travel time*. Yet, they do not show how their approach is proven more accurate in estimating future markets, and does not show how it represents the present market.

Use of drive times is a valid approach, but it has weaknesses that must be considered, or incorrect conclusions might be reached. Three aspects must be added into the analysis. The first is whether or not another casino is closer. A 90 minute time to a casino may be viewed differently by a potential customer if that is the closest casino. Rather than a tertiary market for a casino, visitation may be closer to the factors for a secondary or even primary market. Secondly, potential customers may view actual drive time as different (likely less) than the official drive time that is based upon posted speed limits. Thirdly, there may be other reasons a person is visiting the area, but decides to make a casino visit as one component of the trip.

Essentially, use of drive times can be valid, but must be considered with other factors, and the model used should first delineate how it represents the present market. AEG fails to use the model to show how Soaring Eagle now captures approximately $400 million in gaming revenues annually.

These aspects become keenly important when considering the Kent County market. The Soaring Eagle in Mt. Pleasant is considered by AEG to be "tertiary" or "secondary" due to drive times, from Kent County. AEG apparently uses this later in their report to suggest a very low present casino visitation scenario for Kent residents. The AEG factors for drive time, if applied to the Soaring Eagle and a Mt. Pleasant site, simply do not total to the over $400 million market share already being realized at that site. The same statement can be made for the Little River casino in Manistee (and perhaps also for the Detroit casinos). Again, AEG provides no reality based (in terms of the present market) justification for their factors, they simply describe them as superior.

The AEG critical analysis also states that the 2002 Michigan Consultants' report uses seven distinct geographic regions. In actuality, Michigan Consultants uses distinct data from over 30 counties, representing well over three-quarters of the Michigan population. The counties are simply grouped into seven subdivisions for ease of presentation. Interestingly, while AEG speaks of the many individual calculations they made, their critical analysis simply offers broad totals.

Page 11

Comments are made regarding Allegan as a prime market area. It is unclear the point being made. Certainly, averages are used for the county. Residents of specific individual communities will make lower or greater use of all casinos, including the Allegan site. Variables include income, religion, age, employment, second homes, friends or business in an area, as well as distance and many other factors. All analyses rely on averages. Again, even if it does turn out that the Wayland casino captures a lower portion of the Allegan market than projected in the Michigan Consultants 2002 scenario, this tends to lower environmental impacts from traffic, new housing, etc.

The AEG study seems to suggest that benefits would not accrue throughout the county. Their view must be challenged. The employment will certainly come from beyond the Township itself. AEG does not mention that the local revenue sharing board in a standard state compact assures one of the three positions for the County (plus one for the host community and one other to be chosen by the first two). The subcontractors serving the casino will be located in a wider region than the host community.

Further on page 11 AEG congratulates itself on the used of drive time rings. This can be a valid technique. Yet, no compelling reason is given that their technique somehow is vastly superior. Moreover, they never show how it represents the present situation in Michigan. A model that does not represent the present cannot represent the future.

Page 12-13

AEG notes their use of drive times; as mentioned above, the technique itself can be valid. It can lead to major mistakes, however, if the factors used for each of the drive times, when applied to the present situation, do not reflect the present market. Native American casinos have gaming revenues above $900 million (perhaps over $1 billion soon), and Detroit casinos over $1.1 billion. As before, AEG never shows how their approach represents the present market realities.

Page 12 also has a comment regarding the Southeastern Michigan market. They claim the Wayland market area should not extend to Southeast Michigan because gamblers from that region "*will be offset by the loss of Wayland-area gamblers to casinos that are out of the proposed casino's immediate region of competition.*" This appears inconsistent with the concept of a sound overall market analysis and understanding impact dynamics.

Visits to other casinos are a central point in understanding the benefits of a casino to an area---dollars are being lost to other areas. Moreover, western Michigan actively promotes the tourism and recreation sites of the region to all of Michigan, including the highly populated southeastern portion. It is highly unlikely that tourism businesses in Allegan view southeastern Michigan as irrelevant. The Michigan Consultants analysis includes an estimate of 2% capture from that area for Allegan. This is a modest goal. It needs also to be placed in the context that people from Southeastern Michigan will be visiting western Michigan for a variety of purposes, such as business related and family related trips. The casino will have the chance to encourage these individuals to stay longer in the area and also visit the casino.

As introduced previously, a report entitled *"Michigan 2001 Travel Summary"* by D.K. Shifflet & Associates Ltd. was published in March of 2003. The study reported that Michigan residents are the origins of 57% of tourism trips to Michigan destinations. The Detroit DMA (a cluster used in the broadcast industry) alone represents the origin of 13% of all tourism trips to Southwest Michigan.

Page 14 (top portion)

AEG claims that fluctuation in distance to a gaming site is not reflected in the Michigan Consultants report, this is incorrect. The Michigan Consultants study considered population data from many counties, with frequency of visits considered in the market generated by residents of each county. This is evident in Tables **3-1**, **3-3**, and **3-4** in the 2002 base report.

AEG, in their *Table 3*, provides figures for primary, secondary, and tertiary trade area visits to casinos. The footnote mentions the figures are "adopted from the average numbers of 10, 5, and 3 used by KPMG in their assessment of similar projects. The report does not note where those projects are, or if any apply to Michigan, or even if the projections represent actual casino visitation experiences or proved correct once a casino was built. AEG does not exhibit why use of those factors are appropriate for individuals within the various travel times used to calculate their market totals. Essentially, AEG never shows how their figures and calculations, whatever the source, ultimately represent the existing market.

Page 14 (bottom portion) through page 16 (top)

These pages are grouped due to the discussion of competition.

As previously, AEG criticizes the Michigan Consultants report for using seven grouping of counties. In actuality, the groupings serve only for convenience, as a way to group many different in counties that independently possess similar characteristics. The foundation of the Michigan Consultants' approach is still upon a variety of counties. Even though AEG compliments itself on the use of many population sub areas, they apparently use three visitation factors for drive time areas, and thus their individual calculations simply can be subtotaled and grouped in the same way as in the 2002 Michigan Consultants base study.

The most questionable aspect of the AEG approach, again, is that the figures used for visits when coupled with drive times simply are not shown to be representative of the existing Michigan market. No market totals are provided, no evidence that their approach is more accurate than the Michigan Consultants approach for the present situation.

Their analysis of competition also fails to include one very important scenario---- that being the impacts that will occur if the casinos in Emmett Township and New Buffalo open, but Allegan does not. This will be discussed further in a segment below. This omission may be deliberate, and affects all AEG conclusions.

In their Table 4 on page 16 AEG again mentions KPMG studies, without clarity on the states and communities where those figures were generated. There is no discussion of how the factors fit the Michigan situation.

Page 16 (bottom) and page 17

The pages appear to deal with shifting to gaming from other services. Their approach, first of all, appears lacking because the representation of present casino gaming and other gaming spending in the region, particularly in the region is not specifically listed. From the factors listed, it appears that this fundamental expenditure is inadequately represented by AEG. One theme in any casino analysis is the gaming dollars presently leaving an area that will be captured in the area if the casino is built. Many of these dollars are then redistributed within the community. If this step is not taken, even the broadest of estimates of the shifting of other, non-gaming, dollars to the casino becomes faulty.

As delineated in the Michigan Consultants study, and elaborated upon in an earlier sections of this response, there already exist many gaming options for area residents. The options will further expand if the proposed either of both of the casinos in Emmett Township or New Buffalo Township opens.

The overall DEA submittal discusses job creation in Allegan county and adjacent counties from the on-site and off spending of customers, the vendor spending by the casino, and the induced benefits. This is consistent, perhaps even more detailed, with other studies conducted throughout the country. The Michigan Consultants 2002 report is also careful to distinguish in its job estimates those positions that are created through new spending in an area versus those stemming from spending that is simply is shifted. The focus is indeed on Allegan, but employment issues in the wider area are addressed.

In terms of the state economy, to our knowledge there has not been written statements of opposition to the casino, or more specifically to the Michigan Consultants study, from state departments overseeing the Treasury or economic development. This covers two administrations, with governors from both major political parties.

It is noted that the Blue Chip casino in Michigan City, Indiana is a member of the Grand Rapids Chamber of Commerce, the sponsor of the AEG study.

Page 18

The critique questions the shifting from other casinos. It does not explain figures of its own regarding individual shifts from other casinos, and makes no attempt to provide a model for the existing market. AEG also does not discuss the capability of the sites to attain replacement revenues from other areas, of through additional marketing, if some dollars do indeed flow to Allegan from their existing base. It simply is not automatic that if dollars are lost to Allegan these enterprises will not be able to replace the revenues.

We are not aware of any letters of opposition to the project from any Native American casinos in Michigan. Indeed, the Saginaw Chippewa Tribe, which manages the Soaring Eagle on reservation land, forwarded a letter of to the Gun Lake Band supportive of the efforts of the Band.

We are also unaware of any letters of opposition from Indiana riverboat or the three Detroit casinos. Essentially, it appears that a firm paid to criticize the proposal of the Gun Lake Band is showing concern for distant casinos even though the operators of those casinos apparently did not submit formal criticisms of the project to the BIA.

The Native American casinos in Mt. Pleasant, Manistee, and the two near Traverse City, have proved very successful. The Soaring Eagle in Mt. Pleasant is one of the largest and most successful in the world. The Little River casino in Manistee was so successful that a major expansion has just been completed. The Grand Traverse Band expanded from their first casino near Traverse City by adding the Turtle Creek casino, which itself has been expanded. As stated above, while a portion of the revenues at the Allegan site would otherwise have gone to Native American casinos, each of the operations has been very successful, should continue to be very successful, and have not opposed the Gun Lake effort. They may also have marketing options in other regions to replace dollars from the Kent-Allegan area. Players otherwise going to the Blue Chip in Indiana will no doubt be the source of some of the Allegan revenues, although no specific opposition on the Blue Chip letterhead has been received. The Blue Chip evaluation conducted by the State of Indiana noted that the target income for that site was $70 million, yet the casino in 2002 achieved gaming revenues in the vicinity of $200 million.

The Gun Lake Band possesses its own vital economic development needs, which should not be marginalized in comparison to existing casinos.

Pages 19 and 20

AEG in *Table 5* provides various figures relating to revenues. The calculations behind the figures are not provided. It is particularly conspicuous that the manner in which their model represents the present casino gaming situation in Michigan is not represented.

As noted, a major flaw in their table at the outset is that the scenarios do not include the possibility of the Emmett Township casino opening, but not the Allegan casino. This scenario would increase to at least some degree the outflow from Allegan and other counties in the region, but bring little back in terms of jobs, and nothing back in terms of public revenues. It is not clear if this is an oversight by AEG, or deliberately omitted because the scenario would not support their criticisms of the Allegan project.

As noted in this response, AEG concludes in their Table that the revenue figures in the submission by the Band are too high. Yet, it also merit repeating that the projected $169.7 million annual gaming figure is less than one-half of that achieved at the Soaring Eagle, and lower than that achieved at the Blue Chip casino in Michigan City, Indiana. Michigan Consultants has performed a variety of casino studies, both in Michigan and other states. A Detroit News editorial called the Michigan Consultants figures in Detroit "definitive." The firm has also been involved in a variety of economic development projects. We fully stand-by our estimates.

AEG offers a figure for *"revenues from expenditures shifted from other industries"* and revenues from *"cannibalization of others casino's probable revenue."* The details behind these statistics are not provided. In that AEG does not attempt to explain how the counties in the target area contribute to the over $1.1 billion annually now flowing to Detroit, and almost $1 billion annually flowing to Native American casinos in Michigan, or to the Blue Chip and other non-Michigan casinos, it is not possible to make a definitive statement about the accusations. It might be noted that the AEG claim that 57% to 46% of the spending would be new (shifted from non-gaming spending) is not supported by any other studies of a new casino in very active existing market.

As a footnote to their Table 5 AEG claims that the "Tribe's submission" (that of the Gun Lake Band that utilizes the Michigan Consultants 2002 base report) does not appear to fully account for competition. As noted previously in this response, competitive aspects are explicitly used in the steps in the Michigan Consultants methodology that produced the revenue estimates, the assumptions regarding competition are also specifically identified.

On page 20 the AEG critique concedes that even within the shift they assume is not from other casinos, that part may be from other forms of gambling.

Again, no comment is made at the end of the section regarding the possibility of the Emmett Township casino opening but not the Allegan.

Page 21

At the start of page 21, line one, AEG refers to "NIGRA." This is suggestive of the inexperience brought to the study. This incorrect acronym is also used in the Executive Summary.

The AEG critique on this page again speaks of supposed theoretical errors; their view of what is proper and improper. They do not explain how in their first study ever they became the source of accuracy for casino analysis. In any event, it is difficult, if not impossible, for the Band to respond to the broad and unspecified criticisms on this page, although some points can be offered.

AEG claims that an error exists because "the Tribe's submission included all economic activity, including activity merely *shifted from one activity in Michigan to another."* First, this is simply an incorrect statement. The Michigan Consultants discusses the shifting issue, and does not include shifting within Allegan. We are not aware of instances where the State of Michigan has demanded an input-output study for a multitude of separate counties for any single, site-specific project. It is not clear what such a study would provide, plus its accuracy would immediately be challenged. AEG itself does not offer a statewide analysis, and does not enumerate the base model for the present system their figures rely on.

It is not uncommon for regions within a state to compete. Indeed, when the Grand Rapids Chamber assisted the City of Grand Rapids in obtaining $60 million in funding for a new convention center, there was not a study of impacts on other existing and proposed convention centers in the state. In the same vein, the massive tourism promotion effort now being undertaken by the West Michigan Alliance does not concern itself with any spending any shifting that may occur from other Michigan destinations.

On the same page AEG claims *"the multiplier used is not one appropriate for the gaming industry".* They mention that the Bureau of Economic Analysis has made statements regarding the use of multipliers, but to our knowledge the BEA has not published a specific figure for casinos---AEG does not cite one. As discussed in a following section, Michigan Consultants only uses the multiplier to explain induced employment from the direct and indirect jobs. The estimates for the direct and indirect jobs are prudent.

As noted before in this response, if the multiplier used by Michigan Consultants is too high, then the result would be lower total economic activity (i.e. spin-off jobs and thus housing). This would serve to reduce overall environmental impact. It is not clear why AEG belabors the point.

Pages 22 through 29

AEG offers a general discussion on the use multipliers, which seems to have questionable relevance. Pages are devoted to examples of *guests at dinner* and the like, to what avail is uncertain. AEG claims that various items should be eliminated before multipliers are used, but fail to show studies that use such methodologies, or explain how multipliers published by the federal government do not already take into account such aspects.

Michigan Consultants uses a multiplier of "2.0" for the Allegan Area; and it is used only for employment (not all economic activity). The figure for Allegan itself is 1.6. This hardly seems exaggerated, or inconsistent with other studies. A few examples are identified below, plus notes on the sequencing in the use of multiplier. We do not suggest that any one figure is the sole one appropriate. A higher or lower figure might be used for Allegan, 2.0 is simply viewed as reasonable for employment.

A key consideration is that the multiplier is used only on the employment total. The only employment items are on-site gaming and non-gaming, off-site from customer expenditures, and the contracts the casino signs with firms in the region. The AEG assertions that Michigan Consultants is including revenues in the use of multiplier that are inappropriate are simply unfounded. The multiplier is not applied to gross revenues, only employment. The calculation also removes non-gaming expenditures by area residents because these dollars are not considered as new to the area. In actuality, both gaming and non-gaming expenditures by area residents actually likely are being retained in the area, rather than being lost to casino communities in other regions and states.

Another key consideration is that the sequencing of factors is important in understanding multipliers, and the Michigan Consultants approach uses a prudent approach. The base employment figures use conservative "revenues per employee" factors. This is important to the use of multipliers because the "high" $/employee factors mean a lower base employment total is being multiplied by the chosen multiplier.

For example, the "Moncton" study quoted by AEG suggests that for every $51.6 thousand in non-gaming spending creates one full year job. For Allegan, Michigan Consultants uses a factor of $90,000 needed for each off-site job. The result is that a higher base employment figure (from use of lower $ of revenue/job factors), times a lower multiplier may provide larger totals than the approach used by Michigan Consultants.

As for the multiplier itself, a few examples.

- In a feasibility for a "Destination Gaming Resort Complex, Shullsburg, Wisconsin, Professor William Thompson of the University of Nevada, chose to use on page 12, *"applying a very conservative multiplier of 2,"* to measure impact.

- A study in Wisconsin by Keith McGee, University of Wisconsin-Marathon on page 17 used differing multiplies for differing categories of local casino expenditures (a low of 1.46 for utilities, a high of 2.4 for insurance; a factor of 1.91 was used for wages and salaries). Factor for "non-local casino patrons in the community" ranges from 1.93 for lodging to 2.31 for food and beverage. The net multiplier for all casino and non-local visitors' expenditures was 1.96.

- In a study of the impacts of the Oneida Nation on New York, Zogby International writes *"The average multiplier effect for all economic activities nationwide is about 2."*

- In the Grand Rapids area, the *"Right Place Program Report--Fall, 2002"* published by an economic development agency reads *"Manufacturing jobs have a high "multiplier effect." Each Michigan manufacturing job supports 3 to 4 jobs in other sectors. The automotive industry multiplier is even higher: 7.6 jobs."* It would not be expected that a casino position would have the same impact as one in manufacturing, but the Right Place figures does provide an interesting benchmark.

To reiterate, while differing minds could chose a higher or lower multiplier rate, the Michigan Consultants choice of 2.0 (actually 1.6 in Allegan itself), is conceptually sound.

AEG again does not appear to appreciate the importance of the intra-state visitor to the tourism industry, and to the economy of an area. Their discussion "Improper Industry Multiplier" (page 26) does not discuss the importance to the region of attracting visitors, or the importance of the retention of dollars now leaving the region to casino destinations elsewhere in Michigan and North America. We are also not aware of governmental documents or sponsored studies that identify a discrete multiplier to use specifically for the casino industry.

Notes on AEG Executive Summary (pages one through five)

The items in the Executive Summary were addressed in the page by page analysis, as well as the "KEY POINTS" section of this submittal on a previous page. Even though redundant, a few items are briefly revisited for thoroughness.

AEG claims not to take a stance "for or against the development of the Wayland Casino"; this seems disingenuous. Their critique is part of the entirely negative series of document submitted by the Grand Rapids Chamber.

They claim that there is a lack of justification in the base report, yet fail to identify specific items that are incorrect, fail to fully note the many data points in the base study. They also fail to discuss the size of the overall market existing market, particularly present visits by the Grand Rapids area population to casinos, and future visits if the Emmett Township casino opens.

AEG mentions their consideration of travel time, yet the 2002 Michigan Consultants base report does provide a detailed methodology, representative of the existing and future markets, competition, and travel distances. Identified above in this response are problems that can occur if travel times alone are relied upon.

AEG claims the frequency of gambler visits are not taken into account in the 2002 study, but indeed such visits are in the tables and narrative provided by Michigan Consultants in the base report. AEG claims that there is *"under representation of existing and potential competition"* yet AEG ignores the impact scenario (which is vital) of the possibility of Emmett Township casino and New Buffalo Township casino opening and Wayland not opening. AEG mentions "cannibalization" concerns, but does not provide a model of the present situation. It is relevant to note the operators of the casinos did not submit documents formally challenging the economic basis of the EA.

AEG mentions the choice of multipliers, but this supplement shows above that a reasonable figure, consistent with studies performed elsewhere, was used.

AEG uses "NIGRA" rather than "IGRA" in the Executive Summary.

Page 5 of the Executive Summary provides the same Table that appeared on page 19 of their report. The comments for that page and Table were offered above in this response document. Essentially, the AEG claims are unfounded, and not based on any clear model of present gaming expenditures and visits in Michigan. The Table also does not consider other scenarios that may likely occur if Wayland does not open but other casinos do.

A Critique of

Market and Economic Impacts of a Tribal Casino in Wayland Township, Michigan

by

The Anderson Economic Group

Jonathan B. Taylor
Cambridge, Massachusetts
4.18.04

EXECUTIVE SUMMARY

The Anderson Economic Group (AEG) has put forward a forecast on behalf of the Grand Rapids Chamber of Commerce that purports to show that a Gun Lake Pottawatomi casino in Wayland would shrink the Michigan economy and destroy jobs. Subsequently, the Senate withdrew its support for the negotiation of a tribal-state gaming compact to be signed under the auspices of the Indian Gaming Regulatory Act of 1988 (IGRA).

This document analyzes the AEG methods and prediction, and it concludes that AEG's report is too badly flawed to be the basis for policy action. In summary:

- AEG's prediction of economic shrinkage resulting from casino introductions does not conform to common sense. If it were true that casinos shrink economies, AEG could have cited ample in-state and out-of-state experience to make its case rather than resort to a complicated and vulnerable forecasting method (see Section II, below).

- AEG's forecast contradicts neutral, comprehensive, and systematic research on the economic effects of casino introductions conducted under the direction of the National Gambling Impact Study Commission. That research shows casinos to be associated with economic vitality not the recessionary effects, which AEG forecasts (Section III).

- AEG's forecast is an amalgamation of sources, assumptions, data, and relationships. As such, it is extremely vulnerable to the well-known garbage-in-garbage-out weakness of computer models. Despite this inherent limitation, the AEG report contains no effective corroboration to demonstrate that it has avoided the pitfalls of its approach (Section IV).

- The core of the AEG forecast is the modeling of competitive "harms" between a Wayland casino and other establishments across Michigan, *as if those harms matter for public policy.* Not only does public policy encourage such competition, AEG's modeling of it diverges widely from microeconomic experience and research and thereby gives rise to the wide deviation of its forecast from systematic research (Section V).

More broadly, the effect of AEG's work is hardly benign. Long-standing opponents of Gun Lake commissioned and now use AEG's forecast to obstruct the workings of IGRA's framework for negotiating how Indian gaming proceeds. And yet cannot be overstated: The AEG report is not robust enough to justify any public policy on gaming, let alone overturn policies that rightly promote competition and support Indian self-government.

I. INTRODUCTION

The Anderson Economic Group has constructed a forecast of the effects of a Gun Lake Pottawatomi casino in Wayland that is too unreliable for making policy.

The Anderson Economic Group (AEG) has produced a forecast of the economic effects on the State of Michigan of a casino proposed by the Match-E-Be-Nash-She-Wish Tribe (a.k.a. Gun Lake Band of Pottawatomi Indians) in Wayland, MI (Anderson, *et al.*, 2003). Despite AEG's claim to "refrain from taking a side for or against casino development or gaming"(p. 1), AEG's analysis on behalf of the Grand Rapids Chamber of Commerce finds that a Wayland casino would shrink the Michigan economy and destroy jobs (pp. 4-6).[1]

To arrive at this purported effect AEG constructed forecasts of casino revenues under different competitive scenarios and then built a model in a "mathematical and simulation software environment" to assess how the forecasts would ripple through the Michigan economy (pp. 2, 22, Appendix C). The forecasts and the mathematical model are built of a varied collection of assumptions, data sources, and mathematical relationships, yet the report describes none of the necessary effort to connect the calculations to real-world experience, to existing research on casino introductions, or to relevant policy questions.

The result is a prediction that a Wayland casino operated by the Band would bring economic growth to Allegan County and "Southeast Michigan," but it would shrink the economy of Grand Rapids (Kent County) and every other region in Michigan, too—from "Northern" and "Middle Michigan" to Ottawa County (p. 4). AEG asserts that from Traverse City to Ann Arbor, consumers would withdraw their spending from movie theaters, boat marinas, other casinos, and the like so that they could play the slots in Wayland. What's worse, according to the AEG report, the total losses in the rest of Michigan exceed the gains in Allegan County and southeast Michigan (p. 4).

The authors repeatedly assert their bona fides to be "rigorous"(pp. 1, 2, 7, 8), "sophisticated" (pp. 2, 22), and "analytically thorough" (pp. 1, 8, 17), yet AEG's predictions are not *reproducible* in any meaningful sense of the word that would relate to science or policy. "Believe our 500-equation, 500-assumption model," the report would seem to say, "because we really are better at doing this than any one else." Never mind that the essentials of AEG's forecast and model could be used to show that virtually *any* consumer-

[1] Numbers and document section references in parenthesis without reference to author, here and henceforward refer to (Anderson, *et al.*, 2003).

oriented business whose profits go out of state would *shrink* the Michigan economy. Take, for example, the very profitable and privately held In-N-Out Burger, which has locations in California and other western states. Michigan citizens can only consume so many lunches; so "letting" In-N-Out Burger into Michigan will cannibalize the sales of Michigan suppliers of meals. AEG's implicit inference is that the Michigan legislature should bar the gates to insidious firms who would employ Michigan residents while providing customers with goods and services that they prefer to what they are currently consuming. If not, such firms will take their ill-gotten gains with them to foreign lands at the expense of Michigan businessmen and women who are deserving of protection from competition. By this logic, AEG would also apparently advise the Governor against recruiting Toyota to build a plant in Michigan because to do so would send profits out of state at the expense of the Michigan economy.

The Michigan Senate has taken the bait. In contravention of principles of sound policymaking with regard to economic competition and Indian self-determination, the Senate is now picking winners and losers in the economy of southwestern Michigan. It has withdrawn its prior support for a Gun Lake gaming compact under the guise of advancing the aims of the recently passed Proposal 1 (which would freeze gaming development) despite that initiative's explicit exemption for Indian tribes. The Senate reversal is not only an affront to the reading skills of the Michigan voter, but it undermines the self-governance rights of Indians.

The Supreme Court of the United States, the US Congress, the Michigan government, and the Michigan voters have concluded that Indian tribes by reason and right ought to have casino compacts executed under the balancing frameworks of the Indian Gaming Regulatory Act of 1988 (IGRA). AEG has not provided evidence that any past compact or casino introduction has shrunk the Michigan economy, and their forecast that Gun Lake will do so goes against common sense and systematic research. The forecast is not credible in its construction. It is wrong in its conclusions. More importantly, it is misguided in its implied application. The AEG report provides insufficient basis to justify the "not-in-my-backyard" (NIMBY) position of the Grand Rapids Chamber. Because AEG's forecast is unsupported by real-world corroboration and verification—indeed it contradicts such evidence—the report does not warrant withdrawal of Senate support for a compact either.

II. AEG's Forecast Goes Against Common Sense

If AEG's forecast that the Michigan economy will shrink with casino introductions is generally true, why have scores of states repeatedly introduced and expanded casino gambling?

Before even delving into the forecasting assumptions and models, the lay reader can readily see the need to approach AEG's work with a skeptical eye. If the AEG predictions were generally true, the other Indian casinos in the state clearly must have had a recessionary effect on the Michigan economy. Chambers of Commerce from Cheboygan to Jackson must have raised a hue and cry about jobs departing for the Indian casinos and related attractions across the state in Traverse City, Mount Pleasant, and Sault Ste. Marie. Surely there must have been after-the-fact empirical studies showing Michigan's economy shrinking with casino introductions. Is there a reason the "analytically thorough" AEG did not cite them?

Likewise by AEG's forecasts, numerous states as diverse as Iowa, Indiana, Illinois, and Mississippi must have damaged their economies with casinos. But they approved (and in many cases expanded) casino options at no risk of being hoodwinked by Indians (because they lack in-state tribes). How could that be? What about the voters of Arizona who passed an initiative loosening the restrictions on the size and scope of Indian gaming *after* almost a decade of first-hand experience with its allegedly recessionary effects? How did they get duped? Clearly by now somebody like the National Council of State Legislatures must have a white paper on how not to shrink your state economy with casinos, but again, why did the "analytically thorough" AEG not cite them? Would the Nobel Laureates in Economics not also be decrying the shrinking US economy as the share of personal income spent on gambling has more than doubled and legal gambling revenues have increased 1600% between national commission reviews in 1975 and 1999? (Gerstein, *et. al.*, p. 3)

In short: No.

The AEG report has the courage of its assumptions and stands as one of the most audacious kinds of economic forecasts—a forecast that does not look askance at history, at its own ability to "forecast" past events, at corroborating impact studies, or at after-the-fact data on its subject. Since Michigan's Indian casinos have not brought contraction to the Michigan economy over the last decade, even the lay reader can see that AEG ought to offer some corroboration from the real world to substantiate its unconventional claims. They do not do so, and consequently their forecast should be treated with deep skepti-

cism. Indeed because AEG did not cite ample evidence from Michigan and out of state and chose instead to apply a complicated, vulnerable, and untested forecasting method, no reasonable person should make policy based on AEG's predictions.

III. AEG'S FORECAST DIVERGES FROM SYSTEMATIC RESEARCH

Research chartered by an independent national commission shows that casino introductions are associated with economic vitality, contradicting AEG's forecast of recessionary effects.

The National Gambling Impact Study Commission—a congressionally chartered body comprising a rough balance of gambling industry representatives and gambling critics—solicited a meta-analysis of casino impact studies by Adam Rose and Associates. That review of more than 100 impact studies concluded:

> Economic theory and the preponderance of evidence indicate that the aggregate direct and indirect impacts of the construction, operation, and taxation of casinos are significantly positive. Broader economic costs relating to such factors as the use of government services and changes in property values are not insignificant, but they do not come close to canceling out the more conventional output, income, and employment gains (Rose, 1998, p. i).

That same Commission also contracted with the University of Chicago's National Opinion Research Center (NORC) to examine US communities over 16 years to measure changes in socioeconomic conditions associated with casino introductions. NORC's random-sample review of 32 indicators of socioeconomic health—covering 16 years in 100 communities, half of which witnessed a casino introduction—showed substantial socioeconomic gains and no discernible adverse effects. Relative to the control group, which experienced no casino introductions, communities within 50 miles of a casino introduction experienced:

- A 12% decline in unemployment (roughly a one-point decline);
- A 13% decline in income from welfare programs;
- A 17% decline in income from unemployment insurance;
- A 3% decline in income from other transfer payment programs;

- No discernible change in total per capita income, notwithstanding the declines in income derived from welfare programs; and

- No discernible change in seven indicators of crime, three indicators of bankruptcy, and one indicator of infant mortality. (Gerstein, *et al.*, pp. 70-71).

This *ex post* review of a random national sample of government statistics by a neutral academic party indicates that casino introductions are associated with regional economic vitality. NORC arrived at these findings neither by failing to address gross vs. net effects (as AEG repeatedly complains of economic studies, pp. 1, 8, 17) nor because NORC layered assumption upon assumption in a constructive forecast as AEG did—see below). When NORC found that unemployment declines and families depend upon welfare less when casinos are introduced, it uses standard-issue social science statistical techniques that are used to assess everything from cigarette smoking risk to the income benefits of college education.

A further investigation of NORC's dataset (not associated with the Commission's review) found that when the introduced casino was an Indian casino, the positive effects on the *non-Indian* community were even more pronounced (Taylor, *et al.*, n.d.). In particular, that research found that non-Indian communities proximate to Indian casinos experienced:

- A narrowing of the income gap—total incomes rose;

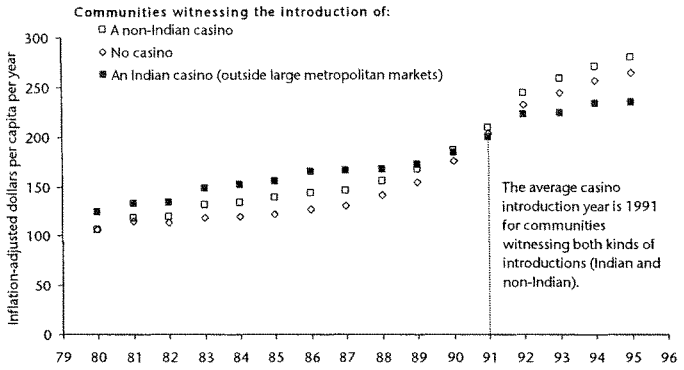
- A reduction in welfare dependence at an even more pronounced rate;

- No discernible increases in social ills (e.g., bankruptcy); and

- Decreases in some crimes (Taylor, *et al.* n.d, 21-26).

The effect is particularly visually apparent in the data on welfare. Figure 1 shows that relative dependence upon welfare started higher and finished lower in non-Indian communities that were close to Indian casino introductions.

Figure 1
Casino Introductions and Welfare Dependence in Non-Indian Communities



Taylor, *et al.* (n.d.), Fig. 1.

Yet despite its repeated claims to be "analytically thorough," AEG's report does not examine or evaluate any of the above research, let alone reconcile its forecast with the demonstrated positive economic experience of scores of communities that witnessed casino introductions within fifty miles. (Wayland is twenty-five miles from Grand Rapids, making NORC's research directly relevant to AEG's forecasting project.) Because the Commission's systematic and neutral research of after-the-fact consequences directly contradicts AEG's forecast, public policy should not be founded on AEG's predictions.

IV. AEG's Construction of the Forecast Generates Error

AEG's forecast connects a host of data sources, methods, and assumptions whose combined reliability is never tested to determine how far it might be from reality.

Forecasting involves a certain degree of imprecision, of course, but the way AEG has constructed its forecast is particularly prone to error. Applying AEG's method to a more familiar industry will make clear why. Suppose again that a formidable competitor like California's In-N-Out Burger enters the Michigan food market. Further suppose that the laws of Michigan constrain how many fast-food franchises there are such that In-N-Out Burger makes profits that are quite above what most businesses make selling soups, sandwiches, and groceries. And finally suppose that out-of-state investors own In-N-Out Burger.

The AEG recipe for simulating the impact of In-N-Out Burger on the State of Michigan would run something like this:

1. Assume every dollar In-N-Out Burger makes is a dollar lost to someone else—particularly from another burger restaurant but also from another industry altogether (i.e., "redirected expenditures" or "revenue from expenditure shifted from other industries", p. 3). Do this without analyzing whether consumers might be better off with more options, more geographically dispersed.

2. Assemble GIS and local demographic data, and add to that, KPMG data on how frequently people attend fast food restaurants (but do so without verifiable citation that would aid in testing reproducibility per fn. 8).

3. Apply data from a neighboring state study regarding how far people are willing to travel to restaurants (fn. 2).

4. Assume (wholly without foundation) how geographic competition between burger restaurants works (per the discussion of Table 2 on p. 14).

5. Insert these data and assumptions into a "mathematical and simulation software environment" where they will generate economic relationships between firms and consumers over a geographic region in relationships that appear to bear little connection to how other economists think about the problem (see the discussion at Figure 4 below).

6. Take the resulting forecast of revenue losses to all burger restaurants and subtract them from the prediction of In-N-Out Burger's revenue, and assume from there that the remaining revenue to In-N-Out came from other industries.

7. Insert the burger restaurant losses and the other industry losses into a "mathematical and simulation software environment" to yield multiplier effects across every industry in the state.

8. Weigh the job and revenue losses and their associated multiplier effects against the gains.

9. When it shows a net loss conclude:

> To support one job, it requires more expenditure at [an In-N-Out Burger] than at the average non-[In-N-Out Burger] establishment. This is because a large portion of the [In-N-Out Burger] expenditure

> is directed (1) out of state, and (2) to uses that have a lesser spin-off effect on the economy (p. 6).

The risk that a forecast with so many moving parts wanders away from reasonable estimates is considerable. If a link or two in the chain of estimation is sufficiently deformed, the error will propagate through the calculations, rendering the whole approach unfit for any policy use. The fact that AEG constructed this model with so many unverified relationships, un-cited sources, assumed behaviors, and mixed-and-matched data means that the report bears an extremely high burden to corroborate its intermediate and final predictions with reality.

The adage "Garbage in, garbage out" is a warning about "mathematical and simulation software environments" like AEG's. The weakness of such constructive models of economies explains the core failings of planned economies—economies where governments would ascertain, among other things, which competitors should be in which markets. To be realistic, forecasts like AEG's must be verified against historical experience, out-of-state experience, empirical literature, and other forecasting approaches. AEG does not provide even the most minimally adequate verification of its techniques. On that basis alone, its conclusions cannot be trusted and certainly should not be the basis for policy.

V. THE COMPONENTS OF THE AEG FORECAST ARE UNRELIABLE

Certain critical individual elements of the AEG forecast are fatally wrong and explain in significant part how AEG's conclusions diverge from common sense and systematic research.

Not only is the architecture of the AEG forecast flimsy, but also many of its critical building blocks are fatally unreliable. The cornerstone of the AEG forecast is the modeling of competition between the Wayland facility and other spending opportunities in Michigan (including casinos). If this component of the forecast is incorrect (it is), the whole structure crumbles (hence the deviation from common sense and systematic research).

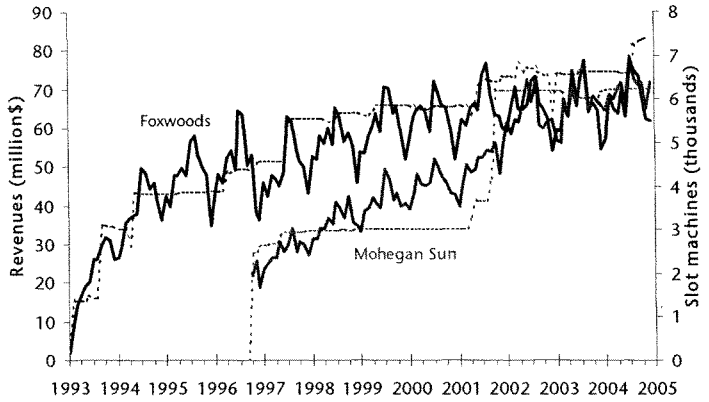
Recall that AEG forecasts economic shrinkage everywhere in Michigan except Allegan County and "Southeast Michigan" (p. 4). These losses arise, according to AEG, from competition between the proposed Gun Lake casino in Wayland and the spending opportunities available in those regions—both gambling and non-gambling spending. However, competition at the distances used by AEG is unlikely to be damaging to the Michigan economy.

First of all and most important, such competition (whether at a distance or not) is not properly grounds for policy intervention blocking Gun Lake. Self-professed neutrality aside (p. 1), AEG's explicit aim is to forecast inter- and intra-industry competitive "harms," *as if such harms ought to matter.* Perhaps they matter to AEG's client, but AEG has not shown why they should reasonably matter for *policy.* Our governments generally do not (and should not) offer protection to, for example, IBM's market share from Dell's encroachment simply because the economy of Armonk, NY (home of IBM's headquarters) would shrink without it. Longstanding US and state policies, ranging from antitrust to procurement, recognize the benefits of competition and encourage it. AEG's explicit framework invites policymakers to jump into markets because one party is competing with another. It cannot be stressed enough: lawmakers should not take this bait.

Second, even if AEG had demonstrated that such competitive "harms" somehow mattered for public policy, it is not a foregone conclusion that casino-on-casino competition has a negative effect on competitor revenues, as AEG would assume (per Item 1 in the recipe above). Some of the largest casinos in the world have opened in southeast Connecticut and in Detroit, and because they did not open simultaneously, their experience sheds light on the casino-on-casino competition that AEG forecasts. Monthly revenues show that even monumental relative capacity additions at very close range do not necessarily appreciably nor permanently alter the total revenues of incumbent casinos.

Figure 2 shows twelve years of data from eastern Connecticut where some of the largest and most abrupt capacity additions in the industry have been made (dotted lines and right-hand scale). Foxwoods began operating in the early 1990s, first as a bingo operation, then as a compacted casino with no regional casino competition. Less than 14 miles away in October 1996, Mohegan Sun opened and thereby increased the slot machine capacity of the region by nearly 60%. Five years later in October 2001 Mohegan Sun opened a major expansion and added another 20% to the existing capacity in that month alone, bringing the total combined Foxwoods and Mohegan Sun capacity increase from March to October of that year to 40%. In neither event does Figure 2 show a significant and permanent decline in Foxwoods revenues (solid lines and left-hand scale).

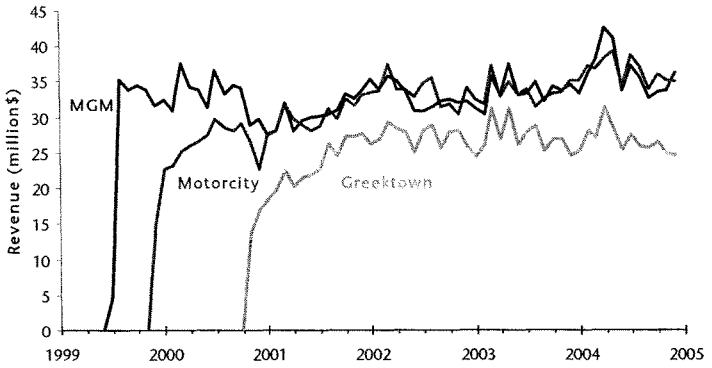
Figure 2
Monthly Slot Machine Capacity and Net Revenue
Connecticut, 1993-2004



State of Connecticut, Division of Special Revenue, 2005a, 2005b.

The same basic behavior of revenue data is evident in Detroit. Figure 3 shows the evolution of Detroit casino revenues over a half decade. Recall that when they entered, the Detroit casinos were immediately competing in a region that had been served by the nearby Windsor facility for some time, so presumably, their revenues would have been under more competitive pressure from the beginning than in eastern Connecticut. Notwithstanding their mutual close proximity of about one-and-a-half miles, precipitous and permanent declines in revenues are not apparent upon entry of competitors here either. Compare the Connecticut and Detroit evidence to AEG's forecast that assumes revenue encroachments of between 5% and 36.5% (depending upon distances—more below) for casinos that are no closer than a hundred miles from Wayland, most of which are considerably further.

Figure 3
Detroit Casinos' Monthly Net Revenue
July, 1999 – December, 2004



Michigan Gaming Control Board (2004).

Thus, the readers of the AEG report might reasonably ask: How is it that AEG forecasts revenue losses at casinos two, three, or even more hours' driving time away from Wayland, when at much closer ranges, real-world observation of casino introductions and revenues shows little or no such encroachment. More to the point, if casinos offering virtually identical goods and services at close proximity are capable of maintaining revenues when new entrants arrive, then should not distant boat marinas, movie theaters, and hunting lodges offering quite distinct leisure services also be able to withstand the supposed statewide onslaught of competition from Wayland? If so, then the negative effects in the AEG report for "Northern Michigan" and "Middle Michigan" (p. 4) drop toward zero, and AEG's forecast quickly flips to the positive for Michigan. And again, no policy should be made to block the Wayland casino on the basis of the AEG forecast.

Third, the way AEG gets to its unusual predictions is by making assumptions that are, by all appearances, wholly ungrounded. AEG's Table 2 forecasts the behavior of consumers at various distances and under varying levels of casino-on-casino competition. For example, when a group of people is in Casino A's "secondary" trade area and in Casino B's "tertiary" trade area, then 63.5% of the customer base in that location is assumed to go to Casino A and 36.5% assumed go to Casino B. (Note the precision of the assumption.) Table 2 is at the foundation of the rest of AEG's forecast, yet Table 2 is apparently a whole-cloth creation of the Anderson Economic Group. Its predictions of

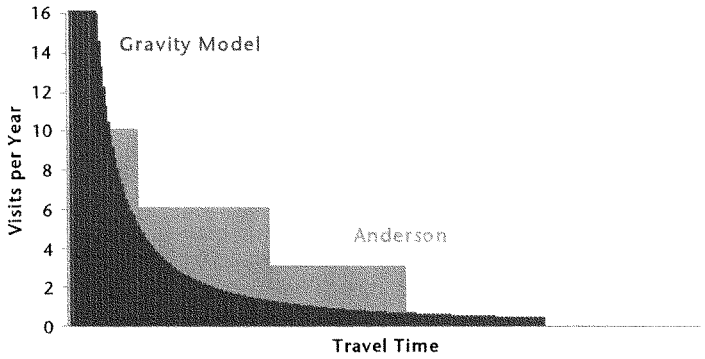
corporate and human behavior have no apparent basis in empirical research, prior literature, visits to casinos, polls—nothing.

Not surprisingly, the prediction deviates significantly from observed behavior. The shaded step function in Figure 4 shows how the assumptions of AEG's Table 2 predict attendance over distance (in conjunction with AEG's primary, secondary, and tertiary market definitions and with KPMG's un-cited participation rate). Economists who have real-world data regarding the actual participation (and expenditures) of consumers at casinos do not use step functions like AEG's to describe consumer and company behavior over geography. Instead, they derive what are generally known as "gravity" models from actual data on customer behavior (see e.g., Cummings, 2003). The black region in Figure 4 schematically displays the pattern of behavior observed directly in casino player club data and other actual visitation data.[2] This empirically observed relationship is dramatically different from AEG's: the observed visitation falls off very quickly with distance. And since customers attend a casino with exponentially declining frequency the further away they are, competition between facilities at a distance must decline rapidly too.

In fact, AEG's failure to test (let alone implement) a much more empirically justifiable model of consumer behavior explains much of how AEG can arrive at the rather surprising and unusual finding that regions far from Wayland (e.g., "Northern Michigan," "Middle Michigan") will be competitively vulnerable to Wayland. AEG assumed what they wanted to prove: the step function assumes that competition will be significant at long distances. More to the point, AEG's failure at the micro level to accurately reflect experience (e.g., Figure 2 and Figure 3) and research (e.g., Cummings) explain the macro deviations of AEG's forecast from the systematic research on casino economic consequences (i.e., Rose and Gerstein, *et al.*). Recall also that this very competition is the objective of good economic policy in the first place, and AEG has not demonstrated how a Wayland facility would be a threat to it.

[2] Note that the schematic gravity model function in black in Figure 4 is *not* empirically derived from data in Michigan or anywhere else, as far as its height and its left-right position are concerned. Only in its curvature is empirically derived.

Figure 4
Anderson Economic Group: Annual Visits by Travel Time Assumption



Note: Gravity model represented schematically.
Anderson, *et al.*, p. 9.

The report also fails on a number of occasions to adequately describe significant and relevant economic attributes of the facility it models. For example, the likelihood that Gun Lake's casino payments to out-of-state investors will continue on forever (or even for all of AEG's decade of analysis) is near zero. Indian tribes all across America let their management contracts expire (the terms are capped by IGRA at seven years), and they even buy them out ahead of expiration. By whatever means they reach the point of full control, the tribes continue at that point investing in regional economic diversification, government services, socioeconomic investment, and a host of other on-reservation and in-state activities—probably with even more vigor. In the same vein, there is also no risk that Gun Lake will move its headquarters and operations to Mexico or China.

AEG also glosses over the revenues that the Wayland facility will pay to Michigan governments. Under the terms of Michigan-tribal compacts 2% of revenues flow to local governments to address impacts and 8% flow to the State general fund. Most of the tribes in Michigan no longer pay the 8% funds under an exclusivity clause that does not require them to pay after the opening of the Detroit casinos. The Gun Lake facility will grandfather the Detroit casinos, thus making the 8% transfer to Michigan a requirement from the beginning. AEG skirts discussion of what the ebb and likely new flow of Michigan tribes' 8% funds means for the alleged shrinking of the Michigan economy. Those dollars are cannot be taken out of state and probably matter to Michigan taxpayers.

VI. CONCLUSION

Public policy should not be influenced by AEG's forecast.

Simulation and forecasting are not everywhere unreliable or unhelpful, but AEG has demonstrated their essential weakness. Detached from on-the-ground data, from other research, from empirical tests of assumptions, and from a multitude of other possible verifications, simulations and forecasts easily wander astray. Despite its self-described sophistication, rigor, and thoroughness, the AEG report blithely ignores the risks of forecasting. Ample in-state experience of casino introductions exists, yet the AEG report does not search for it. More damaging still, the AEG report also fails to put itself to the premier test of such models: to forecast the past accurately. The introduction of Soaring Eagle, Kewadin, MGM, Greektown, or any other casino in Michigan (or elsewhere) offers the acid test of AEG's approach. The forecast ignores them, and it is no wonder their results do not correspond with common sense or empirical research.

At best, AEG's failure to pull away from their "mathematical and simulation software environment" to explore even the most easily accessible data and research on casino competition and impacts belies AEG's repeated self-description as "sophisticated" and "analytically thorough." More likely, the fact that the AEG forecast goes so clearly against common sense, systematic research, and the Michigan experience, implies AEG has bought into the long-standing NIMBY intransigence of its client, the Grand Rapids Chamber of Commerce.

The effect of AEG's "neutral" work is hardly benign public policy results. Long-standing opponents of Gun Lake commissioned and now use AEG's work to obstruct the workings of IGRA's framework for negotiating *how* not *whether* Indian gaming proceeds. Gun Lake seeks to exercise its legal prerogatives as a federally recognized Indian government by opening a casino in Wayland. The Band has found an investor willing to stake its capital on the market opportunity in the Tribe's region. Various environmental and other reviews have been undertaken to assess the effects of the facility. Likewise various discussions, meetings, and negotiations have taken place to ensure that traffic intensity, law enforcement needs, and other external impacts are addressed. The research cited above from the National Gambling Impact Study Commission demonstrates that now that these public infrastructure issues are resolved, there is nothing for the region to fear.

Per Congress, Indian gaming policy is predicated on the *good faith* negotiation of compacts between tribes and states over a) regulation and b) scope

of games. Nothing in IGRA gives states veto power over whether gaming proceeds on a reservation. If the Michigan Senate rescinded its support for a compact with Gun Lake on the basis of the AEG report, perhaps it has failed to examine the issue in good faith. Perhaps it did not walk through the layperson's skeptical examination of AEG's results. Perhaps it did not retrieve the readily available and plainly contradictory independent and credible economic research. If so, the Senate has fallen victim to special-interest proclivities in contravention of Indian self-determination and the explicit Indian exemption of Proposal 1. Moreover, it has done so on behalf of narrow Grand Rapids interests touting junk science. The AEG report is not robust enough to justify any public policy on gaming, let alone overturn policies that rightly promote competition and support Indian self-government.

ABOUT THE STUDY AND AUTHOR

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Recent work:

Tribal Self-Government and Gaming Policy: The Consequences for Indians and Washington State. Cambridge: The Taylor Policy Group, 2005.

American Indians on Reservations: A Databook of Socioeconomic Change Between the 1990 and 2000 Censuses. Cambridge: Harvard Project on American Indian Economic Development, 2005, (with J. Kalt).

Social and Economic Consequences of Indian Gaming in Oklahoma, *American Indian Culture and Research Journal,* 28:2, 2004, 97-129(with K. Grant and K. Spilde).

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PREPARED STATEMENT MICHAEL B. JANDREAU, CHAIRMAN, LOWER BRULE SIOUX TRIBE

I respectfully submit the following statement to the Senate Committee on Indian Affairs with regard to the Oversight Hearing on Taking Land into Trust. I request that my statement be made a part of the written record.

I am Michael Jandreau, chairman of the Lower Brule Sioux Tribe. I have been chairman for over 25 years. During my tenure I have overseen countless land transactions and dealings involving every kind of land possible from private non-Indian owned property within the boundaries of our reservation to land held in trust by the Federal Government. Of all the types of transactions, taking land into trust is by far the most burdensome and cumbersome of all; indeed I believe that it is a flawed process. Let me illustrate with an example that has been plaguing our tribe for 15 years.

The reservations of South Dakota are among the poorest in the Nation. Lower Brule, which has an unemployment rate of 30 percent is actually considered to be one of the most prosperous in South Dakota. One of the main reasons for the severe poverty is the Pick-Sloan water development project, authorized by Congress in 1944 through the Flood Control Act. As a result of this act, over 22,000 acres, approximately 10 percent of the entire reservation and our best bottom-land was flooded. In addition, it required resettlement of nearly 70 percent of the resident population. To date, we have still not received fair monetary compensation from the Federal Government for the loss of this land. Even worse are the deep spiritual and cultural losses, which can never be repaid. Since the flooding we have struggled to spur economic development. However, several of our attempts have proved quite successful, including our tribal farm, which is among the most successful of its kind.

In 1990 the Lower Brule Sioux Tribe acquired 91.7 acres of land in Oacoma, SD. The land is where the original Lower Brule Agency was located, is within the territorial boundaries of the original Lower Brule Sioux Reservation, and is within the territorial boundaries of the Great Sioux Reservation as defined by the Ft. Laramie Treaty of 1868. There is a clear and undeniable aboriginal connection to the land. The land is also on Interstate 90, which is the main east-west highway through South Dakota.

The tract of land is an ideal location for economic development projects utilizing our unique culture and can serve not only our tribe, but the entire Sioux Nation as well. The tribe is currently using the land as the Southern Gateway to the Native American Scenic Byway, a cultural tourism enhancement project. The Byway not only benefits the tribes of South Dakota, but many non-Indian communities as well, including Oacoma, Chamberlain, Ft. Pierre, and Pierre.

The tribe applied for trust status on 1990 and we are still in limbo. Governor Janklow (R) supported our efforts to take the land into trust as he saw it as a beneficial to all of South Dakota (see attached letter). It is placing the land in trust, and maintaining full jurisdiction over that land that is most important to our tribe.

In 1991 the Bureau of Indian Affairs issued a notice of intent to take the land into trust. An appeal was filed by the city of Oacoma, but dismissed. In July 1992 the land was taken into trust for the Lower Brule Sioux Tribe. The city of Oacoma continued legal action, joining with the Attorney General of South Dakota (notwithstanding the Governor's position) in filing suite against the Department of the Interior, citing that the Man Reorganization Act was unconstitutional, and hence, the taking the land into trust for the tribe was unconstitutional. In 1995 the State and Oacoma won their case. It was vacated and remanded by the Supreme Court, and the Secretary of the Interior was directed to reconsider his decision to put the land into trust. On May 14, 1997 the Department published notice in the Federal Register that the land was no longer in trust. As a result of the decision, the rules for taking land into trust were altered. The new rules made it easier for city, county, and State governments to delay decisions by the Federal Government to take land into trust.

In 2000 Lower Brule reapplied for the land to be taken back into trust and the process was repeated, with the State of South Dakota and the city of Oacoma filing suit yet again. Currently, we are awaiting another decision from the Eight Circuit. We intend to take whatever steps are necessary to see that this land once again becomes part of the Lower Brule Sioux Reservation. The process has dragged on for 15 years, through multiple Administrations and Congresses. Something must be done.

The entire land into trust process must be scrutinized and changes made accordingly. I would propose the following changes, which would serve to expedite the process and make relations between various parties more amicable.

- Procedural Timelines: Currently, there are no timelines for the Department to issue decisions concerning land into trust applications. Reasonable timelines should be set by Congress so that the process does not go on indefinitely.
- Report to Congress: The Congress should require the Department to send to Congress an annual report on the status of all pending trust applications. Perhaps this attention would serve to expedite the process.
- Arbitration: When a land into trust application is challenged the Department should be required to bring together all parties for arbitration consistent with treaty rights, principles of sovereignty and the unique Federal-tribal government-to-government relationship.

I applaud the committee's leadership and hard work in taking on this very important issue, and I hope that it becomes more of a priority. I am confident that with your leadership Mr. Chairman and Ranking Member Senator Dorgan that land into trust issues will be addressed in a thoughtful and meaningful manner and that will be fair to all parties involved. I stand ready to assist the committee in any way possible.

Thank you for the opportunity to share my thoughts with the committee.

STATE OF SOUTH DAKOTA,
December 15, 1998.

Hon. BRUCE BABBITT,
Secretary, Department of the Interior,
Washington, DC.

DEAR MR. SECRETARY: The Lower Brule Sioux Tribe currently owns 92 acres of land in Oacoma, SD. The tribe has asked you to take this land into trust.

Based upon their new business plan and assurance that the tribe will not conduct gaming at this location, we are pleased to support the tribe's application for trust status.

Sincerely,

WILLIAM J. JANKLOW, *Governor*

PREPARED STATEMENT OF SANTA YNEZ VALLEY CONCERNED CITIZENS, PRESERVATION OF LOS OLIVOS, AND PRESERVATION OF SANTA YNEZ

Mr. Chairman and members of the committee, thank you for the opportunity to submit this testimony on the important subject of the legal requirements and procedures for decisions by the Bureau of Indian Affairs [BIA] on taking land into trust for Indian tribes. This is an issue that has generated considerable controversy throughout the Nation for many years, and it recently has become a significant issue in our local area. The problems with the trust land acquisition process are being brought home to the Santa Ynez Valley as a result of the actions of the Santa Ynez Band of Chumash Indians. As discussed in our testimony, the problems we are currently confronting in the Valley are the direct outgrowth of the lack of adequate legal controls over the procedures used to consider trust land acquisition requests and the criteria that govern BIA decisions. We are grateful for this Committee's timely consideration of the trust land acquisition issue, and we pledge our support and cooperation to your efforts to bring reform to the tribal trust land process.

The three organizations submitting this testimony, Santa Ynez Valley Concerned Citizens, Preservation of Los Olivos, and Preservation of Santa Ynez, have been established in recent years in response to concerns regarding the manner in which tribal activities could affect the environment and quality-of-life in the Santa Ynez Valley. In 2004, our organizations became focused on the way that the tribe was seeking to use the trust land acquisition process to develop land in Santa Ynez Valley in contravention of the local land use plans. Our organizations are comprised of residents, businesses and environmental interests united in the goal to protect the Santa Ynez Valley from unfettered tribal development.

The tribe has already engaged in considerable development activity in Santa Ynez Valley. It currently possesses approximately 111 acres of designated reservation land on which is constructed a highly successful 190,000 square-foot casino. The casino houses 2,000 slot and video machines, 40 table games, 14 poker rooms, a bingo room seating 1,000 patrons, four restaurants, and a gift shop. In 2002, the Chumash Indians financed a $150-million expansion of its casino and hotel, which was completed 1 year ago and is open for operation. The tribe also operates an oversized,

expandable wastewater treatment plant capable of handling significant additional development.

As the tribe itself has acknowledged, in the very short period of time the Chumash Casino has been open, it has become economically self-sufficient. In fact, each tribal member reportedly receives $360,000 annually from casino revenues. The tribe has been able to use casino revenues to support the Chumash tribal government, an education program paying for a portion of members' education beyond high school, a health clinic, and numerous other tribal purposes.

Despite this high degree of success, the tribe continues to request to have more land placed in trust for development. In January of this year, BIA announced its intent to accept 6.9 acres of land in trust. This land is located outside of the reservation boundaries, and it is supposed to be used for a commercial retail facility, parking lot, offices, and museum/cultural center. Our organizations decided to appeal the BIA decision because of numerous factors, including the other development plans which the tribe appears to be submitting to the BIA in a piecemeal manner. The BIA ignored the concerns expressed by our organizations and others regarding the tribe's plans for development, including our request that the BIA facilitate the development of a cooperative agreement between the county and the Tribe to protect local interests.

Within a few months of the BIA's decision on the 6.9-acre parcel, the tribe filed another request to have an additional 5.8-acre parcel of land placed in trust immediately adjacent to the 6.9-acre parcel. The reason for this trust acquisition is not clear, since the tribe indicated on its application that it does not intend to change the use of the land in any way. A look at a map suggests that the tribe is attempting to connect all of these and possibly other parcels to establish a contiguous stretch of trust land free from local control. It also may be trying to connect its current reservation to a large tract of property it seeks to develop with a local landowner, Mr. Fess Parker.

Over the last year, the tribe has engaged in negotiations with Mr. Parker to acquire an additional 745-acre parcel located about 1.5 miles from the 6.9-acre parcel and almost 2 miles from the tribe's reservation. In those negotiations, the tribe planned to develop this large, and exceptionally beautiful, tract of land cooperatively with its current owner, Mr. Parker, has a luxury housing development, two golf courses, and other commercial development. Mr. Parker proposed the plan to the tribe because he had for years been unable to develop the land commercially himself due to existing and accepted county land use restrictions. By having the land placed in trust, Mr. Parker and the tribe can evade local land use restrictions, which currently designate the land for rural uses only. In addition, there also may have been a plan under consideration to build a casino on this property. If that is the case, having the land connect to its reservation could possibly allow the tribe to evade other review requirements under the Indian Gaming Regulatory Act [IGRA]. The current status of their plans for the Parker parcel is unclear.

Regardless of whether the tribe intends to develop another casino on Mr. Parker's land, its efforts to acquire additional land in trust are undermining the land use plans in the Valley and will adversely impact the environment and quality of life in the region. We do not believe that Congress ever intended for the trust land process to become an evasion of community land use or environmental rules that would otherwise be applicable. In particular, we are concerned with the tribe's apparent desire to add parcels together that it argues are "contiguous" to each other to gain the benefit of more permissive BIA trust acquisition standards for such properties. Rather than reveal its overall plans, the tribe appears to be following a pattern of simply adding one parcel to another, piece-by-piece, in a gradual effort to expand its trust lands without ever undergoing full disclosure or review. Further, the Chumash request to have land placed in trust for no apparent reason would establish dangerous precedent to allow a successful tribe to take advantage of a process intended to help economically disadvantaged tribes attain self-sufficiency and effective self-governance.

The factual situation described above demonstrates the problems with the BIA's approach to trust land acquisition. The procedures and standards for making decisions on trust land requests are weak and ineffective, and they do not provide an adequate role for public participation. The combined effect of these deficiencies is to make it possible for tribes to have land removed from State and local control and taxation to the detriment of local communities without adequate justification or public interest review. Each of the principal problems with the trust land process is discussed below.

Need for Clear Standards. The current BIA trust land acquisition regulations are set forth in 25 C.F.R. Part 151. These standards predate the Indian gaming era that came into effect in 1988 with the enactment of the Indian Gaming Regulatory Act

[IGRA]. With the establishment of Indian casinos and the generation of incredible wealth for some Indian tribes, the potential for abuse of the trust land process has grown significantly. When the regulations were first promulgated, it was generally the case that tribes would seek to have land taken into trust for the purpose envisioned under section 5 of the Indian Reorganization Act of 1934 [IRA], where the statutory authority comes from. These were circumstances where additional land was truly needed by a tribe to achieve governmental and economic self-sufficiency. The regulations appear to have been generally adequate for evaluating most trust land requests in that context. Indian gaming has changed all that, however, because not only do many tribes now have the financial wherewithal to buy virtually any land in any place for any purpose, there is strong incentive to add to the wealth generated by Indian casinos by taking more land into trust, escaping the requirements of local land use planning which may prohibit casino-related development, and avoiding the need to pay any taxes or other government fees on the use of that land. This is a virtual bonanza for casino interests and developers. The problems presented by a procedure that allows sovereign tribal governments and their developer partners to escape all state and local regulation become even more apparent when real world situations are considered, as demonstrated by the situation we now confront in the Santa Ynez Valley.

The problem with the current regulations is that they are far too general and vague. There are seven criteria under the BIA regulations in 25 C.F.R. Part 151 for taking land into trust, and only three of these—purpose of trust land request, tribal need for putting land into the status, and impact on local governments—are of any real significance. Unfortunately, the regulations do not spell out in any way what these standards mean, and the BIA has developed no useful guidance over the years on how to apply them.

It has been over 70 years since Congress addressed the circumstances under which land should be taken into trust as a general proposition through the IRA. It is now time to revisit that question by providing specific standards as to the acceptable purposes for taking land into trust, the circumstances under which tribal need can be demonstrated, and how the concerns of local governments, and the represented public, would be taken into account.

In this regard, we believe it is particularly important to return to the basic purposes of land in trust. The purpose of the IRA was "to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." H.R. Rep. No. 1804, 73d Cong. 2d Sess., 1 (1934). The act encouraged "tribes to revitalize their self-government through the adoption of constitutions and bylaws and through the creation of chartered corporations, with power to conduct the business and economic affairs of the tribe" so that "a tribe taking advantage of the act might generate substantial revenues for the education and the social and economic welfare of its people." *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145, 151 (1973).

These principles should continue to apply. In circumstances such as those we are confronting in the Santa Ynez Valley, wealthy tribes that have achieved an extraordinary level of success and economic self-sufficiency should not be able to apply to have land taken into trust for vague and generalized purposes such as self-determination and consolidation of land holdings. At the very least, when such circumstances exist, Federal law should prohibit land from going into trust unless the tribe involved has entered into an inter-governmental agreement with the affected local government that provides for consistency with local standards and ensures that compensation is provided to cover the impacts associated with the development that is likely to occur on such lands. Most importantly, such agreements must be required to include a waiver of sovereign immunity and an agreement on judicial enforcement. They also should be subjected to public review. Unless standards such as this are developed, there will be no limit on placing land into trust; tribes will always be able to meet the test, and local community interests will be lost.

Limitation on Development to Proposed Uses. Another major problem with the trust land acquisition process is that it does not impose limitations on the use that can be made of such land once it is taken into trust. As a result, there is strong concern that tribes will identify one purpose, or claim only a very general intent for the use of such land, until the trust land decision is made. Then, once the land is in trust, the tribe will change its use to something entirely different that is objectionable to the local community, violates local standards, and should have been the subject of far more detailed Federal environmental review.

The Federal Government takes the position that it cannot impose deed restrictions on land titles held by the United States. While we do not necessarily agree with this concern, such a problem can be readily addressed by Congress in the con-

text of trust land acquisition. We believe it is critically important that tribes be held to their intended uses of the land that serve as the basis for BIA and public review.

Improved Public Review. The current trust land process does not provide for adequate public review. As demonstrated by the strong public controversy over many trust land requests, the effect of such action by the BIA has a very strong impact on local communities. Yet, BIA regulations have no provision that provides for public comment, they only provide for local governments with jurisdiction over the subject lands to submit information on tax loss and jurisdictional conflicts. The only way public comment occurs is through related legal requirements, such as the National Environmental Policy Act [NEPA]. When tribes develop proposals that are not addressed through a NEPA process involving public comment, such as an EIS, then there is no opportunity for such input at all.

We currently are confronting such a situation in the Santa Ynez Valley, where the Chumash Band is seeking to have the 5.8-acre parcel taken into trust on the theory that there will be no change in land use. Obviously, a parcel of land in this location, in a prime commercial location, will not go undeveloped. Yet, by arguing for no change in use the tribe could make an effort to avoid NEPA review entailing public comment. The California Environmental Quality Act does not apply because there is no State action. Obviously, any Federal decisionmaking process is improved by public input, especially one that has such a significant impact on local communities. The BIA trust acquisition process must be reformed to provide expressly for such public comment.

BIA Trust Land Checklist. The practice of BIA to avoid public review is amply illustrated by the recently released "Trust Land Acquisition Checklist." This checklist contains numerous provisions that are of concern to the public. It is focused primarily on trust land acquisitions in the gaming context, and includes things such as geographic limitations on the applicability of the critically important section 20 of IGRA, which prohibits gaming on post-1988 trust land except in narrow circumstances. The checklist also covers issues such as procedural limitations on how consultation under section 20 would occur, definitions of what constitutes gaming on contiguous lands, and other very important provisions. Many of these provisions are of considerable concern to us, yet BIA unilaterally issued this checklist as internal guidance to govern its actions and public involvement in trust land reviews without even seeking outside comment. Indeed, many of these provisions were included in proposed regulations issued in the past. This demonstrates that the provisions of a checklist qualify as rulemaking, yet the BIA has simply forged ahead in issuing this guidance on trust land issues of great importance to the public without any notice or comment.

The Need for Intergovernmental Agreements. Experience has demonstrated that many of the concerns associated with trust land acquisition can be addressed through the development of inter-governmental agreements between tribes and local communities. There is a strong record in this regard, and the possibility of such an agreement being developed in the Santa Ynez Valley for the 6.9-acre parcel is now under consideration. Our organizations strongly support the use of such agreements, provided they are developed with adequate public input, fully address local concerns, and are made enforceable in the appropriate court through waivers of sovereign immunity. We understand that the BIA generally supports the use of this approach, but far more needs to be done to develop these agreements and support their use. The BIA should be playing a more active role and encouraging parties to trust land disputes to pursue such agreement, and it should be developing prototype agreements that contain the provisions which are typically necessary for things such as sovereign immunity waivers. Successful use of intergovernmental agreements can help avoid trust land conflicts, and BIA should play a leading role in promoting their use.

It is clear that the trust land acquisition process is broken. The situation that is now emerging in the Santa Ynez Valley is a perfect example of this problem. Unfortunately, we do not believe that the BIA is doing enough to solve these problem areas. We encourage the committee to become actively involved in this issue and to use circumstances such as those occurring in the Santa Ynez Valley as the basis for oversight and reform. Thank you for considering these comments, and please let our organizations know what they can do to assist in your review and reform efforts.

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