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GAMING

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING ON THE REGULATION OF INDIAN GAMING

JUNE 28, 2005
WASHINGTON, DC

PART 2

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GAMING

TUESDAY, JUNE 28, 2005

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

The committee met, pursuant to notice, at 10:16 a.m. in room 106 Senate Dirksen Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Burr, Coburn, and Dorgan.

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

Senator DORGAN. I am going to call the hearing to order. I am Senator Dorgan, the vice chairman of the committee. Senator McCain, the chairman of the Committee on Indian Affairs will be with us momentarily. We just started a vote on the energy bill on the floor of the Senate moments ago, and as soon as the chairman votes, he will be here.

I am managing the Interior bill on the floor of the Senate, which is coming to the floor immediately following the energy vote, so I will have to depart for the floor. Senator McCain suggested that I begin as soon as I arrived at the hearing room. So I will do that and make an opening statement, and as I said, my colleague Senator McCain will be along shortly. I then will have to leave to go manage the Interior bill on the floor for the remainder of the day.

We have a hearing today in the Committee on Indian Affairs on the regulation of Indian gaming. We have previously discussed this issue in this committee, and we wanted to invite specifically today a number of representatives of Indian tribes to discuss with us the general subject of Indian gaming; what it means to tribes; what the opportunities are that it offers to tribes; what some of the challenges that they have experienced are; how they see and view the regulatory mechanisms that exist.

We felt it would be a useful opportunity and I believe the tribes feel the same say, to have this kind of an open discussion from the viewpoint of those elected governments of the tribes who are involved in gaming to discuss with us their view of it.

I want to make a couple of brief comments about the subject generally of Indian gaming. I come from a State that has four Indian reservations. Not unlike in many other areas of the country, the locations for the Indian reservations are areas of the State that are in remote areas, in many cases, without substantial industry or job

opportunities, or in some cases without substantial natural resources.

The tribes that have been located there over these many years have found it very, very difficult to exist. In many cases, they face full-blown crises in health care, education, and housing. I have spoken at great length about those challenges in many other hearings. We have all struggled to find ways to bring new industry, new jobs, new opportunities to the reservations, to provide new educational opportunities and to improve the educational facilities that exist on the reservations.

We have all worked in all of these areas to try to see if we can change things, and yet not very much has changed over a long period of time. Some years ago, there was a decision, the Cabazon decision, that determined that the sovereignty of Indian tribes allowed them to engage in gaming operations. That brought about an industry that has now grown to become a rather significant industry, somewhere we believe between $16 billion and $19 billion a year in Indian gaming.

Indian tribes as a result of that court decision have decided in many circumstances, I believe over nearly 250 of them, have decided to engage in gaming activities. Those activities have in some circles been controversial and in other circles have been a Godsend and a real boon to tribes that have been struggling for the kind of revenue stream that would give them an opportunity to make an investment in the people of their tribes. So we have stories, for example, cover stories or feature stories in Time magazine that describe certain elements of gaming in one way, and then we have others that describe it in another way.

From my point, Indian gaming has brought significant opportunities to certain tribes that found that they have a way to generate revenue that they previously had not had the opportunity to take advantage of. That revenue then goes into an income stream that allows the tribes to invest in the general welfare of the citizens of that tribe and to make investments to improve health care, to improve education, to improve housing on the reservations.

There are some other circumstances where the tribes through the recognition process are very small tribes with just a few members. I believe in one case there is a tribe with one recognized member, with a gaming facility; another with four, five, or six members, where a substantial amount of resources are developed.

Still, again there are the issues of the compacts with State Governments because in order to engage in gaming, the tribes must negotiate with the States, the Governors and the State authorities, for a compact. The question then has become what portion of that revenue shall the States be involved in, what kinds of compacts shall exist.

So all of these things have been worked through and worked out over now well over a decade. This gaming activity has grown and grown very substantially. As I indicated, it certainly includes with it challenges. Some of the challenges were discussed at a previous hearing we held. It brings with it also enormous opportunity for resources to be made available to people who previously did not have those resources.

So our committee recognizes both sides of this issue. We believe it is a very important issue. We believe decisions about this need to be made with the full consultation and a full discussion with the members of the Indian tribes. They are a sovereignty. No one gave them that sovereignty. That sovereignty is theirs. I know from time to time people say Indians were given sovereignty. That was not the case. The sovereignty is theirs.

We believe it is helpful and fruitful for us to have this kind of discussion today in order to hear from the members of the tribes with respect to their view of gaming. How has it worked? What benefit does it provide? What challenges has it posed? How do they view the regulatory mechanisms? That is the purpose of the hearing.

You have noticed that two of my colleagues have just joined us. Senator McCain, at your instruction I did proceed with an opening statement, and that is the point we are at now. I also indicated that I am managing our side of the Interior appropriations bill on the floor of the Senate as soon as this vote is over and will have to leave.

The CHAIRMAN. Thank you very much, Senator Dorgan. I am pleased to note you always carry out my instructions. I thank you for that. [Laughter.]

Senator DORGAN. There will come a time. [Laughter.]

The CHAIRMAN. Thank you very much, Senator Dorgan. I appreciate your involvement in this issue, your continued involvement, and I understand the requirement of your presence on the floor as we take up the Interior appropriations bill. I thank you for your continued involvement in this very important issue.

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

The CHAIRMAN. This morning the committee is holding the third in a series of hearings on the Indian Gaming Regulatory Act. This hearing is devoted to those most impacted by the successes and challenges of Indian gaming: Indian tribes. That success has not been achieved, however, without Indian tribes facing a number of challenges, some of which still confront them.

It is important to remember that when Congress enacted IGRA in 1988, it was not creating another Federal program for Indians. Rather, IGRA was an acknowledgment of the ingenuity of the Indian tribes in finding a legal economic activity that could provide jobs on the reservations and supplement the meager Federal support for necessary tribal government services; 17 years later, that ingenuity has proven to be a greater success than anyone could have imagined.

I also want to emphasize that IGRA was a direct result of the *Cabazon* decision. If it had not been for the *Cabazon* decision, there would not have been IGRA. Once that decision was made, then we had to do our best to find a workable relationship between States and tribes.

This success has not been shared solely by Indian tribes. According to a recent economic study, States received over $900 million in "revenue sharing" funds last year, in addition to $200 million for reimbursement of regulatory costs, despite the fact that IGRA spe-

cifically preserved Indian tribes' immunity from taxation by States. As this committee continues its oversight of IGRA, we will review those payments to ensure that Indian tribes are obtaining value in return for sharing gaming revenues with State Governments.

IGRA reflects careful balancing of tribal, State, and Federal interests. In keeping with our trust responsibility, this committee is committed to reviewing the implementation of the act over 17 years and ensuring that Indian tribes remain the primary beneficiaries of the gaming activities under IGRA and that there is transparency and that there is integrity and that there is sufficient oversight. This enterprise has gone from a $500-million a year business to a $18.5-billion to $19 billion a year business.

Anyone who does not believe that it does not need to be reviewed after 17 years, then we have an honest difference of opinion. I have been a member of this committee for 19 years. I believe we have an obligation to review any enterprise that is a $19-billion a year business. If any of the witnesses today believe that we do not have that responsibility, then we have a respectful disagreement.

So I look forward to this hearing and others as we review this very important aspect, and now has become a very important aspect of America's economy.

Senator Coburn.

Senator COBURN. Mr. Chairman, I have no opening statement.

The CHAIRMAN. Thank you very much.

Senator DORGAN. Mr. Chairman.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Before I leave to go to the floor, I wanted to mention that Chairman JC Crawford from the Sisseton-Wahpeton Tribe, is here. I had visited that tribe some months ago, and wanted to just mention to you I went to the gaming facility. Senator Conrad and I were actually down near the southern end of our State.

It was dinner time and we stopped into the gaming facility owned by the Sisseton-Wahpeton Tribe. It was the first time I had been there. We went to the buffet, which is always a well-advertised portion of any gaming facility. As we stood in the buffet line, when we got to the cashier, she looked at Senator Conrad and myself and said, "Would you want the senior citizen discount?" [Laughter.]

I confess to you that did your tribe no good. [Laughter.]

To be asking the two of us that question. We actually demurred. We deferred, I guess, for another trip, our senior citizen discount.

The CHAIRMAN. I could have taken it.

Senator DORGAN. I was not too happy. She took a close look at us and then asked the question.

But I did want to say to Chairman Crawford, we are very pleased you are here, and I am sorry I am not able to stay for your testimony, but I have read it.

Thank you.

The CHAIRMAN. Welcome. Our first panel is Vivian Juan-Saunders, chairwoman of the Tohono O'odham Nation in Sells, AZ; Dallas Massey, Sr., chairman of the White Mountain Apache Tribal Council; Deron Marquez, chairman of the San Manuel Band of Mis-

sion Indians; and Joseph A. Pakootas, chairperson of the Colville Confederated Tribe.

Please come forward.

Welcome, Chairwoman Saunders. It is good to see you again. Please begin. All four of you, your written statements will be made part of the record. Please proceed.

STATEMENT OF VIVIAN JUAN-SAUNDERS, CHAIRWOMAN, TOHONO O'ODHAM NATION

Ms. JUAN-SAUNDERS. Thank you.

Good morning, Chairman McCain and Vice Chairman Dorgan and members of the committee. I am Vivian Juan-Saunders, chairwoman of the Tohono O'odham Nation. I am also here on behalf of the Arizona Indian Gaming Association. In Arizona, we have 22 federally recognized tribes; 18 are members of our association.

Thank you for the opportunity to discuss Indian gaming regulation in the State of Arizona. I would also like to extend a special appreciation and greetings to our honorable Senator from our great State of Arizona. It is always a pleasure to be in the same room with you. I appreciate your interest and your concern for our industry.

Arizona's regulatory system meets the intent and directives of the Indian Gaming Regulatory Act. My written comments provide in detail the success of Indian gaming on the Tohono O'odham Nation. Indeed, sound regulation and prudent management of our gaming operations has generated revenues that fund more than one-half of our budget. Without casino revenue, the nation clearly could not provide the amount of available governmental services.

For the Tohono O'odham Nation, we have used gaming revenue to build our own Tohono O'odham Community College, a tribal college which this past year was accredited by the higher learning institution, the same accrediting agency that accredits other 2-year colleges. We built three Head Start centers, a nursing home, five recreation centers for our youth, offered business grants for tribal members, and a westside health clinic. If we waited for the Federal Government to build our health clinic, we would be in line for 20 years. In the meantime, our people are dying and are in need of health care.

My remarks this morning will address the successful Indian gaming regulatory system in our State. Under Arizona's gaming compacts, tribes are the primary regulators, but the State also has an important role. The State regulatory agency has concurrent licensing authority and significant oversight functions. The tribes and the State cooperatively work together to ensure that Indian gaming is well regulated and achieves what Congress intended in passing IGRA.

Today, Arizona has 567 people employed in Indian gaming regulation, including 105 State employees and 462 tribal employees. Collectively, the tribal and State regulatory agencies spent more than $35 million per year funded with Arizona Indian gaming revenues. State regulators share a variety of concurrent licensing, inspection and compliance functions, which are detailed in my written remarks.

The State's role has been evaluated as highly effective. In 1999, Arizona's Auditor General determined that the State's extensive oversight activities are well designed for ensuring the integrity of class III gaming operations. The report noted the following key State regulatory functions. Pre-operation inspections are conducted at every casino. Random inspections of at least 50 devices at each casino are conducted every 4 weeks. Compact compliance reviews are conducted at each casino every 18 months. State regulatory agencies maintain an ongoing presence through weekly visits to casinos to inspect operations and investigate possible compact violations.

The report concluded that Arizona's regulatory system was among the most extensive nationally, with more staff monitoring Indian gaming than any other State with comparable gaming demographics. In addition, the report noted that our regulatory budget is larger than States with comparable numbers of casinos and that gaming inspections and reviews are more frequently conducted in our facilities than in most other States.

In Arizona, Indian gaming is both limited and well regulated. Our compact limits the number of facilities, as well as the type of devices and games, including table games. The scope of gaming is based on the size of the tribe, with those having more enrolled members eligible for devices and so on.

While the State has an active regulatory role, these activities are secondary to those of the tribes who are the primary gaming regulators in the State. The tribal regulatory offices have primary responsibilities for licensing all casino employees, licensing all gaming vendors, licensing all large non-gaming vendors, inspecting gaming devices, approving the rules for poker and blackjack games, setting detailed internal control standards governing casino operations, monitoring compliance with IGRA and the compact and meeting internal control standards.

Arizona's gaming compacts also require that a tribal gaming inspector be physically present in each gaming facility at all times during operating hours. Moreover, the tribes and State have been working on other initiatives to further strengthen our system, including the creation of a special U.S. attorney position to exclusively address crimes committed in tribal gaming facilities, and we have an ongoing effort to update and improve gaming regulatory requirements in the areas of new security and surveillance. We anticipate continued cooperative work in the areas I mentioned.

We believe there is a misperception that serious crime exists at Indian casinos that go unpunished. Typically, most offenses occurring at tribal facilities are in fact minor property crimes. Nevertheless, we are diligently working in Arizona to protect the integrity of our facilities and to ensure that appropriate measures are taken to prevent and prosecute any criminal or other wrongful action committed in our facilities.

Arizona's gaming tribes take our role as regulators seriously, and so does the State. Our system is both stringent and demanding, and requires a significant amount of communication and cooperation. Because our system is both comprehensive and highly effective, we believe that additional regulation at the Federal level will only duplicate current tribal and State efforts. Instead, it makes

sense for the National Indian Gaming Commission to continue providing technical assistance to help strengthen our existing system. It is not necessary or functional, however, to add a third regulatory layer.

Finally in light of the significant resources we spend on regulation, as well as the NIGC's current role in our system, we do not believe that Arizona tribes should be required to shoulder the cost of any additional NIGC regulatory functions in our State.

Let me just conclude by sharing with you that in Arizona, we have what we refer to as metro tribes and urban tribes. The Tohono O'odham Nation is not only metro and rural, we are also international in that we have 75 miles of the international border that is adjacent to the United States, Mexico, and Tohono O'odham Nation.

We continue to catch up for the last 200 years. Today, we spend $3 million annually addressing homeland security. We have spent $10 million of our own tribal resources on border issues, when these funds ought to be spent on housing, economic development, infrastructure, roads and so forth.

Another major unique difference with our tribes in Arizona is some are small in population and land-based, and other like Tohono O'odham Nation are large in land-base and population. We have 2.8 million acres of land and 28,000 enrolled members, one-half of which live on the reservation. Much of our land is still virgin territory, with lack of infrastructure, which is very costly. So you can see that an increased revenue to oversee the regulation of gaming will seriously impact our efforts and the efforts of tribes in Arizona to catch up to the 21st century.

I also want to express that for tribes in Arizona, the metro tribes continue to deal with encroachment; continue to deal with encroachment not only on land, but also with the water sources surrounding the reservation lands. Revenue-sharing in the State of Arizona, we also negotiated with the State of Arizona to provide significant revenue-sharing, although there were internal discussion with tribes in our State, including Tohono O'odham Nation, and the political realities sank in. In 2004, $37 million went to the Arizona Benefits Fund to fund problem gambling, instructional improvement. Also, $8 million went to the Arizona Department of Gaming to regulate gaming in our State, Arizona wildlife and tourism. In addition, 12 percent of revenue-sharing goes to local municipalities to help support their government services.

So each time we agree to take from gaming revenue, we continue to take from the intent of Indian gaming, which was to develop sound and stable economies for Indian country. I want to conclude my remarks and thank you for the opportunity to provide testimony this morning.

[Prepared statement of Ms. Juan-Saunders appears in appendix.]

The CHAIRMAN. Thank you very much.

I note Senator Burr is here. Would you care to make any opening comments, Senator Burr?

Senator BURR. Senator McCain, thank you. I would much prefer to hear the testimony. Thank you.

The CHAIRMAN. Thank you.

Chairman Massey, it is good to see you again, sir.

STATEMENT OF DALLAS MASSEY, SR., CHAIRMAN, WHITE MOUNTAIN APACHE TRIBAL COUNCIL

Mr. MASSEY. Good morning, John, chairman of the committee and committee members. Thank you for inviting me to be part of these proceedings. I will make brief comments and ask to submit my written testimony entered into the record.

The CHAIRMAN. Without objection.

Mr. MASSEY. I am Dallas Massey, tribal chairman of the White Mountain Apache Tribe. The White Mountain Apache Tribe is located in East-Central Arizona on the Fort Apache Indian Reservation. We are a rural tribe, a small market. Our land covers more than 1.6 million acres. We have about 12,000 members within our land-base. Our members experience serious poverty and unemployment. Our median family income is just over $9,200 a year. Our casino provides not only an important source of revenue for us, but it also provides a major source of employment for our people.

We have many natural resources on our land, including timber. In the summer of the year 2002, the White Mountain Apache Tribe suffered a horrible loss when the Rodeo-Chedeski fire swept through our timber stand on the west side of the reservation. Because of the fire, the land cannot he logged for 100 to 150 years. Even when the mill was operating, unemployment on our reservation was over 60 percent. Our casino is critical for jobs and governmental revenues.

Yet despite our daily struggle with severe revenue shortfalls, our tribe, like other Arizona tribes, is sharing a portion of our gaming revenues with the people of Arizona. In the year 2004, Arizona gaming tribes contributed nearly $38 million in revenue-sharing payments to the State to support education, emergency health care, wildlife conservation and tourism throughout Arizona. We also provide support for helping problem gamblers.

Arizona regulations, I want to point this out, in the year 2004, 21 tribes have compacts and 15 have gaming facilities. Arizona has 11,831 slot machines, 424 table games. To regulate the industry, Arizona tribes and the State of Arizona spent more than $35 million in oversight. In total, the State has 567 regulatory employees, a number that is exclusive of NIGC staff. This equates to one regulatory employee for every 21 games.

In comparison, Atlantic City, which has 34,225 machines in play, one regulatory employee for every 95 games. In Nevada, which has 211,760 games in play, has one regulatory employee for every 492 games. Arizona spends roughly $3,000 per year program per game for regulations, while Atlantic City, with an industry three times the size, spends $672 per game per year. In Nevada, nearly 20 times the games, spent $118 per game per year.

How did Arizona develop such a system? Although we have different backgrounds, cultures, and competing interests, we unite to agree upon common policy for Indian gaming in Arizona. Tribal governments are dedicated to building and maintaining strong regulatory systems because our sovereign immunity authority and government operation resources are at stake.

Proposition 202 passed by Arizona voters in the year 2002 provided additional regulation for Indian gaming by the Arizona Department of Gaming. Indian gaming is a highly regulated industry.

In Arizona, nothing is left to chance. In the year 2004, Arizona gaming tribes contributed $8 million to the Arizona Department of Gaming. This nearly fully funds the agency, since ADOG's total budget is almost $10 million. This increase in funding has enabled the agency to grow from 75 full-time employees in the year 2003 to 105 full-time employees in 2004.

In 2004, Arizona tribes spent more than $25 million for tribal regulation. In addition to being licensed by tribes, gaming vendors and gaming employees must be certified by ADOG. This process includes background checks on and licensing and certification of management, officials and key tribal employees. ADOG also inspects Indian gaming facilities to review cash and credit transactions, the integrity of games and vendor payments.

Arizona tribes believe revenue-sharing should be capped to ensure that more money is generated for tribal needs and regulations, rather than using revenues from tribal government gaming to offset State deficits. Senator McCain, when you drafted IGRA, you said no authority could tax Indian gaming agreements. Tribal government gaming was instituted to help tribes supply essential government services to its members, not to provide State Government with ways to meet budget shortfalls.

Arizona tribes have already fully funded adequate State tribal regulatory systems. Tribes should not be forced to pay for increases in NIGC fees. Furthermore, increases in NIGC funding should be based on specific budget justifications submitted to appropriation committees and not based on automatic funding increases.

Our system is limited, regulated. It works. From our experience, our model interprets the letter and intent of IGRA. It generates revenues for tribes to encourage self-sufficiency and recognizes that tribal land presents tribes with different opportunities. Therefore, we would like to be on the record to remind the committee that there are financial impacts and hardships to tribes when fees are increased.

Thank you for giving me an opportunity today to represent the White Mountain Apache Tribe and the State of Arizona. On behalf of Arizona tribes, we invite this committee to come to Arizona and see our system working.

Thank you.

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

The CHAIRMAN. Thank you very much.

Chairman Marquez.

STATEMENT OF DERON MARQUEZ, CHAIRMAN, SAN MANUEL BAND OF MISSION INDIANS

Mr. MARQUEZ. Good morning, Chairman McCain, Vice Chairman Dorgan and members of the committee.

I am Deron Marquez, chairman of the San Manuel Band of Mission Indians. I would like to begin by thanking you for this opportunity to testify before this committee.

First, I would like to provide some background on our tribe. Our reservation was established in 1891. It is located roughly 70 miles east of Los Angeles. We occupy roughly 800 acres in the mountainous region of San Bernardino County. Our reservation was like

many before gaming: No infrastructure, poor housing, poor health, conditions still found on many reservations today.

Tribal government gaming has empowered our tribe to dramatically improve these conditions for our people and to assist other tribes. My understanding is Congress intended this empowerment to occur when enacting IGRA. IGRA's purpose is to provide tribes with economic activity, self-sufficiency and strong tribal governments. It was also intended to provide a framework for gaming regulation to ensure that gaming was fair and honest; and finally, to ensure that tribes are the primary recipients of gaming revenues.

Today, I would like to discuss two of our concerns: First, reservation shopping or off-reservation land acquisitions; and second, revenue-sharing.

Before we talk about specific concerns, let me tell you about our tribal gaming regulation. Last year, we spent $47 million on regulation.

The CHAIRMAN. Based on what revenues?

Mr. MARQUEZ. Based off of our tribal gaming operations.

The CHAIRMAN. And what were the revenues? You spent $47 million on regulation. How much were your gaming revenues?

Mr. MARQUEZ. Last year?

The CHAIRMAN. Yes.

Mr. MARQUEZ. Those are numbers we really do not disclose. I would probably get in a lot of trouble if I disclosed.

The CHAIRMAN. I see. But you want to disclose how much you spent on regulation, but you do not want to disclose your revenues. It is not helpful. Go ahead.

Mr. MARQUEZ. On average, we allocate $20 million on regulation per year. Our independent gaming commission has around-the-clock oversight responsibility. As a result, we experienced zero embezzlements or other systemic criminal activity. All of this pursuant to our tribal gaming ordinance, and working in concert with Federal and State regulatory bodies.

As Chairman Hogan recently stated, "Indian gaming is a healthy and transparent industry due to solid tribal regulation." We believe this to be true and San Manuel is one example of upholding the strictest and most comprehensive regulation.

Another strong example of our commitment is a $17 million investment in a state-of-the-art security and surveillance system we installed last year. Our system is an all-digital platform. It provides quick turnaround for prosecutors and has over 2,500 cameras. For these reasons, we encourage cooperation among all agencies that oversee tribal gaming and that these agencies acknowledge and work with tribal gaming commissions since they are the primary regulatory body.

For San Manuel, we have remained steadfast in our commitment to the strictest regulation. No other form of gaming is as highly regulated as tribal gaming. We hold a deep belief in separation between the elected body of the tribe and the gaming commission.

While we believe IGRA is working for the most part, we do have two concerns where we believe IGRA's intent is not being followed. First is reservation shopping. We support tribes acquiring land to rebuild their homelands. However, we strongly oppose encroachment on our ancestral lands by tribes or developers. As the Interior

Inspector General stated, "Expansion of gaming off-reservation is being pushed by wealthy developers who want a piece of the action." This conflicts with the stated purpose of IGRA and places tribal nations against each other.

What needs to be understood is that tribal government gaming is a tool. Sovereignty should be exercised responsibly. Accessing of land far from existing reservations will lead to the end of gaming as we know it today. If this activity occurs, tribal governments will lose rights and critical revenue, taking us backwards. Clearly, that was not the intent of IGRA.

Let me tell you about our second concern, which is current revenue-sharing practices. IGRA restricts revenue-sharing and prohibits taxation. But today, States are using tribal government funds to pay down State deficits, and neither tribal governments or tribal gaming caused these debts. Governor Schwarzenegger has literally demonized tribes in his campaign slogan, "Fair Share," convincing the public that tribes are responsible for paying taxes to the State with large sums of money.

Yet our gaming operation provides millions of dollars and thousands of jobs outside of the tribal community. In California, tribal governments are the second-largest employer in the State, only second to the State itself in job creation. Gaming is not a Federal or a State program. Tribes are responsible for paying for services received and improper revenue-sharing only bleeds tribes. This is why we believe protecting our sovereignty and our rights is paramount.

In closing, San Manuel supports the intent of IGRA. The spirit and soul of IGRA always contemplated a tribal primacy regulatory role; that gaming is to be conducted on lands not many miles away from existing reservations; and that tribes are the primary recipients of revenues generated on tribal lands. These concepts are nothing new to this committee, for it was this committee that crafted this critical piece of legislation that has lifted many tribes from utter poverty and despair. We simply ask that Congress enforce the true intent of this act.

Finally, tribal gaming works. It works because of strong regulation, a strong tribal government, fair revenue-sharing practices, and strong relationships with the local communities. Housing, health care, education and infrastructure are now possible. That is why IGRA must be upheld to what this committee created.

Mr. Chairman, I would invite you or anybody from the committee to visit our reservation to see our operation for yourselves. Thank you for asking me to testify today. I am pleased to answer any questions when it allows.

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

The CHAIRMAN. Thank you very much.

Can you help me with the pronunciation of your name?

Mr. PAKOOTAS. Certainly. Joe Pakootas.

The CHAIRMAN. Pakootas.

Mr. PAKOOTAS. Pakootas, yes.

The CHAIRMAN. Thank you very much. Welcome.

STATEMENT OF JOSEPH A. PAKOOTAS, CHAIRPERSON, COLVILLE CONFEDERATED TRIBE

Mr. PAKOOTAS. Thank you very much.

Good morning, Mr. Chairman and members of the committee. As I said, my name is Joe Pakootas and I am chairman of the Colville Business Council. I represent the Confederated Tribes of the Colville Indian Reservation and over 9,000 enrolled members of the tribe.

Today, I would like to present the views of the Colville Tribe on the Indian gaming regulations, specifically regulation of the after-acquired trust lands for gaming purposes under the IGRA.

I would like to give a little brief history of the Colville tribes. We are located in North-Central Washington. Our reservation comprises about 1.4 million acres of trust and allotted lands. Our tribe, like many other tribes in the United States, has been the victim of the Allotment Act, Dawes Act, and many different acts of the Federal Government in the past. Indian gaming has helped us to reacquire many of those lands that we lost through the years, and also helped us to improve the health and welfare of our tribal members, tribal people on the reservation, and those who live off the reservation also that are going to college for higher education.

The Colville Tribes is a confederation of 12 different tribes in North-Central and Eastern Washington. These tribes were located on the reservation after it was established by Executive order in 1872 by President Grant. Some of the tribes were moved to our reservation at gunpoint in the late 1800's. Also, a majority of our enrolled members live on the reservation. Our reservation is divided up into four different districts, and those districts are metropolitan, or where the smaller cities are located within our reservation.

Also, our reservation is quite remote. We are a little ways off the beaten path, so to speak. The nearest Interstate to our reservation is about 100 miles from our headquarters which is in Nespelem. Our reservation encompasses lands within Okanogan and Ferry County in the State of Washington. These are two of the poorest counties in the State of Washington. These counties were primarily dependent upon agriculture, mineral, and timber industries.

Since some Federal regulations have come into place also, these two counties are struggling economically. The Colville Tribe is the major contributor to these local economies at this point in time. Our tribe, along with our Colville Tribal Enterprise Corporation, employs over 2,500 people in this area. That makes the Colville Tribes the largest employer in North-Central Washington.

Many of these employees are non-members that live on the reservation or off the reservation. Many of our employees, tribal members that do work in our enterprises and within our tribal government spend all of their dollars off the reservation. We do not have any real economy on the reservation so these two counties where we are located receive quite a bit of those dollars, and the State of Washington also ultimately receives all of our dollars.

As one of the largest employers in North-Central Washington, we are quite concerned with what is going on within our reservation. As I said, we have no economy. Our dollars leave the reservation immediately. Yet, we are so off the beaten path that not too many people come to our facilities, our gaming facilities in particular.

Our gaming revenues, we have three casinos. One casino is located off the reservation on trust land. The other two casinos are located within the boundaries of the reservation. Our gaming revenues are about $25 million annually. So we are quite different than many tribes that are close to the huge metropolitan areas, the huge areas over on the west side of the mountains on the west coast, Seattle area. So we are not one of those rich tribes, so to speak, yet we do consider ourselves wealthy because of our land-base and because of our people.

Eighty percent of our casinos' net revenues fund essential tribal governmental functions. These functions include our elders, many of our youth, fire safety, police protection, gaming regulation, land-use planning, social and health services, housing and also education. We do not utilize our gaming revenues for per capitas as some tribes do.

Our tribe, as I said, we are located quite a ways from the metropolitan areas. Because of that, we are looking to off-reservation lands. These lands that we are looking to are aboriginal territories of one of the 12 different bands, tribes that make up our confederation. One of the areas that we are looking at is the Moses Lake area. That is why I want to speak to the after-acquired lands after 1988. It is because of our economy on the reservation and the remoteness.

We are looking at the Moses Lake area right now. That is aboriginal territory of the Moses-Columbia Band-Tribe of our Confederation. We still own trust land down in that area. We have trust land allotments still located outside the exterior boundaries of the reservation that is considered Indian land. So we looked at Moses Lake area. Some of the concerns that we have is putting that fee property into trust status. Many tribes that are in this situation have to put up millions of their own dollars, tribal dollars that are required to provide services to our tribal membership, and in this case for the Colville Tribe to improve the economy not only for the Colville Tribe, but also for the Moses Lake area.

We are required to put up the millions of dollars up front to either purchase the land, and we want it to be a casino and destination resort area. We are required to put these millions of dollars to purchase the property, not knowing if it can ever be put into trust status.

To a lot of people, this is bad business.

The CHAIRMAN. You are going to have to summarize here pretty quick.

Mr. PAKOOTAS. Okay. For a lot of people, this is bad business, but for Indian tribes, we are required to do this to improve our economies. So that is a concern that we have, is the many hurdles that we have to jump through in section 20 of IGRA.

So Mr. Chairman, that short part that I said, I do appreciate the opportunity to testify today. Our written testimony is submitted. We will answer any questions that you may have of the Colville Tribes.

Thank you very much.

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

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

Chairwoman Saunders, the Arizona compact in some ways is unique in that remotely located tribes are able to share revenues in that urban tribes can lease the rights to slot machines. Right? And since you mentioned that you are both, since your tribe is both, how do you feel about that, and how is it working?

Ms. JUAN-SAUNDERS. In our State, we have five tribes who currently are engaged in agreements for machine transfers. These are tribes who for many reasons have decided not to build facilities on their reservations so they enter into agreements.

The CHAIRMAN. Like the Wallapais?.

Ms. JUAN-SAUNDERS. Wallapai, Havasupais, San Juan, Southern Paiute, Zuni, and Kaibab Paiute, for example.

The CHAIRMAN. Has that worked out well?

Ms. JUAN-SAUNDERS. Yes; it has. It allows the protection of their sovereignty and the sovereignty of the tribe. They are entering into agreements to be protected. It also provides a revenue source for those very remotely located tribes to also share in the economics of Indian gaming.

The CHAIRMAN. I understand the new Arizona compacts provide for some revenue-sharing with the State on a sliding scale. As a large urban tribe, do you find these revenue-sharing provisions to be acceptable?

Ms. JUAN-SAUNDERS. In our State, we take pride in the fact that tribes are united on these issues. It was very difficult negotiations even among ourselves. But in the spirit of unity, we agreed to compromise and the scale ranges from 1 percent to 8 percent, with everyone starting at 1 percent and it goes up to 8 percent as their year-to-date revenues reaches the change points. So for Tohono O'odham Nation, despite our ever-pressing needs, and in that spirit of cooperation and unity with the tribes in our State, we have agreed to the sliding scale.

The CHAIRMAN. Off-reservation casino proposals do not seem to have the same popularity in Arizona as in other areas. Why do you think that is?

Ms. JUAN-SAUNDERS. Again, the tribes in our State, we have come together to discuss these very important issues. Through our monthly meetings and respect for our basic needs and respect for our sovereignty, we compromise with each other. We have 18 of the 22 tribes in our State who are members of our association, the Arizona Indian Gaming Association. We have very frank discussions among ourselves. Next month, we will be having that very discussion on off-reservation shopping.

The CHAIRMAN. Chairman Massey, do you have a view on that, on the issue of off-reservation casinos?

Mr. MASSEY. Every tribe is different. Ours, what White Mountain Apache Tribe, I, like the leaders sitting here, we do not agree with that also, off-reservation gaming.

The CHAIRMAN. You mentioned very eloquently, Chairman Massey, that this was an issue of tribal sovereignty, and I agree. I think that some of my fellow citizens would also point out that about 99 percent of the patrons of Indian gaming operations are non-Indian. So we have an obligation to protect the interests of those who engage in these gaming operations who are the source of the revenue. That aspect of this has to be injected in any discus-

sion that we make. I happen to very proud that we engage in it. I happen to very proud of the compact that was agreed to by the majority of citizens of our State. I think that it is working well. But implicit in that agreement and the fact that the majority of off-reservation citizens of Arizona approve that compact, implicit in that is that we have to respect and safeguard their ability to engage in a gaming operation that is honest, straightforward and not one that lacks transparency. I hope that you appreciate that aspect of my representation of the people of the State of Arizona.

Which brings me to my next question. Do you have concerns regarding the level and effectiveness of State regulatory involvement?

Mr. MASSEY. State regulatory involvement?

The CHAIRMAN. Yes.

Mr. MASSEY. Yes; I think like I mentioned here that we are one of the most regulated gaming industries. The dollars that I have mentioned between different States and the State of Arizona, I think we have one of the strongest regulatory gaming in Arizona. I think that that says enough with the numbers that I gave out a while ago.

The CHAIRMAN. Has your tribe had difficulties in making referrals to Federal law enforcement and prosecution agencies?

Mr. MASSEY. Not on Fort Apache Indian Reservation.

The CHAIRMAN. Chairman Marquez, you make a very important point in your statement about developers exploiting Native Americans for the purposes of developing casinos. One of the more outrageous practices that we have seen is specifically in IGRA we prohibited, we put a ceiling on the percentage that they could get in a management contract, so they changed the name to consulting. A number of "consultants" have exacted exorbitant amounts of money from tribes who are desperate to begin gaming operations.

First of all, do you agree with that? I draw the conclusion from your testimony that you do. Second of all, if that is the case, what do you think we ought to do about it?

Mr. MARQUEZ. I do agree with the fact that there are unscrupulous developers masquerading themselves as consultants. They are what they are. I think that one of the elements, I do not know how you would get there, but there are obviously very fair and honest developers out there who do want to do good things out there and help tribal nations move forward, and how we could basically shift them around so we understand who is good and who is bad.

I think the NIGC, along with our own gaming commissions, as well as the State's gaming operations, especially back in California, if they all have to go through a background check before they are engaged in this process. I can only speak to the fact that I know in California, at least for our gaming operations, it works. In California at the State level, it works. I do believe, some of the findings I have read from the NIGC about some of these corrupted people involved in developing or trying to develop, it works.

I just think that there has to be a step up in the area by which if it is more funding to the NIGC, then it is more funding to the NIGC. If it is more funding to the State regulators, then it is more funding there, as well as the tribal level. But I think at each level, the tribal gaming commission having the primacy on this to find out first if this group is what they say they are.

The CHAIRMAN. Let me talk to you about, very briefly since you raised it in your opening statement. We had a situation here. We had a hearing on the Lytton situation. As you know, a provision was inserted in another bill, an omnibus bill, that allowed this tribe to establish a casino, as I understand it, down in downtown Oakland. There was a significant backlash against that. As you know, Senator Feinstein from the State introduced legislation repealing that provision. I understand it has been rendered a little bit moot because the legislature is apparently not going to approve.

Another example, there is a tribe that wants to give up their claim to one-half the State of Colorado in return for one acre in downtown Denver. We see example after example of this. There is another one lately that I do not recall the details of.

First of all, it seems to me that that harms the whole ideal of Indian gaming, and that was allow Indian tribes to conduct gaming operations on their own sovereign territory. Now, we are seeking casinos in downtown Oakland and downtown Denver, which they may have a legitimate claim to, but that is a separate process.

What is your view on that situation?

Mr. MARQUEZ. Mr. Chairman, let me speak to you about the particular situation in my own backyard, where I have three tribes seeking land into trust for the same exact purpose, to do gaming on our ancestral lands. These tribes have no historical ties to this area whatsoever. Big Lagoon is located on the California-Oregon border. Los Coyotes is located in San Diego. The Timbi-Sha Shoshone through an act of Congress already in place, are trying to seek lands in that area as well.

If these are allowed to go through, as I said in my testimony, this will be the end of which we know tribal government gaming today. It will only do things that we cannot even fathom. If we think the compacts are bad today, when these types of deals are struck, they are going to be worse, thus setting the bar higher than any other compact across this country for submitting tribal sovereignty under State law.

The CHAIRMAN. And there will be a predictable reaction in the Congress and among the people of California who do not think that that is the appropriate way. For example, polls in my State show the majority of the citizens agree and support gaming on Indian reservations, I think obviously because of concern we have about conditions on Indian reservations.

The majority of my citizens do not support non–Indian gaming. So if you start blurring those distinctions, then I think you have a rather serious challenge here to Indian gaming as it exists today.

Mr. MARQUEZ. If I may, Mr. Chairman, especially in California, when we moved the process to get our compacts put in place, we took a stance by saying this would not happen. In fact, we created the revenue-sharing trust fund by which all the tribes who are in gaming pay into to provide funds to those tribes who cannot participate in gaming, just to make sure that this activity did not transpire. Unfortunately, we are a the stage today and we have been very vocal about saying how wrong this is and how it needs to be addressed.

The CHAIRMAN. Do you think that requires congressional action?

Mr. MARQUEZ. Yes, sir.

The CHAIRMAN. Would you provide this committee with specific recommendations?

Mr. MARQUEZ. Yes, sir.

The CHAIRMAN. Thank you.

Chairman Pakootas, do you have any views on this particular aspect of the issue, particularly since you have a casino far removed from your actual tribal lands, as I understand it?

Mr. PAKOOTAS. We do have a casino. It is located outside the exterior boundaries of our reservation, but it is considered Indian lands, trust property. This is trust property that has been held in trust for the tribe and members of our tribe since the Allotment Act has been in place.

So especially for our reservation, we do look outside the reservation to develop our different businesses, gaming, whatever it is going to be, to go toward to those larger populations to generate more revenues because we are a ways out in the country and people are not going to come to sometimes visit our reservation.

We do have a couple of huge, one of them is Grand Coulee Dam, which is located one-half on our reservation and 1.5 million people come and visit that annually, but they are more tourist-type people. They stop at Coulee Dam for one night and visit the huge concrete thing there that is stopping the water, then go on someplace else, so there are no real draws to come to our reservation. In a lot of cases, we have to go outside to our aboriginal territories of one of those 12 different tribes. We do still own trust property outside, even down in the Moses Lake area, that is considered Indian land. That is outside.

So for us, we do have to go outside the reservation boundaries to generate more revenues.

The CHAIRMAN. Senator Coburn.

Senator COBURN. Thank you, Mr. Chairman.

I would like for each of you to describe for me the economic diversification that you have put in place from the revenues that you have received from gaming.

Ms. JUAN-SAUNDERS. Mr. Coburn, right now the Tohono O'odham Nation is moving forward to address the diversification of our economy. As I stated earlier, our land-based is 2.8 million acres and enrolled population of 28,000. We do have an economic development plan in place. We are moving toward looking at a hotel, looking at economic development on the reservation.

However, one of our key barriers is the lack of infrastructure. In order to bring business to the reservation, we need water, power lines, roads in place. As you know, those are very costly. We also need sound business codes in place. We also need stable government. We are working very hard right now to put those in place. Infrastructure on the main reservation is a concern.

In the surrounding Tucson area where we do have land, we look at those potential market areas as our source. We have convenience stores, gas stations on the reservation.

The CHAIRMAN. May I interrupt, Chairwoman Saunders? It might help Senator Coburn if you told him how much the tribe is spending fighting the issue of illegal immigration, including how many abandoned cars a week that you have to remove and the enormous burden you have on law enforcement.

Senator COBURN. I heard her testimony, Mr. Chairman. I understand the $10 million that they spent on illegal immigration. But the key I want to get through is the funds generated in gaming to create a further future for your tribe. How many dollars are going into economic development? Is there an example of where you have put in a business or invested in an industry or invested in things that will generate other revenues outside of gaming that will give you a long term?

My fear is, in Oklahoma we have 39 recognized tribes and 83 gaming operations. In another couple of years, it will be saturated in Oklahoma. There is only so much money that is going to go into gaming. So the time to make the investments for economic development, for sustainable economic development I believe is now. I was just wondering what are the specifics.

Ms. JUAN-SAUNDERS. We agree with you. The whole intent of IGRA was to develop sound economies so that we do not rely on Indian gaming. I believe that firmly. However, we still have these barriers that we deal with every day, and so we are working right now to look at other sources of revenue to assist us with infrastructure development and move in that direction.

Senator COBURN. Chairman Massey.

Mr. MASSEY. Yes; like I have mentioned, White Mountain Apache Tribe is isolated from cities. We are in a rural area. So right now, our revenues are basically governmental and trying to get some money into the Education Department and also probably going into some other businesses that will be off set in our sawmill and ski area also. Right now, we are just re-strengthening our enterprises on the reservation with the revenues that we have from gaming.

Senator COBURN. So is there an economic development program? Have you built a business? Have you invested in an economic model other than gaming, with the gaming revenues?

Mr. MASSEY. Not right now.

Senator COBURN. Chairman Marquez?

Mr. MARQUEZ. First let me explain to you a brief synopsis of our philosophy as we move forward for economic development. One of the things we look at is it has to stand on its own. We do not believe in coupling businesses with each other to make it sound good. In other words, we do not believe a casino and a golf course. A golf course is not diversification, or a hotel with a casino.

Second, the project must make economic sense. Third, it has to fit within our parameters set forth for our plan. And then also it has to fit within our moral and ethical standards that the tribe has set forward.

We have a complete department called Economic Development/Project Development that reviews thousands of these things a year. We get countless proposals to get involved in various programs. To date, we have gotten ourselves involved in some pretty interesting programs. Obviously, the casino that you heard about which is on the reservation.

We are partners in the Four Fires development and residents here in Washington, DC. We are building another hotel in Sacramento under the same paradigm by which the Four Fires was created, now called Three Fires. On the reservation, we have the San Manuel water bottling plant by which we buy our own water

and sell it to the valley down below. We own a restaurant in Pasadena called Twin Palms. We own an office building here in town, the Congressional Building. We are in the middle of developing what was Norton Air Force Base. We are looking to do warehousing and light manufacturing in that area. We have 90 acres down there.

We have a site for a warehouse building in the city of San Bernardino on Sterling and Fifth. We have a Colton warehouse building by which we moved some of our water bottling plant facility into there and lease out the other one-half. We have built in the city of Irvine what is called the Big Orchard property project, by which we built three buildings and bought back two, so we own two buildings down there and leased those out to some of the most qualified companies across this country.

Back on the reservation, we have a wireless tower that provides Internet services to the reservation, as well as to the tribal offices down below in the valley, soon to open that to other businesses to tie in and use that service as well.

Currently, we are in the process with the city of Highland to do what is called the San Manuel Village, where we will have our third hotel, which is two miles east of the reservation. There will be a hotel, two restaurants, retail shopping center-type of a mixed-use facility. Last, we have what we call simple property management. We have a building now called the San Manuel Warehouse that we use for our own purposes, as well as office buildings located in the city of San Bernardino.

So we have a pretty aggressive economic program. Our philosophy, from my tribe, and I came into office back in 1999, was in the year 2020, I want this Council to have a sound decision to make, to stay in gaming or get out of gaming, and that is where I want to put my people.

Senator COBURN. And Chairman Pakootas?

Mr. PAKOOTAS. Yes; there is 80 percent of our gaming revenues goes towards our tribal government. We have our tribal government. Also, we have an enterprise corporation that is incorporated under the Governmental Incorporations Act of Colville Tribes. They manage 14 different businesses on behalf of the Colville tribal government. That 20 percent remains with the corporation and they take a look at economic development and diversifying our economy. We are mainly a timber tribe. We have been in the past.

Since gaming has come about, we have purchased a new mill, or an old mill that was closed down and going into bankruptcy. The tribe purchased that and taken some of our gaming dollars and remodeled that facility. We are now employing almost double what it was in the past, nearly 300 people right now. It was employing about 160 when it was owned by non-Indians.

So there is some diversification there, and taking a look at our dollars. We are also looking at industrial parks to improve the economy in the local areas in our counties.

Senator COBURN. Let me ask each of you again, for the record, the answer is obvious, but I would like for you to state for the record why you do not publish your gaming revenues?

Ms. JUAN-SAUNDERS. Because we are a sovereign entity and we have the right to. The law right now does not authorize us or mandates that we do, and that is our position.

Senator COBURN. What is the reason behind the position?

Ms. JUAN-SAUNDERS. The law does not require us to.

Senator COBURN. But you could just as well say we will publish it, because sunshine is good for people to know how much revenue we are making; how much we are doing. Why would you not want to do that? What is wrong with publishing your revenue?

Mr. MASSEY. I think for information for Arizona tribes, we submit together as tribes submitted to the State of Arizona.

Senator COBURN. I understand that, but again, what is the reason for not publishing your revenue? I want you to state that for the record. Why would you not want the people in Arizona to know and the people in this country to know your revenue from gaming?

Mr. MASSEY. I believe ADOG has that record. I believe they publish that.

Senator COBURN. Again, specifically, why would you not want to publish your specific tribal organization's revenue from gaming? Not in combination, but individually? What is wrong with people knowing what your revenue is?

Ms. JUAN-SAUNDERS. I guess my concern is why are we singled out as tribes?

Senator COBURN. Every other organization in this country, whether it is a 501(c)(3), whether it is a corporation, whether it is a business, whether it is an individual income taxpayer, recognizes and publishes through either individually through the IRS so that the government knows that. That is not public knowledge, but every business that is public and publicly traded or publicly interacting with the Congress or with the Nation as a whole, publishes their record. You can go to every 501(c)(3), you can go and get their 990's.

I am just asking, I know you do not have to. I am asking why you won't.

Ms. JUAN-SAUNDERS. We as sovereign governments, we want to abide by the law and the compact and the National Indian Gaming Commission prohibits it.

Senator COBURN. It prohibits you from publishing it, or does not allow you to publish it, or you can publish the revenue if you want to?

Ms. JUAN-SAUNDERS. It is prohibited.

Senator COBURN. Chairman Marquez?

Mr. MARQUEZ. This topic is one that has been debated many times in our council by why we do not move forward in such a display of financial information. One of the things, I believe within our own council, there is a trend that is going to be shifting, I believe, to being more, wanting to disclose various elements.

As it stands now, for our council, the main reason is simply trust. History shows that ever time we did share information with the outside world, if you will, it has always come back to hurt us. It has always been something that has been detrimental to us, so there is a large reluctance.

Senator COBURN. Let me take a little exception with that. The number of people who are getting Indian Health Service in Okla-

homa is in excess of 60,000 or 70,000. That is published information from the tribes which allows us to get more dollars for health care. As a matter of fact, I am going to be offering an amendment on the Interior bill to move money to Indian Health Service.

I cannot take that statement as a blind fact. It is not a blind fact. The information gives us knowledge. In fact, one of the ways we protect your sovereignty is with open and clear sunshine and transparency. So either you have the right to have sovereign gaming or you do not. If you have that right, then what is wrong with publishing the numbers?

Mr. MARQUEZ. As I was saying, I think that that tide is turning. I can only speak for San Manuel. I cannot speak for Oklahoma or any other tribe. I only know what is going on in my council. And that is, one of the chief reasons why, mostly flowing from the elder side, is that we just simply are reluctant to release that information.

I think one of the things, if you know or do not know this, that our council, our general membership has full access to all this information, so they are getting the information. I do not want anybody to think that we are hoarding that information from our own people. It is simply not the case. We simply at this juncture in time are not comfortable releasing information to the outside. Like I said, it has always come back to hurt us.

Senator COBURN. Thank you. I think Chairman Pakootas has already given us their revenue.

Mr. PAKOOTAS. Yes; that is just on our gaming side of it.

Senator COBURN. That is all I asked about.

Mr. PAKOOTAS. We do not publish all the numbers, but we are audited every year by the Federal Government. There are audits performed annually. We audit ourselves. We have State compacts. The State requires a lot of reporting. As Chairman Marquez said, there is a lot of history behind a lot of our secrecy in some cases, so to speak. It is not necessarily secrecy, but we are not public companies. We are actually like different countries, so to speak. We are a country within the United States. That is the stance that we look at.

We publish a lot of our numbers in our economies in our local areas. We have no secrets. Our secrets are cultural areas and those types of places.

Senator COBURN. I would just say, every other form of government in this country, county, State, municipal, and Federal Government publishes their numbers. Transparency and sunshine is great for you in the long run. It may not be great for you in the short run, but in the long run will build trust and build support for the Native Americans in this country.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you very much.

I thank the witnesses. Thank you.

Our next panel is James "JC" Crawford, chairman of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Agency Village, SD; Jim Ransom, chief of the St. Regis Band of Mohawk Indians; Doreen Hagen, president of the Prairie Island Indian Community.

Chairman Crawford, we will begin with you. Next time, you should offer Senator Conrad and Senator Dorgan the children's discount. [Laughter.]

Mr. CRAWFORD. I do not think that is something we are going to live down very easily.

The CHAIRMAN. Thank you. Please proceed. You are welcome here.

STATEMENT OF JAMES CRAWFORD, CHAIRMAN, SISSETON-WAHPETON OYATE OF THE LAKE TRAVERSE RESERVATION

Mr. CRAWFORD. Good morning, chairman and members of the committee. I am very honored to present to you some testimony in oral form, but I also have to apologize today that my written summary is driving around in a taxicab someplace, so I have to wing it from my vision and from the heart.

Today, Mr. Chairman, I want to bring to you some of the issues that we have at Sisseton-Wahpeton Oyate at the Lake Traverse Reservation. We reside in the northeast corner of South Dakota. Our tribe overlaps in two State's jurisdictions, that of North Dakota and South Dakota. We are composed of 11,600 tribal members. We do enjoy the benefit of Indian gaming by having three facilities, one in North Dakota and two in South Dakota.

Mr. Chairman, we also want to express the gratitude toward your hearing today of going in to the benefits of Indian gaming. Indian gaming is not something that was invested into by private stockholders for shares and profits. It is really a benefit for us to go forward and to invest in our number one resource, in our tribe.

Mr. Chairman and members of the committee, our number one resource at Sisseton-Wahpeton is our people itself, as we understand that the people is the government and the government is for the people. So the things that we have done for the future for our tribe is that we have been able to start communicating and talk about the issues of tribal master plans. We started to look at the issues of integrated resource management plans, and how do we build a future for our tribe, and how do we build a future and give a statement to lasting generations for our young people that have yet to be heard or seen.

Those are the things that we need to concentrate on to the benefit of our people. It is not so much that JC is going to get something at the end of the day. It is what are my children and grandchildren are going to receive at the end of their time, when it comes to there's, to rely upon a resource to get a quality of life in Northeast South Dakota.

We are very honored to be able to enjoy the benefits of Indian gaming. It has started all the things that previous witnesses and previous tribes are doing out there, doing for education, health and benefits and economic diversification plans. Those are all things that are on our plate and our agenda for the Sisseton-Wahpeton Oyate.

I want to come to you today, Mr. Chairman, and acknowledge that Indian gaming has been a springboard, not just from the gaming industry itself and for its people that work there. We have 55 percent of our tribal members are employed through our three facilities. They have attained a quality of life that they could help

and give direction not only for themselves, but for their children that they leave behind.

I am just a small portion as a tribal leader on the reservation. I believe that as a vision, we need to contribute our resources together for a common goal to a total vision of our global total vision for our people at Sisseton-Wahpeton Oyate.

We also want to become good neighbors. We also want to participate in the benefits of those in the communities around us that surround us, that we understand that we dip into their socioeconomic dollars by coming to be entertained and to play the gaming devices that we offer at our casinos. We also understand that those are detrimental to them in a social means. So there is a concern that we monitor and evaluate through economic plans and assessments to see the social disparities that it has, not only on the tribal reservation members, but members in the communities around it as well.

As we look forward for Indian gaming, we understand that there is no certainty when the end of gaming is going to come, or it is going to continue to prosper. But we do know that as we take this very at this point stable industry and resource, and to plan for the future for our grandchildren, we need to know that we are taking those steps. We need to know that we are asking for partnerships with our local communities and brothers and sisters to work together. We are going to be successful because we all believe that this resource is beneficial for all of us.

In the benefits of Indian gaming, we are able to diversify on issues such as with doing the plastic bag manufacturing that employs 45-plus employees, to have something diversified other than gaming. We looked into the retail management opportunities that the tribe could have. We looked at our own internal resources that we have to do that, where we buy retail issues in daily activities, things that we need such as heating resources or petroleum to put in our cars to move forward to work and to our recreations.

Those are things that we are asking, that are taking our gaming dollars, to go in and expand those and provide those services to us. Our main goal, as I started out, is we need to have our number one resource be able to have those opportunities, and that is our people.

We look at those business opportunities as being profitable, but we also look them, or in one of our major objectives is to maintain that the people have jobs in whatever it may be. If we can manipulate somewhat the bottom line of profitability that we can share that, that it is more affordable for those members that live on fixed incomes, that they enjoy all those things, that means such as propane or gasoline, fuel oil. Those things may be the bare necessities, but they would make that contribution to them so that they have enjoyable lifestyles.

In closing, Mr. Chairman, I guess I would like to apologize for not being more professionally prepared today because my notes are in the taxicab. But I speak to you from my vision that I see as a tribal member and as a tribal leader, and I speak to you in this committee in this testimony from the heart, knowing that I am a part of the gaming process, that I work through the system and

now somehow, some way they decided I should be a tribal leader and be their tribal chairman.

I come with those things and with a good way. I present this to you in our oral testimony knowing that as we go with our challenges in life, we will use every resource available to us to sustain the stability of our government to our tribal people.

In closing, not to enlighten you, not to be detrimental to anything, but I, don't give me a check; give me a resource, and let me make that resource work for me and determine the amount of the check that I will receive from those benefits.

Thank you.

The CHAIRMAN. Thank you very much.

Chief Ransom.

STATEMENT OF JIM RANSOM, CHIEF, ST. REGIS BAND OF MOHAWK INDIANS

Mr. RANSOM. Good morning. I extend my appreciation to Chairman McCain and the committee for the opportunity to speak today.

The St. Regis Mohawk Tribe has been diligently observing the discussion that has occurred surrounding the issue of off-reservation gaming and out-of-State tribes, as we have a vested interest in its outcome. Clearly, Indian gaming is under increased scrutiny. There is a national debate going on primarily over off-reservation gaming and out-of-State tribes. In Indian country, NCAI and NIGA have taken leadership roles in responding to concerns raised over these issues. I would like to commend them for the good work they have been doing.

What has emerged from the discussion are two important trends. First, Indian gaming is a success story and much of the success can be attributed to IGRA. It works. Second, Congress should not reopen IGRA. There are other regulatory solutions that will work.

I think it is timely that you are holding this hearing. It is good to hear from other tribes, especially the Arizona tribes. What has been missing from this national discussion has been the success stories. What if it is to a tribe's and State's mutual interest to pursue off-reservation gaming? What if the off-reservation gaming can help local governments in an economically depressed part of a State? And what if off-reservation gaming is pursued in a transparent and open manner?

In New York, the experience is unique. We believe that what is happening in New York can serve as a model for conducting off-reservation gaming. It addresses many of the issues that have been identified in the various meetings that have taken place. One of the issues has been whether the State and/or Governor supports off-reservation gaming. What has happened in New York is that in 2001, the New York State legislature authorized three off-reservation casinos in the Catskills. In March of this year, the BIA issued an expanded checklist to give clearer guidance for off-reservation gaming.

Recently, New York Governor George Pataki introduced legislation providing additional criteria for off-reservation casinos. These enhanced regulations will ensure that off-reservation gaming in New York is conducted in a responsible manner.

Another issue is the issue of local support. Local impact agreements are now one of the criteria BIA looks for in reviewing off-reservation gaming projects. In New York, Governor Pataki's recent legislation requires that before a gaming compact is ratified there must be a local service and impact agreement. These additional steps ensure local interests are protected.

On the issue of full environmental reviews, the BIA's checklist now calls for a full environmental review of off-reservation gaming. Again in New York, Governor Pataki's legislation requires that each gaming compact for an off-reservation casino provide prior to construction a full environmental review. These increased requirements create a positive atmosphere for off-reservation gaming to occur.

In regards to the issue of out-of-State tribes, current regulations and the atmosphere within both States and Congress are addressing this issue. New York illustrates this point. Recently, just last week, two out-of-State tribes interfered in our Mohawk land claims settlement. They were attempting to piggyback their effort to get an off-reservation casino on our effort to settle our land claim.

Last Thursday, Governor Pataki sent them an e-mail:

> Please be advised that if your clients or their representatives succeed in their current efforts to prevent passage of the Mohawk settlement legislation, the State will engage in no further settlement negotiations with out-of–State tribes.

We commend Governor Pataki for recognizing the desperate attempt by out-of-State tribes and for his strong response to their actions. We believe that in the future, it will continue to become more difficult, not less, for out-of-State tribes.

In conclusion, the St. Regis Mohawk Tribe is the lead tribe in siting an off-reservation casino in the Catskills. Our project has the support of the Governor and the State. We have a local impact and service agreement. We have undertaken a comprehensive environmental review at both the State and Federal level. We are the only tribe with site-plan approval, and the lands are within our ancestral lands. All of this is being done within the context of IGRA.

Mr. Chairman and members of the committee, thank you for listening to me. I would be pleased to answer any questions you may have.

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

The CHAIRMAN. Thank you very much.

President Hagen.

STATEMENT OF DOREEN HAGEN, PRESIDENT, PRAIRIE ISLAND INDIAN COMMUNITY

Ms. HAGEN. Good morning, Chairman McCain and honorable committee members. Thank you for the opportunity to testify today on the regulation of Indian gaming.

My name is Doreen Hagen. I am a member of the Prairie Island Community, a veteran of the U.S. Army, and president of the Prairie Island Indian Community Tribal Council.

Prior to being elected to tribal council, I worked for the Prairie Island Indian Community Gaming Commission. During my tenure, I served as a commissioner of vendor licensing and later I became the assistant executive director.

For centuries, my tribe has been a careful steward of resources. In the past, the tribe cared for the bounty of the land because it provided for our sustenance. Today, the tribe carefully attends to its economic enterprise, Treasure Island. That stewardship is implemented by aggressive and thorough regulation. Our tribe works closely with the Minnesota Department of Public Safety and its alcohol, gambling enforcement division. We have a good relationship with the division's Deputy Director Frank Ball, Special Agent Norm Pint, and the agent assigned to our property, Jill Ahart, and the late Ralph Shingledecker. The State officials have and will always have an open door at Treasure Island. In addition, we work with the NIGC to ensure we meet all standards as described by the Federal MICS.

First and foremost, however, our tribe takes full responsibility for the regulation of our tribal government gaming operations through the Prairie Island Indian Community Gaming Commission. We are very proud of their work and their regulatory reputation. That commission is an autonomous regulatory arm of tribal government. It is the principal regulator of gaming at Prairie Island. The commission is responsible for the day-to-day oversight of gaming activities and ensures the business adheres to all guidelines set forth in IGRA, the Federal MICS, our compact with the State of Minnesota, and the Prairie Island Gaming Ordinance.

The commission provides a weekly regulatory report to the tribal council, but it does not take requests or receive regulatory direction from the tribal council. The commission is comprised of five members, an executive director and the commissioners of employee licensing, vendor licensing, compliance and surveillance. Commissioners are appointed officials and have no fixed terms. Each commissioner oversees his or her respective department and reports any concerns to the full commission for action.

The commission has a staff of 12 employees. Prior to employment, all gaming commissioners and gaming commission employees are subject to a full background check. In addition, employees receive vigorous training and testing before assuming the responsibility of their job. Moreover, employees attend continuing education courses, conferences and seminars as appropriate.

The commission's obligation to protect the gaming facility and its integrity is realized in two principal ways: First, by controlling access to the facility by third parties through its employee and vendor licensing departments; and second, by internal policing through the compliance and surveillance departments.

The commission's employee licensing department has a staff of five employees. These employees conduct full background checks on all applicants for employment at Treasure Island, which includes at a minimum a full FBI background check, State and local criminal checks, driver's license and credit checks, and checks on past residences and employment. Once a full background check is completed, it is forwarded along with a recommendation regarding the applicant's licensing to the Commissioner of Employee Licensing. If an applicant or license is determined by the commission to pose a potential threat to the integrity of gaming at Treasure Island, his or her license is denied or suspended.

Recently, the employee licensing department converted to electronic fingerprinting, which has reduced the time for receiving background check results from days or months to minutes. The commission also conducts full background investigations and licenses casino vendors via its vendor license department. Although not required by IGRA or its implementing regulations, the commission has fulfilled this function for many years. Vendor licensing applications are available and can be completed online on the casino's website. Only licensed and approved vendors can do business with the casino.

Internal monitoring of gaming activities at Treasure Island is accomplished by the Commissioner of Surveillance, who works closely with the casino's Surveillance Department. In 2002, the department installed a state-of-the-art all-digital surveillance system valued at over $5 million, the first such system in the entire gaming industry. The system provides clarity of images that far exceeds any analog technology and allows the operators to instantly review recorded images, while simultaneously viewing ongoing activity. The new system has proved to be an invaluable tool in monitoring the integrity of the business, tracking potentially illegal activity, and assisting in prosecution and conviction of individuals engaged in such activity. This technology is so advanced that the NIGC is reviewing its MICS for surveillance requirements which are still based on outdated analog technology.

The commission's internal oversight is also fulfilled by the compliance department whose purpose is to ensure the business follows all Federal, State, and tribal regulatory guidelines. The department includes compliance inspectors who are on-property 24 hours a day. These inspectors observe day-to-day activities for complete regulatory compliance. If the inspectors discover any deviation, the incident is documented and forwarded to the Commissioner of Compliance. In turn, the commissioners meet with the department responsible to resolve the deviation. If necessary, a citation is issued to the responsible department. Failure to comply with recommendations from the compliance department results in disciplinary action up to and including fines, gaming license revocation, and even employment termination.

The Prairie Island Indian Community Gaming Commission provides a complete regulatory structure for the tribe's government and gaming operation. The commission prevents potential threats to the business's integrity from third parties, and it internally monitors the business for compliance with all Federal, State, and tribal regulations.

In closing, the Prairie Island Indian Community takes its stewardship responsibilities very seriously. Our tribal government gaming operation is the lifeblood of our community. We now have sanitary water, sewers, good housing, paved roads, excellent health care, a tribal court system, our own police department, and education opportunities that never existed before tribal gaming. Moreover, we have the resources and time to revitalize our culture and tradition.

I want to echo Chairman Massey's remark that tribal government gaming is intended to provide essential services to our members, not to provide State government with a way to meet budget

deficits. The regulation and the integrity of our business are vital to our very survival. On every occasion, we have met and in many instances exceeded all Federal and State regulatory guidelines because of their importance to our business, as well as their importance to the Prairie Island Indian Community.

We do not believe that the Indian Gaming Regulatory Act needs to be amended. As a proud leader of Indian country, tribes are self-governing in the manner intended by the committee and the U.S. Government. I assure you that the privilege and responsibility of governing and providing for one's people is something no tribe would place in jeopardy.

Thank you. I will answer any questions you may have.

[Prepared statement of Ms. Hagen appears in appendix.]

The CHAIRMAN. Thank you very much.

Chairman Crawford, do the tribe and State share the regulation of the tribe's casino?

Mr. CRAWFORD. Under the compact under the State of North Dakota and South Dakota, there is some dual reporting requirements that we need to submit to the State's regulatory body, as well as audit reports.

The CHAIRMAN. It works out okay?

Mr. CRAWFORD. It works out okay, yes. There needs to be some little tuning up to be done, but nothing is always perfect. You have to work it out.

The CHAIRMAN. Does the NIGC come around regularly?

Mr. CRAWFORD. Yes; they do.

The CHAIRMAN. Has gaming affected your tribe's relationships with local communities?

Mr. CRAWFORD. Greatly. In reading the testimony, about 10 years ago, I could not sit in a coffee shop in Watertown, SD and talk shop. Today, seeing our resources, they kind of recognize who I am now today, and they try to say, hey, how are you guys doing out there; how is the tribe doing; how are you guys moving to Dakota Western Corporation; what are your plans; how do we work with housing development and those things. Those are all things that are kind of positive now that it sets you into that opportunity to make that small talk.

The CHAIRMAN. And they want you to pick up the check? [Laughter.]

Mr. CRAWFORD. Sometimes they do. [Laughter.]

The CHAIRMAN. Chief Ransom, the way I understand your testimony, you think off-reservation gaming is okay as long as it is within the State that the tribe resides. Is that your position?

Mr. RANSOM. I think that it is okay in certain circumstances when some of the criteria I identified are in place when you have the local support.

The CHAIRMAN. But not out of State?

Mr. RANSOM. I think that the current regulations and the current atmosphere prevents out-of-State tribes from crossing the border.

The CHAIRMAN. Yes; but what is your position?

Mr. RANSOM. Officially as a tribe, we have not taken a position.

The CHAIRMAN. What I find interesting is that you are very involved with Governor Pataki and the Assembly and approvals and

disapprovals and site locations and all that with the State. And yet I have spent my 19 years on this committee trying to protect tribal sovereignty and excluding the States from exercising any influence over the tribes because of their sovereignty. And yet you seem to be hand-in-glove with the Governor of the State and with the legislature and agreements with the State. Aren't you worried about an erosion of tribal sovereignty here?

Mr. RANSOM. We think it is probably just the opposite. It is an example of tribal sovereignty at work.

The CHAIRMAN. That the Governor should have the right to decide whether you should have an off-reservation casino or not?

Mr. RANSOM. That the tribe should have the ability to negotiate with the State an off-reservation casino, and that it be done on terms that we find acceptable and that do not compromise our sovereignty. I think that where there are problems is when out-of-State tribes in particular attempt to accept less when they cross borders.

The CHAIRMAN. Well, I think that, it is just my opinion, if we have enough off-reservation casinos set up in America, you are going to see a backlash against Indian gaming, because that was not the intent of the law; that was not the intent of IGRA; none of us ever anticipated that there would be casinos in the Catskills as associated with your ability to conduct Indian gaming within your tribal reservation boundaries. You are already beginning to see that backlash. So we will be examining this issue very carefully.

It seems to me now you are in a position where the State of New York has basically the ability to decide whether you can locate a casino or not anywhere in the State of New York. I am not sure that that is in keeping with the tribal sovereignty issue, which I think is paramount and should remain paramount.

President Hagen, how are your relations with the State as far as the regulatory role is concerned?

Ms. HAGEN. As I testified, we have a very good relationship with the Department of Public Safety. They come down quite often and we meet with them, and are in constant communication with them.

The CHAIRMAN. What about with the NIGC?

Ms. HAGEN. We also have the same type of relationship. However, our surveillance department has not been approved because of the new digital, what I testified in here. But we have been meeting with them and we are working with them and we also have our doors open to them at all times.

The CHAIRMAN. How do you handle criminal jurisdiction matters with State law enforcement agencies?

Ms. HAGEN. We have an agreement with the county of Goodhue, and we send whatever prosecutions or arrests that we have to the county of Goodhue.

The CHAIRMAN. What is your tribe's position on off-reservation casinos?

Ms. HAGEN. Do you have plenty of time? Because right now, we are in a disagreement with the Governor of Minnesota on off-reservation gaming.

The CHAIRMAN. Here is my point. We have reservations that are located near metropolitan areas and some not near metropolitan

areas. Okay? Now, they are engaged in gaming operations after compacts that are concluded. Suppose that tribes were allowed to locate off-reservation casinos in downtown metropolitan areas. What would that do to the gaming operations that are being conducted on reservations which happen to be geographically further away from the areas, like downtown Denver, downtown Oakland, et cetera. Haven't we thought that through? I would like your opinion, too, Chief Crawford.

Go ahead.

Ms. HAGEN. I understand what you are talking about because we are going through that right now. In Minnesota, we have 11 tribes. Right now, there are tribes that operate away from the metro area and we have tribes that are in remote areas that are doing good for the rural economy where they are located. We have actually three tribes that are close to the metro area.

However, any type of off-reservation casinos will affect even those, because we have as far as Treasure Island, Prairie Island is concerned, we are a destination resort. We are off the beaten track. We do not have a major highway or a major roadway. You have to literally drive a long way to get to our casino. We have to market the metro area. We have buses.

The CHAIRMAN. What would happen to you if there was a casino located in downtown Minneapolis?

Ms. HAGEN. We just had a new study done that 30 percent of our income would be affected, and 300 jobs would be affected. We employ 1,500 employees, and 300 would lose their jobs. That means a tax-paying job, excellent health benefits, and 401(k) benefits. Those would be affected by the rural community. We have resolutions from the city of Red Wing and the commission of Goodhue County backing us on this, that we do not want a casino to be opened in the metro area.

The CHAIRMAN. Chairman Crawford.

Mr. CRAWFORD. Yes; South Dakota is a very rural area, obviously, and we have a struggle. Governor Rounds of South Dakota has come out with a 2010-initiative on how to increase the State gross product. He gave a hand in friendship to the tribes as they come to speak with him on how do we improve the quality of life, the Midwest lifestyle in South Dakota.

We are hampered by our resources, our people leaving the State of South Dakota and our reservation to find the quality jobs that they need to sustain a quality of life. But putting these resources like that into a metropolitan area only handicaps us further, to be able to be bringing in people to our region for economic benefits. We cannot get 3M; we cannot get the big corporations to come out to rural South Dakota.

So if we can tie this benefit of Indian gaming to tourism, to integrate our resources together to make a plan that we can help each other, not only the tribes, but the State as well, I think those are some of the things that we need to offer.

I think, to be honest with you, Mr. Chairman, I think that the IGRA Act does not completely maximize its responsibility to rural development. I think that was an intent.

The CHAIRMAN. Chief Ransom, I would like to give you an opportunity to respond.

Mr. RANSOM. I think that, again, New York is unique in that there are only seven federally recognized tribes. There are only three out of the seven that are doing gaming. The Senecas are in the Buffalo-Niagara Falls corridor. The Oneidas are in the Central New York corridor. The Mohawks, we are in the northernmost remote part of the State. We do not have a large urban population near us.

So in terms of the Catskills, we see it as a project that would benefit not only the Catskills, but our current reservation as well, so it benefits two parts of the State. I think that that is why we see it as a win-win for the State and us.

The CHAIRMAN. Well, I would agree there are different situations throughout the country.

I thank the witnesses. You have been very helpful being here today.

This hearing is adjourned.

[Whereupon, at 12:04 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF DOREEN HAGEN, PRESIDENT, PRAIRIE ISLAND INDIAN COMMUNITY TRIBAL COUNCIL

Good morning Chairman McCain, Vice Chairman Dorgan and honorable members of the committee. Thank you for the opportunity to testify today on the regulation of Indian gaming. My name is Doreen Hagen. I am a member of the Prairie Island Indian Community, a U.S. veteran, and president of the Prairie Island Indian Community Tribal Council. Prior to being elected to tribal council, I was one of the first commissioners on the Prairie Island Indian Community Gaming Commission.

During my tenure, I served as the Commissioner of Vendor Licensing and later I became the Assistant Executive Director.

The Prairie Island Indian Community is a federally recognized, sovereign, self-governing Indian tribe located in the State of Minnesota along the banks of the Mississippi River north of the city of Red Wing. My tribe is a Mdewakanton Dakota Community; the literal translation of Mdewakanton is "dwellers of Spirit Lake" and Dakota means "ally." Tinta Wita or Prairie Island has provided for the needs of my people for centuries; it is a spiritual place. Over the years, this land has provided food, medicine and housing for my tribe, especially following the Dakota Conflict when times were especially challenging.

More recently, Prairie Island has provided my tribe with economic opportunities, namely casino gambling. In 1984, we opened a bingo parlor known as Island Bingo. Tribal members worked hard to make certain that the enterprise was ran well and provided for good jobs for the membership. Many tribal members can tell you stories of late nights and hard work, lean times but happy times, making the bingo enterprise a success.

Following the *Cabazon* decision, and subsequent passage of the Indian Gaming Regulatory Act [IGRA] in 1988, my tribe successfully negotiated compacts with the State of Minnesota and our modest bingo operation was transformed into a casino, known as Treasure Island. Resort & Casino. Throughout our business' existence, we have been proud of our record of regulatory compliance and our positive and productive relationships with state and Federal regulatory and legislative bodies.

As a result of hard work, responsible management, and aggressive regulation, Treasure Island has become a great economic success, both for my tribe and the State of Minnesota. Our casino employs over 1,500 people, 95 percent of whom.are non-Indians, residing near our reservation. As such, the Prairie Island Indian Community is the largest employer in Goodhue County, providing good paying jobs with great benefits in rural Minnesota without any assistance from the State of Minnesota. Prairie Island, and other Indian Gaming Operations in Minnesota are great examples of successful rural economic development in Minnesota. We are economic enterprise zones that cost the residents of Minnesota nothing.

For centuries, my tribe has been a careful steward of its resources. In the past, the tribe cared for the bounty of Prairie Island, which provided for our sustenance. Similarly today, the tribe carefully attends to its economic enterprise, Treasure Island, and that stewardship is implemented by aggressive and thorough regulation.

Our tribe works closely with the Minnesota Department of Public Safety and its Alcohol Gambling Enforcement Division. We have a good relationship with the division's Deputy Director, Frank Ball; the late Ralph Shingledecker; Special Agent, Norm Pint and the agent assigned to our property, Jill Ahart. The State officials have and will always have an open door at Treasure Island. In addition, we work with the National Indian Gaming Commission [NIGC] to ensure we meet all standards as described by the Minimum Internal Control Standards [MICS].

First and foremost, however, our tribe takes full responsibility for the regulation of our tribal government gaming operation through the Prairie Island Indian Community Gaming Commission. We are very proud of their work and their regulatory reputation.

The Prairie Island Indian Community Gaming Commission is an autonomous regulatory arm of our tribal government. It is the principal regulator of all gaming activities at Prairie Island. The commission is responsible for the day-to-day oversight of gaming activities and ensures the business adheres to all regulatory requirements set forth in IGRA, the Federal MICS, our compact with the State of Minnesota and the Prairie Island Gaming Ordinance.

The commission is comprised of 5 members, an executive director and commissioners of employee licensing, vendor licensing, compliance and surveillance. Commissioners are appointed officials and have no term limits. Commissioners are rigorously trained in every aspect of the gaming operation before assuming their role as commissioner and each commissioner is, therefore, cross-trained in the department of the other commissioners. Each commissioner oversees his or her respective department and reports concerns to the full commission for action. The commission has a staff of 12 employees. All Gaming Commission employees receive weeks of training and testing before assuming the responsibility of their job. Moreover, employees attend continuing education courses, conference and seminars as appropriate.

The commission's obligation to protect the Gaming facility and its integrity is realized in two principal ways: first by controlling access to the facility by third parties through its employee and vendor licensing departments; and second by internal policing through its compliance and surveillance departments.

The Commission's Employee Licensing Department has a staff of 5 employees. These employees conduct full background checks on all applicants for employment at Treasure Island, which includes at a minimum, a full FBI background check, State and local criminal checks, driver's license and credit checks, and checks on past residences and employment. Once a full background check is completed, it is forwarded along with a recommendation regarding the applicant's licensing to the Commissioner of Employee Licensing. If an applicant or licensee is determined by the Commission to pose a potential threat to the integrity of gaining at Treasure Island, his or her license is denied or suspended. Applicants are entitled to a full post-deprivation due process hearing, including the opportunity to request reconsideration by the Commission en banc.

Recently, the Employee Licensing Department converted to electronic fingerprinting, which has reduced the time for background checks from days or months to minutes. As is true with all other Departments of the Commission, the Employee Licensing Department is always looking to improve its efficiency and performance through improved technology.

The Commission also conducts full background investigations and licenses casino vendors via its Vendor Licensing Department. Although not required. by the IGRA or its implementing regulations, the Commission has fulfilled this function for many years. Background checks for vendors are tiered based on the level of economic activity the vendor has with the casino. Only licensed and approved vendors can do business with the casino, regardless of whether a contract has been executed or agreed to, and a list of approved vendors is available on-line for casino management.

The Commission's regulation and oversight of vendors extends from enormous gaming vendors down to charter bus providers, who must demonstrate their licensure and good standing with the Minnesota Department of Transportation and the United States Department of Transportation. Vendor licensing applications are available and can be completed on-line on the casino's website.

Internal monitoring of gaming activities at Treasure Island is accomplished by the Commissioner of Surveillance who works closely with the casino's Surveillance Department. In 2002, the department installed a state-of-the-art, all digital surveillance system valued at over $5 million dollars, the first such system in the entire gaining industry. The system provides clarity of images that far exceeds any analog technology and allows the operators to instantly review recorded images while simultaneously watching on-going activity. The new system has proven to be an invaluable tool in monitoring the integrity of the business, tracking potentially illegal

activity and in assisting in the prosecution and conviction of individuals engaged in such activity. The technology is so advanced that the NIGC is reviewing its MICS for surveillance requirements, which are still based on out-dated analog technology.

The Commission's internal oversight is also fulfilled by the Compliance Department whose purpose is ensure that the business follows all Federal, state and tribal regulatory guidelines. The Department includes Compliance Inspectors who, are on property 24 hours a day. The inspectors observe day-to-day activities for complete regulatory compliance. If the inspectors discover any deviation, the incident is documented and forwarded to the Commissioner of Compliance. In turn, the Commissioner meets with the Department responsible to resolve the deviation and if necessary a citation is issued to the responsible department. Failure to comply with the recommendations from the Compliance Department will result in disciplinary action up to and including fines, gaming license suspension, gaming license revocation and even employment termination.

The Prairie island Indian Community Gaming Commission provides a complete regulatory structure for the tribe's government gaming operation. The Commission prevents potential threats to the business' integrity from third parties and it internally monitors the business for compliance with all Federal, State, and tribal regulations.

As has been the case for centuries before Europeans arrive here, the Prairie Island Indian Community takes its stewardship responsibilities very seriously and its current gaming regulatory responsibility is no exception. Our tribal government gaming operation is the lifeblood of our Tribal Community and helps support the economies of our neighbors and friends. Prairie Island's members now have sanitary water and sewer, good housing, paved roads, good health care and educational opportunities that never existed before tribal gaming. Moreover, we have the resources and time to revitalize our culture and traditions.

The regulation and the integrity of our business are vital to our very survival. On every occasion we have met, and in many instances exceeded, all Federal and State regulatory guidelines because of their importance to our business as well as their importance to the Prairie Island Indian Community.

We do not believe that the Indian Gaming Regulatory Act needs to be amended. The regulatory guidelines it includes allow tribes to self-govern in the manner intended by this committee and the U.S. Government. As a proud leader in Indian country, I can assure you that the privilege and responsibility of governing and providing for one's people is something no tribe would place in jeopardy.

Pidamaya. Thank you. I will answer any questions you may have.

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

Thank you, Mr. Chairman.

I commend the committee for holding this hearing on the regulation of Indian gaming specifically to hear the views of tribes.

Indian gaming has grown to a multi-billion dollar industry. there are over 200 Indian tribes that have taken advantage of this thriving economic opportunity.

Unfortunately, when most people think of Indian gaming, they think of the wealthier tribes, which often have the benefit of an ideal location.

So I welcome the opportunity today to hear from those tribes that rely on Indian gaming the most—those that are located in rural areas or face other challenges.

Indian tribes, including the less wealthy tribes, have accepted the call for regulation and have developed state of the art surveillance systems and other mechanisms to ensure the integrity of Indian gaming.

They have established systems to identify criminal activities undertaken by visitors who seek to take advantage of them and reported those activities to the proper authorities.

This has resulted in much benefit to Indian tribes—both socially and economically.

I look forward to listening to the testimonies of today's witnesses.

Thank you Mr. Chairman for scheduling this hearing today.

PREPARED STATEMENT OF VIVIAN JUAN-SAUNDERS, CHAIRWOMAN, TOHONO O'ODHAM NATION

Good morning Chairman McCain, Vice Chairman Dorgan and members of the committee and staff. My name is Vivian Juan-Saunders and I am chairwoman of the Tohono O'odham Nation. The Tohono O'odham Nation is a member of the Arizona Indian Gaming Association, an organization comprised of the gaming tribes in

the State of Arizona. Thank you for the opportunity to address the committee. It is my great pleasure to provide you with an overview of tribal gaming regulation in the State of Arizona, and to share the gaming success on the Tohono O'odham. Nation.

The Arizona gaming compacts work both for tribes and for the State. Tribes in Arizona have a long track record of working with each other, and with the State. Because of our new gaming compacts, our commitment and our process, Arizona has a system that is meeting the intent and directives of the Indian Gaming Regulatory Act [IGRA].

To understand the Arizona regulatory climate, it is important to first understand the Arizona gaming environment. For most of the past century, Indians on reservations in Arizona lived in extreme poverty, welfare dependency, and economic despair. The situation began to improve after Federal legislation recognized and affirmed the right of Indian tribes to conduct gaming on our lands and established a regulatory framework for the purposes of, among other things, providing jobs and funding services for tribal members.

Since 1992, Arizona law has authorized the Governor of the State to negotiate tribal-State compacts on the State's behalf. Since then, 21 Indian tribes in Arizona have entered into compacts with the State. Sixteen have made major investments in gaming facilities on their tribal lands.

The first compacts authorizing class III gaming by tribal governments were signed in Arizona in 1993. Since the first casino opened in Arizona, gaming revenues earned by Arizona tribes have been directed to providing for the health, welfare, education and well-being of tribal members. Just as the IGRA intended, Indian casinos on Arizona tribal lands generate vital revenues used to provide decent housing, clean water, better education, health care, public safety and other services to tens of thousands of Indians living on Arizona reservations. Indian casinos also provide jobs removing thousands of Indians off welfare and unemployment, and producing many economic benefits both for nearby communities and for the State as a whole.

Regulation is a major component of this successful system. In Arizona, the gaming conducted by tribal governments is both limited and well-regulated. Arizona's gaming compacts limit the types of games that may be played on tribal lands, the number of gaming facilities, and the number of gaming devices and table games that can be installed in these facilities. The scope, of gaming permitted under Arizona's gaming compacts is based upon the size of the tribe. Tribes with more enrolled members are eligible to have more gaming devices. Conversely, smaller tribes are able to have fewer gaming devices. This regulatory structure enjoys the broad support of both Arizona's tribes and by Arizona's citizens.

Revenues earned by Arizona Indian casinos also fund the comprehensive regulatory oversight system of Arizona Indian casinos. Not only do Arizona's tribes fund our tribal gaming regulatory offices, they also fund the Arizona Department of Gaming [ADOG]—the State agency that oversees gaming conducted by tribal governments on Indian lands.

Today, 567 people are engaged statewide in regulating gaming, including 105 employees with the Arizona Department of Gaming employees and 462 employees in tribal, regulatory offices. Collectively, these regulatory offices spend more than $35 million per year regulating Indian gaming in Arizona.

In November 2002, Arizona voters passed an initiative sponsored by 17 of Arizona's Indian tribes—proposition 202. Proposition 202 allows tribes that are unable to profitably operate gaming on their lands or that have chosen not to game to secure benefits of gaming by transferring their rights to operate gaming devices to other tribes. Intra-tribal transfers are enabling tribes on remote reservations like the Hualapai, Havasupai, San Juan Southern Paiute, Zuni, and Kaibab-Paiute for the first time to benefit from gaming.

Proposition 202 also provides for a portion of gaming revenues to be shared with the State of Arizona and local governments calculated on a sliding scale of 1 percent to 8 percent. Eighty-eight percent of these shared revenues are deposited into the Arizona Benefits Fund to pay regulatory expenses incurred by the Arizona Department of Gaming, to combat problem gambling, reduce classroom sizes, increase teacher salaries, support dropout prevention programs and instructional improvement programs, reimburse hospitals for unrecovered costs for trauma and emergency services, and fund wildlife conservation and statewide tourism promotion. The remaining twelve percent of these revenues are directed to city, town, and county governments, either through direct grants by tribes or through the Local Communities Fund of the State's Commerce and Economic Development Commission.

A statewide study of Indian Gaming in Arizona released by the Udall Center for Studies in Public Policy [Stephen Cornell: *An Analysis of the Economic Impacts of Indian Gaming in the State of Arizona*] estimated the economic impact of tribal gov-

ernmental gaming in the State of Arizona. The report concluded that Indian gaming in Arizona indirectly generated $468 million in economic activity during 2000.

The Udall report noted that many Indian employees formerly were welfare recipients. Although statistical data is not available on the actual number of former welfare workers now employed in Indian gaining, the study concluded that, in counties where casinos operate, the presence of casinos reduced welfare rolls.

Tribal gaming operations in Arizona currently employ approximately 10,000 people—a figure comparable in size to the number employed in Arizona's mining sector. Approximately 4,300 Indians are employed in tribal gaining operations, and several hundred more are employed as tribal gaming regulators. On remote reservations, Indian casinos are often the largest employer in the region, significantly reducing the economic burden for Indian and non-Indian residents by providing much needed jobs. There, where few other options for employment exist, the number of tribal employees working in Indian gaming can run as high as 84 percent. In addition to the direct benefits from employment, it is important to remember that these employees pay Federal income and payroll taxes, most pay state income taxes, and all spend their earnings in the State, creating a positive economic impact for the State.

The IGRA confirmed the right of tribal governments to game on their lands, but it also established a regulatory structure for class III gaming, one that is shared by the State and tribes with oversight by the National Indian Gaming Commission [NIGC]. Arizona's gaming compacts provide for tribes to be the primary regulators of Indian gaming in the State, but the compacts also provide for a State regulatory agency with concurrent licensing authority and substantial oversight rights. The system has worked because sovereign tribal governments and the State government worked together to ensure that Indian gaming is well-regulated and achieves what Congress intended in passing the IGRA.

The Arizona Legislature established the Arizona Department of Gaining in 1995 to monitor Indian gaming operations on behalf of the State of Arizona. Today, the Arizona Department of Gaming has more than 105 full-time employees who perform a variety of functions to meet the State's responsibilities under the gaming compacts. These employees carryout regulatory activities such as licensing many casino employees and making licensing recommendations on others, licensing all gaming vendors and large non-gaming vendors, inspecting gaming devices, reviewing the rules for poker and blackjack games, and monitoring tribal compliance with compact requirements, including detailed internal control standards.

In 1999, the State of Arizona's Auditor General evaluated the, State's effectiveness in overseeing gaming operations run by tribal governments in Arizona. The Auditor General's report concluded: "the [Arizona] Department's [of Gaming] extensive oversight activities are well designed for ensuring the integrity of class III gaming operations." The Auditor General noted that the Department performs pre-operation inspections at every casino, randomly inspects 50 gaming devices at each casino every 4 weeks, conducts compact compliance reviews of each casino every 18 months, and maintains an ongoing presence through its investigators who visit casinos on a weekly basis to inspect operations and investigate possible compact violations. The Auditor General also concluded that the Department's "extensive and intensive activities are generally well designed and are accepted practices among gaming regulators." The Auditor General concluded that Arizona's regulatory approach was "among the most extensive nationally," noting that the Arizona Department of Gaming has more staff monitoring Indian gaming than any other State, maintains a larger budget than States with comparable numbers of casinos, and conducts its activities more frequently than most other States.

The Tohono O'odham Nation in Southern Arizona encompasses more than 2.8 million acres of vast desert land, and is home to more than 28,000 enrolled members. Our lands also extend into Sonora, Mexico, and we have the unique distinction and challenges created by the 75 miles of international border shared with Mexico, the largest of any tribe. The Tohono O'odham Nation, is the second largest Indian Nation in land base, next to the Navajo Nation, and is roughly equal in size to the State of Connecticut.

The Tohono O'odham Nation's gaming operations generate revenues that fund more than one-half of our budget, providing vital and essential services to all our members. Our tribal gaming revenues directly fund essential governmental services such as education, public safety, housing, health care, community, and economic development, as well as many basic operations of the Nation and our 11 political subdivisions [which are known as Districts].

The Nation is the first line of defense for the United States, protecting 75 miles of International border between the United States and Mexico. Since October 2003, the Nation has seized more than 180,000 pounds of illegal narcotics and, when combining Federal and tribal law enforcement efforts, more than 300,000 pounds of ille-

gal narcotics were seized on the Nation's lands in 2004. In addition, 27,130 undocumented immigrants were detained and arrested crossing the border on the Nation's reservation last year. Every single one of our officers spends 60 percent of his or her day on border-related law enforcement. This benefit for the United States came at a great cost to the Nation, as the Nation spends in excess of $3 million annually on border law enforcement alone. To date, the Nation has spent more than $10 million dollars in tribal resources on Homeland Security issues, which is clearly a Federal responsibility. Over $2 million of the Nation's Indian health care funding allocation is lost to emergency health care treatment of undocumented immigrants taken to our health clinic.

Revenues from the Nation's gaming operations fund 66 percent of the Nation's budget for police protection, supporting over 70 officers, 30 rangers, 109 support staff, 40 vehicles, and 4 substations. However, the police protection provided cannot address the vast border related issues faced by the Nation.

Our gaming revenues have had a marked impact on improving higher education opportunities for our tribal members to obtain college educations. A college education formerly was beyond the reach of most of our students. Our gaming revenues have allowed the Nation to fund over $30 million in scholarships, enabling more than 2,000 Tohono O'odham students to attend college. Our gaming revenues also have made it possible for the Nation to start our own community college, the Tohono O'odham Community College, which now is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. In addition to supporting higher education, our gaming revenues also have entirely funded the Nation's budget for Early Childhood and Head Start facilities, as well as the costs of starting a radio station, KOHN, which broadcasts in O'odham in an effort to preserve our native language.

Our gaming revenues have also allowed the Nation to fund initiatives to improve the health of our people, who are plagued with diabetes and related medical conditions. Although portions of the Nation's lands are close to metropolitan areas with numerous health care options, the vast majority of our members live in remote, rural areas far from health care providers. Our gaming revenues fund the entire $11.2 million budget for a health care clinic on the rural West side of the Nation, and were used to construct a $2.5 million kidney dialysis center in a location far more convenient for those who suffer from kidney failure. Our gaming revenues also have funded the entire $14 million budget for the construction of the first nursing home on the Nation's lands, providing health care services to our elderly without them having to move to Tucson, far from their families. Additionally, our gaming revenues are funding 11 youth recreation centers to encourage our youth to engage in healthy lifestyles.

In an effort to diversify our economy, the Nation also has used gaming revenues to foster economic development on the Nation. The Nation has established a substantial fund to provide grants to small business ventures. To date, more than 150 of our tribal members have received grants to help them establish and run private businesses.

This is just what the Nation has accomplished so far. In the future, the Nation plans to expand our police, fire, and EMT services, build a solid waste disposal way station, and continue work on addressing the sizable problem of substandard housing and poor or inadequate infrastructure on the Nation's lands.

With the State taking an active role in the oversight of Indian gaming, it is important to recognize that the State's activities are secondary to those of the primary gaming regulators in the State—the tribes. Arizona's gaming compacts allocate the primary responsibility for the regulation of gaming to the tribes. The tribal gaming regulatory offices in Arizona license all casino employees, license all gaming vendors and large non-gaming vendors, inspect gaming devices, approve the rules for poker and blackjack games, set the detailed internal control standards that govern casino operations, and monitor compliance with the IGRA, compact requirements, and internal control standards. In addition, Arizona's gaming compacts require that a tribal gaming inspector be physically present in each gaming facility at all times during operating hours.

Arizona's Indian tribes also have embraced technology as a tool for regulating gaming. Since 1993, Arizona's gaming compacts have required all gaming devices to be hooked up to and monitored by a computerized accounting system, which provides much greater control than a manual system. Soon, Arizona's larger gaining facilities will provide limited access to those computerized accounting systems to tribal and State regulators, which will allow for easier access to information, which today is available only on paper.

The Arizona Department of Gaming, in consultation with many of Arizona's gaming tribes, has recently completed negotiations over the terms of a memorandum of

understanding that contemplates the Department of Gaming funding a position at the U.S. Attorney's office. The Special U.S. Attorney position funded under this agreement will solely address crimes committed in tribal gaming facilities. This agreement assures that the U.S. Attorneys' office has adequate resources to prosecute crimes committed in these facilities.

There is a misperception that serious crime exists at Indian casinos that is going unpunished. What has been found is that typically most crimes occurring at tribal casinos are minor property crimes against casinos. Regardless of the nature of the crime, Arizona is working to find unique solutions to address all challenges and ensure appropriate action is taken for any criminal action found. Clearly, in Arizona, crimes in gaming country are not being ignored.

The Arizona Department of Gaming and many of Arizona's gaming tribes also have been engaged for several years in an on-going effort to update and improve the regulatory requirements for Indian gaming in Arizona. We have just completed several years of negotiations that will result in new security and surveillance regulations for Arizona casinos. Similar discussions will continue in the future as we address new topics of concern for tribes and the State.

A few short years of gaming revenues cannot reverse the effects of more than a century of poverty, despair, and inadequate education, but gaming conducted by tribal governments is contributing to significant improvements on many of Arizona's Indian reservations. If the challenges remain severe, the successes are sweet.

As this committee considers potential changes to the IGRA, please remember that the regulatory framework in Arizona is working well. Arizona's gaming tribes take our role as gaming regulators seriously, as does the State in its oversight role. Stringent and often demanding, this system, which has required substantial on-going cooperation by tribal governments and the State of Arizona, has provided comprehensive and highly effective regulation of Indian gaming operations. Additional regulation at the Federal level will only duplicate current tribal and State efforts in Arizona. We invite the members of this committee to visit Arizona and see how Indian gaming is working.

Considering that class III Indian gaming largely hinges on the agreements negotiated with the States, it makes the most sense that the majority of the regulation be left to the States and tribes. The appropriate role for the NIGC would be providing technical assistance to the States to strengthen the tribal State regulatory relations. It is not appropriate or functional to add a third layer of regulators if the basic tribal State regulation is soundly established and effective.

Finally, in light of the significant tribal resources already devoted to the regulation of Indian gaming in Arizona, and the limited role the NIGC plays in the regulation of Indian gaining in Arizona, Arizona's Indian tribes do not believe that we should be forced to shoulder the cost of any additional funding that the National Indian Gaming Commission needs to carry out its regulatory responsibilities in other States.

Mr. Chairman, members of the committee and staff, thank you for the opportunity to share my perspective on this very important issue. I would be happy to answer any questions you may have.

PREPARED STATEMENT OF DALLAS MASSEY SR., CHAIRMAN, WHITE MOUNTAIN APACHE TRIBE

Thank you for inviting me to be part of these proceedings. My name is Dallas Massey Sr., chairman, White Mountain Apache Tribe.

I am pleased to be able to add my remarks to those of Chairwoman Juan-Sanders and help you learn more about our system in Arizona. As the chairwoman explained, gaming in Arizona is limited and regulated and is working for all of us.

The White Mountain Apache Tribe is located in east central Arizona on the Fort Apache Indian Reservation. Our land covers more than 1.6 million acres. The tribe has over 12,000 members located on nine major reservation communities. Within our land base, our members experience serious poverty and unemployment. Our median family income is just $9,200 a year. Our casino provides not only an important source of revenue, but it also is a major source of employment for our people.

For years, before gaming, my tribe struggled to move forward without adequate schools or housing, health care, roads, telephone systems, water, and police and fire protection. While gaming revenues are helping us make strides, our needs are so overwhelming that my people often go without food, electricity, employment and shelter. Our average income is far below the Federal poverty level and our unemployment rate is 60 percent.

We have many natural resources on our land—including timber. But we do not see our land as a resource to exploit. We manage our land with traditional techniques out of respect for the Creator and creation. At the same time, we understand the need to develop extensive infrastructure so we can attract ecologically compatible industry to selected areas of our reservation. These competing needs and commitments make it difficult for us to finance the most basic services for our people.

In the summer of 2002, the White Mountain Apache Tribe suffered a horrible loss when the Rodeo-Chedeski fire swept through our reservation. This was not only a physical but also an emotional loss because we feel such strong cultural ties to our land. To fight the blaze, we mobilized nearly 400 men and women. Still, the fire charred 276,000 acres of the Fort Apache Reservation. Our tribe has been working hard to salvage the forest and our economy, but because of the fire, the land scarred by the fire cannot be logged for 100 to 150 years. For the next 30 years, we will be cutting one-half of what the tribe planned to harvest. Loss of income is exacerbated by job losses. Even with the mill fully operating, unemployment on our reservation hovered at 60 percent. Without the mill operating, the casino becomes an even more critical source for employment.

With revenues from gaming, the White Mountain tribal government is funding necessities like a daycare facility. We are making improvements to our schools, health care and housing. But building projects are costly and the needs, like our land base, are enormous.

Yet despite our daily struggle with severe revenue shortfalls, our tribe, like other Arizona tribes, is sharing a portion of our gaming revenues with the people of Arizona. In 2004, Arizona gaming tribes contributed nearly $38 million in revenues sharing payments to the State. Revenues supported education, emergency health care, wildlife conservation and tourism throughout Arizona. Shared revenues also provided treatment and support to help problem gamblers. In addition, and as described in more detail below, part of this $38 million funded the Arizona Department of Gaming's regulation of Indian gaming in the State. As Chairwoman Saunders explained, our revenue sharing system is unique. Because our compact ensures that tribes with casinos near urban locations pay the lion's share of revenue sharing, smaller, more rural tribes, like mine, are not unfairly burdened.

In 2004, 21 tribes have compacts and 15 have gaming facilities, with 11,831 slot machines and 424 table games. To regulate the industry, Arizona tribes and the State of Arizona spend more than $35 million annually in oversight. In total, the State has 567 regulatory employees, a number that is exclusive of NIGC staff. This equates to one regulatory employee for every 21 games. In comparison, Atlantic City, which has 34,225 games in play, has one regulatory employee for every 95 games; and Nevada, which has 211,760 games in play, has one regulatory employee for every 492 games. Arizona spends roughly $3,000 per year per game for regulation, while Atlantic City, with an industry three times the size, spends $672 per game per year and Nevada, with nearly twenty .times the games, spends $118 per game per year.

How did Arizona develop such a system?

Although tribes in Arizona have different backgrounds, cultures and competing interests, they united to agree upon a common policy for Indian gaming in Arizona. They gave up their parochial interests, which was not an easy decision or an easy process. Today tribes continue to be committed and dedicate tremendous resources to the regulation of Indian gaming. Tribal governments are dedicated to building and maintaining strong regulatory systems because our sovereign authority, government operations and resources are at stake.

When proposition 202 was passed by Arizona voters in 2002, it contained several innovations that, at the time, represented some of the best practices from around the country. For example, it details a progressive approach to revenue sharing. In the Arizona model, the more you make, the more you pay. Agreement on revenue-sharing was not an easy decision for tribal leaders to reach. Establishing a sliding scale from 1 percent to 8 percent made this easier to accept. Arizona tribes provide 12 percent of the State-shared revenue to local cities and towns, or through them, to qualified non-profits. In Arizona, more than 90 percent of the revenue sharing is paid by the large urban tribes who make the most revenues.

Another innovation is that the tribal-State gaming compacts only allow Arizona tribes to increase the number of slot machines they operate by leasing machine rights from other tribes that are not using their gaming rights. These arrangements are done on a tribal government-to-tribal government basis. For example, the Salt River Pima-Maricopa Indian Community contracted with the Havasupai Tribe which is located at the bottom of the Grand Canyon and the Hualapai Tribe in northeast Arizona in Peach Springs to lease their machine rights. For the Havasupai, these revenues more than doubled the tribe's annual budget.

And the Arizona model protects our exclusivity. Two so-called "poison pills" keep slot machine gaming and other potential gaming limited to the compacts.

Proposition 202 provided for additional regulation over Indian gaming by the Arizona Department of Gaming. Arizona gaming tribes contributed $8 million to the Arizona Department of Gaming [ADOG] in 2004. The tribal contribution nearly fully funds ADOG, since its total budget is almost $10 million, ADOG receives no State general funding. This increase in funding has enabled ADOG to grow from 75 full-time employees in 2003, to 105 full-time employees in 2004. ADOG receives additional funding from fees paid by gaming vendors and gaming employees for their State certification.

In addition to being licensed by the tribes, gaming vendors and gaming employees must be licensed by ADOG. That process includes background checks for suitability. ADOG also inspects Indian gaming facilities to review gaming transactions, the integrity of games, and vendor payments. Clearly, Indian gaming in Arizona is a highly regulated industry. In our industry, nothing is left to chance.

Our system is limited and regulated and it works. From our experience our model interprets the letter and the intent of IGRA. It generates revenues for tribes to encourage self-sufficiency and recognizes that tribal lands present tribes with different opportunities.

Therefore, we would like to be on record to remind the committee that there are financial impacts and hardships to tribes when fees are raised. Arizona tribes are opposed to a fee system for NIGC that would create unfair burdens for those tribes least able, to pay.

Arizona tribes also believe that revenue sharing should be capped to ensure that more money is generated for tribal needs and regulation rather than using revenues from tribal governmental gaming to offset State deficits. Senator McCain, when you drafted IGRA, you said no authority could tax Indian gaming revenues. Tribal governmental gaming was instituted to help tribes deliver essential government services to their members, not to provide—State governments with a way to meet budget shortfalls.

Arizona tribes believe that tribal governments must retain the primary responsibility for regulating tribally owned and operated gaming operations. Fifteen years of Federal policy under the Indian Gaming Regulatory Act have created a highly developed, well funded, and extensive State-tribal regulatory system that should be supported by the U.S. Congress and not supplanted with wasteful or duplicative Federal regulations. The National Indian Gaming Commission's authority over class III gaming should be supplemental and deferential to class III regulation under negotiated tribal-State gaming compacts.

Arizona tribes already fully fund an adequate State-tribal regulatory system and should not be forced to pay for increases in National Indian Gaming Commission fees. Furthermore, any increase in the National Indian Gaming Commission's funding should be based on specific budget justifications submitted to the Appropriations Committee and not based on automatic funding increases.

Thank you for giving me the opportunity today to represent the White Mountain Apache Tribe. On behalf of Arizona tribes, we invite this committee to come to Arizona and see our system working.

DERON MARQUEZ, CHAIRMAN
SAN MANUEL BAND OF MISSION INDIANS

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

June 28, 2005

INTRODUCTION

Good Morning Chairman McCain, Vice Chairman Dorgan, and Members of the Committee. My name is Deron Marquez. I am Chairman of the San Manuel Band of Mission Indians. I'd like to begin by thanking you for this opportunity to testify before the Committee this morning. Before I get to the heart of my testimony, which is the discussion of our Government's regulatory efforts, and concerns with the Indian Gaming Regulatory Act, I'd like to first provide some background about our Tribe and the benefits that our community has achieved because of Indian gaming.

BRIEF HISTORY OF TRIBE

The San Manuel Band of Mission Indians are descendants of the Yuhaviatam or People of the Pines. Our ancestral homelands began at Cajon Pass, ran easterly past Cottonwood Spring to the border of the Chemehuevi, southerly to the border with the Cahuilla, and northerly to the border with the Kitanemuk.

The first Spanish explorers to the area identified the Yuhaviatam as a clan of the Serrano people, the Spanish term for highlander. The Spanish settlers used the name Serrano to identify the indigenous people of the San Bernardino highlands, passes, valleys, and mountains who shared a common language and heritage.

Our Tribe faced an onslaught of change in the mid-1800s with the passage of the Treaty of Guadalupe Hidalgo in 1848 and the California Gold Rush of 1849. Settlers radically changed the Serrano lands with their ranching, farming, and logging. In 1866, unrest came to the area as militia forces from San Bernardino killed Serrano men, women, and children in a 32-day campaign. Yuhaviatam tribal leader Santos Manuel safely led the remaining Yuhaviatam from the mountainous terrain to the valley floor.

In 1891, with passage of the Act for Relief for Mission Indians, the San Manuel reservation was established and recognized as a sovereign nation with the right of self-government. The San Manuel reservation was named in honor of its courageous leader, Santos Manuel, and our Tribe has since been recognized as the San Manuel Band of Mission Indians by the United States government.

Like many Tribal Nations throughout the country, and due in large part to the misguided policies of Allotment, Assimilation, and Termination: our lands were wrongly taken, our culture suppressed, and our economic way of life destroyed. By the 1960s and 70s, these policies had effectively crippled our community.

Before 1995, the San Manuel tribal community did not have the capability to track social and economic conditions. Anecdotally, however, the tribe was certainly aware that problems of unemployment, alcohol and substance abuse, low educational attainment and other social ills were very much a part of the community. Unfortunately, the tribal government did not have the resources to deal with these issues directly.

In addition to the social ills that plagued the community, efforts to enter into economic relationships with the larger non-Indian community were met with reluctance. To a large degree, these businesses were uncertain about the status of tribal governments, and were unwilling to risk doing business with the Tribe.

BENEFITS OF INDIAN GAMING

Today, our Reservation consists of just over 800 acres and is located on part of our ancestral homelands in the foothills of the San Bernardino Mountains in California, just north of the city of Highland.

In 1986, the San Manuel Band turned to gaming as a means of generating governmental revenue as well as creating jobs for the community. Beginning with a small bingo operation, the Tribe was finally able to generate modest amounts of government revenues, which were used to begin addressing the challenges facing our tribal government.

Like a number of other tribal nations, the San Manuel Band of Mission Indians has been able to utilize the government gaming revenues to make improvements in our community. Just as the Indian Gaming Regulatory Act of 1988 required, we are dedicated to strengthening our tribal government and undertaking economic development in a substantial way.

Infrastructure:
Revenues from the Tribe's government gaming enterprise have provided the tribal government with the means to develop the physical infrastructure on the reservation. Since the majority of the reservation is located on a steep hillside, developing the area for roads, water & sewer, utilities and tribal homes has been an expensive undertaking. In addition, the reservation is located on the San Andreas Fault to the south, the San Manuel Fault cutting through the middle and to the north, the "N" Fault, requiring the Tribe to pay even closer attention to developing and maintaining the physical infrastructure.

Education:
The San Manuel Band of Mission Indians enacted an education ordinance, which provides tuition payment and other support for tribal members in their educational pursuits from pre-school through graduate and post-graduate. Child care services are available for adult members of the Tribe who are continuing their education. The Tribe also assists other tribal students from around the country who may be seeking advanced degrees in such fields as education, medicine, law and other disciplines.

In addition, the Tribe provides financial and other support for schools in the Inland Empire area. Most recently in April 2005, the Tribe was awarded the Educational Medal of Honor by the San Bernardino County Unified School District for exemplary service to public education in San Bernardino County.

The Tribe contributed $3 million to California State University – San Bernardino, in part, to assist with the construction of a new student center. The student center, scheduled to open in November 2005, will be an integral part of the university community and include resources and amenities to assist students with their educational pursuits.

California State University-San Bernardino is the host campus for the annual California Native American Day celebration. The week-long period of educational activity includes some 3,000 students, mostly fourth graders, from the San Bernardino area. The goal is to educate them on the language, culture, history and political environment of tribes in California. The first day is spent educating the educators while the remaining days are reserved for the students to gain a "hands-on" experience. The last day of the week's activities, always the fourth Friday in September, was designated by the state of California as "California Indian Day" through the efforts of San Manuel.

Health care:
Tribal elders recall a time in the 1930's and 1940's when a medical doctor traveled a circuit, which included a stop on the San Manuel Indian Reservation. Once each month or so, the doctor was available to provide medical care to tribal members. Most, if not all, of the tribal members born during this period were born at home sometimes with the assistance of the traveling doctor.

For a number of years until the 1970's, a small Indian Health Service clinic on the San Manuel reservation provided a limited range of medical, dental and eye care services to our tribal citizens on an out-patient basis. When higher levels of care were required, tribal members were transported to a larger Indian health care facility on the Morongo Indian Reservation some 30 miles from San Manuel. Proper health care, though just miles away, was not always attainable. For emergencies, tribal members were able to get assistance at local hospitals under the contract health care program of the Indian Health Service.

Today, the San Manuel tribal government is able to provide a comprehensive health care program for our tribal member families. The Tribe offers a PPO that grants access to the finest health care programs in the Southland. With such a program, we are able to

address heart disease issues, diabetes, diet, dental care, vision care and simple routine check-ups.

Because of the chronic health issues such as heart disease and diabetes plaguing Native people across the country, San Manuel assists our tribal members with additional programs. Among these programs are those that encourage tribal members to undertake preventive health care measures such as exercise and good diet. Three years ago, the Tribe incorporated a fully-equipped fitness facility into the new Community Center which houses tribal government operations.

***Cultural Preservation*:**
In 2003, San Manuel contributed $4 million to the University of California Los Angeles (UCLA) to supplement their Indian studies program. As a part of the effort, the Serrano tribal language program was instituted to teach tribal students.

The Tribe also established a cultural preservation effort to preserve and enhance the tribal language and culture. As a part of the efforts, the "Yaamar'a" or spring celebration is held each year in the tribal community. San Manuel invites other California tribes to share their traditions at the spring celebration.

Additionally, the Tribe has developed various educational tools – books, DVD's and CD ROM's, to assist teachers and others in their teaching of tribal history and culture.

***Contributions to local charities and nearby local governments*:**

We are well aware of the recent good fortune of our community. Now that we are beginning to revive our reservation and provide the essential programs needed to serve our citizens – we acknowledge the importance of contributing to our surrounding community and where needed throughout Indian country. In addition to contributions to non-gaming Tribes and to the Special Distribution Fund, which goes to mitigate off-reservation impacts of gaming (both of which were agreed to in our compact), San Manuel has made it a priority to aid other Tribes in need throughout the Nation, to help our neighbors, and to contribute to local charities. The following is a partial list of the contributions that we have made over the past five years.

April 2005 – A $178,000 donation to purchase land for the children and parents of Lori Piestewa who received a home from the television program Extreme Makeover: Home Edition. Lori Piestewa is a Native American (Hopi Indian) soldier and mother of two young children. She died serving her country in Iraq in April 2004.

January 2005 – A $500,000 contribution to KVCR, a PBS and NPR affiliate station, as part of its capital campaign to purchase new master control equipment for its conversion from analog to digital technology.

FY 2004- Scholarship Program - $150,000 of an $800,000 endowment was distributed to San Manuel employees.

FY 2004 – Total Education Giving - $105,000 to local primary, secondary and higher education institutions and extra circular activities.

October 2004 – A donation of $5.5 million to the city of San Bernardino Calif. for local public works improvements.

March 2003 – A donation of $4 million to the University of California Los Angeles to establish the Tribal Learning Community and Education Exchange: a training and policy center dedicated to prepare students to work for tribal communities and governments.
November 2003 – A $200,000 donation was made to the San Bernardino Valley Lighthouse for the Blind.

November 2003 – A $1 million donation to aid wildfire victims following the blazes that swept through many parts of Southern California, including the San Manuel Indian Reservation, causing extensive damage. Another $1 million was donated to Habitat for Humanity to rebuild homes on the San Pasqual Indian Reservation. More than 2/3 of the San Pasqual tribal members lost their homes to the wildfires.

March 2003 – A $3 million donation was made to partly fund the construction of a new student union facility on the Cal State San Bernardino Campus. This is one of the largest gifts from a Native American tribe to any of the 23 California University campuses. The student union will be named the Santos Manuel Student Union.

March 2003 – A donation of 10 Eagle Imager Thermal Cameras to eight local fire departments and one fire academy to aid fire response to Southern California communities.

September 2001 – A donation of $500,000 to the September 11 Red Cross Relief Fund.

June 1999 – A $1.2 million contribution to provide fire fighting equipment to the city of San Bernardino, including three fire trucks and one hazardous materials vehicle.

Diversification:
In the September 7, 1988, *Congressional Record*, the Honorable Senator John McCain acknowledged that, like other Members of Congress, he would rather see Indian tribes involved in other revenue-raising activities aside from gaming. The San Manuel Band of Mission Indians agrees with Senator McCain and have taken a course of economic diversification in an aggressive way to provide for a reliable and consistent revenue stream for the tribal government.

It is, therefore, the goal of the Tribe's economic development efforts to ensure that revenues for the tribal government can be secured for the long term. The mindset is simple: In 20 years, the current 1999 gaming compacts in California are due to expire. At that time, the Tribe will be in a position to decide if it wishes to remain in gaming or not. We are working diligently on our economic diversification program so that the Tribe can rely on a diverse revenue streams with which to operate our government operations.

To enable us to reach these fiscal goals, we have adopted several key principles to guide the Tribe during deliberations over project proposals.

1. The proposed project must be able to succeed on its own merits and not depend on the Tribe's government gaming enterprise for its viability or success;

2. The proposed project must make economic sense so as not to place the resources of the tribal nation at a mid-to-high risk with the investment;

3. The proposed project must be in line with the Tribe's economic diversification efforts.

4. The proposed project must conform to the Tribe's own moral and ethical standards.

Today, San Manuel employees, directly and indirectly – some 5,000 individuals - are making a difference in the regional, state and national economic landscape. According to the California Employment Development Department, tribal governments have been the leaders in creating new jobs – percentage growth in double-digit numbers - for the past four years. Tribal governments, including San Manuel, are the second strongest job creators in the state; second only to the state itself.

Below is a partial list of the Tribe's economic development ventures:

1. San Manuel Indian Bingo & Casino – The Tribe's government gaming enterprise is operated in full compliance with the California Tribal/State Gaming Compact signed in 1999, and provides revenues for the tribal government as intended by the Indian Gaming Regulatory Act of 1988. It is also owned and operated by the Tribe.

2. Residence Inn by Marriott – Washington, DC – The hotel project was developed by the Four Fires partnership, an intertribal group involving the Viejas Band of Kumeyaay Indians, Forest County Potawatomi of Wisconsin, Oneida Tribe of Wisconsin and the San Manuel Band of Mission Indians. The hotel, located just three blocks from the new National Museum of the American Indian, opened in January 2005.

3. Residence Inn by Marriott – Sacramento, CA – The hotel project is being developed by the Three Fires intertribal partnership involving the Viejas Band of Kumeyaay Indians, Oneida Tribe of Wisconsin and the San Manuel Band of Mission Indians. Three Fires broke ground on the new project in December 2004. It is located across the street from the State Capitol Building in Sacramento.

4. San Manuel Bottled Water Group – The Company began operations in April 2002 on the San Manuel Reservation. It produces Big Bear Mountain Premium Spring

Water and provides private-label bottling for a number of national retailers. The plant produced more than 140 million bottles in 2003.

5. Twin Palms Restaurant – San Manuel Band of Mission Indians and Twin Palms Restaurant have joined in a strategic business partnership with San Manuel as a new cooperative owner of the famous restaurant in Old Pasadena. The partnership is an investment project for the Tribe designed to create a strong and sophisticated presence in the food and beverage industry.

6. Washington, DC Congressional Building – The Tribe, in an effort to continue building a positive and mutual working relationship with the federal government, purchased a 12,000 square-foot, three-story building near Capitol Hill. The Tribe uses the third floor for its government relations work and leases the remainder of the property to other tenants.

7. Norton Re-Use Project – The Tribe acquired 91.5 acres of the former Norton Air Force Base in San Bernardino, CA, and continues discussions on how best to develop the property.

8. Sterling and 5th Street Project - The project involves some 25 acres of usable land near the former Norton Air Force Base. Project planners are considering a number of possible developments for the property.

9. Colton Warehouse Building – The new 123,000 square-foot building serves as the new home for the San Manuel Bottled Water Group. The new state-of-the-art building was acquired in June 2004.

10. Bake Orchard Parkway Project – The Tribe purchased two commercial office buildings in Irvine, CA. With a total area of 53,000 square-feet of space, the buildings are ideal for commercial use.

11. Wireless Reservation – In 2002, the Tribe invested in a communications tower on the reservation. The tower provides fixed wireless broadband service to tribal homes and buildings on the reservation as well as the Colton Warehouse.

12. San Manuel Village – The commercial real estate investment project is designed as a multi-use project, including a hotel, office buildings, retail and specialty use stores.

13. Property Management – The Tribe has acquired various office buildings, private residences and warehousing for its own use. These acquisitions have appreciated tremendously.

INDIAN GAMING REGULATION

The Indian Gaming Regulatory Act of 1988 (IGRA) provides the statutory framework for the conduct of government gaming by Indian Tribes on Indian lands. As a part of this

framework, the Act acknowledges that tribal governments are the primary regulators of the tribal government gaming activity.

In order to fulfill its primary regulatory obligations, IGRA requires that the tribal government establish a system of tribal laws, rules and regulations that provide for effective regulation of the gaming activity. First, The tribe must adopt a tribal gaming ordinance, which establishes the tribal gaming commission with the appropriate regulatory powers and authorities.

If the Tribe is to engage in Class III gaming, the IGRA requires that the tribe negotiate a gaming compact with the state government. IGRA requires that the tribe and the state negotiate 1) scope of gaming that is to be conducted at the tribal gaming facility; and 2) a system to regulate the tribal gaming activity.

The San Manuel Band of Mission Indians is aware that the benefits discussed above would not be possible without appropriate and effective regulation of the gaming enterprise. We realize the importance of protecting the integrity of the San Manuel Indian Bingo and Casino operation. As a result, the Tribe has dedicated significant financial resources to ensure that the highest levels of capability and professionalism are the standard at the San Manuel Gaming Commission. The Tribe also believes in the separation of the Commission from the Tribal Business Committee with a requirement that the two shall meet only once every three months. In addition, the Gaming Commission is required to report to the General Council once each month.

San Manuel Regulatory Infrastructure

Generally speaking, the San Manuel Gaming Commission is comprised of three (3) members. The San Manuel Tribal Gaming Ordinance requires that the Commission Chairman be a member of the Tribe and that two be non-Indian Commissioners who have backgrounds that are essential to effective regulation.

Organizationally, the Commission is comprised of three (3) major divisions: 1) Licensing Division; 2) Compliance Division; and 3) Surveillance Division. Each division has its own set of responsibilities, however, the entire Commission works interdependently to provide effective regulation of the casino activity.

Licensing Division

The Licensing Division has a full-time staff of ten (10) Background Investigators, four (4) Investigator Assistants; one (1) Investigations Supervisor; and one (1) Investigations Manager. Their primary function is to conduct background investigations on prospective employees of the Tribe and the casino facility. Investigations are conducted in accordance with the NIGC Minimum Internal Control Standards (MICS), the Tribal Gaming Ordinance and the Tribal/State Gaming Compact. The scope of the background investigations includes review of the following:

1. Criminal History
2. Financial History
3. Department of Motor Vehicles
4. County, State and Federal Courts
5. Social Security
6. Immigration and Naturalization Services
7. Internal Revenue Service and California Franchise Tax Board
8. Employment History – last 15 years
9. Personal References
10. Residences – last 15 years
11. Certifications, Permits, Licenses, Registrations
12. Education
13. Business Interests
14. Military Enlistment
15. Character, Integrity and Reputation

Once the Background Investigators complete their investigation and the results reviewed and approved by the San Manuel Gaming Commission, the investigation report is forwarded to the National Indian Gaming Commission (NIGC). Upon receipt of approval from the NIGC, the San Manuel Gaming Commission issues a gaming license that is valid for two years. Each licensee must renew their gaming license biannually.

In addition, licensees who work directly in Class III gaming are required to receive a suitability clearance from the State Gaming Office. For these employees, the San Manuel Gaming Commission forwards their background investigation report to the California Gambling Control Commission (CGCC). The CGCC, in conjunction with the California State Division of Gambling Control, conducts a background investigation for suitability.

Compliance Division

The San Manuel Gaming Commission – Compliance Division includes a staff of nine (9) full-time compliance auditors. Two are supervisor personnel whose focus is the tribal

gaming enterprise. Among their duties and responsibilities are auditing various departments of the casino to ensure compliance with the NIGC MICS, the IGRA, the Tribal Gaming Ordinance, the Tribal/State Gaming Compact and other applicable regulations. Any findings from the audits are presented to the casino management in writing for corrective action as required. The Compliance Division will follow-up with the casino management to ensure that the findings have been appropriately addressed.

Of the nine full-time auditors, three (3) are also highly trained slot technicians who ensure that access to the logic board and other sensitive, non-public areas of the gaming devices are restricted to authorized personnel only. Their duties also include verification of logic authenticity as confirmed by outside, independent testing laboratories prior to installation in the gaming devices.

Surveillance Division

The Surveillance Division is a "24/7" operation and reports to the San Manuel Gaming Commission. There are 42 employees in this division. The surveillance staff is classified into two major job categories:

1. Surveillance Operators – Responsibilities include watching surveillance monitors for suspicious activities or deviations from policies and procedures, creating and maintaining affiliated documentation, and reporting observations to superiors.

2. Surveillance Technicians – Responsibilities include installing and maintaining more than 2,500 surveillance cameras throughout the casino. They are also responsible for maintaining components of the digital system which receive images from the surveillance cameras.

Our state-of-the-art surveillance system is among the best at any gaming operation in the Nation. It is a fully-digitized system and among the most advanced available in the market today. In recent meetings with industry experts at trade seminars, the San Manuel Gaming Commission staff received confirmation that tribal casinos generally have the newest systems due to the fact that they are the most recent constructions. The older and more established Las Vegas properties are likely to be using older video tape-based systems and few have invested the funds to convert to digital equipment.

The San Manuel Gaming Commission continues to receive requests from other casinos for tours of the surveillance systems. During the week of June 27, 2005, security executives from Las Vegas representing such properties as the Luxor, Mirage, Excalibur, Circus Circus and Mandalay Bay will visit San Manuel for a tour of the security and surveillance systems.

Tribal Public Safety/State and Local Law Enforcement Cooperation

The Tribe has created the Department of Public Safety (DPS), a security force and support staff of some 450 professionals. The DPS is instrumental in providing a safe and

secure environment on the San Manuel Indian Reservation. Among their primary duties is to provide the first line of security for the tribal gaming facility. The DPS provides patrols around the clock to ensure that tribal government properties, private tribal residences, and other tribal property holdings both on and off the reservation are protected. An ancillary benefit of the "24/7" tribal DPS patrols is the added security provided for the homes of non-reservation neighbors who live near the San Manuel reservation.

California is a Public Law 280 state thereby creating a situation where tribes are not allowed to have their own police departments. In order to provide for the safety and security of all persons on the San Manuel Reservation, our DPS interacts with the tribal community as well as the local police agencies. A strong and productive relationship has been developed between the three agencies: the San Manuel DPS, San Bernardino County Sheriff and the San Bernardino Police Department.

Local USA and FBI Offices

At the April 27th Senate Indian Affairs Committee hearing, the U.S. Department of Justice (DOJ) highlighted the establishment of the Federal Indian Gaming Working Group (FIGWG). The Group consists of the FBI, Interior's Inspector General's Office, the IRS, the Financial Crimes Enforcement Network (FinCEN), the Bureau of Indian Affairs' Office of Law Enforcement Services, and the NIGC. Mr. Heffelfinger stated that the "purpose of the Working Group is to identify resources through a multi-agency, multi-program approach to address the most pressing criminal violations in Indian gaming." As Chairman of DOJ's Native American Issues Subcommittee, he also highlighted the development of a "Best Practices" document for the U.S. Attorneys Offices. The Best Practices document encourages both the FBI and US Attorneys offices with jurisdiction over Indian country and Indian gaming to attend training on issues related to gaming crimes; and to use more "flexibility when considering the prosecution of theft cases with loss amounts lower than what the Office would typically accept. Cases which have a 'significant impact' on tribal organizations and enterprises, including Indian gaming operations, should be considered for prosecution despite lower loss thresholds in order to facilitate prosecution and deterrence."

We applaud these and the other provisions put forth by DOJ in the Best Practices document. The Federal Indian Gaming Working Group and the U.S. Attorneys Best Practices Protocol are both positive steps towards consolidating federal resources to protect the integrity of Indian gaming. However, we recommend that Congress urge DOJ to take additional steps to coordinate with tribal gaming commissions and tribal law enforcement agencies. Tribal regulators are the primary day-to-day regulators and enforcers of Indian gaming laws and the daily watchdogs of tribal gaming operations. They are best able to provide the federal regulators with needed information about where the soft spots are, where more help and coordination is needed, and should be provided a seat at the Federal Working Group Table to further communication and coordination to protect Indian gaming.

AMENDMENTS TO THE INDIAN GAMING REGULATORY ACT

We understand that the Committee is considering a number of amendments to the Indian Gaming Regulatory Act. The Tribe strongly supports the intent, spirit and goals of the Act. While we believe that IGRA has worked, for the most part, to help rebuild tribal communities, there are several provisions of the Act that may need some clarification.

Because Indian gaming is the one proven method of generating governmental revenue for Indian Tribes, amending IGRA is generally not the desired method of achieving such clarification. However, we also understand that IGRA has been amended in the past, and we appreciate the Committee's desire to narrowly address its concerns through the Act. In addition to the number of issues that the Committee will address in developing its bill to clarify IGRA, we respectfully offer the following comments and recommendations on two issues of concern to San Manuel, that I hope will be considered for inclusion in your bill.

1. Off Reservation Gaming

One issue that has come to the forefront with regard to IGRA, is off-reservation gaming – or reservation shopping as it's been termed. It is our belief, which is supported in the legislative history to IGRA that Indian gaming was and is to be conducted on "Indian lands." For that reason, Congress included in IGRA a general prohibition against gaming on certain lands acquired after October 17, 1988. Acknowledging the complexities and concerns of landless Tribes, newly acknowledged or restored Tribes, and the policy supporting tribal land restoration, IGRA provides for several exceptions to the general prohibition.

In recent years, the abuse, either in practice or theory, of one exception has the potential to swallow the rule. That exception is often referred to as the two-part determination process. IGRA's Section 20(b)(1)(A) permits Tribes to conduct gaming on after-acquired lands located far from their existing reservation if: (1) the Secretary determines that gaming on such lands would be beneficial to the Tribe seeking the land, and "not detrimental to surrounding community"; and (2) only if the Governor concurs in the Secretary's determination.

Over the past several years, the number of two-part determination proposals has increased dramatically. Regrettably, the vast majority of these proposals are driven by non-Indian developers, whose sole purpose is to obtain an unreasonable percentage of revenues derived from the proposed tribal gaming operation – at any cost. These developers do not understand Indian Tribes. And they are not concerned with tribal sovereignty. Their only concern is profit, thus removing the tribal government element from the IGRA process.

Developers realize that they need the support of both the local communities and the State in order to succeed in acquiring the land for the Tribe. To gain this support, they offer a

percentage of the Tribe's gaming revenue, and they offer up pieces of tribal sovereignty – permitting the application of State or local laws on the newly-acquired Indian lands.

These deals affect all Tribes nationwide. Once a State Governor obtains a revenue sharing agreement from one Tribe, it sets a new bar that all other Tribes are expected to follow. Likewise, once a concession of tribal sovereignty is given, it's assumed that all Tribes will follow.

San Manuel is not opposed to fellow tribes seeking and acquiring rightful and much-needed lands to rebuild their homelands, and we respect each tribe's sovereign right to conduct government gaming on their reservations. However, the abuse of the two-part determination process is hurting these legitimate land acquisitions. The efforts to acquire lands far from existing reservations has brought added scrutiny from the general public and Congress to all tribal land acquisitions, and makes such efforts more difficult.

Moreover, in areas rich with Native American history, such as California, off-reservation land acquisitions also may encroach on land claims from other neighboring tribes. This is our primary contention with reservation shopping: the encroachment on our ancestral lands by Tribes residing far away from their existing reservations for the sole purpose of acquiring our homelands to build a casino.

The Serrano ancestral lands include a large geographic area in what is considered Central California, ranging from as far north as Barstow south to the San Bernardino valley; and from Los Angeles to as far east as Twenty-nine Palms. Since time immemorial, the Serrano people have used these homelands to carry on our traditional, religious and cultural practices as well our daily living. Now, one Indian tribe from Eureka, California, some 600 hundred miles to the north is making plans to build a casino in Barstow. Another tribe from the San Diego area, more than 100 miles to the south, has also been working with developers to build a casino in the same area. Still yet another tribe from Death Valley is working on plans for a casino project in Hesperia, California, an area that is well within our Serrano ancestral territories.

It is critical to understand that tribal government is a tool, not a toy. Tribal sovereignty should be exercised responsibly, for history shows that Congress and the courts have little patience when such powerful rights are abused. I urge tribal governments to exercise their sovereignty carefully and responsibly, so as to avoid additional loss of rights and jeopardizing tribes' sovereign status.

Thus, I recommend that Congress amend the two-part determination process (IGRA Section 20(b)(1)(A)) to require that a Tribe seeking off-reservation land for gaming purposes prove an ancestral tie to the land being sought. Additionally, I ask that the Secretary's consultation requirement be expanded to include consultation, not only with nearby Tribes, but also with tribal governments whose ancestral lands are being sought for acquisition. The position of these Tribes, whose ancestral lands would be affected by the land acquisition, should be given the equal weight as the determinations of State Governors.

2. Tribal-State Compacting Process–Revenue Sharing, Sovereignty Concessions

For hundreds of years, Tribes maintained an exclusive government-to-government relationship with the federal government. Tribes entered into treaties with the United States, not individual States. In these treaties, Tribes ceded hundreds of millions of acres of tribal homelands to the United States in return for protection of their inherent right to self-government, and promises to aid tribal governments with education, health care, and other essential government services. Indian lands and other resources were managed by the federal government. Through these and other dealings, a trust relationship developed between the United States and Indian Tribes.

Congress, through IGRA, struck a delicate balance in the tribal-state compacting process. Tribes were required to enter into gaming compacts with State governments in order to conduct class III gaming. States that regulated gaming within their borders were required to negotiate in good faith with tribal governments to reach a gaming compact. If a State failed to negotiate in good faith, the Tribe could bring suit against the State in federal court. When Congress debated the passage of S. 555, which was to become IGRA, several Senators acknowledged the apparent danger in the new relationship.

The Honorable Senator Daniel Inouye, then-Chairman of the Senate Indian Affairs Committee, issued a caution over the tribal-state compact provisions in the pending federal legislation. His statement published in the *Congressional Record* reads in part:

> "It is a long- and well-established principle of Federal-Indian law as expressed in the U.S. Constitution, reflected in federal statutes, and articulated in decisions of the Supreme Court, that unless authorized by an Act of Congress, the jurisdiction of state governments and the application of state laws do not extend to Indian lands. In modern times, even when Congress has enacted laws to allow a limited application of state law on Indian lands, the Congress has required the consent of tribal governments before state jurisdiction can be extended to tribal lands....
>
> "Consistent with these principles, the Committee has developed a framework for the regulation of gaming activities on Indian lands which provides that in the exercise of its sovereign rights, unless a tribe affirmatively elects to have state laws and state jurisdiction extend to tribal lands, the Congress will not unilaterally impose or allow state jurisdiction on Indian lands for the regulation of Indian gaming activities.
>
> "The mechanism for facilitating the unusual relationship in which a tribe might affirmatively seek the extension of state jurisdiction and the application of state laws to activities conducted on Indian land is a tribal-state compact. In no instance, does S. 555 contemplate the extension of state jurisdiction *or the application of state laws for any other purpose....* The relinquishment of such rights shall be specific to the tribe so making

> the election, and shall not be construed to extend to other tribes, or as a general abrogation of other reserved rights or of tribal sovereignty.

134 Cong. Rec. S11922 (Sept. 7, 1988) (emphasis added).

Congressman Tony Coelho also expressed concern about the compacting requirement, but added Congress' intent to limit the purposes for which States could use the compacting process:

> This bill establishes a framework in which Indian tribes and States can meet as equals, government-to-government, to negotiate an agreement-a compact-for a mutually acceptable method of regulating high-stakes gambling on Indian reservations. The bill requires the States to negotiate in good faith and it provides for legal recourse if they do not.
>
> It is important to make it clear that the compact arrangement set forth in this legislation is intended solely for the regulation of gaming activities. *It is not the intent of Congress to establish a precedent for the use of compacts in other areas, such as water rights, land use, environmental regulation or taxation. Nor is it the intent of Congress that States use negotiations on gaming compacts as a means to pressure Indian tribes to cede rights in any other area. Congress also assumes that the States will be reasonable in negotiating gaming compacts and not simply insist that tribes submit to complete State regulation.*

134 Cong. Rec. H8146-01 (Sept. 26, 1988) (emphasis added).

The Honorable Senator John McCain was equally concerned as his statement in the September 7, 1988, *Congressional Record*, reflects:

> "The State and gaming industry have always come to the table with the position that what is theirs is theirs and what the Tribes have is negotiable.... I understand ... the concerns regarding the potential overextension of the intended scope of the tribal/state compact approach. Toward this end, I believe it is important to underscore the following statement: 'The Committee does not intend to authorize any wholesale transfer of jurisdiction from a Tribe to a State....' Under our Constitutional system of government, the right of Tribes to be self-governing and share in our federal system must not be diminished.

134 Cong. Rec. 11922 (Sept. 7, 1988).

A number of similar discussions were made during the floor debate before IGRA's passage – all clarifying that the tribal-state compacting process was intended to include only provisions directly related to Indian gaming. Several Senators and Congressmen added that they would revisit IGRA, if the States abused the compacting requirement.

To carry out the intent discussed above, the direct language of the Indian Gaming Regulatory Act specifically limits the provisions that can be included in tribal-state compacts. IGRA Section 11(d)(3)(C) lists the provisions that may be included in a compact – all of which require some direct relation to the regulation of gaming activity. In addition, Section 11(d)(4) specifically prohibits States or its political subdivisions from imposing any "tax, fee, charge, or other assessment upon an Indian tribe.... No State may refuse to enter into [compact] negotiations ... based on the lack of authority in such State ... to impose such a tax, fee, charge, or other assessment."

Unfortunately, the concerns discussed above have proven true. The Supreme Court's decision in Seminole Tribe v. Florida, 116 S. Ct. 1114 (1996), has destroyed the delicate balance set forth in IGRA's compacting process, and essentially given States veto authority over the compacting process. With the negotiating leverage solely in favor of State governments, a number of Governors have used the tribal-state compact requirement as a vehicle to exact revenue and sovereignty concessions from tribal governments.

In our initial compact with the State of California, the Tribes agreed to share revenues so that all federally-recognized Indian Tribes in the state benefit from tribal government gaming. Additionally, the Tribes agreed to establish a Special Distribution Fund (SDF) which is used to mitigate the impacts of tribal gaming to local governments as contemplated within IGRA.

In our own area – San Bernardino County – surrounding local governments receive mitigation funds from the SDF through legislation created by State Senator Jim Battin. The SDF is appropriated by the state legislature as directed by the tribal/state gaming compact to all the counties where the tribal gaming facilities are located. Under the same Act, the Indian Gaming Local Community Benefit Committee is created in each county and they are charged with ensuring that the money is used to mitigate the impacts. Tribal governments are a part of the committee as well as the county and local municipalities that are near the reservation. For our committee, the monies have been spent on police and road improvements. The SDF will continue for the life of the compact, providing approximately $24 million to local governments over that time. Beyond the SDF obligations, San Manuel provided a one-time contribution of $5.5 million to the City of San Bernardino to assist with mitigation efforts.

However, this generosity was met with greed. In recent years, the State of California has made increasing demands for more tribal government revenues to solve the State's fiscal crisis. The California situation has deteriorated to a point where the state government has a distorted sense of entitlement to tribal government gaming revenues.

During the 2003 California recall election, gubernatorial candidate Arnold Schwarzenegger made statements characterizing Indian nations as "special interests" and demanded that Tribes pay their "fair share" to the state government. Then, during the 2004 special election, the governor further alienated Tribes by stating that for years, the

tribes have been "ripping off the state". He has made no apology or effort to explain his offensive remarks to the tribes.

Tribal leaders are understandably incensed by the remarks. Since his election, Governor Schwarzenegger has continued to make revenue-sharing demands that are beyond reason and we believe, prohibited by federal law. Demands that seek to address the state's budget deficits on the backs of tribal government gaming is a growing phenomenon and surely was not the intent of the federal Act.

The State's demand for revenue is growing every day, extending well beyond its need to resolve its financial uncertainties. For example, new compacts proposed in California are now connecting revenue sharing schemes to tribal enrollment. Under this scheme, if tribal membership falls below a threshold of members and the tribe's gaming generates an established amount, the Tribe will be required to pay more to the State of California.

IGRA clearly prohibits taxation of tribal gaming revenues. Yet there is a trend escalating with each new compact that mandates tribes to pay amounts to the states in excess of what is needed to mitigate the impacts of tribal gaming as IGRA intended. Just as troubling is that these new "revenue sharing schemes" are being approved by the Department of Interior. With each new compact, a new "standard and practice" paradigm is created only to be captured by others. This practice places other tribal nations in an "uphill" negotiation session. We in California know this practice quite well given our compact and initiative history. That's why such negotiations must be limited to the gaming-related issues as outlined in IGRA, which does not contemplate a wholesale concession of sovereignty. This activity is empirical.

Thus, I recommend that as the Committee develops its bill to amend IGRA – that it include a provision to limit revenue sharing in tribal/state compacts. The Department of Interior should be given more direction and less discretion regarding revenue-sharing aspects of the compacting process. The Department of Interior should be given the tools to uphold IGRA as designed by Congress which specifically prohibits taxation of tribal gaming revenues. Tribes can agree to financially assist other governments if that is their choice, but it should not be mandated in the tribal/state gaming compact.

I do not recommend that revenue sharing be prohibited, but only that the practice be limited to require that tribal gaming revenues be used in the first instance to meet the needs of the tribal community – as IGRA intended. If revenue sharing provisions are approved by the Secretary, then I recommend that IGRA require that such provisions be accompanied by a substantial benefit to the Tribe from the State. Again, it is our belief that IGRA intended that assessments be limited to defray costs of services received by the Tribe from the State, not to balance a state budget. Thus, I hope that Congress will restore this original intent to IGRA – to ensure that gaming revenues are used first to benefit Indian Tribes, their governments, and communities.

CONCLUSION

Thank you for the opportunity to provide testimony today. Indian gaming is working and is beginning to turn around our once forgotten community. It is creating great benefits for our neighbors and for the State. As noted earlier, tribal nations are providing jobs in areas of the country that desperately need economic opportunity. In California, tribal governments have become the second strongest job creator.

We understand that the benefits of Indian gaming are only possible through the solid regulation of our operation. Thus, our government annually appropriates more than $6 million to protect the integrity of our operation, and to shield it from outside corrupt influences.

We also understand and appreciate the task that is before this Committee. We acknowledge that we are only one voice in this process, and this Committee will hear from many more from Indian country and others.

Therefore, I state again that we support the Indian Gaming Regulatory Act as it was intended. However, the spirit and soul of the IGRA must be salvaged. The delicate balance of federal/tribal/state interests that the Congress worked so hard to establish in 1988 must be restored. As this Committee moves ahead to address the various areas of concern, we stand ready to provide our thoughts.

— San Manuel Band of Mission Indians —

July 29, 2005

The Honorable John McCain
Senate Indian Affairs Committee
United States Senate
Washington, D.C. 20510-6450

RE: Answers to Questions from Tribal Government Gaming Regulation Hearing

Dear Chairman McCain:

Below are responses to questions that were submitted to me as follow up on the June 28, 2005 hearing on tribal government gaming regulation.

1a. In your testimony, you raise significant concerns over revenue sharing, yet you also recommend that it be allowed. You suggest that tribal revenues should first "meet the needs of the tribal community." Is there a priority in needs, such as medical, education, or housing? Would you say that your tribe has been able to meet all of its needs, even after revenue sharing with California?

Given the sad saga of treatment toward Native Americans, priorities such as health care, education and housing are paramount to survival and self-determination for Indian people. We note that even with the advent of tribal government gaming, chronic challenges in these areas persist. Priorities for Native Americans, however, do not lie simply in material benefits, but also in areas of cultural preservation, traditions and language.

San Manuel has been able to meet the current obligations to tribal citizens in the areas of health care, education and housing, though our inadequate land base coupled with the mostly unusable terrain that comprises our reservation still pose substantial challenges for housing sites. As the tribal community and membership grows, we have to be in a position to respond effectively to the increasing demand for services.

Even so, I would caution the direction this question leads to. It would be misguided to establish a new "needs met" standard as a threshold for revenue sharing. Tribal government gaming produces the revenues that tribal governments rely upon to provide governmental services for its citizens, as state governments rely upon lotteries for education and other governmental needs. There should be no litmus test for revenue sharing.

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1b. If a benefit must be provided, as you suggest, what types of "benefits" do you believe would meet the test? Are there other parameters you think would be appropriate to consider?

The compacting process involves the meeting of two sovereigns: A federally-recognized Indian tribe and a state. Both have obligations to their citizens. Compacts are arrived in good faith negotiations whereby two parties exchange consideration of some kind. A state is not the competent sovereign to permit Indian gaming per se. Rather, the state negotiates terms whereby tribal gaming can lawfully take place within its state boundaries. IGRA, of course, prohibits states from taxing tribal governments. As such, negotiations should lead to benefits of real and tangible value to both parties. The ability to conduct gaming on reservations exclusive of any competition is an ideal benefit when this is possible, given the notoriously remote location in which the majority of reservations are located. If this is not possible due to other forms of pre-existing gaming within the given state, then scope of gaming (i.e. types and number of games) would be a possible negotiating point. Ideally such parameters should be free to follow market demand.

2. What specifically did you find objectionable in [the compacts between Governor Schwarzenegger and other tribes in California, the dollar amounts of the revenue sharing, or the other "non-gaming" provisions?

While the Indian Gaming Regulatory Act of 1988 involved a compromise between tribal and state interests, it was never intended to subrogate tribal sovereignty to the state. Tribal gaming is governmental gaming. It provides a tax base for tribes thereby enabling self-determination following a saga of deprivation marked through force, stealth and deceit. It is therefore most alarming to observe that recent compacts in California include elements contrary to IGRA, and equally disconcerting to note the approval of these onerous provisions by the Secretary of the Interior, given the fiduciary relationship of the U.S. Government with Native Nations.

Speaking of recent specific compacts, we note the inappropriate link between revenue sharing to the state and tribal enrollment, a domain uniquely under the competent jurisdiction of each tribe. Such a provision was included in compacts with the Fort Mojave Tribe, the Yurok Tribe and Quechan Tribe. Such a provision risks giving credence to a faulty principle of "needs met" as referred to in my response above.

We also witness revenue sharing on a sliding scale so that states are enriched depending on the success of an operation. These scales, which disproportionately burden successful endeavors, do not even find any parallels in state corporate tax rates. We mention this observation merely for illustration while vehemently asserting that IGRA prohibits the state from taxing tribal government gaming revenues.

Equally troubling is the additional intrusion of local government in the affairs of tribes. While IGRA entertains a compromise of tribal and state interests, as mentioned above, it is the state, in its negotiation process, that can request compensation for impacts proximate to the tribe's governmental gaming enterprise. To force additional agreements with local jurisdictions or overtly create local oversight is a violation of the tribe's sovereignty and a framework for double-dipping, in effect.

The role of organized labor continues to burden the compacting process as well. No other entity has organized labor thrust upon them, nor do we believe that the National Labor Relations Board has jurisdiction over labor affairs on reservations, as the NLRB had consistently ruled for over 30 years until recently.

3a. Some of the more outrageous "off-reservation" proposals, you suggest, seem to be pushed by developers or financiers, and not a tribe. You also indicate significant concerns with attempts by some tribes to obtain "off-reservation" casinos in areas that are the traditional or ancestral lands of another tribe. In your opinion, should the Federal government scrutinize developers that want to partner with tribes? Can this be done in a way that still respects tribal sovereignty and self-government?

San Manuel does not oppose the NIGC requiring tribes to conduct background checks and issuing licenses to commercial developers that have agreements with Indian tribes. This approach respects tribal sovereignty and the important role of tribal gaming commissions. It also fulfills the trust obligations of the federal government. Finally, this would provide another important layer of oversight that will help protect the integrity of tribal government gaming operations.

"Reservation Shopping" is born from developers and consultants (one and the same today). There is much to be said about this practice, but it must be understood that this is a real problem, not perceived one. Many have stated the latter.

In the case of San Manuel, we have three distant tribal governments seeking land within our recognized ancestral territories. One tribe is located in Northern California near the Oregon border more than 700 miles away; one from the San Diego area more than 150 miles away and another from the Death Valley area. The one consistent element in all three is the aggressiveness with which the developers are pressing for the casino projects. These tribal governments have no ties to these lands.

3b. How would you propose to address the situation that seems fairly common in California, where two tribes share common ancestral territories?

For purposes of IGRA, in cases where a tribe seeking land for gaming purposes has an existing reservation, San Manuel believes that tribes that have an ancestral tie to the lands being sought, should have approval authority over that acquisition – even if the Tribe (with an existing reservation) seeking additional lands can prove an ancestral tie.

4. Your testimony mentions that, to be licensed by your Tribe, an employee must pass a background check by the Tribe, and a suitability clearance from the state. If the state finds a person "unsuitable", how does the state prevent the [sic] [Tribe] from hiring that person anyway?

The San Manuel Band of Mission Indians' tribal gaming ordinance specifies that every person who works in the tribal gaming facility must be licensed by the tribal gaming commission. Before the tribal gaming commission may issue a license, it is required to conduct a thorough background investigation on the applicant. As my written testimony indicates, the investigation involves a lengthy and in-depth review of at least 15 areas of inquiry, including an applicant's personal, employment, financial and character history over the past 15 years. The tribal gaming commission's review of an applicant's criminal history is not subject to a statute of limitations, meaning that the applicant's entire life, including juvenile records, is investigated for crimes and convictions.

During the initial step in the investigation process, the tribal gaming commission involves the services of the National Indian Gaming Commission (NIGC) and the Federal Bureau of Investigation (FBI) for fingerprint checks. State Department of Motor Vehicles files are also a part of the tribe's investigation as are the files of local, state and federal courts. This initial first phase of the background investigation is especially helpful in filtering out unqualified persons.

Applicants for positions in a supervisory or management capacity empowered to make discretionary decisions regarding the operation of Class III gaming activities will have their files forwarded to the Division of Gambling Control within the California Department of Justice for a suitability determination. The Division conducts an investigation and forwards its findings to the California Gambling Control Commission (CGCC). The CGCC issues its finding of suitability and advises the tribe accordingly.

Inasmuch as the tribal gaming commission is the primary regulatory authority for Indian gaming, it is the final authority on licensing matters. However, since the signing of the tribal-state compact in 1999, there has not been a single instance of the San Manuel Gaming Commission and the state gaming agency failing to reach agreement on a suitability determination. This is powerful evidence that the background investigations conducted by the tribal gaming commission are thorough and beyond reproach. Moreover, it is indicative of a strong and effective relationship between the tribal, state and federal regulatory systems working together to ensure that the San Manuel tribal gaming activities are conducted in a fair, honest and legal manner.

5. Has your Tribe had any problems obtaining the attention of the U.S. Attorney's office for prosecuting crimes at your casino?

No, the tribe has had no problems securing the assistance of the U.S. Attorney's office when needed.

6. Is there a disconnect between the perception of problems in Indian gaming regulation and the reality of problems in Indian gaming regulation? If so, to what do you attribute this disconnect? What should be done to address it?

The San Manuel Band does believe that there is a disconnect between the perceptions and reality of Indian gaming regulation. The problem stems from several reasons: (1) a cultural resistance on the part of tribal governments to seek recognition for their accomplishments; (2) the difficulty in proving the negative – i.e. that Indian gaming is not corrupt; and (3) a media bias that scrutinizes tribal regulation – but that gives a pass to regulation of other forms of gaming.

As I stated during the hearing, tribal governments throughout the nation invest heavily in regulation. The San Manuel Tribal Government understands the importance of regulation – and we have reinvested substantial proceeds from our gaming revenues to ensure that the integrity of our operation is protected. In addition, all Tribes work with the State and Federal governments. Because of this strong system of regulation, Indian gaming consistently receives positive governmental reports about regulation. For example, the U.S. Department of Justice has consistently reported to the Indian Affairs Committee that Indian gaming regulation is working to protect the integrity of tribal operations and prevent the infiltration of systemic organized crime.

The disconnect with most of the media comes from a failure to acknowledge tribal governmental regulation. Many compare statistics of commercial gaming regulation with that of Indian gaming regulation. However, when citing statistics for tribal gaming – only the federal component of regulation is counted. The Media reports commonly state that tribal gaming is regulated only by the 70 odd employees of the NIGC and its $8 million budget. It is ironic that they use these numbers against tribes, because tribal gaming is the only form of gaming in the nation that is subject to federal oversight. While acknowledging the federal portion, many of these reports ignore the nearly $230 million that tribes spend on tribal regulation and the nearly $50 million that tribes spend to reimburse state governments for their part in regulating tribal gaming operations.[1] When all the numbers are considered, it is clear that tribal gaming is strongly and effectively regulated. These facts are even more compelling when compared to other forms of gaming.

We do not believe that tribal gaming regulation is problem-free. In any cash intensive operation – such as gaming – there will be continuous attempts to scam and cheat the operator, both from the inside and from without. However, when other forms of gaming – including State lotteries, commercial casinos, and race tracks receive equal scrutiny under the same microscope – it will be made clear that tribal gaming regulation is at least as strong, and in most cases stronger.

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[1] State governments provide the only form of oversight of State government operated lotteries

7. As you know, IGRA bars state taxation of Indian casinos. Should the amount of revenue a state can seek from an Indian casino be capped by Congress? Will this remove states' incentives to approve new compacts? If so, will this hurt tribes that do not yet have gaming operations, but are seeking them?

The San Manuel Band believes that sharing of tribal gaming revenues with State governments should be capped. The primary goal of tribal gaming – and IGRA – is to promote economic self-sufficiency for tribal governments, not to balance State budgets.

Capping revenue sharing may lessen the incentive for States to enter into compacts. If a cap is to be considered, it should be flexible enough to enable the tribe and the state to engage in meaningful compact negotiations. Ultimately, it should be firm enough to prohibit the most egregious efforts of states to reach revenue shares so high as to undermine the purposes of tribal government gaming.

At the same time, as I stated in my testimony, I do not recommend that revenue sharing be prohibited, but only that the practice be limited to require that tribal gaming revenues be used in the first instance to meet the needs of the tribal community – as IGRA intended. IGRA also clearly states, and I agree, that tribes should reimburse the state for services provided, as our compact provides. This is the degree of revenue sharing that the Congress envisioned and should be permissible.

If "super" revenue sharing provisions are approved by the Secretary, then I recommend that IGRA require that such provisions be accompanied by a substantial benefit, such as exclusivity, to the Tribe from the State – this requirement will effectively prevent taxation of Tribes. The most popular "super" revenue sharing paradigm is found in Connecticut where the state agreed to not allow any competition, thus creating a substantial benefit to the tribe and a "super" benefit to the state. Today, every state wants this deal without the same substantial benefit to tribe.

The Committee sought a similar approach in the 108th Congress – through S. 1529. This approach will leave room for revenue sharing and with it the incentive for States to enter into compacts, while at the same time ensuring that tribal gaming revenues first meet IGRA's intended goals of addressing the economic needs of tribal communities.

8. Many critics of Indian gaming point to the refusal by many tribes to make public their revenues from casinos. If your tribe does not make gaming revenues publicly available, please explain why it does not release those figures.

Pursuant to IGRA, every Tribe engaged in gaming is subject to an independent audit by an independent accounting firm. For several years, our Tribe has retained PriceWaterhouse Coopers to conduct such an annual audit. These audits are submitted for review by the National Indian Gaming Commission – and the NIGC treats this information as proprietary. We also submit documents annually to the Internal Revenue Service. Our compact requires that financial reports be submitted to the State. In

addition, our general membership – every citizen of our tribal community – has full access to the tribal government's financial records.

As I mentioned at the hearing, the reason that we are reluctant to release the information publicly is the issue of trust. Every time that we have released information to the outside, it has come back to hurt us. Finally, the San Manuel Band is a government. We are not a corporation, a non-profit, or a publicly traded company. At the same time, as I stated at the hearing, in our governing body there is a shifting trend to consider the benefits of releasing our numbers – but ultimately, it is a governmental decision to make.

I hope that these responses are informative and aid the Committee in its important work of reviewing the effectiveness of the Indian Gaming Regulatory Act. I also want to be clear to the Committee regarding the off reservation/reservation shopping phenomenon - we are engaged on this issue because protecting our homelands is critical. We oppose any outside tribe seeking to take land into trust in our Serrano ancestral territories for any purpose. When gaming is partnered with such activity, then IGRA is the appropriate federal statute to address this very real issue.

Please feel free to contact me if you have any questions or need additional information.

Sincerely,

Deron Marquez

Deron Marquez, Chairman

CC: The Honorable Byron Dorgan

The Confederated Tribes of the Colville Reservation

Statement of the Honorable Joseph A. Pakootas, Chairman Confederated Tribes of the Colville Reservation

Oversight Hearing on the Regulation of Indian Gaming

Senate Committee on Indian Affairs

June 28, 2005

Good morning Mr. Chairman, Mr. Vice-Chairman, and distinguished members of the Committee. My name is Joseph A. Pakootas, and I am the Chairman of the Colville Business Council. I represent the Confederated Tribes of the Colville Reservation ("Colville Tribe" or "Tribe"), and more than 9,100 tribal members. Today, we are pleased to provide our views on Indian gaming regulation, specifically regulation of after-acquired trust lands for gaming purposes under the Indian Gaming Regulatory Act ("IGRA").

The Colville Tribe is located in north central Washington State, and comprises over 1.4 million acres of trust and allotted lands. Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is, as the name states, a confederation of 12 smaller aboriginal tribes and bands from all across eastern and central Washington. A majority of our 9,100 tribal members live on the reservation.

Our location is quite remote from the main commercial corridors in Washington State. The nearest entrance to an interstate highway is approximately 100 miles from Nespelem, the seat of our tribal government. Our reservation encompasses lands within Okanogan and Ferry Counties,[1] the economies of which are primarily dependent on agriculture, limited mineral development, and timber. The federal government, on its own behalf or on behalf of the Tribes, holds the majority of the land in both counties. Ferry County was recently informed that the only federally insured bank in the county will close its doors in September. In short, our neighbors are poor, and their economic fate is closely tied to the vagaries of weather, the agricultural economy, and federal regulation.

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[1] We also exercise governmental authority over off-reservation allotments in a number of other counties.

The Colville Tribe has become a major contributor to these local economies. The Colville Tribe, together with its corporate entity, the Colville Tribal Enterprise Corporation, employs over 2,000 people, many of whom are non-Indians. Many of our tribal member employees own fee property off the reservation and contribute taxes to the local economy. As one of the largest employers in north central Washington, our tribal payroll contributes substantial sums to the off-reservation economy.

The economic power of the Colville Tribe has increased substantially because of Indian gaming. We have three small casinos, two located within the Reservation and a third located on allotted land in Chelan County, on Lake Chelan. Our gaming revenues have rarely approached $25 million in any fiscal year and have declined steadily over the past several years. We are not a "rich" gaming tribe. Yet this income has enabled us to significantly expand government services to our people, and provide jobs for members and non-members alike. The Colville Tribe uses eighty percent (80%) of its casinos' net revenues to fund essential tribal governmental functions, including services for elders, fire safety, police protection, gaming regulation, land use planning, social and health services, housing, and education. We do not utilize any gaming revenues for per capita payments.

Because we are located in an economically depressed area, it is doubtful we will ever be able to meet our own peoples' needs through gaming alone.[2] Our people have experienced increased unemployment during recent years. Our gaming revenues have also steadily declined during the last three years. Several factors have contributed to this decline, including the restrictive scope of games allowed under our Class III compact with Washington State, increased regulatory costs associated with the Compact, and increased competition from Indian tribes located in western Washington (where the majority of the state's population resides). Because of these factors, the Colville Tribe would like to establish a new casino site off-reservation, at Moses Lake, Washington, which is an area within the Colville Tribe's aboriginal territories.

Like many other remote Indian tribes, we are too far from the urban population centers and major transportation corridors to become a major "Las Vegas" superpower in Indian gaming. Our proposed venture in Moses Lake would not change this outcome. Rather, it would provide us a chance to expand our market and generate additional needed revenues to fund the Colville Tribe's government, as well as provide jobs and economic growth for the Moses Lake area.

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[2]We also derive revenues from our timber products, and our two mills, which produce dimensional lumber, plywood, and veneer.

Yet we face substantial hurdles in accomplishing this task, even with a welcoming local government at Moses Lake, a willing seller ready to consummate the transaction with us, and our history of financing our gaming facilities with our own resources.[3]

The first hurdle is Section 20 of IGRA and its restrictions on conducting gaming on off-reservation lands acquired in trust status after 1988.[4] Even assuming that the federal government could act relatively quickly on our fee-to-trust application, experience shows that it is now a matter of years before the Department of the Interior completes its review of such applications. Because the Tribe would acquire the land with the intent of operating a tribal casino/destination resort, the Tribe would be required to satisfy the "two-part determination" in Section 20. The two-part determination would require the Department to determine – after consulting with Washington State and local government officials and officials of our sister Indian tribes – that the gaming establishment on the newly acquired land would be in the best interest of the Colville Tribe and its members, and would not be detrimental to the surrounding community. Assuming that the Department would make such a determination, the Department could not take the land into trust under Section 20 if and until the Governor concurs in the Department's determination. As evidenced by the fact that since 1988 state governors have concurred in only three positive two-part determinations for off-reservation gaming on trust lands, Section 20 presents a formidable obstacle.

Complying with the existing IGRA framework will mean that the Colville Tribe will have to commit millions of Colville Tribal dollars to the Moses Lake project without any certainty that it will come to fruition. The backlog of applications at the Department, the requirements under existing law and regulations, and the inherent delays associated with the process all contribute to these hurdles. To put it plainly, no self-respecting capitalist would take those odds. Nevertheless, if Indian tribes wish to expand governmental services to our people and enhance our way of life, those are odds many of us will have to take.

Today, we ask that the Committee carefully consider the fact that not all Indian tribes are alike and not all gaming tribes are basking in the glory of multibillion-dollar revenue streams. Many of us depend on Indian gaming to provide critical support for our governments and people, and have become new partners with our non-Indian neighbors in many areas of economically depressed rural America.

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[3]We would have to rely on conventional borrowing to accomplish our goals. The Tribe has never associated with any private investors to build its existing casinos, and has never relied on outside management contractors or other third parties to establish or maintain its gaming facilities. We are the sole owner of our casinos.

[4]We note with alarm the recent developments in Oregon with the Warm Springs Tribe's proposed casino at Cascade Locks. Even with a compact endorsed by the State of Oregon that contemplates an off-reservation site on the Columbia River, the Department has effectively delayed the project by years, if not killed it altogether.

We further ask that the Committee exercise care in developing any amendments to IGRA to address off-reservation gaming, and remember that any additional regulation that renders investment in tribal gaming risky will inevitably favor the wealthiest Indian tribes, who can most afford to take those risks. Such regulation will just as inevitably prevent those Indian tribes that most desperately need gaming revenue from participating in the market.

Thank you for the opportunity to present the Colville Tribe's views to the Committee. I will be happy to answer any questions the Committee may have.

U.S. Senate Committee on Indian Affairs
Oversight Hearing on the Regulation of Indian Gaming
June 28, 2005

Introduction

Good morning, my name is James W. Ransom, Chief with the St. Regis Mohawk Tribe. I extend my appreciation to Chairman McCain and the Committee for providing me with the opportunity to speak today. SRMT, like the others testifying today, has a strong regulatory system in place and I am happy to answer any questions on this. Today, my remarks will focus on how the existing regulatory process under IGRA for placing land into trust on 'after acquired lands' for gaming purposes is working in New York.

We have been diligently observing the discussion that has occurred surrounding the issue of off-reservation gaming as we have a vested interest in its outcome. Clearly, there is a national debate going on in regards to off-reservation gaming and out-of-state tribes. Chairman Pombo of the House Resources Committee has a draft bill to amend the Indian Gaming Regulatory Act (IGRA) to address his off-reservation gaming concerns. In addition, Chairman McCain is holding this series of hearings that is including a discussion of off-reservation gaming.

Over the past four months, the National Congress of American Indians (NCAI) and the National Indian Gaming Association (NIGA) have sponsored a series of tribal forums across the country on this important topic. I would like to share my observations of how this discussion is going.

Understanding the Problem

Most, if not all examples cited by tribes and others concerned with off-reservation gaming and out-of-state tribes center around five major issues:

1) Lack of State and/or Governor's support for the proposed project.
2) Lack of local support for the proposed project.
3) Failure to complete a full environmental review of the proposed project.
4) Failure to consult with other tribes who could be potentially impacted by the proposed project.
5) Tribes attempting to site a casino in states outside their reservation, the "out-of-state" tribes.

We are concerned proposed national legislation to address these issues will be extremely detrimental to our efforts and any tribe's effort to site an off-reservation Catskill casino in the State of New York. We believe this proposed legislation is not necessary and that other actions can and are being taken to reinforce IGRA and its processes.

For example, earlier this year, the Bureau of Indian Affairs came up with a revised checklist to give clearer guidance for following its rules and regulations under IGRA[1]. The checklist helps address three of the four issues above. First, it recommends an environmental impact statement be prepared. Second, it expands consultation with local officials. Finally, it recommends agreements between tribes and local governments regarding tax impacts to the local community, jurisdictional issues such as law enforcement and emergency services, and land use issues.

In listening to the discussion that has taken place in Indian Country on the off-reservation gaming and out-of-state tribe issues, two common themes have emerged.

IGRA Works

This is a common theme that has emerged in every meeting and forum we have attended since March on the issue of off-reservation gaming. Whether its been George Skibine with the Department of the Interior, Chairman Ernie Stevens with the National Indian Gaming Association, USET Executive Director James T. Martin, or Oneida Nation of New York's Keller George, they all share this opinion of IGRA, it is accomplishing its purpose.

George Skibine testified earlier this year that "Section 20 of IGRA imposes reasonable restrictions on the right of Indian tribes to engage in gaming activities on off-reservation lands." It has been our personal experience that IGRA works as well. As we have spent the past four years navigating its rules and regulations to site our Catskill casino, we can report it is a daunting and difficult process to follow.

The Exception Clauses within IGRA work. Over the past seventeen years, it has been repeatedly demonstrated for off-reservation land acquisitions for gaming that these clauses are difficult to use. In responding to the issue of out-of-state tribes using IGRA, James Martin, USET Executive Director acknowledged the difficulties of IGRA at a March 17 hearing "No out-of-state tribe has obtained the necessary approvals to establish the casinos they are seeking."

IGRA Should Not Be Reopened

This is another common theme that has emerged in all of the meetings we have attended. The discussion of "off-reservation gaming" and "out-of-state tribes" has becoming a

[1]See Attachment A for Checklist for Gaming Acquisitions, Gaming-Related Acquisitions and IGRA Section 20 Determinations

polarizing issue in Indian country. However, in NIGA and NCAI sponsored meetings from across the country, no matter what a tribe's position on off-reservation gaming has been, we have heard the vast majority of Tribes warn of the dangers of reopening IGRA.

Too much effort went into getting Congress to pass IGRA to have it potentially undone when IGRA is not the problem. We agree and do not believe reopening IGRA is the best solution to off-reservation gaming concerns.

The Catskill Casinos

What has been absent from the discussion of off-reservation gaming is a discussion of what to do when it is to a tribe's and state's joint benefit to pursue off-reservation gaming. What if the off-reservation gaming can help local governments in an economically depressed part of the state to return to prosperity? And what if the off-reservation gaming is pursued in a transparent and open manner, with opportunities for comments by all concerned parties to the project?

What's happening in New York and the Catskills in particular, has the potential to serve as a model for the rest of the country for conducting off-reservation gaming. If we revisit the five major issues facing off-reservation gaming and out-of-state tribes, one can see how this can happen.

1) Lack of State and/or Governor's support for off-reservation gaming.

The legislation passed by New York in 2001 to authorize up to three Indian casinos in the Catskill and recent legislation introduced by New York Governor George Pataki (Governor's Program Bill 70) can serve as a template for when off-reservation gaming should occur[2]. Combined with the recent actions taken by the Bureau of Indian Affairs in expanding its checklist, it has the potential to be a how-to manual for off-reservation gaming that can guide tribes and states for years to come.

In addition, the IGRA requirement that the Governor must concur on the two-part determination and on the Gaming Compact for the Catskill Casinos will serve as additional evidence of State support.

2) Lack of local support for off-reservation gaming.

Local impact agreements are now one of the criteria that the Bureau of Indian Affairs looks for in reviewing off-reservation casino projects. In addition, the Governor's Program Bill 70 requires that before a Gaming Compact is ratified by the New York State Legislature, that there exists a local service and impact agreement between the tribal government and the county within which the gaming facility is located.

[2]See Attachment B for 2001 New York Legislation and Governor's Program Bill 70

In fact, the St. Regis Mohawk Tribe was the first tribe to enter into impact agreements with local governments as we pursued our off-reservation casino in the Catskills[3].

3) Failure to complete a full environmental review of the project.

The BIA's checklist calls for a full environmental review of off-reservation gaming projects. This comprehensive environmental review will help ensure that potential environmental impacts during the construction and operation of the casino are properly mitigated for.

In addition, the Governor's Program Bill 70 will require each Gaming Compact to provide, prior to construction, a full environmental impact statement using either the State Environmental Quality Review Act or the National Environmental Policy Act[4].

4) Failure to consult with other tribes who could potentially be impacted by the proposed project.

The solution to this issue really falls upon tribes to be respectful to each other and engage in positive discussions around the issue of off-reservation gaming. Tribes have a history of working together and they need to be reminded of the strength that arises from this unity.

One idea we would like to float out there in New York is to see the creation of a trust fund for language and cultural preservation. All tribes conducting off-reservation gaming in the state could be asked to contribute to this fund on an annual basis. However, the fund would be overseen by an independent board. Any tribe in the state would be eligible to access this fund for language and cultural preservation.

5) Tribes attempting to site a casino in states outside their reservation, the "out-of-state" tribes issue.

We believe that current regulations and the atmosphere in Congress will make this option for out-of-state tribes almost impossible to use. The difficulty of pursuing off-reservation gaming within existing regulations was acknowledged earlier this year in the testimony of United South and Eastern Tribes Executive Director James T. Martin as he stated "No out-of-state tribe has obtained the necessary approvals to establish the casinos they are seeking."

What happened in New York last week serves to demonstrate the difficult path out-of-state tribes have in pursuing casinos in New York. In this case, the Oneidas of Wisconsin and Stockbridge Munsee of Wisconsin chose to interfere in our efforts to have our land claim settlement ratified by the New York State Senate. They are attempting to piggy-

[3]See Attachment C for SRMT's Local Agreements
[4]See Attachment D for SRMT's Environmental Effort

back their pursuit of an off-reservation casino on our efforts, as an in-state tribe, to settle our land claim.

In response to their efforts, last Thursday, the Governor's office issued the following e-mail to them, "Please be advised that if your clients or their representatives succeed in their current efforts to prevent passage of the Mohawk settlement legislation, the State will engage in no further settlement negotiations with out-of-state tribes."

While these two tribes were successful in delaying the passage of our land claim settlement bill, it has come at a tremendous cost to them. We commend the Governor for recognizing this desperate attempt by the out-of-state tribes and for his strong response to their actions. We believe our land claim bill will be acted upon later this summer by the New York State Senate.

Finally, given the increased scrutiny Congress is placing on off-reservation gaming and out-of-state tribes, it is going to become more difficult, not less, for tribes to pursue this option.

Conclusion

The steps that have been taken in New York, combined with actions taken by the Bureau of Indian Affairs, create a process for tribes to undertake off-reservation gaming. The act of the New York State Legislature in authorizing the three off-reservation casinos demonstrates clear support from the State for off-reservation gaming. The requirement of the Governor to sign the Gaming Compact and to concur on the land-in-trust application provides further evidence of clear support from the state for off-reservation gaming.

BIAs expanded checklist calls for greater consultation with local governments. Governor Pataki's Program Bill takes it a step further in requiring the existence of the local service and impact agreements. Both actions will ensure a greater role for local governments as it concerns off-reservation gaming.

Requiring a full environmental review will ensure that potential environmental impacts are properly identified and mitigated prior to construction of an off-reservation casino. Again, this will afford all interested parties the opportunity to have their concerns addressed.

On the issue of the limited role of tribes in the state who may be impacted by the proposed off-reservation gaming. Tribes need to be considerate and respectful to each other. This issue could also be addressed by requiring the establishment of a tribal fund that could be accessible by all tribes in the state where the off-reservation gaming would take place. The fund could be used to support language and cultural programs for tribes and could be replenished on a yearly basis. The funding could be controlled by an independent board that would review proposals submitted to it.

We firmly believe that existing regulations and the atmosphere in Congress are addressing the issue of out-of-state tribes. As I stated, we see this avenue for tribes becoming more difficult, not less.

The circumstances of the St. Regis Mohawk Tribe's quest for an off-reservation casino are unique in that the State and local governments, as well as the locally impacted community, are all proponents for our project. It is true that Chairman Pombo's bill, as currently drafted, would cause great harm to this collaborative effort. But, it is equally true that other Tribes in other states working in a positive manner with their respective state and local governments would suffer too. The rigors of the current system serve to protect the interests of all parties and it is only when that system is circumvented, that it fails.

Congress needs to work with states, local governments, and tribes to develop a process for off-reservation gaming that will mutually benefit everyone involved, close the loopholes within IGRA and prevent circumvention of what is a good and fair regulatory system.

I and the members of our Tribe thank the Committee for its time and consideration.

MOHAWK MOUNTAIN CASINO RESORT
SULLIVAN COUNTY, NEW YORK

Project Milestones
St. Regis Mohawk Tribe's Environmental Review Process

The following chronology includes Project milestones relating to Project approvals:

- March 2001, the Tribe submits an application to the Department of Interior's Bureau of Indian Affairs to approve taking the 66 acres into trust for the Tribe, supported by a related 141 acre development parcel that includes a large parking garage and Project related infrastructure.

- August 2001, Tribal leadership and the County negotiate and sign an Agreement to defray impacts on local government; the County strongly endorses the Project.

- October 2001, the Tribe files an application for site plan approval with the Town, focusing primarily upon the development of the 141-acre parcel on Town land. Application includes full delineation of all of the wetlands of the 207 acres, full investigation of all of the potential archaeological resources on the 207 acres, the traffic impact study for the Project and a conceptual site design.

- November 2001, Tribal leadership and representatives of Park Place sign a formal Development Agreement concerning the Project at a signing ceremony at the Kutsher's Country Club next to the Project site. Ceremony is well attended by local and state officials; Tribe hosts federal inspection of Project site.

- December 2001, Tribal leadership widely publicizes and hosts a Public Meeting with the local community concerning the scope of the Environmental Impact Study that will fully assess the impacts of the Project on the environment and the local community; the community expresses strong support for the Project.

- January – April 2002, Tribal leadership and representatives attend series of meetings in Washington, DC and Albany, the State and the County and Nashville, Tennessee, seeking approval for the Land-In-Trust Application.

- May 2002, the Tribe publishes a supplemental and revised environmental assessment in support of federal approval for the Project.

- August 2002, the Town deems the Draft Environmental Impact Statement complete and publishes it widely for public comment.

- September 2002, Tribal leadership and representatives host a well-publicized community meeting in the County to obtain public comment on the draft Environmental Impact Statement; community expresses wide support for the Project.

- December 2002, the BIA deems the draft Environmental Assessment in support of the Project complete and publishes the document for public comment.

- January 2003, Tribal leadership gains the written support of Governor George Pataki, the County leadership and the Town representatives in support of the Land-In-Trust Application, stating that development of the Project is in the best interest of the community and the State.

- February 2003, Tribal leadership submits a substantial letter to the BIA, documenting that the County is aboriginal Mohawk land and that development of the Project is in the best interests of the Tribe.

- April 2003, the BIA publishes for public comment a supplemental engineering report in support of the on site sewer at the Project.

- May 2003 The Tribe and the State execute a Memorandum of Understanding setting forth the terms of a Gaming Compact to be executed between the parties for the Project.

- July 2003, finalize hydrogeologic study in support of on-site water supply alternative.

- September 2003, obtain NYS DOT concept approval of all traffic mitigation measures.

- September 2003, obtain federal and town approval of plan to produce joint federa/state EIS.

- October 2003, publish notice of intent to complete joint federal/state EIS and joint supplemental scoping session.

- October 2003, obtain approval from NYS Thruway Authority regarding scope of regional traffic study.

- November 2003, finalize Amended and Restated Management and Development Agreements.

- December 2003, finalize revised water use report.

- December 2003, complete economic analysis of Sullivan County costs compared to $15,000,000.00 mitigation payment.

- December 2003, finalize revised visitation analysis by The Innovation Group including impact of three casinos plus racino scenarios on visitation.

- December 2003, compile final report on cumulative traffic impact of three casinos plus racino scenario.
- December 2003, compile final wastewater treatment report based on new visitation analysis.
- January 2004, distribute (final) DEIS for pre-publication review by Feds and state.
- February 2004, distribute (final) DEIS for pre-publication review by town.
- February 2004, submission of NIGC package and revised management agreement.
- May 2004, joint federal/state DEIS made available for public review.
- June 2004, participate in joint federal/state public hearing on DEIS at County Building.
- October 2004, publish comments on DEIS and publish joint federal/state FEIS that includes cumulative impact analysis of three casinos for federal, state and local review.
- November 2004, BIA issues Notice of Availability of FEIS.
- December 2004, Town of Thompson, as State lead agency under SEQRA, grants site plan approval and issues findings statement.

TOWN OF THOMPSON PLANNING BOARD
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TOWN OF THOMPSON – TOWN BOARD

APPLICATION OF ST. REGIS MOHAWK TRIBE
AND CAESARS ENTERTAINMENT, INC.

SEQRA RESOLUTION AND FINDINGS STATEMENT

SUBDIVISION APPROVAL AND SITE PLAN APPROVAL

Motion of Lou Kiefer, second of Bernard Cohen, carried unanimously, approving the following:

RESOLUTION

WHEREAS, on or about October 10, 2001, the Planning Board of the Town of Thompson ("Planning Board") received applications for site plan review and subdivision approval ("Application"), regarding the development of the Mohawk Mountain Casino Resort ("Project") filed by the St. Regis Mohawk Tribe ("Tribe") in Partnership with CEI – Sullivan County Development Company ("Applicant") in the Town of Thompson ("Town"); Sullivan County ("County"); and,

WHEREAS, on or about November 11, 2001, after consulting with other interested and involved agencies, the Planning Board designated itself as Lead Agency under SEQRA for the Project; and,

WHEREAS, the Planning Board considered the Application at its November 14, 2001 meeting and, upon review of the Application, including the Long Environmental Assessment Form ("LEAF") submitted therewith, the Planning Board issued a Positive Declaration of Environmental Significance and published the scheduling of a Public Scoping Session for the Project; and,

WHEREAS, on or about December 12, 2001, a Public Scoping Session was held on the Application, at which time the Planning Board received comments on the scope of the Local Draft Environmental Impact Statement ("LDEIS"); and,

WHEREAS, the Planning Board accepted written comments on the proposed scope of the LDEIS through and including December 22, 2001; and,

WHEREAS, the Planning Board notified all of the involved agencies of the proposed scope and the comment period, yet no comments were received from such involved agencies regarding the scoping document; and,

WHEREAS, the Planning Board issued a Final Scoping Document to the Applicant on January 23, 2002; and,

WHEREAS, on or about June 25, 2002, the Applicant submitted a Preliminary Local Draft Environmental Impact Statement ("PLDEIS") to the Town Engineer for review and comment; and,

WHEREAS, on or about July 19, 2002, the Applicant met with the Town Engineer, who provided comments on the PLDEIS; and,

WHEREAS, the Applicant responded to the Town Engineer's comments and supplemented the PLDEIS accordingly; and,

WHEREAS the Applicant filed a LDEIS in response to the Final Scoping Document issued by the Planning Board, the comments of the Town Engineer and public input on August 14, 2002; and,

WHEREAS, the Planning Board held a Public Hearing on September 10, 2002; and,

WHEREAS, the Sullivan County Division of Public Works reviewed the preliminary design of improvements to Anawana Lake Road (County Road 13) and recommended to the Sullivan County Legislature that such preliminary plans be conceptually approved, and,

WHEREAS, on September 18, 2003, the Sullivan County Legislature resolved to conceptually approve the preliminary designs; and,

WHEREAS, the Planning Board, in coordination with the United States Department of Interior Bureau of Indian Affairs (the "BIA") conducted a joint supplemental Scoping Session, upon public notice, on October 8, 2003 and subsequently adopted a revised Scope for a joint Draft Environmental Impact Statement ("DEIS"); and,

WHEREAS, on or about February 2, 2004, the Applicant submitted a revised DEIS to the Town Engineer for review and comment; and,

WHEREAS, the Applicant further revised the DEIS and submitted the revised DEIS to the Planning Board on May 7, 2004; and,

WHEREAS, members of the Planning Board and its planning consultants and other advisory technical staff reviewed the revised DEIS for completeness in response to the Scoping document; and,

WHEREAS, McGoey, Hauser and Edsall Consulting Engineers, P.C. (the "Town Engineer"), issued Technical Review Comments on the Application, dated May 2004; and,

WHEREAS, by Resolution dated May 12, 2004, the Planning Board determined that the information submitted in the DEIS was complete with respect to the scope, contents and

adequacy for the purpose of commencing public review pursuant to Article 8, State Environmental Quality Review Act of the Environmental Conservation Law; and,

WHEREAS, the Planning Board duly published notice of its determination to accept the DEIS as complete with respect to its scope and content and its intent to conduct a public hearing on the DEIS on June 23, 2004, at 7 p.m., in local newspapers and in the May 19, 2004, Environmental Notice Bulletin; and,

WHEREAS, a joint Planning Board/Bureau of Indian Affairs public hearing was held on June 23, 2004, at which time the Planning Board received comments from, among others, members of the public; and,

WHEREAS the Planning Board accepted written comments on the DEIS through and including July 12, 2004; and,

WHEREAS, the Applicant addressed the Responsiveness Summary adopted by the Planning Board by Resolution dated October 5, 2004; and,

WHEREAS, the Planning Board considered the DEIS, the public comments thereupon and Technical Review Comments of the Town Engineer then prepared and adopted a Responsiveness Summary responding to each such comment by Resolution dated October 5, 2004; and,

WHEREAS, on October 27, 2004, the Planning Board received and reviewed a Final Environmental Impact Statement ("FEIS") that, where appropriate, took into account the comments on the DEIS received from the public and the involved agencies, and compared the FEIS to the standards and criteria set forth in 6 N.Y.C.R.R. § 617.9; and,

WHEREAS, by Resolution dated October 27, 2004, the Planning Board determined that the information submitted in the FEIS, including the Responsiveness Summary, met the standards and criteria set forth in 6 N.Y.C.R.R. § 617.9 and therefore accepted the FEIS as complete for purposes of making the findings and determinations required by Article 8 of the Environmental Conservation Law and 6 N.Y.C.R.R. § 617.11, and published a Notice of Completion of the FEIS in local newspapers and in the November 10, 2004 Environmental Notice Bulletin; and,

WHEREAS, more than ten days have passed since the acceptance and filing of the FEIS, as required by SEQR; and,

WHEREAS, by letter to the Planning Board dated November 23, 2004, pursuant to General Municipal Law Section 239, the Sullivan County Division of Planning and Community Development issued its comments on the Application recommending approval of the Project subject to certain requested modifications, which have been included in the conditions of approval set forth below (the "County Comments"); and,

WHEREAS, the Planning Board received a number of comments from the public that postdated the end of the comment period on the DEIS as well as a number of comments after the FEIS was published. These late comments were largely restatements of concerns expressed during the comment period, except that the Village of Goshen in Orange County submitted a document entitled "Preliminary Report for Orange County, New York: Potential Economic Impact of Class III Casino Hotels," prepared by the Spectrum Gaming Group, LLC, dated July 16, 2004 ("Orange County Preliminary Report"); and,

WHEREAS, the Orange County Preliminary Report was submitted to the Applicant by the Planning Board and reviewed by Applicant's consultants. Upon review, on November 22, 2004, Applicant submitted to the Board a report entitled "Response to Orange County Impact Study by Spectrum Gaming Regarding Potential Casino Development in Sullivan County, New York" prepared by the Innovation Group ("Response to the Orange County Study"); and,

WHEREAS, the Planning Board has received and continues to receive a number of general comments from the Public regarding the Project beyond the close of the comment period, these late comments do not identify any material environmental issues that are not addressed in the FEIS; and,

WHEREAS, the Planning Board hereby adopts this Findings Statement:

APPLICATION OF ST. REGIS MOHAWK TRIBE AND CAESARS ENTERTAINMENT, INC.

FINDINGS STATEMENT

1.0 DESCRIPTION OF PROPOSED ACTION

1. The St. Regis Mohawk Tribe (the "Tribe"), in conjunction with Caesars Entertainment, Inc. ("Caesars"), proposes to construct the Mohawk Mountain Casino Resort (the "Project").

2. The Preferred Alternative consists of the development of a 134,000 square-foot casino; 160,600 square-feet of food, beverage and support area; a 742 room, 492,600 square-foot hotel; a 2,800 seat theater; 3,000 square feet of retail space; structured parking for 6,010

vehicles; a central plant; a facilities garage; a 178 bus parking area; a wastewater treatment plant; and a potable water plant.

3. The Project is proposed for a 175+/- acre site consisting of a 66+/- acre parcel of land on Anawana Lake and an adjacent 109+/- parcel of land located along the east side of Anawana Lake Road (County Road 103) in the Town, approximately three miles north of the Village of Monticello (the "Site").

4. Public access to the Project will be provided by one main entrance on Anawana Lake Road on the south end of the Project and a secondary entrance on Anawana Lake Road on the north end of the site.

5. Of the 175+/- acres, 66+/- acres will be designated as trust land for the Tribe pursuant to its land-in-trust acquisition approved by the United States Department of the Interior, pursuant to the Indian Gaming Regulatory Act. The casino will be constructed and operated on this portion of the Site. The remaining 109 acres will include the parking garage, the bus parking, and the Project's main entrance.

6. The Mohawk Mountain Casino Resort is expected to operate 24 hours a day.

2.0 ENVIRONMENTAL CONSEQUENCES

Upon full consideration of the FEIS and the accompanying five-volume Appendix for the Project, the following findings are made.

2.1 LAND USE, ZONING AND COMMUNITY CHARACTER

1. The Site is governed by Chapter 250 of the Town Code entitled "Zoning and Planned Unit Development."

2. The Site is located within the Town's "SR Suburban Residential" Zoning District. A wide variety of residential, religious, recreational and commercial uses are permitted within the SR District, including hotels and motels.

3. The Project will conform to the general land use provisions of the Town of Thompson zoning ordinance that permits hotels, motels and recreational facilities in the SR district.

4. The Town of Thompson Zoning Board of Appeals granted an area Variance for set back and height of parking garage for the 109-acre parking garage parcel, which is fully consistent with the zoned land use, as set forth in greater detail below in § 4.0.

5. Although the Project will change and intensify the existing uses of the Project Site, several studies conducted during the planning stages of the Project have indicated that there will be no significant impacts on land use.

COMMUNITY CHARACTER

1. Historically, the Town has been a resort haven for travelers from New York City as part of the "Borscht Belt."

2. The Town of Thompson – Village of Monticello Comprehensive Plan of 1999 lists, as one of its major goals, the preservation and resurrection of major resort areas in the region.

3. The Project, as a major resort area, will not significantly impact the Town's community character. The Project will employ strong elements of traditional resort architecture and use a variety of landscaping and lighting techniques to mitigate impacts from the Project and comply with the objectives of the Comprehensive Plan.

4. While the Project will introduce casino gaming into the region, the area has long supported gambling on horse-racing at the Monticello Raceway and off-track betting. The Monticello Raceway now has video lottery terminals. Therefore, the increased gambling in the region will not have a negative impact on the rich community character of this resort area.

5. The Applicant has committed to restrict access to the casino gaming floor so that persons under the age of twenty-one may not participate in gaming. This commitment should protect the region's youth from access to gaming at the Project.

6. The development of the Project will have a positive cumulative affect on the community character in Sullivan County. The 1999 Joint Comprehensive Plan adopted by the Town of Thompson and the Village of Monticello envisioned the development of major resort areas in the community.

7. The Site Plans, described more fully below, incorporate the region's rich resort history and natural resource base into the Project.

8. The density, scale and architectural scheme of the project will blend pleasantly into the surrounding community and will reflect the "Borscht Belt" history of the region.

MONTICELLO SCHOOL DISTRICT

1. Due to the relocation of Project employees, and their families, the Monticello School District ("School District"), which serves the Town, will see an increase in enrollment.

2. Local property taxes paid by new residents will help offset the costs associated with increased enrollment. Additionally, the increased commercial tax base is expected to yield additional revenue for the School District.

3. The Site presently yields $54,430.46 in tax revenue for the School District at an assessed value of $3,335,200.00.

4. Even with the removal of the 66-acres from the tax rolls, the value of the 109-acre parcel and the projected capital expenditures in excess of $40,000,000.00 for the parking garage and access drives, facilities garage and bus parking will exceed the current assessed value of the Site.

5. Project traffic will not significantly impact the flow of traffic during school hours as the peak hours of traffic from the Project will be during night and weekend hours.

6. The Tribe and County entered into an Agreement dated August 17, 2001 (the "Local Agreement"), which provides for significant, and adequate, payments to the local school districts that will mitigate any impact upon the schools.

7. There will be no significant adverse impacts on local school districts.

Mitigation Measures:

1. The Local Agreement, and the proposed allocation, will provide impact payments of several million dollars to schools districts within the County. These payments, together with the taxes generated from the increased tax base, will meet any increased costs associated with enrollment generated by the Project.

SULLIVAN COUNTY

1. The County entered into the Local Agreement with the Tribe and has concurred with the allocation of the funds by the Tribe, including public works and roads funds.

2. On December 19, 2002, Sullivan County indicated its support for the Project in a letter to the United States Department of the Interior regarding the Tribe's land-in-trust application.

3. The County also agreed to annually direct $1,650,000.00 of the $15,000,000.00 in annual impact payments to the Town.

4. The New York State Department of Transportation ("NYSDOT") has approved roadway improvements on State roads that will be funded by the Applicant to mitigate Project traffic impacts.

5. The Sullivan County Division of Planning and Community Development approved the Project subject to the following modifications:

   a) The Applicant must assure that the water supply permit application for groundwater withdrawal for the Project is evaluated by the Environmental Permits and Compliance Division of New York State Department of Environmental Conservation ("NYSDEC") in Albany, New York;

   b) The Applicant must secure a work permit from the Sullivan County Department of Public Works ("Sullivan County DPW") regarding County road improvements;

   c) The provision of local emergency services that are the subject of preliminary agreements must be established in formal, written agreements; and

   d) High Bush Blueberry should be substituted for Japanese Barberry in the landscaping plan for the Project.

Mitigation Measures:

1. The Local Agreement and approved roadway improvements mitigate all socioeconomic impacts upon Sullivan County.
2. The modifications proposed by the Sullivan County Division of Planning and Community Development set forth above in paragraph 5 are imposed as site plan conditions in the terms of this Resolution as set forth below.

2.2 LAND RESOURCES

1. The Site lies within the southern New York section of the Appalachian Plateau, which is a topographic expression of the underlying sandstone, shale and conglomerate mix.
2. The Site contains a series of low hills to the west and north, and slopes downward to the Anawana Lake basin, which drains southeasterly through Bailey's Lake into the Neversink River, a tributary of the Delaware River.
3. The highest point on the Site is between 1,620 and 1,640 feet, while the lowest point, at Anawana Lake is approximately 1,440 feet.
4. "Soils Survey of Sullivan County" was published by the United States Department of Agriculture Soil Conservation Service in 1990 and indicated that the Site is composed of various sand and/or silt loams overlying sandstone or shale bedrock formations.
5. There is no perceptible erosion on the Site.
6. The Project Site does not contain valuable agricultural lands.

Mitigation Measures:

1. The Stormwater Pollution Prevention Plan ("SPPP"), developed in accordance with the "NYS Stormwater Management Design Manual," will manage runoff during construction at the Project and will include the installation of retention and water quality basins.
2. The construction plans will limit Site disturbance by restricting earthwork within tight limits, partially with the use of retaining walls as shown on Site Plan C103, Erosion Control Plan and C103.1, Erosion Control Details.
3. The SPPP includes specific requirements related to colloidal solids and Applicant is required to treat stormwater with polymers and provide for extended retention as may be necessary.
4. Project construction may require disturbance of more than five acres of the Project Site at any one time. The Tribe and Applicant will obtain approval from the NYSDEC prior to disturbing more than five acres of the Project Site at any one time during construction.
5. A suitable storage site for topsoil moved during construction will be established and will be replaced and seeded and mulched to establish a vegetative cover.
6. The blasting required during construction will be done in accordance with local, state and federal law and only with all required permits including local permits.
7. Approximately 60 acres of the Site will be impacted by construction in the development process. A SPPP has been developed, in accordance with guidelines published by the NYSDEC, for construction at the Project to protect the Site from erosion and to protect local waterways from adverse impacts from stormwater runoff, both during construction of the Project and upon completion. The approved "Site Plan," consisting of a series of

drawings described in detail below, sets forth conditions that are imposed upon the Project to protect the local environment from stormwater runoff impacts.

8. The approved "Site Plan" includes a landscaping plan that must be implemented as a condition of site plan approval.

9. The Tribe and Applicant will work cooperatively with, and reimburse the Planning Board for, any licensed landscape architect retained by the Planning Board to oversee implementation of the landscaping plan for the Project.

2.3(A) GROUNDWATER

1. There are presently two (2) wells on the Site, one (1) of which is currently in use, while the other is abandoned.

2. The Project will not utilize either well currently on the Site. Test wells were developed at and around the Site by Applicant to evaluate the groundwater resources.

3. The groundwater resources in the area of the Project Site have been evaluated and documented to contain abundant supplies. The water needs of the Project can be met by the groundwater resources.

4. The average water demand for the Project is 558,000 gallons per day.

5. The hydrogeologic studies of the area around the Project Site document that nearby wells will not be adversely impacted by the Applicant's use of the groundwater to meet the needs of the Project.

6. The groundwater resources can be developed for the water supply without any adverse impact upon regional groundwater resources or surface water quality or quantity.

7. The peak demand for water usage on a few summer weekends at the Project is anticipated to be up to 800,000 gallons per day.

8. All water supply needs for the Project can be met by the development of several water supply wells on and adjacent to the Project Site.

9. The twin water tanks will hold a total of 1.5 million gallons of potable water on-site, more than capable of meeting the peak demand days and in serving fire suppression needs for the Project.

Mitigation Measures:

1. Use of on-site groundwater eliminates the growth-inducing impact of off-site water supplies.

2. The Project has adopted the use of water conserving fixtures, to minimize water usage.

3. The Tribe and Applicant will obtain all necessary permits from state, local and regional authorities for the development of the water supply.

4. The Tribe and Applicant will submit copies of all permit applications, drawings and reports that are submitted to the New York State Department of Health ("NYSDOH") for approval of the drinking water supply storage, treatment and distribution system for the Project to the Planning Board at the same time that they are submitted to NYSDOH.

2.3(B) SURFACE WATER QUALITY

1. The Site lies about 8.5 miles south of the nearest topographic point in the New York City Water Supply System's watershed.

2. The Site lies within the Delaware River Basin and the jurisdiction of the Delaware River Basin Commission.

3. The Site adjoins the southerly boundary of Anawana Lake. An inlet stream empties into the Lake at its northeast corner. The Lake presently receives a sanitary discharge from the septic/sand filter at the Kutsher's Resort and general runoff from the resort and its structures without stormwater controls. The Lake and the stream are considered Class "B" and are protected under Article 15 of the Environmental Conservation Law. Water quality samples from Anawana Lake indicate that it is in compliance with relevant parameters, in that the Lake now meets Class "B" state standards for Class "B" waters.

4. At its southeast corner, Anawana Lake discharges into Anawana Brook, which connects to Sheldrake Stream and, ultimately, the Neversink River.

5. Water quality samples for Bailey's Lake indicate that it is in compliance with the relevant parameters, in that the Lake now meets Class "B" state standards for Class "B" waters.

6. Soils on the Site where the majority of the construction will take place contain between 7 and 27% clay, which will significantly reduce erosion.

7. The Project will contain an on-site wastewater treatment plant situated on the 66-acre Trust Parcel which will be designed to provide a tertiary level of treatment to the effluent before it is discharged to Anawana Brook.

8. The average daily discharge from the wastewater treatment plant will be 440,000 gallons per day. Although the flow of Anawana Brook does not decrease below about 2 million gallons per day, "intermittent stream standards" apply to its classification. The dilution of the effluent from the wastewater treatment plant by the flow of Anawana Brook should be sufficient to have minimal impact on Anawana Brook species due to temperature.

9. The quality of the effluent from the wastewater treatment plant will meet or exceed the actual stream standards of Anawana Brook and therefore will not have an adverse impact upon the water quality of Anawana Brook or any downstream waters such as Bailey's Lake.

10. The peak flow of the on-site wastewater treatment plant will be 619,000 gallons per day to Anawana Brook.

11. The use of an off-site wastewater treatment system would have induced growth along the 1.5 miles of new sewer piping.

12. Wastewater will be treated using a Sequencing Batch Reactor (SBR) system and tertiary filter system with an average daily design capacity of 440,000 gpd and a peak treatment capacity of 619,000 gpd. Treatment will ensure that the effluent will meet or exceed the discharge quality requirements for intermittent streams.

Mitigation Measures:

1. The SPPP provides for the construction of various water quality basins, detention basins and retention basins both during and after the construction of the Project. The SPPP will allow first flush treatment of all runoff and reduce Site runoff to predevelopment rates and volumes.

2. Surface waters will be protected from colloidal soils runoff, as discussed above in Section 2.2 (Land Resources).

3. The Applicant will obtain all necessary Tribal, State, Regional and Federal permits for the development of the on-site wastewater treatment system.

4. The Applicant and the Tribe will obtain NYSDOH permits and approval for the Project's drinking water supply and Delaware River Basin Commission approval of the discharge to Anawana Brook.

5. The Tribe and Applicant will submit copies of all permit applications, drawings and reports that are submitted to the NYSDEC for approval of the Project wastewater treatment plant to the Planning Board at the same time that they are submitted to NYS DEC.

2.4 AIR RESOURCES

1. An Air Quality Analysis was performed for the Project by Creighton Manning Engineering, LLP in May 2002.

2. The analysis was conducted in accordance with the procedures of the NYSDEC. The NYSDEC currently follows the procedures outlined by the NYSDOT in the "Environmental Procedures Manual" ("EPM").

3. As part of the study, a detailed air quality analysis was conducted at the Route 42/Anawana Lake Road, Route 17 westbound off ramp, Anawana Lake Road/Lanahans Road, Route 42/Ames Plaza, and Route 42/Concord Road intersections. The results of the detailed air quality analysis indicated that the study area intersections are in compliance with the New York State and National Ambient Air Quality Standards (NYSAAQS, NAAQS) for the No-Build and Build conditions. The analysis results indicate that the geometric improvements proposed as traffic mitigation will result in decreased CO emissions in the Build condition at numerous receptor locations due to the improved vehicle flow and reduction in vehicle queues. Other study area intersections

screened out from requiring a detailed analysis; however, based on the EPM procedures are said to be in compliance with the standards.

4. There will be a short-term impact on air quality due to construction at the Project in the form of increased airborne particulates.

5. There will be no violation of the NYSAAQS and NAAQS and no significant impact on air quality in the vicinity of the Site after completion of the Project.

Mitigation Measures:

1. During construction, stockpiled materials will be covered, bare earth surfaces utilized in construction will be wetted down to reduce dust, streets will be swept, as needed, and exposed soils will be vegetated as soon as possible.

2. The Applicant will construct electrification stations at the bus parking area to substantially reduce air emissions from idle buses.

3. The required roadway improvements will reduce queue lengths and thus improve air quality in the vicinity of the westbound exit ramp from Route 17 and the intersection of Route 42 and Anawana Lake Road, by avoiding current air quality impacts of vehicles at traffic lights in these areas.

2.5(A) BIOLOGICAL RESOURCES

1. The Fish and Wildlife Service of the United States Department of the Interior was contacted and it determined that the Site did not contain any officially designated wildlife preserves, or wild, recreational or scenic rivers. Additionally, it was determined that no critical habitat would be disturbed by the Project and that no listed or endangered species would be threatened by the Project.

2. First Environment, Inc. consulted Federal Land Data from the Bureau of Land Management and data from the NYSDEC Wildlife Management Division. The data revealed that there are no wildlife management areas, endangered species, or critical habitats in the vicinity of the Site.

3. While approximately 60 acres will be directly impacted by construction of the Project, much of that portion of the Site includes structures associated with Kutsher's Sports Academy and is not wildlife habitat.

4. Common biological resources exist in the .66 acres of onsite wetlands and 1.7 acres of offsite wetlands that will be impacted by the Project.

Mitigation Measures:

1. Trees, plants, and shrubs will be disturbed or removed as a result of the Project, but significant plantings will occur as part of the landscape plan, which is part of the approved Site Plan described in detail below.
2. The landscape plan provides for preservation to the extent possible of mature trees on the 175-acre Project Site.
3. The Wetland mitigation measures, detailed in the FEIS and described in the approved Site Plan, will expand, and preserve wetland areas used by terrestrial wildlife on the Project Site.

2.5(B) AQUATIC AND WETLAND RESOURCES

1. The Applicant fully delineated the wetlands on the Site.

2. The wetlands on the Project Site are scattered and disconnected and located in discreet areas on the Site.

3. The United States Army Corps of Engineers ("USACOE") concurred in the wetlands delineation prepared for the Project on the Project Site.

4. The Director of the Environment Division for the Tribe also concurred in the delineation and issued a finding that the Project will not have an adverse impact on the wetlands or the environment.

5. There are no New York State Freshwater wetlands located on the Project Site. Several locations on Site exhibit hydrophytic (wetlands) vegetation, wetland hydrology and hydric soils, comprising a total delineated area of approximately 13.05 acres of Federal wetlands on the 175-acre Project Site.

6. Site development will be implemented to avoid impacts and disturbance of the delineated wetlands by situating structures, access drives, utilities and Site work between and away from wetland areas except for .66 acres of low quality wetland areas associated with the existing structures on the Site.

7. The disturbance of .66 acres of low quality wetlands on the Tribal Trust Parcel is unavoidable and necessary for an energy-efficient structure.

8. The Wetland Mitigation Plan will fill .66 acres of scattered, low quality wetland area and create over 3 acres of high-quality wetland acres on-Site, will not have an adverse impact on waters of the United States and will actually enhance the wetlands on the Project Site.

9. The Wetland Mitigation Plan will require approval and permitting by the USACOE, working closely with the Tribe's wetland scientist.

10. The approved and necessary traffic improvement plans between Exit 105 of NYS Route 17 and the Project Site on Anawana Lake Road were fully designed after NYSDOT concept approval in late 2003.

11. The Road widening, detailed more fully below, involves safety improvements for the traveling public that are required based on the expected gaming visits per year.

12. When the concept plans for road improvements were finally designed, scientific evaluation of the ditches and hydrology adjacent to the road revealed a series of low quality wetlands.

13. Detailed design documents reveal that approximately 1.7 acres of off-site wetlands are expected to be impacted by the necessary road construction activities.

14. The off-site low-quality wetland impacts are unavoidable.

15. A total of 2.4 acres of wetlands will be impacted by the Project, .66 acres on-site and 1.7 acres off-site.

16. The Wetland Mitigation Plan will generate additionally created high-quality wetlands to compensate for the filled ditches that are required by the off-site roadway improvements.

Mitigation Measures:

1. The Project will be constructed to avoid impacts and disturbances of the delineated wetlands. Structures, access roads, and utilities will be placed away from wetlands, which will be marked for visual reference and avoidance by construction personnel.

2. The SPPP will ensure the integrity of wetlands with proper management of stormwater runoff.

3. The total "new wetland" proposed through a combination of the on-site and off-site wetland impact and mitigation plans is 6.6 acres for the Project, which is consistent with federal and state wetland regulations and policy to compensate for the total disturbance by the Project of 2.4 acres of low quality wetlands (.66 acres on-site and 1.7 acres off-site).

4. Just as with the on-site mitigation plan, the off-site plan will require approval and permitting by the USACOE, working closely with the Tribe's wetland scientist.

5. After review and recommendation and permitting by USACOE, construction at the Project will incorporate any proposed mitigation measures beyond those already set forth in the Applicant's mitigation plan and site plan, as approved below.

6. There will be no significant unmitigated impacts to wetlands from the Project.

2.6 ARCHEOLOGICAL AND HISTORIC RESOURCES

1. The Project utilized a series of detailed Archaeological/Historical Sensitivity Evaluation Surveys that were performed on the Site by Greenhouse Consultants:

   a. Stage 1 Report, dated February 2001, for an area, somewhat larger than the 175-acre site.

   b. Stage 1B/2 Report, dated January 2002. The Stage 1B Report provided a detailed analysis of the 66-acre Trust Parcel. The Stage 2 Report focused on the adjacent 109-acre parcel.

   c. Stage 2 Report, dated April 2002, for a small portion of the 109-acre parcel.

   d. A February 2003 photographic documentation of existing structures; and

   e. A Stage 1B dated April 2004 for a portion of the 109-acre parcel.

2. Document searches with the National Register of Historic Places and the New York State Museum did not reveal any historic sites or structures or sensitive areas within one (1) mile of the Site.

3. The Tribe's Historic Preservation Officer was consulted, in accordance with state and federal law, and determined that the Project would not have an adverse impact on Tribal cultural resources.

4. The State Historic Preservation Officer (SHPO) through the New York State Office of Parks, Recreation and Historic Preservation has been provided with the archaeological reports in order to determine whether the Project will have an adverse impact on historic or cultural resources. SHPO provided a final letter dated June 18, 2004, indicating that the Project would not have a material adverse impact upon cultural or historic resources.

Mitigation Measures:

1. No historic or cultural resources have been identified that may be adversely impacted by the Project.

2. Construction of on-Site and off-Site improvements will be monitored for the unexpected discovery of any significant archaeological or historical resources and will provide for resource assessment in the event of such a discovery.

2.7 SOCIOECONOMIC CONDITIONS

1. The population is expected to increase within the County. The Project will create 4,000 direct jobs and about 1,500 indirect jobs. Many of these workers will move to Sullivan County, generating a county-wide increase of about 2,085 households.

2. The increased population and economic development spurred by the Project will increase the Town's overall tax base. While the 66-acre Trust Parcel, where the casino will be sited, cannot be taxed under Federal law, the remaining 109-acre Fee Parcel, including the Project parking garage, will be taxed. Due to the approximately $40,000,000.00 in capital improvements projected for that portion of the Site, the resulting tax assessment on the 109-acre parcel will exceed the current tax assessment on the entire 175-acre Site.
3. Overall, the Project is expected to increase the Town's commercial tax base. This would provide for additional revenue directly to the Town.
4. Based on studies of other casinos, it is expected that the Project will generate approximately $215,000,000.00 of additional personal income annually.
5. Due to the increase in the projected tax base, the Project will not have any adverse impact on the Town's revenues and finances.

Mitigation Measures:

1. The Local Agreement and its $15,000,000.00 annual impact payments will mitigate any unforeseen costs attributable to the Project. The Town has entered into an agreement with Sullivan County to receive $1,650,000 of the $15,000,000 paid annually to the County under the Local Agreement.

2.8 TRAFFIC AND TRANSPORTATION

1. The Traffic Impact Study (TIS) was prepared for the Project by Creighton Manning Engineering, LLP on April 1, 2002 and was last revised August 8, 2002. The TIS was reviewed by the NYSDOT, McGoey, Hauser & Edsall, the Town's independent traffic consultant, and Clough, Harbour & Associates, LLP, providing peer technical review.

The TIS was supplemented with the Regional Traffic Impact Analysis, dated December 31, 2003 and the last revised April 29, 2004. The Regional Traffic Impact Analysis was reviewed by the NYSDOT, the New York State Thruway Authority and McGoey, Hauser & Edsall.

2. The study area was determined through discussions with the Town, as well as the County and the NYSDOT. The study areas were as follows:

   a. Anawana Lake Road (CR103)/Kutsher's Road

   b. Anawana Lake Road (CR103)/Fraser Road

   c. Route 42/Fraser Road/Kiamesha Lake Road (CR109)

   d. Route 42/Concord Road (CR182)/Lanahans Road

   e. Anawana Lake Road (CR103)/Lanahans Road/Wal-Mart Driveway

   f. Route 42/Anawana Lake Road (CR103)/McDonald's Driveway

   g. Route 42/Route 17, Interchange 105 westbound off-ramp

   h. Weaving areas on Route 42 at Interchange 105 of Route 17

   i. Route 42/Broadway (in Village of Monticello)

   j. Anawana Lake Road/Site Driveways

3. Existing traffic volumes were collected in accordance with the standard industry practice of gathering data during the peak hours of traffic in the study area. Traffic counts were collected during July and August of 2000, between 4:00 p.m. and 6:00 p.m. on Friday and Sunday afternoons, typically the peak weekend hours for resort and commuter traffic (45% more than the average annual traffic).

4. Peak hour volumes for the Route 17, Exit 105 interchange, were obtained from the 1998 DEIS for the Monticello Raceway. Those volumes were increased to balance with peak summer volumes conducted for the Project at the Route 42/Anawana Lake Road (CR103) intersection. However, Sunday peak hour volumes were not available from other studies at the time the TIS was prepared. Therefore, additional counts were conducted in May 2001 at the Exit 105 interchange to establish Sunday peak hour volumes.

5. Annual Average Daily Traffic (AADT) volumes on Route 42 have remained relatively stable through the 1990's with growth rates ranging from minus 6% per year to plus 1.3% per year.

6. Existing traffic volumes were increased by 1.5% per year from the year 2000 for the next four (4) years to account for induced residential and commercial growth as a result of the Project.

7. The projected volume increases from the Concord Project and its traffic impact study prepared in January 2002 entitled "Traffic Impact Evaluation-The Concord," were incorporated into the TIS. The traffic impact study for the Concord Resort and Casino, dated January 1, 2004, and the Supplemental Traffic Impact Study for the Concord Resort and Casino, dated February 10, 2004, were both considered in the comment disposition section of the FEIS.

8. The Level of Service (LOS) and intersection capacity analysis for design year 2004, comparing Build and No-Build volumes, was conducted in accordance with the "2000 Highway Capacity Manual."

9. The LOS at the following intersections will not decrease as a result of the Project:

   a. Anawana Lake Road (CR103)/Kutsher Road – The intersection will continue to provide an adequate LOS and no improvements are necessary. Notwithstanding the results of the LOS analysis, the Applicant will widen Anawana Lake Road to provide a separate northbound left turn lane for vehicles turning onto Kutsher Road.

   b. Route 42 (Pleasant Street/Broadway) – The intersection currently operates at LOS C and will continue to operate at that LOS after completion of the Project. However, the intersection is already slated for reconstruction by NYSDOT and the capital improvements are expected to be complete prior to the completion of the Project.

10. The LOS at the following intersections will decrease as a result of the Project, although improvements to some of the intersections will minimize those decreases:

   a. Anawana Lake Road (CR103)/Fraser Road – The northbound and southbound approaches at the intersection currently operate at LOS A during peak hours, while the eastbound and westbound approaches currently operate at LOS B and LOS C, respectively. The Project will result in excessive delays to eastbound and westbound traffic. However, the installation of a traffic signal and exclusive left turn lanes for northbound and southbound traffic will permit the intersection to operate at LOS B or better during peak hours.

   b. Route 42/Fraser Road/Kiamesha Lake Road – The intersection currently operates at LOS B during peak hours. After completion of the Project, the

intersection may see a slight decrease to LOS C during one peak hour. However, no improvements are deemed necessary as an anticipated LOS between B and C for signalized intersections is a generally acceptable LOS and the increase in average delay will be small.

c. Route 42/Concord Road (CR182)/Lanahans Road – The intersection currently operates at LOS B during peak hours. Based on the traffic impact study prepared for the Concord project, the construction of a northbound right turn lane is required. The mitigation discussed above, coupled with traffic from the Project, still yields LOS B and LOS C during peak hours.

d. Anawana Lake Road (CR103)/Lanahans Road – The intersection currently operates at LOS B during peak hours. The Project will decrease the level of service to LOS F for the eastbound lane which permits traffic to travel through the intersection and make a right-hand turn. However, signal timing adjustments will allow the intersection to operate at an overall LOS C, during the peak hours. The Project is also constructing a second lane for the westbound approach on Anawana Lake Road.

11. The intersection of Route 42 and Anawana Lake Road (CR103) currently operates at LOS F during peak hours and LOS C during Sunday peak hours. Even under No-Build conditions, the intersection will continue to operate at LOS F and will be exacerbated by the Concord project. Traffic from the Project will impact the northbound left-turn movement and eastbound right turn movement. The Project will mitigate the current deficiencies and impacts from the Project itself with the widening of Anawana Lake

Road from Lanahans Road to Route 42 and modifying the pavement markings and traffic signals to provide for two eastbound right-turn lanes and a combined eastbound left-turn and through lane. In addition, the intersection will be widened so that the existing southbound right turn lane will accommodate through movements. With these improvements, the intersection is expected to operate at LOS D or better during peak hours. The Project is also constructing of a westbound through-lane on Anawana Lake Road from Route 42 through the intersection at Lanahans Road and the Wal-Mart driveway.

12. Westbound traffic on Route 17 exiting at Interchange 105 to head northbound on Route 42 will be impacted by the Project. The off-ramp on Route 17 is currently controlled by a stop sign and operates at LOS F during the weekday peak hours and LOS C during Sunday peak hours. To mitigate impacts from the Project, a traffic signal will be placed at the intersection, as well as an additional right-hand turn lane on the off-ramp. The improvements completed by the Project will also include an additional through-lane northbound and southbound on Route 42 to yield an overall LOS B with the northbound and westbound approaches operating at LOS C during peak hours. The additional lanes on Route 42 will be implemented without widening the bridge over Route 17.

13. The Project is not expected to provide mitigation to other areas along Route 17. If further development will affect other interchanges within the Town, the respective applicants are expected to take the same responsible approach as the Project. Additionally, the proposed re-designation of Route 17 to Interstate 86 by NYSDOT will further mitigate growth-induced impacts from the Project and further unrelated development. In any

event, the NYSDOT Highway Sufficiency Ratings for 2000 indicate that Route 17 was operating at only half of its capacity, suggesting there is adequate reserve capacity for Project traffic, as referenced in page 47 of the TIS. The NYSDOT Commissioner made a finding that Route 17 has capacity to serve all three casinos that may be built in the region.

14. The Project will be served by two (2) driveways along Anawana Lake Road with left-hand and right-hand turn lanes. The Northern Driveway will be controlled by a stop sign and the left-hand and right-hand turn lanes will operate at LOS C or better and LOS A during peak hours, respectively. The Southern Driveway will be served by a southbound left-hand turn lane on Anawana Lake Road and an exclusive northbound right-hand turn lane, as well as a 70-second cycle two-phase signal control. The left-hand and right-hand turn lanes are expected to operate at LOS C and LOS B during peak hours, respectively. The northbound and southbound lanes on Anawana Lake Road will operate at LOS B or better.

15. The weave analysis for the TIS was conducted in accordance with the "2000 Highway Capacity Manual."

16. The Route 42 northbound weave currently operates at LOS B and is a Type A weave as the major weaving movement on Route 17 eastbound to the Route 42 northbound off-ramp and the minor weaving movement on Route 42 and northbound to the Route 17 westbound on-ramp must make one (1) lane change. However, with the improvements discussed above, the weave will become a Type B weave because the major weaving movement will no longer be required to change lanes. Therefore, under Build conditions,

the weave will operate at LOS C during peak hours and LOS B during Sunday peak hours.

17. The Route 42 southbound weave is also a Type A weave and currently operates at LOS B. Under No-Build conditions, the LOS will decrease to C, while construction of the Project would result in LOS F for the weave. However, the improvements discussed above will make the weave a Type C weave operating at LOS E during peak hours.

18. The two-lane analysis for the TIS was conducted in accordance with the "2000 Highway Capacity Manual." The analysis focused on Anawana Lake Road, which provides a 22-foot wide traveled way with one (1) to two (2) foot paved shoulders.

19. The existing traffic volumes for Anawana Lake Road currently represent approximately 19% of its capacity. The Project is expected to increase traffic volumes on Anawana Lake Road to approximately 57% of its current capacity. While not a significant impact, the Project will expand Anawana Lake Road to a 36-foot wide, three-lane road, with 6-foot paved shoulders, from Lanahans Road to Kutshers Road. The proposed center turn lane will further increase the capacity of Anawana Lake Road.

20. The queuing analysis in the TIS concluded that queuing is expected to increase under both Build and No-Build conditions. During peak hours, the following intersections were identified to have increased queuing problems and analyzed for mitigation measures:

    a. Anawana Lake Road/Lanahans Road – The westbound approach will see a minor increase in queues, but the addition of a second westbound through-lane on Anawana Lake Road will minimize the queue length.

b. Route 42/Anawana Lake Road – The intersection currently experiences the longest queues of any area within the scope of the TIS.

i. Currently, the queue in the northbound left-hand turn lane is approximately 26 vehicles during peak hours and 17 vehicles during Sunday peak hours. However, the available storage in the 300-foot and 400-foot turn lanes is only 28 vehicles at 25 feet per vehicle. The Project will significantly increase queues in this turn lane to 36 vehicles during peak hours and 28 vehicles during Sunday peak hours. However, the reconfiguration of the northbound approach, the intersection will have a storage capacity of 38 vehicles; more than adequate to mitigate the expected increase.

ii. The queue in the 200-foot eastbound right-hand turn lane has a storage capacity of 8 vehicles, but currently contains between 10 and 11 vehicles during peak hours. The Project is expected to create a queue length of 24 vehicles during peak hours and 21 vehicles during Sunday peak hours. The construction of a second lane, discussed above, yields a storage capacity of 16 vehicles, as well as an additional 10 vehicles in the lane taper from the through-lane of traffic; adequate to prevent excessive queuing.

iii. The southbound through-lane currently has queues of 24 vehicles during peak hours and 19 vehicles during Sunday peak hours. The Project is expected to increase the queue on the approach by approximately 15 to 18

vehicles. However, the intersection improvements will minimize the increase on the queue.

21. A signal warrant analysis was performed at the following intersections to demonstrate that future traffic volumes will be high enough to meet NYSDOT thresholds for the installation of a traffic signal:

    a. The predicted traffic volumes under Build conditions for the Route 42/Route 17 westbound off-ramp fall well above the threshold requirements for the installation of a traffic signal. Otherwise, traffic volumes due to the Project will result in excessive delays.

    b. The plotted point for future Build traffic volumes is approximately 200 vehicles above the threshold requirements for the installation of a traffic signal at the intersection of Anawana Lake Road and Fraser Road.

    c. The proposed intersection of Anawana Lake Road and the Southern Driveway is expected to have traffic volumes approximately 250 vehicles above the threshold requirements for the installation of a traffic signal.

22. Accident reports for the last three (3) years were obtained for the study area intersections from the New York State Department of Motor Vehicles Accident Bureau. The Anawana Lake Road/Fraser Road intersection was the only intersection identified to have significant safety related issues. The accident rate for this intersection (.52) was slightly higher than the statewide average (.42) based on the number of accidents per million vehicles entering the intersection. However, the extensive improvements discussed

above will mitigate safety issues at the intersection and reduce the accident rate by approximately 30%.

23. Two (2) other intersections had accident rates marginally higher than the average state-wide rate. However, the type of accidents is also a factor that should be taken into account to determine the existence of significant safety issues.

24. The state-wide average accident rate is generally based on accidents in merge areas of highways. However, the Route 17 eastbound on-ramp is a collector-distributor roadway and the two (2) accidents during the last three (3) years do not warrant accident-related mitigation.

25. The accident rate at the intersection of Anawana Lake Road and Kutsher's Road (.22) is marginally higher than the state-wide average (.18). However, the extensive improvements to Anawana Lake Road will reduce the accident rate by approximately 30%.

26. The improvements proposed by the Project will also decrease the accident rates, currently below the state-wide average, at the intersections of Route 42/Anawana Lake Road and Anawana Road/Lanahans Road by 20%.

27. The Route 42/Ames Plaza intersection was not included in the scoping document adopted for the Project. However, the intersection was addressed in the TIS and the FEIS. Project improvements to the Anawana Lake Road/Route 42 intersection will improve the flow of southbound traffic generally along Route 42 which will facilitate exiting the Plaza. Moreover, NYSDOT long-range planning has focused on the section of Route 42 north of Anawana Lake Road and is committed to a capital improvement plan that will

widen Route 42 to five (5) lanes. The Applicant is conditionally obligated to undertake these improvements as set forth in Mitigation Measure Paragraph 7 below.

28. NYSDOT and Sullivan County have reviewed the TIS and have concurred with the improvements proposed by the Project.

29. The NYSDOT has made a definite finding that the Route 17 corridor between New York City and the Project Site has sufficient capacity to handle the cumulative impact of three casinos in Sullivan County.

30. Without the Project and the proposed improvements to the transportation system, the intersection of Route 42 and Anawana Lake Road will continue to operate at a LOS F condition during the summer PM peak hour with long queues and delays on Route 42. The accident rate at the intersection of Anawana Lake Road and Fraser Road will continue to be above the statewide average for similar intersections.

Mitigation Measures:

1. Anawana Lake Road will be widened from Lanahans Road to Kutsher's Road to provide one 12-foot travel lane in each direction with a center 12-foot wide two-way left-hand turn lane and 6-foot paved shoulders. Anawana Lake Road will also be widened from Route 42 to Lanahans Road to provide a second westbound through lane.

2. Sight distances will be improved at the intersection of Anawana Lake Road and Kutsher's Road.

3. A traffic signal will be installed at the intersection of Anawana Lake Road and Fraser Road.

4. The intersection of Route 42 and Anawana Lake Road will provide for two eastbound right-hand turn lanes; the southbound right-hand turn lane will be modified to provide shared through movement; Route 42 will be widened to enable two lanes to exit the intersection southbound; and the northbound approach will be re-striped to provide a lane drop into the left-hand turn lane. Additionally, overhead directional signing will be installed on Route 42 northbound.

5. At the intersection of Route 42 and Route 17 westbound off ramp, a signal will be installed to control the northbound and westbound approaches; a second right turn lane from the ramp will be added; and a second northbound and southbound through-lane will be implemented.

6. The Route 42/Route17 on/off weave will be reconfigured to provide two southbound through-lanes, one of which becomes the Route 17 eastbound on-ramp, and the northbound weave will be modified.

7. The NYSDOT has committed to add a southbound lane on Route 42 between Concord Road and Route 17. The site plan approval granted by the Board for the redevelopment of the Concord Resort and Casino, filed in the office of the Town Clerk of the Town of Thompson on April 23, 2004, states that the Concord Applicant is required, at its cost and expense, to construct this improvement to Route 42 in order to obtain a certificate of occupancy if the improvement has not already been made by NYSDOT. The Board now requires that the Applicant for this Mohawk Mountain Casino Resort Project construct such improvements to Route 42 before obtaining a certificate of occupancy if such improvements have not already been made by NYSDOT or the Concord Applicant.

8. Mass transportation is expected to play a large role in mitigating traffic impacts from the Project. Companies such as Shortline and Greyhound can be expected to offer bus trips from the New York City area. Additionally, the Metropolitan Transit Authority may offer travel packages to the Project, similar to those offered to the Mohegan Sun Casino.

9. The development of a gaming casino and related facilities requires approximately 6010 parking spaces, and these spaces will be provided in a combination of structured parking facilities as shown on the Site Plan. The Planning Board finds and determines under Section 250-22D(7) of the Town Code that the proposed number of parking spaces is adequate for the Mohawk Mountain Casino Resort as a whole.

10. The improvements itemized at numbers 1-6 are required as conditions of Site Plan approval. A summary of these required improvements is set forth below.

Highway	**Improvement**
Anawana Lake Road	Widen from 2 lanes to 3 lanes from Lanahans Road to Kutsher's Road
Anawana Lake Road	Construct additional westbound lane from Route 42 to Lanahans Road
Anawana Lake Road	Widen from Lanahans Road to Route 42 and modify pavement markings and traffic signals to provide for two eastbound right-turn lanes and a combined eastbound left-turn and through lane
Anawana Lake Road	Install a traffic signal at Fraser Road
Anawana Lake Road	Install a traffic signal at the southern site driveway
Route 42	Construct additional southbound travel lane from south of Anawana Lake Road to the Route 17 on-ramp
Route 42	Modify the pavement markings on the southbound right turn lane at Anawana Lake Road to allow through *and* right turn movements
Route 42	Install overhead and ground mounted signs to clarify travel and lane configurations for northbound traffic approaching Anawana Lake Road
Route 42	Modify the weave section between Route 17 westbound

	on-ramp and eastbound on-ramp to provide two southbound through lanes. Modify the weave section between Route 17 eastbound and westbound off-ramps to provide two northbound through lanes.
Route 42	Install a traffic signal at the Exit 105 westbound off-ramp
Exit 105 Westbound Off-Ramp	Construct additional westbound right-turn lane approaching Route 42
Route 42	Route 42 corridor between Anawana Lake Road and Concord Road widened to 5 lanes *contingent upon Mitigation Measure Paragraph 7 above.

2.9 PUBLIC SERVICES AND INFRASTRUCTURE

WATER SUPPLY

1. The Project has identified a need for an average water demand of 558,000 gallons per day, to be derived from groundwater.

2. The impact of the water supply on groundwater resources is discussed above at § 2.3(A).

Mitigation Measures:

1. The Project will maintain compliance with state and federal regulations, including the Delaware River Basin Commission, to supply the water needs of the Project.

2. The Project water supply will be developed in accordance with all required permits.

SANITARY SEWER

1. The Site is currently served by an on-site collection and surface outfall system that flows into Anawana Lake by way of a tributary ditch. The Project will not use the system and will have it removed.

2. The Project will direct wastewater to an on-site Treatment Facility on the 66-acre Trust Parcel. It is estimated that the Project will discharge an average of 440,000 gallons of

wastewater per day. The Project wastewater system will be developed in accordance with all required permits.

ENERGY

1. New York State Electric and Gas (NYSEG) has indicated that upgrades and reconstruction of electrical transmission facilities will be required to serve the Project. NYSEG will upgrade the Lanahans Road substation and install heavier transmission lines between that station and the Site. NYSEG is also considering the construction of a new substation in the vicinity of the Site.
2. The Project's Central Plant will employ advanced technology to minimize energy consumption and maximize energy efficiency at the Project.
3. There will be no significant impacts from energy consumption at the Site.

SOLID WASTE

1. Refuse and solid waste from the Site will be disposed of at the Sullivan County Landfill on East Broadway in the Village of Monticello, or it will be hauled outside of the County in accordance with commitments that the Applicant has obtained from private solid waste contractors. The Project is expected to generate approximately 75 tons of solid waste per week.

Mitigation Measures:

1. The Project anticipates that it will be able to separate and recycle at least 10% of its solid waste.

LAW ENFORCEMENT

Police Protection Services

1. The Site is presently provided police protection services by the Sullivan County Sheriff's Department, in conjunction with the New York State Police. The Sheriff's Department headquarters and the County Jail are located within three (3) miles of the Site, yielding a response time of approximately three (3) minutes. The closest State Police barracks is located in the Village of Liberty, yielding a response time of approximately eight (8) minutes.
2. An increase in crime based upon increased visitors to the County will increase the need for police protection services. However, the increase will not be disproportionate to the increased need due to the expected population growth and increased area traffic.
3. The Tribal-State Compact, which will be approved prior to the opening of the Project, will provide for a State Police presence at the Project. Additionally, Tribal Police will also have a presence at the Project and maintain a substation at the Site.
4. The Sheriff's Department has provided written assurances that it will work with State and Tribal Police to assume a presence at the Project.
5. The Town is satisfied that the final arrangement of the police presence at the Site will be adequate to provide for the public safety.

Mitigation Measures:

1. The Local Agreement between the Tribe and the County provides for yearly impact payments of $15,000,000.00 to the County for a seven (7) year period. In the FEIS, the Project proposed an itemized breakdown of the $15,000,000.00. The proposed allocation includes an allowance for Public Safety and law enforcement. Therefore, the Local

Agreement will mitigate the costs associated with any increases in crime attributable to the Project.

2. The Project will employ a trained 24-hour security force. The Project will use security fencing, lighting, and monitoring equipment. The security force will coordinate its efforts with the State and Tribal Police and the Sheriff's Department to control potential "in casino" crime. Therefore, the security employed by the Project will prevent "in casino" crime from impacting the surrounding community.

FIRE PROTECTION SERVICES

1. The Site is within the Town of Thompson Fire District. Fire protection services are provided to the Town and the Site by the Village of Monticello Fire Department pursuant to a contract between the Town and Village. The Fire Department has agreed to provide fire protection services to the Project.

2. The Project will not significantly impact the ability of the Fire Department to provide fire protection services to the Fire District.

Mitigation Measures

1. The Project will be designed in compliance with all applicable requirements of federal, state, county and municipal fire codes and will incorporate a Fire Protection and Emergency Response Plan.

2. The itemized breakdown of impact payments from the Local Agreement provides for an allocation for Fire Prevention and Safety to provide funding for any increased costs in order to supply services to the Project.

EMERGENCY SERVICES

1. The Town is responsible for providing emergency services to the Site. The Monticello Ambulance Group, a volunteer group, has provided services to the Site. Monticello Ambulance Group and a private ambulance agency, Mobile Medic, presently provide emergency services for the Town and are located within two (2) miles of the Site. Mobile Medic has given written assurances that it will provide emergency services to the Project.
2. The Catskills Regional Medical Center, formerly Community General Hospital, is the local health care facility and is located approximately three and one half (3½) miles from the Site with a transport time of seven (7) minutes. This facility will be adequate to provide services should a health care emergency arise at the Project.
3. The Project will not significantly impact the provision of emergency services to the Town.

Mitigation Measures

1. The Project will include a 2,000 square foot emergency medical/health clinic, staffed by at least one (1) EMS certified paramedic for 24 hour operation. This facility will be adequate to handle the majority of the medical needs of employees and guests.
2. The Project will strictly comply with Occupational Safety and Health Administration (OSHA) guidelines, enforced by the St. Regis Mohawk Gaming Commission. Moreover, the Project will consistently provide worker safety training to minimize work-related accidents at the Site.

3. The Project has proposed that portions of the payments under the Local Agreement be directed at Public Health Programs and Nursing to meet any increased costs of emergency services.

SOCIAL SERVICES

1. The Project will create an increased need for social services in the County.
2. The introduction of casino gaming into the Town will increase incidents of gambling addiction and the social problems created by such addiction.
3. The Recovery Center, located in the Village of Monticello, has a number of sophisticated programs that provide a continuum of addiction prevention, intervention, treatment, aftercare and recovery support services. Moreover, the Director of Clinical Services at the Recovery Center is certified by New York State as a Gambling Treatment Counselor, one (1) of only 12 in the State.
4. The Recovery Center will be able to meet the increased need for social services and treat the problems associated with gambling addiction.

Mitigation Measures:

1. The impact payments to the County pursuant to the Local Agreement, and proposed by the Project, will mitigate any increased costs of social services. Specifically, the Recovery Center will receive a portion of the payments for addiction treatment and control to meet the costs associated with higher rates of gambling addiction.

2.10 NOISE

1. A Noise Impact Study (NIS) was prepared for the Project by First Environment, Inc. in February 2001.

2. The NIS relied on the guidance provided by "Assessing and Mitigating Noise Impacts," published by the NYSDEC.
3. The NIS assessed impacts from Project traffic and Project operation noise, as well as noise generated during construction, from four (4) locations.
4. The noise impacts from the Project will not significantly increase noise levels in the NIS study area.
5. Project traffic noise will yield a maximum hourly noise level of 63 dBA, below the Federal Highway Administration's goal of 67 dBA.
6. Project operation noise will yield maximum noise levels below the United States Environmental Protection Agency's goals of 55 dBA for residential areas and 65 dBA for commercial areas.
7. Construction at the Project will not result in a significant increase in noise levels around the Site. Moreover, the nearest residential property boundary is 1,100 feet from the center of construction activity.
8. The Project will not violate the general guidelines of the Town's noise ordinance. The County of Sullivan does not presently have a noise ordinance.

Mitigation Measures:

1. Construction noise will be reduced, potentially by as much as 5 dBA, with proper and periodic maintenance of construction equipment.
2. The Applicant will use shields and enclosures around noise-producing machinery such as pumps and compressors.

2.11 VISUAL RESOURCES

1. The general areas from which the view shed analysis was required were identified as follows: neighborhood locations (Highway 17 and Old Liberty Road; Fraser Road and Anawana Lake Road); lakes (Autumn Lake, Bailey's Lake, Fraser Lake); roadways (Anawana Lake Road, Fraser Road, Old Liberty Road); and prominent locations (Columbia Hill, Gurney's Pond).
2. The analysis relied on guidance provided by the NYSDEC's policy document entitled "Assessing and Mitigating Visual Impacts."

Mitigation Measures

1. The Project is located northeast of the highest point on the Site, which means that the hills and mature trees will screen the majority of the casino structure and the parking garage.
2. The Project will employ both lighting and landscaping techniques to minimize visual impacts from the Project.
3. The approved "Site Plan," a series of approved plans and drawings described in detail below, sets forth conditions that are imposed upon the Project to protect the local environment from adverse impacts from lighting.

2.12 HAZARDOUS MATERIALS

1. A full investigation of the site reveals that there is no hazardous materials contamination on the Project Site.
2. Some of the existing buildings that were constructed using some asbestos containing materials will be demolished as part of the Project development. These materials will be

handled and disposed of in a manner that is protective of human health and the environment and will be in compliance with all laws and permits.

2.13 ENVIRONMENTAL JUSTICE

1. Environmental Justice policies generally require analysis as to whether a Project will adversely affect an impoverished or minority community.
2. The FEIS documented the fact that there are no environmental justice communities in proximity to the Project or its impacts.
3. The project will not have an adverse impact upon environmental justice.

Mitigation Measures:

1. None required.

2.14 GROWTH INDUCING EFFECTS

1. The proposed casino and hotel complex is expected to result in both temporary and permanent employment. An estimated 860 temporary construction jobs would be created in the development of the facilities. Total permanent employment is estimated to be 4,055 jobs.
2. Employees can be expected to occupy the vacant housing units available within the region.
3. The remaining employees will induce the development of housing units in areas zoned for development.
4. The Town of Thompson Planning Board and the Town of Fallsburg Planning Board are currently reviewing plans for a cumulative total of over 3,800 housing units, which should absorb significant growth effects anticipated from the Project.

5. Development of any additional housing within Sullivan County or adjacent areas would be subject to analysis under SEQRA and subject to approval by County and Town land use plans and ordinances. The appropriate County or Town agency would determine the consistency of proposed housing development with the goals and policies of their General Plan.

2.15 CUMULATIVE EFFECTS

1. Cumulative effects analysis broadens the scope of analysis to include effects defined as the effects on the environment that result from the incremental effect of the action when added to other past, present, and reasonably foreseeable future actions.
2. The New York State Thruway Authority and the NYSDOT are studying and planning a number of highway improvement projects, including an upgrade of Route 17 to Interstate status as Route 86.
3. The FEIS takes redevelopment of the Concord Hotel into consideration in the traffic analysis.
4. It may be foreseeable that two additional casinos may be developed in Sullivan or Ulster County in addition to the Project. The FEIS closely scrutinizes the foreseeable environmental impact of two more potential casinos and a VLT location upon the region and Sullivan County, particularly related to traffic and socioeconomic impact.
5. In addition, construction has commenced toward the development of the Bethel Performing Arts Center ("BPAC") in the nearby Town of Bethel, which is considered in the FEIS. The BPAC will control event times to mitigate traffic impacts and avoid peak hours of casino travel.

6. The cumulative impact of the three-casino scenario upon the Route 17 corridor will not be adverse because Route 17 has the capacity for the projects according to documentation from the NYSDOT Commissioner dated August 29, 2004.
7. The Project Site has no mineral resources and therefore, there will be no cumulative impacts on these resources.
8. Groundwater resources in the Sullivan County area are abundant and are expected to meet the needs of all past, current and reasonably foreseeable development, including the possible three-casino scenario.
9. Due to the features incorporated into the Project, including the Erosion Control Plan, wastewater treatment plant discharge quality requirements and surface water runoff controls/treatments, there will be no significant adverse impacts to local surface water resources. Therefore, there is no contribution of the Project to adverse cumulative impacts on surface water resources.
10. Air quality within the area is currently in "attainment" status and therefore in compliance.
11. Project operation, when combined with the impacts of past development, and two more casinos, will not have a significant adverse impact on area air quality.
12. Each additional project would be responsible for monitoring and mitigating the impacts caused by that project on the air quality.
13. As with any project which converts open areas to building facilities, there will be a minor cumulative impact on wildlife and their habitat. However, the wetlands mitigation plan will create additional habitat.

14. There will be no unmitigated significant impacts from the Project which will contribute to adverse cumulative impacts to surface waters.

15. The Project Site Plan mitigates and controls cumulative and induced impacts by the construction and operation of on-site water supply and wastewater treatment systems.

16. The Project will most likely have moderate to significant cumulative impacts on the region's demographic profile. The establishment of a first class casino/resort will immediately increase tourism in the area. Related development will help create an economically desirable condition.

17. Sullivan County's workforce profile should change significantly as a result of this Project. Unemployment will be reduced to a normal turnover rate of 1-3% on an annual basis. The size of the labor force can be expected to expand back to its 1990 level and slightly above, perhaps to a total of 34,500 to 35,000 persons.

18. The competition for workers will raise wages for service industry workers. Additional employees from outside the County in Delaware, Orange, Pike, Wayne and Ulster Counties will again travel to Sullivan for work.

19. The cumulative social and economic benefits that will be derived from the Project by both the Tribe and the surrounding community are extensive. Many members of the Tribe will have employment opportunities that will have lasting affects on the Tribe's overall fiscal condition. The County's tax base will climb as thousands of jobs are created.

20 Any additional demands upon law enforcement, social services and education will be mitigated by the Tribe's $15 million impact payment to Sullivan County under the Local Agreement.

21. The incremental and cumulative public service and public infrastructure cost of up to three casinos in Sullivan County is entirely manageable within the framework of the Local Agreement.

22. The implementation of the Project will not have any significant cumulative adverse social impacts on the surrounding community.

23. The full, cumulative anticipated traffic impacts of a three-casino scenario have been calculated.

24. The cumulative regional traffic analysis concluded that the projected regional increase in directional traffic volumes generated by the Project is within the standard deviation of existing afternoon peak hour traffic volumes. Therefore, no significant regional traffic impact is anticipated as a result of the Project.

25. The Project, when combined with other foreseeable actions, will not have a significant adverse impact on the abundant area supplies of water.

26. There are no adverse cumulative impacts of the Project on the availability of energy or communications services.

27. Direct impacts of the Project on solid waste disposal are not significant but cumulative impacts, particularly if the three-casino scenario develops, will shorten the life expectancy of the local landfill.

28. The Tribe has obtained a proposal for solid waste management services from a private contractor as an alternative to disposal in the Sullivan County Landfill of construction and demolition debris and solid waste generated during operations of the Project, in order to mitigate cumulative solid waste impact if necessary.

29. The Project will make no contribution to the cumulative impacts of area development on stormwater management.

30 There will be no significant unmitigated cumulative impacts to law enforcement resources.

31. There will be no significant unmitigated cumulative impacts to fire protection resources.

32. There will be no significant unmitigated cumulative impacts to the availability of medical services.

33. Implementation of the Project, when considered in combination with other planned and reasonably foreseeable future actions, would lead to a positive cumulative impact on recreational opportunities offered in the area.

34. The Project will have an impact on the local roads. This impact has been thoroughly studied and mitigation measures, which will be funded by the Tribe, will be implemented to mitigate this impact, as approved and required by the NYSDOT.

35. The Project will create additional demands on local social service providers, but these additional demands have been mitigated by the Local Agreement. Assuming other casino developers make similar payment, there will be no cumulative adverse impacts.

36. The nature of the area and future development will, in all likelihood, result in small noise increases, which are limited to very localized impact areas and will not have an overall

cumulative impact on general noise levels. Assuming that other foreseeable projects, including other casinos, use design criteria that is compatible with the area, there should be no significant adverse impact on visual resources.

2.16 INDIRECT EFFECTS

1. There are no indirect effects as to which findings must be made that are not addressed above in the cumulative impact and induced impacts sections, above.

2.17(A) ADVERSE IMPACTS THAT CANNOT BE AVOIDED

1. Short-term noise and air quality impacts from construction activities are unavoidable. However, various mitigation measures will be employed during construction to minimize those impacts. Additionally, the Site is not near the Town's major residential areas.
2. Approximately 60 acres of the Site will be disturbed by construction of the Project, but much of the acreage is already occupied by various structures used by Kutsher's Sport's Academy.
3. The topography of the Site will be altered due to the cuts and fills required for construction of the Project.
4. Full development of the Project will result in 31 impervious acres of developed area and 29 pervious acres of lawn and landscaping. 115 acres of the Project Site will remain undisturbed in their natural conditions, with watershed to Anawana Lake, Anawana Brook and Bailey's Lake, primarily through the wetlands. The stormwater will be managed in accordance with a detailed stormwater pollution prevention plan.
5. Approximately 2.4 acres of wetlands will be disturbed by the construction of the Project and the offsite roadway improvements that are required to mitigate traffic impacts. This

unavoidable impact will be fully mitigated by the Applicant's creation of 6.6 acres of quality wetlands on the 175-acre Project site that will be integrated with the existing wetlands at the Project.

6. Traffic attributable to the Project will increase noise levels, but the impact will not be significant as those levels will remain within acceptable levels set by the Federal Highway administration.

7. Traffic attributable to the Project will decrease air quality levels, but the impact will not be significant as those levels will remain in compliance with state and federal ambient air quality standards.

8. The Project will increase traffic within the Town, but the significant mitigation imposed and approved by the NYSDOT will minimize the impacts of the additional traffic and maintain or improve the existing levels of service throughout the Town.

9. The Project will cause an increased need for police, fire and emergency services, but the increase will not be significant and the Project, pursuant to the Local Agreement, directs impact payments to mitigate increased costs.

10. The Project will create an increased need for social services due to the introduction of casino gaming into the region, but the Local Agreement directs impact payments to meet the costs of those additional services.

2.17(B) PROJECT ALTERNATIVES

1. Alternatives considered for the 1,450-acre Kutsher's parcel on which Caesars has an option included the Preferred Alternative, the Project (as set forth in the Site Plan drawings); Alternative A1, the Project at the preferred site yet with off-site sewer and

water supplies; Alternative B, development of the Kutsher's Resort site; Alternative C, development of the Sherwood Road Site; and Alternative D, the No Action Alternative.

2. Alternative A1 was rejected primarily because it would have a greater impact. Connection to the off-site systems would likely cause significant growth inducement, which is avoided by the on-site systems. Use of an on-site wastewater treatment plant and on-site water supply will actually mitigate the potential growth inducing effects of using off-site water and sewer. This is so because there are considerable distances between the Project Site and there is considerable undeveloped land between the Project Site and these off-site utilities.

3. Alternative B was rejected for two reasons. First, the demolition of Kutsher's Resort would possibly have required the closure of the Kutsher's Country Club Golf Course. Second, the Town would lose Kutsher's Resort.

4. Alternative C was rejected because 15 acres of wetlands within the Anawana Lake watershed would have been adversely impacted by the construction of the Project.

5. Alternative D, the No-Action Alternative, would not eliminate the potential for environmental impacts due to the operation of the Kutsher's Sports Academy on the Site. Also, it would eliminate the positive social and economic benefits associated with the Project.

2.17(C) IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES

1. The Project will utilize approximately 558,000 gallons of groundwater per day.

2. The Project will generate approximately 440,000 gallons of wastewater per day.

3. The Project will generate approximately 75 tons of solid waste per week. However, the Project estimates that at least ten percent (10%) of that waste will be separated and recycled.

4. Construction and operation of the Project will utilize various sources of energy, including propane. However, the Project's state-of-the-art central plant will supply the Project's energy needs with high-efficiency in an environmentally-sensitive manner.

5. Construction of the Project will result in a commitment of finances, labor, and building materials.

6. The Project will fill 2.4 acres of low quality wetlands, but 6.6 acres of high quality, integrated wetlands will be created.

7. The NYSDOT has advised the Town that construction of a Route 42 corridor improvement program between Route 17 and Concord Road which includes the Route 42 Southbound Improvement (the "Route 42 Corridor Improvement Program") is scheduled to begin in the year 2005. This commitment is backed up by contingent requirements upon the Applicants that may require construction of the improvements by Applicant at their cost and expense under certain circumstances which are set forth above in Section 2.8, Mitigation Measure No. 7.

8. Construction of the Project will expand Anawana Lake Road and ramps and lanes from Route 17 to the Project Site, which road expansion is necessary to improve road safety and capacity to the Project.

3.0 SUBDIVISION APPLICATION AND APPROVAL

1. The Application for Site Plan approval is supported and accompanied by an updated and revised application dated May 7, 2004 for a two-lot subdivision for Parcel SBL 9-1-1 ("Parcel 1") and a 2 lot subdivision for Parcel SBL 6-1-13 ("Parcel 2"). Parcel 1 is now a 118.4-acre parcel. The Applicant proposes that Parcel SBL 9-1-1 be subdivided and redrawn in a manner such that it becomes a 108.67-acre parcel. This subdivision is achieved by a deletion to Parcel SBL 9-1-1 and an addition to it as follows:

   (a) deletion of an approximately 23.04 acre portion of Parcel SBL 9-1-1 on its southerly side so as to create a 50 foot wide access to Anawana Lake Road, such 23.04-acre subdivided parcel to be retained by Milton Kutsher Associates; and

   (b) the addition to Parcel SBL 9-1-1 of the southerly portion of Parcel SBL 6-1-13 consisting of 13.31 acres, leaving a 16.26 acre portion of Parcel SBL 6-1-13 to be retained by Milton Kutsher Sons, Inc.

2. The Town Engineer commented on the subdivision on May 8, 2004 and on May 14, 2004. The comments were fully addressed.

3. The description of this subdivision, and the newly created 108.67-acre parcel, generally referred to herein as the Tribal Fee Parcel, is more particularly described on a project tax map plan, and survey and site plan labeled "Two Lot Subdivision for Parcel No. 9-1-1 by Glenn L. Smith, Consulting Engineer, P.C.," last updated May 13, 2004.

4. A duly noticed public hearing was held on this subdivision plan on June 23, 2004, and no negative comments were received regarding the subdivision.

5. The subdivision application meets all of the requirements of Town Law Chapter 212.

6. Upon all of the proceedings had herein and in full consideration of the detailed FEIS for the Project that fully describes the use, development and impact upon subdivided Parcel

SBL 9-1-1 and 6-1-13 of 108.67 acres, referred to in the FEIS as the Tribal Fee parcel, subdivision approval is hereby **GRANTED.**

4.0. ACKNOWLEDGEMENT OF THE ZONING BOARD OF APPEALS DECISION REGARDING AN AREA VARIANCE

1. On or about September 27, 2004, the Applicant submitted an application for two area variances to the Town of Thompson Zoning Board of Appeals (the "ZBA") in connection with the proposed improvements to be constructed on the Project Site.

2. The two area variances are:

   (1) a side yard variance on the Tribal Fee Parcel of approximately 109 acres to allow a porte-cochere to provide direct connection between the parking garage structure on a Tribal Fee Parcel and the casino and hotel structure on the Tribal Trust Parcel. Since the Trust Parcel will be taken into trust by the United States of America for the benefit of the St. Regis Mohawk Tribe, the side yard variance does not adversely affect neighboring property owners; and

   (2) a height variance on the parking garage structure, which is only required because of the energy efficiency and land saving design that depends upon the porte-cochere and the side yard variance.

3. The side yard and height variances for the parking garage will not have an adverse impact upon the visual resources of the community.

4. The ZBA, based on full consideration of the affirmation of Walter F. Garigliano, Esq. and the affidavit of Thomas L. Hoskens, AIA, a licensed architect in the State of New York, member of the Cuningham Group, PA and facilitator of many of the Site Plan drawings set forth below, and upon full consideration of the proceedings previously had herein and

the FEIS and accompanying five-volume Appendix, granted the area variance on December 1, 2004.

5. The area variance granted by the ZBA will not have an adverse impact upon the environment.

5.0 SITE PLAN APPROVAL

1. The Town Engineer reviewed a series of preliminary Site Plan drawings and provided technical comments to the Applicant on or about October 18, 2004, November 14, 2004 and November 26, 2004, whereupon revised drawings that responded to these comments were produced by the Applicant.

2. The Application now consists of the following plans and drawings, all captioned "The Mohawk Mountain Casino Resort" (collectively, the "Site Plan"):

DRAWING NUMBER	DRAWING NAME	SCALE	BY WHOM	LAST REVISED
G001	Cover Sheet	Not to scale	Cuningham Group	11/30/04
C100	Site Grading Plan	1"=100'	Hawk Engineering	11/23/04
C101	Utility Plan/Sanitary Sewer	1"=100'	Hawk Engineering	11/23/04
C101.1	Sanitary Sewer profiles	Vert 1"=10' Horiz 1"=100'	Hawk Engineering	11/23/04
C102	Drainage Plan	1"=100'	Hawk Engineering	11/23/04
C102.1	Drainage Details	Not to scale	Hawk Engineering	11/23/04
C103	Erosion Control Plan	1"=100'	Hawk Engineering	11/23/04
C103.1	Erosion Control Details	Not to scale	Hawk Engineering	11/23/04
C103.2	Drainage Details Detention Pond 1	Not to scale	Hawk Engineering	11/23/04

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C103.3	Drainage Details Detention Pond 2	Not to scale	Hawk Engineering	11/23/04
C104	Site Roadways	1"=100'	Hawk Engineering	11/23/04
C104.1	Site road Profiles	Vert 1"=10' Horiz 1"=100'	Hawk Engineering	11/23/04
C104.2	Site road Profiles	Vert 1"=10' Horiz 1"=100'	Hawk Engineering	11/23/04
C104.3	Pavement Details	Not to scale	Hawk Engineering	11/23/04
C105	Sewage Treatment Plant Plan	1"=40'	Hawk Engineering	11/23/04
C105.1	Sanitary Details	Not to scale	Hawk Engineering	11/23/04
C106	Overall Site Utilities Plan	1"=200'	G. Smith Engineering	11/23/04
C106.1	Partial Site Utilities Plan	1"=100'	G. Smith Engineering	11/23/04
C106.2	Partial Site Utilities Plan	1"=100'	G. Smith Engineering	11/23/04
C106.3	Water Wells and Gas Details	1/8" = 1' 1"=50'	G. Smith Engineering	11/23/04
C107	Water Tanks and Details	Not to scale	G. Smith Engineering	11/23/04
C108	Demolition and Abatement Plan	1"=100'	G. Smith Engineering	11/23/04
C109	Roadways, Parking & Fire Lane Stripping Plan	1"=100'	Creighton Manning	11/23/04
C110	Wetland Mitigation Plan	1"=100'	G. Smith Engineering	11/23/04
SL100	Site Lighting Plan	1"=100'	Schuler Shook	11/23/04
SL101	Site Lighting Details	Not to scale	Schuler Shook	11/23/04
L100	Landscape Plan	1"=100'	Rotolo Consultants	11/23/04
L101	Detailed Landscape Plan at Anawana Lake Road	1"-30'	Rotolo Consultants	11/23/04
L102	Detailed Landscape Plan at Guest Garage Entry	1"-30'	Rotolo Consultants	11/23/04
L103	Detailed Landscape Plan at Porte Cochere	1"-30'	Rotolo Consultants	11/23/04

L104	Plant Schedule and Planting Details	Not to scale	Rotolo Consultants	11/30/04
SS100	Site Signage Plan	Not to scale	B&D Signs	11/23/04
A100	Architectural Site Plan	1"=100'	Cuningham Group	11/23/04
A101	Site Details	1/8" = 1' 1/16" = 1'	Cuningham Group	11/23/04
A102	Building/Site Sections and Exterior Elevations	Bldg 1/32"=1' Elevation 1"=20'	Cuningham Group	11/23/04
A103	Building Model/Photographs/ Material Image	Not to scale	Cuningham Group	11/23/04

3. The drawings referenced herein in Paragraph 2 are conditions of Site Plan approval for the Project and serve to impose controls, mitigation and conditions that will protect against significant adverse impact on the environment, particularly through a grading plan that protects against erosion; a sanitary sewer plan that provides for on-site treatment; drainage and erosion control plans and detention ponds that protect against stormwater impacts; on-site roadway plans and profiles that provide for adequate parking under Town Law and provide for adequate traffic circulation within the Project Site; water tanks and details that provide for an on-site drinking water supply and supplies fire suppression needs; a demolition and abatement plan that provides for the protection of human health and safety and complies with all environmental laws and permits; a wetlands mitigation plan that will enhance the wetlands on the Project Site and mitigate the necessary impacts upon wetlands that will occur from the development of the Project; a Site lighting plan that protects against adverse impact upon visual resources; a landscape plan that will enhance the Project Site significantly and that works in tandem with the erosion control and stormwater management plans; architectural site plans and site details that are consistent with the visual impact analysis set forth in the FEIS.

4. The roadway improvement plans that have been approved by the NYSDOT are set forth in the FEIS and detailed in the Appendix to the FEIS at Volume I, Tab 12. These off-site roadway improvements are necessary mitigation measures. Design and construction of these plans is a condition of Site Plan approval.

NOW, THEREFORE, BE IT RESOLVED, the Planning Board, acting as SEQRA Lead Agency for the above referenced action makes the following findings and determinations and impose the following conditions upon site plan approval based on the record before it, including the DEIS, FEIS, the analysis and recommendations of various agencies, including the Planning Board, the comments of the Town consultants, various Town Departments and the Applicant's consultants, the federal lead agency, the involved and interested agencies, members of the public, and the knowledge of the Planning Board of the site and the community.

1. The requirements of the SEQRA Act and the regulations promulgated under SEQRA at 6 NYCRR 617.12(b) have been met;

2. Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the construction and operation of the Project avoids or minimizes adverse environmental impacts to the maximum extent practicable, including those impacts identified in the DEIS and FEIS;

3. The Board has reviewed the Orange County Preliminary Report and the Response to the Orange County Study and has determined that the Orange County Preliminary Report: (a) raises issues that go beyond the Scope of the EIS, as determined by Public Scoping Sessions and adopted by the Board in a Revised Scope after the Public Scoping Meeting on October 8, 2003; (b) does not raise any significant impacts that are not mitigated by the Applicant; (c) lacks a

specific assessment of Orange County operations; (d) contains numerous fundamentally flawed assumptions and methods; (e) provides no foundation for Orange County traffic concerns, particularly in light of findings by the Commissioner of the NYSDOT; and (f) has no documented relationship to the operations of Orange County or its political subdivisions or school districts;

4. Adverse environmental impacts will be avoided or minimized to the maximum extent practicable through compliance with conditions and mitigation measures identified herein as practicable;

5. Having reviewed the Application and taken into consideration the public health, safety and general welfare of the public in general and the residents of the immediate neighborhood in particular, the Planning Board hereby incorporates by reference all of the prior findings and determinations made by the Board in connection with the Mohawk Mountain Casino Resort Project, except that the Planning Board makes the following findings and determines that the following conditions of approval are required:

a.) The additional traffic that will be generated by the development of a gaming casino and related facilities can be adequately accommodated provided that the Roadway Improvements approved by the New York State Department Transportation and listed below are constructed as follows:

Highway	Improvement
Anawana Lake Road	Widen from 2 lanes to 3 lanes from Lanahans Road to Kutsher's Road
Anawana Lake Road	Construct additional westbound lane from Route 42 to Lanahans Road
Anawana Lake Road	Widen from Lanahans Road to Route 42 and modify pavement markings and traffic signals to provide for two eastbound right-turn lanes and a combined eastbound left-turn and through lane
Anawana Lake Road	Install a traffic signal at Fraser Road
Anawana Lake Road	Install a traffic signal at the southern site driveway
Route 42	Construct additional southbound travel lane from south of Anawana Lake Road to the Route 17 on-ramp
Route 42	Modify the pavement markings on the southbound right turn lane at Anawana Lake Road to allow through *and* right turn movements
Route 42	Install overhead and ground mounted signs to clarify travel and lane configurations for northbound traffic approaching Anawana Lake Road
Route 42	Modify the weave section between Route 17 westbound on-ramp and eastbound on-ramp to provide two southbound through lanes. Modify the weave section between Route 17 eastbound and westbound off-ramps to provide two northbound through lanes.
Route 42	Install a traffic signal at the Exit 105 westbound off-ramp
Exit 105 Westbound Off-Ramp	Construct additional westbound right-turn lane approaching Route 42
Route 42	Route 42 corridor between Anawana Lake Road and Concord Road widened to 5 lanes *contingent upon Section 2.8, Mitigation Measure, Paragraph 7 above.

b.) The unavoidable wetland impacts are adequately mitigated, provided that the Applicant is required to implement the wetland mitigation plan and obtain all required permits from the USACOE and the NYSDEC prior to implementation.

c.) The on-site wastewater treatment plant and on-site water supply plant mitigate certain induced growth impacts from the Project and require NYSDOH, NYSDEC and DRBC permits and approvals prior to implementation;

d.) The Local Agreement and the real estate taxes to be paid on the Tribal Fee Parcel of the Project are adequate to mitigate the socioeconomic impact of the Project and the Applicant is required to comply with the terms of the Local Agreement;

e.) Applicant is required to follow the site plan drawings referenced above, particularly as they relate to stormwater and erosion control; and

f.) The Applicant must assure that the water supply permit application for groundwater withdrawal for the Project is evaluated by the Environmental Permits and Compliance Division of NYSDEC in Albany, New York;

g.) The Applicant must secure a work permit from the Sullivan County DPW regarding County road improvements;

h.) The provision of local emergency services that are the subject of preliminary agreements must be established in formal, written agreements;

i.) High Bush Blueberry should be substituted for Japanese Barberry in the landscaping plan for the Project;

j.) The Applicant must obtain plan approval from NYSDOH and NYSDEC for water and wastewater treatment plants, and from Sullivan County DPW and NYSDOT for roadway improvements; and from Delaware River Basin Commission and USACOE for wetland mitigation plan, prior to the signature of the maps by the Planning Board Chairman.

k.) The Applicant will submit all engineering reports, plans and specifications for the NYSDOH, NYSDEC, NYSDOT and Sullivan County DPW to the Planning Board for review simultaneously with submittal to the referenced agencies.

6. Based on these findings and determinations, the Planning Board:

a.) adopts the Findings of Fact as above-referenced;

b.) grants the Application for Subdivision; and

c.) approves the Application as shown on the Site Plan, subject to the above-referenced conditions, pursuant to Section 220-50 of the Town Code subject to the following:

i) The approval of this Application and the grant of conditional Site Plan approval herein shall expire twelve (12) months after the date of this resolution. If the twelve- (12) month period expires and no construction has been initiated,

the approval shall be null and void; provided, however, that prior to the expiration of the twelve- (12) month period, the Applicant may obtain an extension of the approval from the Planning Board, upon good cause shown, which extension approval shall not be unreasonably withheld.

ii) The Planning Board Chairperson will sign the Site Plan upon the above conditions being met.

Adopted December 1, 2004 by the Planning Board of the Town of Thompson
Filed in the Office of the Town Clerk of the Town of Thompson on December 2, 2004.
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AGREEMENT

THIS AGREEMENT negotiated in Sullivan County dated as of August 17, 2001, is made by and between The St. Regis Mohawk Tribe ("Tribe"), a federally recognized Indian tribe, and the County of Sullivan ("County"), a municipal corporation of the State of New York ("State") on behalf of and for the benefit of the County and all other affected local entities within the County. The County and other affected local entities are hereinafter collectively referred to as the "Locally Impacted Entities."

1. Intent of the Tribe. The Tribe intends to develop a casino ("Casino") and hotel (collectively, the "Project") on a 66.39± acre parcel of land located on County Road 103 and depicted on the Town of Thompson tax map as Section 6, Block 1, Lot 14.1 ("Site"), and through this Agreement the Tribe agrees to mitigate the impacts which the Project will have on the Locally Impacted Entities.

2. Undertakings of the County. In consideration of the undertakings of the Tribe in this Agreement, the County undertakes to support the Project, and to actively work with and assist the Tribe and its contractors and agents to obtain any and all approvals required for the Project from governmental entities and officials of the United States of America, the State of New York, and its political subdivisions. In further consideration of this Agreement, the County, will undertake, in its sole discretion, to enter into agreements with the Locally Impacted Entities to mitigate impacts of the Project.

3. Tort Liability. The Tribe shall carry insurance with general liability limits of not less than Ten Million ($10,000,000.00) US Dollars per occurrence ("Project Insurance"). All insurance shall be on an occurrence basis. Contemporaneously with all or any part of the Site being taken into Trust by the United States of America on behalf of the Tribe, the Tribe shall deliver to the County certificates evidencing such insurance. Thereafter, like certificates shall be provided to the County not less than fifteen (15) days prior to the renewal of policies evidenced in previously delivered certificates. The Tribe consents to resolution of tort liability claims relating to the Project by binding arbitration pursuant to the procedure established in Section 22(i) of this Agreement. The Tribe shall waive sovereign immunity from unconsented suit for enforcement of an arbitration award regarding the tort liability in the federal courts to an extent not to exceed the available limits of the Project Insurance for the specific occurrence. If a federal court shall determine that it lacks jurisdiction over such a suit (or any federal court has previously determined that it lacks jurisdiction over a similar suit), the Tribe shall waive sovereign immunity from unconsented suit for enforcement of an arbitration award regarding tort liability in state court to an extent not to exceed the available limits of the Project Insurance for the specific occurrence.

4. Police Protection. It is anticipated that provision of police protection to the Project will be addressed in the compact between the Tribe and the State ("Compact") authorizing gaming at the Site. In the event that costs of police protection are not addressed in the Compact, the County and its political subdivisions (collectively, the "Local Governments") shall not be obligated to provide police protection without a supplemental agreement.

5. Fire Protection. It is anticipated that provision of fire protection to the Project will be addressed in the Compact. In the event that costs of fire protection are not addressed in the Compact, the Local Governments shall not be obligated to provide fire protection without a supplemental agreement.

6. Emergency Services. It is anticipated that provision of emergency services to the Project will be addressed in the Compact. In the event that costs of emergency services are not addressed in the Compact, the Local Governments shall not be obligated to provide emergency services without a supplemental agreement.

7. Building and Fire Protection Code. The Tribe shall adopt codes applicable to the Project relating to building construction and fire protection ("Tribal Building Code") that are no less rigorous than the New York State Uniform Building and Fire Prevention Code as the same shall be amended from time to time. Enforcement of the Tribal Building Code shall be by a Tribal Code Enforcement Officer appointed by the Tribal Council. Additionally, independent consultants shall be engaged by the Tribe to periodically review construction activity on the Site and its compliance with the Tribal Building Code. The independently engaged experts shall provide the County with reports certifying that construction at the Site is in accordance with the Tribal Building Codes no less often than quarterly.

8. Sewer and Water Infrastructure. The Tribe will pay for all necessary extensions to sewer and water infrastructure necessary for development and operation of the Project. All operation and maintenance charges for sewer and water use by the Project shall be borne by the Tribe.

9. Roads. The Tribe shall pay for all necessary road improvements to State, County and local roads necessary for development and operation of the Project. Additionally, the Tribe shall pay mitigation costs, if any, as determined by the New York State Department of Transportation.

10. Compliance with SEQRA. The present site plan for the Project anticipates construction of a parking structure and entryway on a parcel of land adjacent to the Site. It is anticipated that site plan approval for the parking garage and entryway will be needed from the Town of Thompson Planning Board ("Planning Board"). In connection with an application for site plan approval, the parties anticipate that the Planning Board will be designated as lead agency. The County shall not seek lead agency status. To the extent that improvements to be constructed on the Site shall have off-site impacts, information relating to on-site improvements shall be provided to the lead agency to the extent necessary to comply with SEQRA.

11. Alcohol and Cigarette Sales. Sale of cigarettes shall be limited to the sale of individual packs of cigarettes to patrons of the Project. Alcohol shall be sold only for on-premise consumption by patrons of the Project.

12. Gasoline. No gasoline sales shall occur on the Site or on the adjacent parcel upon which the parking structure is to be constructed.

13. Hiring Preference - Construction Activities. The Tribe hereby establishes a preference policy for hiring of contractors, subcontractors, and construction employees. The preference policy shall provide for hiring of the most qualified and/or low-cost provider with a preference

for contractors, subcontractors, or construction employees as follows:

a. Members of the Tribe
b. Members of other Tribes of the Iroquois Confederacy
c. Residents of Sullivan County
d. Native Americans not included in a or b above
e. Residents of New York State

14. Bingo. The Tribe will not conduct bingo at the Site or elsewhere in the County without a supplemental agreement.

15. Employee Background Checks. It is anticipated that background investigations for employees of the Project will be addressed in the Compact. Further, such investigations are subject to state and federal law. To the extent not addressed in the Compact, background checks and compliance programs shall be subject to further agreement.

16. Union Labor. Union labor shall be utilized for construction of the Project. The Tribe shall not oppose efforts by its hotel and restaurant employees to organize.

17. Promotion of Tourism. The Tribe shall make available to the Sullivan County Visitors Association ("Visitors Association"), at a mutually agreed upon location, adequate space (not exceeding 1,000 square feet) to establish static displays, interactive computer terminals, and racks for the dissemination of brochures for the promotion of Sullivan County as a tourism destination. All such displays shall be designed to avoid the need for an individual to be present at the display area. Ongoing presence of a Visitors Association employee at the display area is not authorized.

18. Gambling Addiction Programs. The Tribe acknowledges the need for a gambling addiction program and will provide such a program to residents of the County. It is anticipated that a gambling addiction program will be mandated by the Compact. To the extent that a gambling addiction program is not mandated by the Compact, the Local Governments shall not be obligated to provide services relating to the prevention and treatment of gambling addictions without a supplemental agreement.

19. Term and Termination. This Agreement shall be effective upon its signature by officials of the Tribe and the County duly authorized by resolutions of the Tribal Council and the Legislature of the County, which resolutions shall be attached hereto. Once effective, the initial term of this Agreement shall extend until the date, which is seven years after the date upon which the Casino, comprising a portion of the Project, opens to the public ("Commencement Date"). At the end of such seven year period, ("Initial Term") and at the end of each successive seven year period thereafter (each, a "Renewal Term") during which the Project offers commercial gaming to the public, this Agreement shall be automatically renewed.

Notwithstanding anything to the contrary set forth herein, this Agreement shall terminate in the event that the Project permanently ceases to offer commercial gaming to the public, provided, however, that the following provisions shall survive such termination of this

Agreement:

a. The obligation to make payment of the local impact fee for the final calendar quarter of Casino operation as contemplated by Section 20.

b. All General Provisions (including Dispute Resolution) contemplated by Section 22.

20. Local Impact Payment. Commencing on the Commencement Date and continuing thereafter through the Initial Term and thereafter unless modified as contemplated by Section 21, the Tribe shall pay to the County, for the benefit of the Locally Impacted Entities as determined by the County, annual impact payments in the amount of Fifteen Million ($15,000,000.00) US Dollars. Within fifteen (15) days following the end of the calendar quarter within which the Commencement Date falls, the Tribe shall pay to Sullivan County an impact payment in an amount equal to the actual number of days of operation of the Casino during the calendar quarter divided by the total number of days in such calendar quarter times Three Million Seven Hundred Fifty Thousand ($3,750,000.00) US Dollars. Thereafter, not later than the fifteenth (15th) day following the end of each calendar quarter, the Tribe shall pay to the County an impact payment in the amount of Three Million Seven Hundred Fifty Thousand ($3,750,000.00) US Dollars (or an amount equal to twenty-five (25%) percent of the annual impact payment then in effect if a modification has occurred). Impact payments made during the calendar quarter that the Casino permanently ceases operation shall be prorated in the same manner contemplated for the payment during the first calendar quarter; provided, however, that such proration shall be based upon the payment made for the calendar quarter immediately prior to the calendar quarter during which the Casino ceases operation.

21. Modification.

a. Following the Initial Term or a Renewal Term. If either party to this Agreement is of the view that one or more provisions hereof should be modified for any Renewal Term because of changed circumstances, such party shall give to the other party written notice of the modification it seeks ("Modification Notice"). A Modification Notice delivered under this Section 21(a) must be served not more than one (1) year nor less than six (6) months prior to the end of the Initial Term or a Renewal Term. As soon as practical, but in no event later than thirty (30) days following service of such a Modification Notice the parties shall meet and negotiate in good faith to address each requested change. If such negotiation does not yield agreement within sixty (60) days following service of such a Modification Notice, either party may initiate dispute resolution proceedings in the manner provided in Section 22(i) hereof. In such proceedings, the party seeking modification shall be required to demonstrate the change in circumstances and necessary modifications to this Agreement by clear and convincing evidence.

b. Upon Opening of Another Casino. In the event another casino established as a result of legalization of gaming by virtue of an amendment of The State Constitution shall open for business within the County or in the event another Native American casino shall open for business within the County after the Initial Term, the Tribe may request that one or more provisions hereof be modified. To

request such a modification the Tribe shall give the County a Modification Notice. A Modification Notice delivered under this Section 21(b) may be served anytime after the opening of a casino authorizing service of such notice. As soon as practical, but in no event later than thirty (30) days following service of such a Modification Notice the parties shall meet and negotiate in good faith to address each requested change. If such negotiation does not yield agreement within sixty (60) days following service of such a Modification Notice, the Tribe may initiate dispute resolution proceedings in the manner provided in Section 22(i) hereof. In such a proceeding, the Tribe shall be required to demonstrate the change in circumstance and necessary modification to this Agreement by clear and convincing evidence.

22. General Provisions.

a. Notices. Any notices, consents, demands, requests, approvals, and other communications to be given under this Agreement by any party to the other(s) shall be deemed to have been duly given if given in writing and personally delivered, sent by nationally recognized overnight courier, or sent by mail, registered or certified, postage prepaid with return receipt requested, at the following addresses:

if to the County:

County of Sullivan
Sullivan County Government Center
100 North Street, P.O. Box 5012
Monticello, New York 12701
Attn: Chairman – County Legislature

with a copy to:

County of Sullivan Department of Law
Sullivan County Government Center
100 North Street, P.O. Box 5012
Monticello, New York 12701
Attn: County Attorney

if to the Tribe:

The St. Regis Mohawk Tribe
412 State Route 37
Akwesasne, New York 13655
Attn: Tribal Council

with a copy to:

Bradley S. Waterman, Esq
Suite 1040- East Tower
1301 K Street, N.W.
Washington, DC 20005

with an additional copy to:

Park Place Entertainment Corp.
26 Main Street
Chatham, New Jersey 07928
Attn: General Counsel

Notices delivered personally or by courier, shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of 10:00 a.m. on the third business day after mailing. Any party may change its address for notice hereunder by giving notice of such change in the manner provided in this Article.

b. Assignment. No party may assign this Agreement without the prior written consent of the other party hereto, which consent may be withheld in its sole discretion; provided, however, the Tribe may assign this Agreement to one or more entities to be formed to carry out the Project, upon notice and execution of an instrument pursuant to which the assignee agrees to be bound by this Agreement. Such assignment shall not relieve the Tribe of its obligations hereunder.

c. Binding Effect. This Agreement shall be binding upon the parties hereto, together with their respective successors, and permitted assigns.

d. Independent Covenants; Severability. The existence of any claim or cause of action of any party to this Agreement ("First Party") against the other party ("Second Party"), whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Second Party of the covenants and agreements of the First Party contained in this Agreement. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

e. Language; Captions; References. Whenever the context requires, references in this Agreement to the singular number shall include the plural, the plural number shall include the singular, and words denoting gender shall include the masculine, feminine, and neuter. Section headings in this Agreement are for convenience of reference only and shall not be considered in construing or interpreting this Agreement. "Hereof," "hereto," "herein," and words of similar import used in this Agreement shall be deemed references to this Agreement as a whole, and not to any particular section, paragraph, or other provision of this Agreement unless

the context specifically indicates to the contrary. Any reference to a particular "section" shall be construed as referring to the indicated section of this Agreement unless the context indicates to the contrary. Whenever the term "including" is used herein, it shall mean including without limitation.

f. Ambiguities. The general rule of contract construction that any ambiguity in a contract will be construed against the party drafting such contract shall not apply to this Agreement.

g. No Third Party Beneficiaries. This Agreement does not create, and shall not be construed as creating, any right enforceable by any person not a party to this Agreement. Any covenant or agreement contained in this Agreement shall be only for the benefit of the signatories hereto and their respective successors and permitted assigns.

h. Relationship of Parties. Nothing in this Agreement shall create or be deemed to create the relationship of partners, joint venturers, employer-employee, or principal-agent among the parties, nor shall any party to this Agreement have any authority to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of any other party or to bind any other party in any manner whatsoever, nor shall any party make any representation, warranty, covenant, agreement, or commitment on behalf of any other party.

i. Limited Waiver of Sovereign Immunity and Dispute Resolution.

(i) (a) By The County. The County hereby waives its immunity for the limited purpose of enforcement of this Agreement, from unconsented suit to permit arbitration of disputes as provided in this Section 22(i) and to permit the federal courts and state courts to compel and aid such arbitration and to enforce the terms of any award or order resulting from such arbitration.

(b) By the Tribe - Non-Monetary Relief. The Tribe hereby waives its sovereign immunity with respect to non-monetary relief for the limited purpose of enforcement of this Agreement, from unconsented suit to permit arbitration of disputes as provided in this Section 22(i) and to permit the federal courts and state courts to compel and aid such arbitration and to enforce the terms of any award or order resulting from such arbitration. The Tribe expressly foregoes and waives any claim that the exhaustion of any tribal court proceeding is or will be a necessary prerequisite to the initiation or maintenance of dispute resolution under this Agreement.

(c) By the Tribe - Monetary Relief. The Tribe hereby waives its sovereign immunity with respect to monetary relief for the limited purpose of enforcement of this Agreement and further limited to the revenue derived by the Tribe from operation of the Project, from unconsented suit

to permit arbitration of disputes as provided in this Section 22(i). The Tribe further waives its sovereign immunity to permit the federal courts to compel and aid such arbitration, and to enforce the terms of any award or order resulting from such arbitration. If a federal court shall determine that it lacks jurisdiction over such a suit (or any federal court has previously determined that it lacks jurisdiction over a similar suit), the Tribe hereby waives its sovereign immunity to permit the State courts to compel and aid in such arbitration, and to enforce the terms of any award or order resulting from such arbitration. The Tribe expressly foregoes and waives any claim that the exhaustion of any tribal court proceeding is or will be a necessary prerequisite to the initiation or maintenance of dispute resolution under this Agreement.

(ii) It is acknowledged by the parties that a quick and efficient resolution of any dispute, claim or controversy arising under or relating to this Agreement, the breach, termination, or validity of this Agreement, or the dealings between the signatories of this Agreement or their successors, or with respect to any claim arising by virtue of any representations made by any party (collectively, "Dispute") is critical to the implementation of this Agreement. In order to effectuate such intent, the parties do hereby establish this dispute resolution procedure. All Disputes shall be subject to this Section 22(i) it being the intention of the parties that all such Disputes be subject thereto regardless of any specific reference or absence of such reference to this Section 22(i).

(iii) Either party shall give the other party written notice of any Disputes ("Dispute Notice") which Dispute Notice shall set forth the amount of loss, damage, and cost of expense claimed, if any.

(iv) Within ten (10) days of the Dispute Notice with respect to all Disputes other than a Dispute involving injunctive relief, the parties shall meet to negotiate in good faith to resolve the Dispute.

(v) In the event the Dispute is unresolved within thirty (30) days of the Dispute Notice by good faith negotiations, the Dispute shall be arbitrated upon the filing by either party of a written demand, with notice to the other party, to and under the rules of a provider of dispute resolution services ("Arbitration Service") acceptable to the parties (to the extent such rules are not inconsistent with this Section) in White Plains, New York before a single arbitrator under the then current Commercial Arbitration Rules of the American Arbitration Association. Within ten (10) days after receipt of written notice of the Dispute being brought to the arbitrator, each party shall submit to the arbitrator a best and final offer with respect to each issue submitted to the arbitrator and an accompanying statement of position containing supporting facts and data. Upon such Dispute being submitted to the arbitrator for resolution, the arbitrator shall assume exclusive jurisdiction over the Dispute, and shall utilize such

consultants or experts as he shall deem appropriate under the circumstances, to assist in the resolution of the dispute and will be required to make a final binding determination, not subject to appeal, within forty-five (45) days of the date of submission.

For each issue decided by the arbitrator, the arbitrator shall award the expenses of the proceeding, including reasonable attorneys' fees, to the prevailing party with respect to such issue. The arbitrator in arriving at his decision, shall consider the pertinent facts and circumstances as presented in evidence and be guided by the terms and provisions of this Agreement and applicable law.

The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. Sec. 1- 16, notwithstanding any choice of law provision contained herein. Any arbitration award may be entered as a judgment in the federal courts or the courts of the State of New York. A printed transcript of any such arbitration proceeding shall be kept and each of the parties shall have the right to request a copy of such transcript, at its sole cost.

The parties agree that, in addition to monetary relief, the arbitrator may make an award of equitable relief, including temporary and permanent injunctive relief, and specific performance.

The arbitrator is not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any right to recover such damages with respect to any Dispute resolved by arbitration.

The arbitrator is not empowered to award damages against the Tribe except to the extent of revenue derived from operation of the Project.

The statute of limitations of the State of New York applicable to the commencement of a lawsuit shall apply to the commencement of an arbitration hereunder, except that no defenses shall be available based upon the passage of time during any negotiation called for by this Section.

j. Governing Law. The laws of the State of New York shall govern the validity or enforceability and the interpretation or construction of all provisions of this Agreement and all issues hereunder.

k. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the subject matter.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement to be effective as of the date first above written.

Approved as to Form:

Ira J. Cohen, County Attorney

County of Sullivan

By: Raymond N. Pomeroy II
Title: Chairman - County Legislature

By: Daniel L. Briggs
Title: County Manager

The St. Regis Mohawk Tribe

By: Chief Hilda Smoke

By: Chief Alma Ransom

By: Chief Paul Thompson

By: Sub-Chief Harry Benedict

By: Sub-Chief John Bigtree, Jr.

7524-040v14.doc

Saint Regis Mohawk Tribe

412 State Route 37
Hogansburg, New York 13655
Tel. 518-358-2272
Fax 518-358-3203

TRIBAL COUNCIL RESOLUTION
2001-164
Saint Regis Mohawk Tribe and Sullivan County Agreement

WHEREAS: the Saint Regis Mohawk Tribal Council is the duly recognized governing body of the Saint Regis Mohawk Tribe; and,

WHEREAS: the Saint Regis Mohawk Tribal Council is responsible for the health, safety, education and welfare of all members of the Tribe; and,

WHEREAS: the Saint Regis Mohawk Tribal Council has the authority to enter into agreements and contracts for the Saint Regis Mohawk Tribe; and

WHEREAS: the Saint Regis Mohawk Tribal Council and Sullivan County have mutually agreed to enter into an agreement for the support and development of a casino in Sullivan County.

SO THEREFORE BE IT RESOLVED: that the Saint Regis Mohawk Tribal Council does hereby agree to terms of this agreement for the support and development of a casino in Sullivan County.

THE SAINT REGIS MOHAWK TRIBAL COUNCIL

Hilda E. Smoke, Chief

Alma Ransom, Chief

Paul O. Thompson, Chief

John Bigtree Jr., Sub Chief

Harry Benedict, Sub Chief

CERTIFICATION: This is to certify that the Saint Regis Mohawk Tribal Council pursuant to the powers vested therein duly passed the above resolution.

Patricia Thomas, Tribal Clerk

Dated August 16, 2001

RESOLUTION NO. 433-01 INTRODUCED BY RAYMOND N. POMEROY II, CHAIRMAN, SULLIVAN COUNTY LEGISLATURE TO RATIFY AND EXECUTE AN AGREEMENT BETWEEN THE ST. REGIS MOHAWK TRIBE AND THE COUNTY OF SULLIVAN

WHEREAS, the St. Regis Mohawk Tribe has filed an application with the United States Department of the Interior, Bureau of Indian Affairs, to have approximately 66 acres taken into trust for the purpose of operating a Class III gaming facility pursuant to the Indian Gaming Regulatory Act, and

WHEREAS, the County of Sullivan, on behalf of itself and other affected municipal corporations within the County of Sullivan, recognizes the importance of this project for economic development in Sullivan County as well as the significant impacts that a Class III gaming facility would have upon the infrastructure and social structure of the County, and

WHEREAS, the parties have negotiated and reached an agreement in principal defining the nature of the parties' relationship and their mutual rights and obligations in the event that a Class III gaming facility is built and operating in Sullivan County, and

WHEREAS, the Sullivan County Legislature is desirous of supporting the application of the St. Regis Mohawk Tribe which said support has been contingent upon the ratification and execution of an enforceable written agreement between the parties, and

WHEREAS, the St. Regis Mohawk Tribe has ratified and authorized the execution of said agreement at a meeting held on the Reservation on August 16, 2001, and

WHEREAS, it is in the best interest of the County of Sullivan and the other affected communities therein to approve the agreement reached between the parties,

NOW, THEREFORE, BE IT RESOLVED, that the Sullivan County Legislature hereby ratifies the agreement negotiated and reached between the County of Sullivan on behalf of itself and the other affected communities therein and the St. Regis Mohawk Tribe and authorizes its execution by the Chairman of the Sullivan County Legislature and the County Manager in a form to be approved by the County Attorney.

Moved by Mrs. Binder, seconded by Mr. Kunis, put to a vote with Mr. Cunningham opposed, resolution carried and declared adopted on motion August 16, 2001.

STATE OF NEW YORK)
§:
COUNTY OF SULLIVAN)

I, DEBORAH H. TANOUS, Deputy Clerk to the Legislature of the County of Sullivan, do hereby certify that I have compared the foregoing copy of a resolution with the original thereof now on file in my office and that the same is a correct transcript therefrom and of the whole of said original.

WITNESS my hand and seal of said Legislature this 16 th day of August 2001

Deborah H. Tanous

DEPUTY CLERK TO THE LEGISLATURE

St. Regis Mohawk Tribe and Sullivan County Sign Agreement To Bring a Casino/Resort to the Catskills

Park Place Entertainment Announces the Signing as a Monumental Step in its Quest to Build a Casino Resort in Sullivan County

THOMPSON, NY, August 17, 2001 – Park Place Entertainment (NYSE: PPE) today joined members of the St. Regis Mohawk Tribe and the Sullivan County Legislature for a ceremonial signing of their agreement to bring a casino/resort to Sullivan County. The agreement commits the Casino/Resort to annual payments of $15 million to the County and other locally impacted entities, and binds the County and the St. Regis Mohawk Tribe together in their pursuit of state and federal approval. All of the parties celebrated their unity at the signing celebration and spoke of their desire to cooperate in this endeavor.

The agreement, which was ratified separately yesterday by the St. Regis Mohawk Tribe and the Sullivan County Legislature, includes important commitments from both parties including:

- Local Impact Payment: The St. Regis Mohawk Tribes' commitment, for the benefit of locally impacted entities as determined by the County, to pay $15 million annually.

- Undertakings of the County: Sullivan County's commitment to actively work with and assist the St. Regis Mohawk Tribe and its contractors and agents to obtain any and all approvals required for the Casino/Resort from governmental entities and officials of the United States of America, the State of New York and its political subdivisions.

- Union Labor: The St. Regis Mohawk Tribe's commitment to utilize union labor for construction of the Casino/Resort, and its commitment not to oppose efforts by its hotel and restaurant employees to organize.

- Promoting Tourism: The St. Regis Mohawk Tribe's commitment to make available to the Sullivan County Visitors Association, at a mutually agreed upon location, adequate space to establish static displays, interactive computer terminals and racks for the dissemination of brochures for the promotion of Sullivan County as a tourism destination.

Park Place indicated that all of the parties to the agreement were happy with the result, and the remarks of those participating in the ceremony confirmed this.

"This agreement provides the St. Regis Mohawk Tribe with the official support and commitment of the County that is necessary to complete the Land In To Trust process. We are confident that the agreement adequately addresses all impacts that the Casino/Resort will have in Sullivan County," said the St. Regis Mohawk Tribe's Chief, Hilda Smoke.

Chuck Miller, Vice President, Park Place Entertainment, and its onsite representative said, "This agreement is a milestone achievement, and we are proud to be a part of the partnership that has come so far in this quest to bring a Resort/Casino to the Catskills. Park Place looks forward to continuing to partner with the St. Regis Mohawk Tribe and the people of Sullivan County. We want to contribute to the community and hope for the community's active support as we work to move forward in Albany."

Raymond "Rusty" Pomeroy, Chairman, Sullivan County Legislature added, "The St. Regis Mohawk Tribe and the people at Park Place worked very diligently with us to fashion a great deal for our County, Towns and Municipalities. This agreement sends a message that Sullivan County wants this project to proceed as quickly as possible."

Park Place was also pleased to have the support of the Sullivan County Building and Trades Council, whose President, Hank Bunce said, "This is a big step for the working people of Sullivan County. Moving forward, this partnership will mean a better economy and a job for anyone in Sullivan County who wants one. We need to work hard to put the shovels in the ground as fast as we can."

Park Place Entertainment is the world's largest gaming company and owns, manages or has an interest in 29 gaming properties operating under the Bally's, Caesars, Flamingo, Grand Casinos, Hilton and Paris brand names with a total of approximately two million square feet of gaming space, more than 28,000 hotel rooms and approximately 60,000 employees worldwide.

This news release contains "forward-looking statements" within the meaning of federal securities law, including statements concerning company plans, expectations and projections. The forward-looking statements in this news release are subject to numerous risks and uncertainties, which could cause actual results to differ materially from those expressed in or implied by the statements herein. Additional information concerning potential factors that could affect Park Place's future financial result is included in the company's annual report on Form 10-K for the year ended Dec. 31, 2000.

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Primary Contact:
Steve Tankel
212-445-8270

Secondary Contact:
Pablo deRosas
212-445-8141

Investor Contact:
Matt Maddox
702-699-5269

August 1, 2005

The Honorable John McCain
Senator
United States Senate
Committee on Indian Affairs
Washington, DC 20510-6450

Dear Senator McCain:

Thank you for the opportunity to respond to the questions posed in your July 11, 2005 letter. I appreciate the chance to provide further clarification to the written testimony I provided at the June 28, 2005 oversight hearing on the regulation of Indian gaming.

Should there be any questions regarding my responses or a need for supporting documentation, please do not hesitate to contact me.

Sincerely,

James W. Ransom
Chief

Enclosure

Chief Ransom, St. Regis Mohawk Tribe

1. **Chief, you express concerns about amending Section 20 of IGRA, in part because the St. Regis Mohawk Tribe has been working on an off-reservation proposal for quite a long time.**

Q. How long has the Tribe been working on this project? Where in the BIA process is the Tribe's application.

R. The St. Regis Mohawk Tribe has been developing the Mohawk Mountain Casino Resort Project since March 2000. At that time, the Tribe first established its relationship with Park Place Entertainment, which later became Caesars Entertainment and most recently, has become Harrah's Entertainment. Since that beginning, we have been working very diligently to fulfill all state and federal requirements in bringing our project to reality.

In the process, we have achieved a number of significant milestones. Over a three and one half year period, starting in December 2001, we completed, first an Environmental Assessment and then a joint State and Federal Environmental Impact Statement (EIS) for our project, becoming the first Tribe to complete one in the Catskills. Our State EIS was approved in December 2004. Our EIS at the federal level has been before the BIA Central Office since March 18, 2005 and is waiting for final approval.

Over a three-year period beginning in 2002, we drafted Development and Management Agreements that have undergone review by the National Indian Gaming Commission (NIGC), been revised based on a letter of deficiency, resubmitted, and revised again based on additional deficiencies identified. In June 2005, we signed the 2nd Amended and Restated Management and Development Agreements. We expect these final agreements to be approved by the NIGC soon after the land is taken into trust as we believe their concerns have been adequately addressed.

The process to obtain site plan approval for our project was a three-year process, beginning in October 2001. In December 2004, the Tribe received Site Plan approval from the Town of Thompson for our Mohawk Mountain Casino Resort Project site, becoming the first Tribe in the Catskills to receive site plan approval. In addition, in August 2001, the St. Regis Mohawk Tribe negotiated and entered into a $15 million annual impact and services agreement with Sullivan County, becoming the first Tribe to enter an impact and service agreement with local government for a Catskill casino.

Within the BIA process, we are at the tail end of our efforts to have the 66-acre parcel of land taken into trust for our project. The above cited accomplishments have been achieved in support of our land-in-trust application. To date, the St. Regis Mohawk Tribe has spent $20 million to complete all of the requirements

associated with our land-in-trust application. We believe that, according to the existing law and policy of the BIA with respect to lands in trust applications that once it completes its review and approves our EIS, our Land-in-Trust application will be completed.

Q. Recently, the BIA disapproved a compact, agreed to by a governor and a tribe that contemplated an off-reservation casino because the land was not yet in trust. Has the BIA informed you of any such concerns?

R. No, the BIA has not informed us of any such concerns. However, we have been reading the numerous media reports on the disapproval and this change in practice by the BIA concerns us as greatly as we continue to move forward with our Catskill project. Earlier this year, we completed our negotiations with the Governor on our Catskill Gaming Compact. We were intending to submit it to the BIA for approval but based on their recent decision, we decided to wait.

We have just started discussions with the State to examine amending our existing Gaming Compact to include provisions that would be applicable to both the Akwesasne Mohawk Casino and the Mohawk Mountain Casino Resort. We believe this option is possible because the definition of "Reservation" in our current Gaming Compact includes all lands "held in trust by the United States for the benefit of the Tribe" and all lands "as a result of the settlement of the Tribe's land claim litigation against the State."

19. Clearly, with so much controversy surrounding Governor Pataki's efforts to push this project, and the efforts of others to block it, there is a lot at stake. That is one of the reasons that I believe there needs to be more disclosure and background review of all parties involved in such projects.

In our case, this is not an issue. Our business partners are Harrah's Entertainment, the largest gaming company in the world. As such, they are required to comply with regulatory requirements from several states, including Nevada and New Jersey. In addition, they have an established presence in Indian gaming and are well known and respected by the National Indian Gaming Commission.

Q. What are some of the other interests that have complicated your efforts to secure an off-reservation casino?

R. In 2003, the Department of Justice indicated that it was less likely to defend a land-in-trust application for off-reservation land acquisitions for gaming unless the proposed project had completed an Environmental Impact Statement under the National Environmental Policy Act (NEPA). We had completed an Environmental Assessment under NEPA at the time but we decided to proceed

with a joint State and Federal Environmental Impact Statement in response to this concern.

This additional requirement resulted in the lengthening of the time period for the BIA to complete its review of our land-in-trust application by 22 months while the preparation of the joint Environmental Impact Statement was undertaken and approved by the respective governments. In addition to this time factor, it has cost our tribe millions of dollars to complete.

Clearly, the national debate that is taking place in regards to off-reservation casinos and out-of-state tribes has impacted on our effort to build our Catskill casino. We have been above board with all state and federal agencies in the process of taking our land into trust for our off-reservation casino. We have been fully complying with a constantly changing regulatory environment as well. Yet, our efforts are coming under increasing scrutiny by Congress as the off-reservation casino debate continues.

We remain greatly concerned that despite following all of the rules and regulations placed before us in our efforts to take land-in-trust for our off-reservation casino, we will be stopped by the upheaval created by others not following the path we have taken. We remain hopeful that Congress will consider and recognize our effort to set a positive example on taking land into trust for off-reservation gaming purposes.

Q. Why does the Tribe believe this project to be so important?

R. The Indian Gaming Regulatory Act (IGRA) places strict requirements that Indian gaming has to serve the health, welfare and economic needs of the Tribe undertaking the gaming. We have numerous unmet community needs for our 11,000 members that our project will help address, consistent with the intent of IGRA.

We currently receive funding from Indian Health Service that amounts to 38.5% of the level of need. Even with the enactment of the Child Health and Family Health Plus Programs, 39% of our Tribal members remain uninsured. Further, our Tribal health facility, for the past seventeen years, is only able to provide emergent or acutely urgent care.

We are located next to three federal superfund sites. The pollution from these sites has led to the exposure of Tribal members to PCBs, heavy metals, fluoride, and other contaminants of concern. As a result, we are forced to use limited resources to deal with the following: thyroid dysfunctions, upper respiratory illnesses, diabetes, endocrine disruptions, and other serious adverse health impacts.

The pollution has also destroyed our traditional economies. Fishing advisories have greatly restricted fishing in our community. Cattle farming has been devastated with fluoride pollution. Families are afraid to plant gardens because of the threat of air borne contaminants. We need to develop alternative economies to replace our impacted traditional economies and the revenues from our project will allow us to do that.

In the area of housing, there are 902 families residing on our reservation, with over 20% of these families living in substandard housing and 10% living in over crowded conditions. We estimate there is a $10 million need in the area of housing. In addition, our housing programs address the needs of low-income families but there is nothing in place to address the housing needs of middle income families.

In the area of education, we provide minimal financial assistance to post secondary students despite having high numbers of students in post-secondary. We offer a $200 educational scholarship to students. Increasing this award substantially will assist us in developing a more qualified workforce.

In the area of Policing and Homeland Security, we spend over 50% of our Tribal General Fund in support of our Tribal Police Force. Despite this commitment, we have recently withheld payment of overtime to our police officers due to the financial strain it is having on our budget. Given our remote location and the need to patrol an international boundary, more financial resources are clearly needed for our Tribal Police. Consequently, we receive no funding from the Department of Homeland Security nor do we get increased funding from the BIA or any other agency to help defray the border security work we perform.

19. A number of tribes, including some in New York, have raised concerns that a tribe negotiating a compact for an off-reservation casino has an incentive to agree to more onerous compact provisions than it would agree to if the casino were "on-reservation."

I have heard these concerns from tribes, nationally, during the discussions on off-reservation gaming and out-of-state tribes and in New York, during the legislative hearings in regard to the land claim settlements for five tribes. I cannot comment on what is happening nationally as I am unfamiliar with the context of those concerns and I do not have knowledge of the details behind the compacts under discussion by tribes in other states.

In regard to New York, I have witnessed first-hand as this discussion has taken place. It has been occurring within the context of discussing the Governor's effort to settle land claims with five tribes. Most, if not all of the negative statements have been directed towards the efforts of "out-of-state" tribes to settle their claims. We have not been subjected to the same criticisms that have plagued these other tribes.

In fact, our Tribe's land claim settlement has received verbal support from the other Tribes in the State during the state hearings, including the Oneida Indian Nation of New York, the Cayuga Nation of New York, and the Todadaho, the Spiritual leader of the Haudenosaunee or Iroquois Confederacy. Even the members of the New York State Legislature have complimented us on how we have settled our land claim and how we are pursuing our Catskill Casino Project.

Q. Are there differences between "on-reservation" and "off-reservation" casinos that would make your Tribe more agreeable to some compact terms for an off-reservation casino that it might not find agreeable were the casino on-reservation?

R. No, once the land is taken into trust, it will become part of our reservation. Therefore, we have a responsibility to ensure that we negotiate and treat these acquired lands the same as our current reservation.

19. Your testimony recommends no amendments to IGRA Section 20. Yet you cite to efforts by other Tribes to block your project, unless they can bootstrap their proposals to your project.

A. Even if the 2-part determination exception is working properly, would you recommend amendments to the so-called "land claim" exception?

R. No. Both the 2-part determination exception and the land claim exception within IGRA are working properly. It is important to recognize that the creation of the IGRA represented the culmination of intense negotiations among a variety of parties. The Exception clauses within IGRA were carefully crafted to consider unique circumstances. Tribes have had an extremely difficult time in using these exceptions, as it should be.

In the seventeen-year history of IGRA, only one tribe has successfully used the "settlement of a land claim" exception. This is a reflection of the difficult road tribes must follow in trying to use this exception. Given the challenge it already presents and the fact that only one tribe has used it in the history of IGRA, we do not believe there is any need for an amendment to this exception. Indeed, as George Skibine pointed out at the hearing, Congress must affirmatively approve a land claim exception for an off-reservation land acquisition, which is a "phenomenal check" on this process.

However, as more tribes are pursuing this exception, there may be a need to further clarify how a tribe can pursue this exception. We support BIA working with Tribes, through proposed rulemaking, to add clarity to this exception.

Q. Would you be agreeable to letting local communities have a veto over approval of a 2-part determination, similar to the governor's veto?

R. No. IGRA requires that the recognized government-to-government relationship is between the Tribe and State through the Governor. In addition, the New York Court of Appeals in *Saratoga Chamber of Commerce v. Pataki,* 100 N.Y. 2d 801, cert. denied, 124 S.Ct. 570 (2003), declared that the tribal-state compact between the State of New York and our Tribe had been entered into without legislative authorization and therefore in excess of the Governor's authority, rendering the compact void, despite having been approved by the Secretary of Interior.

Following the *Saratoga* decision, the New York State Legislature eventually passed, and the Governor signed into a law a bill that approved our 1993 Compact. What is significant about the *Saratoga* decision is that it clarified the roles of both the New York State Legislature and the Governor. And since members of the New York State Legislature represent local communities around the State, they are the voice of the local communities.

So, local communities have numerous opportunities to have input, first with their representatives on the New York State Legislature in the process of authorizing the Governor to enter a Gaming Compact with our Tribe. Second, they have opportunities to contribute during the preparation of the Environmental Impact Statement through the numerous public comment sessions. Third, they have a say as part of the Governor's consultation with them during the process of concurring on the 2-part determination. Finally, there is an additional opportunity for input prior to the Governor signing the Gaming Compact.

I am not aware of any situation where the Governor of a state has concurred on the 2-part determination or signed a Gaming Compact over the objection of the local communities. Both State and Federal environmental processes give extensive weight to local concerns. Allowing local communities a veto power would make what is already a challenging process even more onerous.

Saying this, it is in a Tribe's business interests to build a positive relationship with the local communities where they intend their project to be constructed. It is just common sense as Tribe's will become neighbors and will have many common interests. We are proud that we have taken the time to build a positive relationship with the Town of Thompson and Sullivan County as we have moved our Catskill Project forward.

20. While IGRA generally bars gaming on lands acquired after 1988, there is an exception for gaming on lands recovered in a land claim settlement.

A. What is the relationship between your land claim in New York and your proposal for an off-reservation casino?

B. In 2001, the New York State Legislature passed legislation authorizing three off-reservation casinos in the Catskills region of the State. New York State Governor George Pataki required that any tribe proposing a Catskill casino had to resolve its land claims prior to being considered for a Catskill casino.

It is important to note that of all the tribes that sought a resolution of their land claims, only the Akwesasne Mohawks pursued their land claim settlement separate from any gaming interests. This decision was made primarily for three reasons. First, it has always been in the best interest of the Akwesasne Mohawks and the State of New York to find a resolution of the land claim. Second, of the three Mohawk plaintiffs, only the St. Regis Mohawk Tribe has gaming interests. The other two Mohawk plaintiffs involved in the land claim settlement negotiations had not gaming interests and thus it was not fair to them to include gaming issues in the discussion. Finally, and equally as important, the Akwesasne community did not want settlement of land claims linked to gaming issues.

As a result of this separation of issues, the Akwesasne Mohawk Land Claim Settlement is the only land claim settlement in the State to not be directly linked to the effort to build off-reservation casinos in the Catskills. This is the only land claim settlement that can make this statement.

Most recently, the New York State Senate failed to allow our land claim settlement to be voted on. This is somewhat ironic since our land claim settlement is the only land claim settlement in the state not contingent on a Tribe being awarded a Catskill casino as part of the settlement. It is also the only land claim settlement with all parties as signatories to it, including the two local County governments. This was an important requirement that the New York Congressional delegation identified to us. Unfortunately, other tribes chose to tie their land claim settlements to the Catskill casinos and we are caught in the political turmoil that has arisen as a result of their decisions.

Our efforts to construct the Mohawk Mountain Casino Resort require no additional legislation within the State. We continue to pursue it using the 2001 State legislation authorizing three Indian off-reservation casinos in the Catskills. So, while our efforts to secure an off-reservation casino continue to move forward, our land claim settlement has been stalled.

6.

Q. Is there a disconnect between the perception of problems in Indian gaming regulation and the reality of problems in Indian gaming regulation?

R. Yes, there is a huge disconnect between the perception of problems in Indian gaming regulation and the reality of problems in Indian gaming regulation. The

people who work most closely with Indian gaming regulation keep telling us that the problem does not lie with the regulations, but no one seems to be listening.

People seem to be keying in on IGRA and its statutory exceptions as being the problem. However, George Skibine, Acting Deputy Assistant Secretary – Indian Affairs for Policy and Economic Development, Department of the Interior, keeps reminding us of how well IGRA is working and just how rarely these exceptions have been used.

Our Tribe can vouch for the long daunting challenge it has been in using the IGRA statutory exceptions. They were intentionally made difficult so that not everyone can use them.

The other major misperception is that Indian gaming is under regulated. Our experience is just the opposite. Our existing Casino is regulated by our Tribe, through our Tribal Gaming Commission, by the State of New York through its Racing and Wagering Board and State Police, and by the National Indian Gaming Commission. We budget in excess of $2.9 million for New York State in regulatory costs plus we budget an additional $1.5 million for our Tribal Gaming Commission.

Q. If so, to what do you attribute this disconnect?

R. It has become almost convenient to select fixing IGRA and its statutory exceptions as the solution to the problems plaguing Indian gaming. They present a tangible target for those who want a quick fix to perceived problems. Once identified, everyone seems to have zeroed in on them without giving much thought to whether they are the right target. We have lost sight of the forest for all of the trees.

Q. **What should be done to address it?**

R. It is being addressed on a number of fronts and they need to continue. The hearings that the House Resources Committee and your Committee have been holding provide objective forums for discussion of Indian gaming that is helping to identify the real problems in Indian Gaming.

The Department of Interior earlier this year issued a revised checklist for gaming acquisitions, gaming-related acquisitions, and IGRA Section 20 Determinations. As I mentioned in my earlier testimony, the checklist will provide clearer guidance for following the rules and regulations within IGRA.

The National Congress of American Indians (NCAI) recently passed a resolution concerning off-reservation gaming that contained several positive recommendations to address off-reservation gaming concerns. These include calling upon tribes to promote positive relationships with State and local

governments; calling upon members of Congress to adhere to the significant processes set forth in IGRA's Section 20 and to refrain from appropriation riders that bypass Section 20 or otherwise amend IGRA; and requests that the Department of Interior engage in negotiated rulemaking process with Tribal Governments to adopt formal regulations governing the implementation of the Section 20 2-part determination process.

In New York specifically, as I stated in my earlier testimony, the Governor is recommending additional requirements for the three Indian off-reservation casinos in the Catskills. These requirements mirror the BIA checklist and were developed based on the path our Tribe has taken in securing a Catskill casino.

We applaud all of the above efforts and fully support the NCAI recommendations. We are proud of our effort to build our Project and we strongly feel we meet the new requirements of the BIA's revised checklist, the intent of the NCAI recommendations, and the new requirements Governor Pataki is placing on Catskill casinos.

1. As you know, IGRA bars state taxation of Indian casinos.

Q. Should the amount of revenue a state can seek from an Indian casino be capped by Congress?

R. Yes, action needs to be taken by Congress to regulate the amount of revenue a state can seek from an Indian casino. There should be objective criteria used to determine the amount of revenue sharing. Some of these criteria could be the geographic location of the gaming facility, the size of the gaming facility, the types of games in the facility, and the size of the population the gaming facility will draw from. It should also consider the benefits the state receives from the revenue sharing as a percentage of the state revenue generated from the geographic area as a whole.

The amount of revenue sharing is one area where there could be a difference based on-reservation and off-reservation gaming. Our current situation could serve as an example to explain this point. Our existing gaming facility is located on our reservation in the most northern and most remote part of the state. There is no large urban population from within the state to draw from. As a result, our present gaming facility is relatively small with 70,000 square feet of gaming space, less than 500 employees, 800 slot machines and hosts 500,000 guests per year.

Our Catskill casino Project, on the other hand, is a different situation. It will be located 90 miles from New York City with one of the largest urban populations in the country. It will have 134,000 square feet of gaming space, 4,000 employees, 3,500 slot machines, and will host an expected 7,000,000 guests per year.

Yet, both facilities will eventually be subjected to the same revenue sharing percentages with the state. It is not fair to our Tribe that our existing casino be subjected to revenue sharing amounts that do not consider our geographic location, size of facility, workforce, and size of the surrounding population.

Q. Will this remove states' incentives to approve new compacts? If so, will this hurt tribes that do not yet having gaming operations, but are seeking them?

R. If the development of Indian gaming projects is approached properly, it should not remove the states' incentives to approve new compacts. As Indian gaming has developed over the years, states have a growing opportunity to share in the economic benefits. With revenues in excess of $19 billion, Indian gaming has become a major revenue source for both tribes and states.

If it was any other business or industry that a state was trying to attract, it would do whatever it could to attract the business. It would provide tax breaks and other incentives, such as low-cost power, to convince the company to locate in the state. Why should Indian gaming be any different?

1. Many critics of Indian gaming point to the refusal by many tribes to make public their revenues from casinos.

Q. If your tribe does not make casino revenues publicly available, please explain why it does not release those figures?

R. In responding to this question, it is important to point out that the gaming industry is an extremely competitive industry. As you point out, there is a lot at stake in our effort to build our Project in the Catskills. Tribes must carefully weigh responding to the request for information against the harm it could cause by releasing information that could put it at a competitive disadvantage. Particularly, if the request could cause the public release of proprietary information of the Tribe.

I believe it is the responsibility of publicly elected officials to be very specific in asking financial questions of tribes so that an appropriate response can be given. If tribes know the underlying reason for the question then the requested response can be given without jeopardizing proprietary information. This would address the misperception that Tribes do not want to release their gaming figures.

Let me provide an example of how this can work. Earlier this year, we received a letter from the New York State Assembly as a follow-up to my testimony at the March 11 hearing on the Governor's proposed "New York Indian Land Claim Settlement Act." The letter specifically requested the projected gross and net revenue for our proposed casino, the projected value of our casino once constructed, the projected revenue from our casino for the State, and the basis for

our estimates. The letter also asked for any analysis to us from any economist, appraiser, or other person expressing an opinion on any of the above.

We responded fairly positively to this specific request providing projections for slot machine revenue's at our proposed gaming facility over a 7-year period, and the projected State share starting at 20% for the first four years, and going to 25% for the remaining years. We also shared the estimated total construction cost for the proposed facility. And we referenced our Final Environmental Impact Statement as a source of further financial information on the construction costs.

We did not release the actual analysis prepared for our Project as it contained proprietary information and its release could have placed our Tribe at a competitive disadvantage. It would have been irresponsible for us to have released that information. So, we were willing to respond to the specific requests as long as they did not place our Tribe at a competitive disadvantage.

This being said, there are other times in which we make our revenues public. We make our revenues public to our tribal community members. We also make our revenues known to the National Indian Gaming Commission via reports from our Tribal Gaming Commission and in making our annual fee payments to the NIGC which are based on revenues. The NIGC then makes their reports public on their website which addresses all tribal gaming operations.

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