

Chapter Fifteen

Tribal and Intergovernmental Relations

Section 1: General Principals

CSAC supports government-to-government relations that recognize the unique roles and interests of tribes, states, and counties in protecting their mutual constituents and providing governmental services and infrastructure beneficial to all.

CSAC recognizes and respects the tribal right of self-governance to provide for tribal members and to preserve traditional tribal culture and heritage. In similar fashion, CSAC recognizes and promotes self-governance by counties as a means to provide for the health, safety and general welfare of all residents of their communities. To that end, CSAC supports active participation by counties on issues and activities that have an impact on counties' abilities to provide for the public safety, health, and welfare of all county constituents, including tribal members.

Federal or state law should not interfere with the provision of public health, safety, welfare or environmental services by local government. CSAC will support legislation and regulations that preserve—and do not impair—the ability of counties to provide these services. CSAC will work to mitigate any impacts on the ability of counties to provide these critical functions and services should federal or state law or regulations propose to hamper the ability of counties to protect all residents of their communities and the environment.

Accordingly, CSAC's fundamental goals for county-tribal intergovernmental relations are to facilitate intergovernmental agreements, develop mechanisms to mitigate for the off-reservation impacts of tribal developments on local government services and the environment, and to promote best practices and models of successful tribal-county relationships. CSAC is committed to promoting and supporting the development of positive working relationships between counties and tribes to the mutual benefit of both parties and the communities they respectively serve.

Section 2: Federal Acknowledgment

Due to the potential interaction between Federal Acknowledgement, Restoration, and Reaffirmation decisions and the Indian Gaming Regulatory Act (IGRA), as well as the potential for such decisions to impact the services provided by counties, CSAC recommends that federal law or policy include the following steps in the acknowledgement process:

- 1) CSAC supports requirements for the Bureau of Indian Affairs to solicit input from and convene consultation meetings with local governments, including counties, concerning acknowledgment petitions, at the earliest opportunity. Counties have government-to-government relationships with tribes affecting a variety of important interests, including child welfare, gaming, environmental protection and mitigation of off-reservation impacts created by on-reservation development, including gaming in particular.

- 2) CSAC supports requirements for Bureau of Indian Affairs consultation with counties prior to authorizing re-petition by a previously denied petitioner.
- 3) CSAC recognizes that newly acknowledged tribes are a clear exception under section 20 of IGRA. Although it is separate from the acknowledgement process, CSAC supports a stringent and transparent fee to trust process with significant input from all stakeholders considered regarding “initial” reservation lands.

Section 3: Federal Tribal Lands Policy/Development on Tribal Land

The overriding principle supported by CSAC is that when tribes are permitted to engage in gaming activities under federal law, then the state should negotiate in good faith with tribes to secure gaming compacts that require judicially enforceable mitigation agreements between counties and tribal governments. These agreements should fully mitigate local impacts from a tribal government’s gaming activities and fully identify the governmental services to be provided by the county to that tribe.

Additionally, when tribes seek to acquire additional trust land, subsequent tribal development projects, which may not have otherwise been consistent with local land use regulations, could have impacts to off-reservation local government services and the environment. As such, federal law and regulations should incentivize intergovernmental agreements between counties and tribes to address the impacts of non-gaming development projects on proposed trust lands. Such agreements could also establish a process to identify and mitigate off-reservation impacts of future projects not envisioned or described in a fee-to-trust application.

CSAC believes that existing law fails to address the off-reservation impacts of tribal land development. The following provisions would address this issue while emphasizing that counties and tribal governments need to each carry out their governmental responsibilities in a manner that respects the governmental responsibilities of the other.

- 1) CSAC supports federal legislation that gives counties an effective voice in the decision-making process for taking lands into trust for a tribe and furthers the overriding principle discussed above.
- 2) CSAC supports federal legislation and regulations to provide that lands are not to be placed into trust and removed from the land use jurisdiction of local governments without adequate and timely notice and opportunity for consultation and the consent of the State and the affected county.
- 3) CSAC supports federal legislation and regulations which ensure that material changes in the use of trust land, particularly from non-gaming to gaming purposes, shall require separate approval and environmental review by the Department of the Interior.
- 4) CSAC reiterates its support of the need for enforceable agreements between tribes and local governments concerning the mitigation of off-reservation impacts of development on tribal land. CSAC opposes any federal or state limitation on the ability of tribes, counties and other local governments to reach mutually acceptable and enforceable agreements, including any federal prohibitions on deed restrictions mutually agreed to by tribal and local governments.

- 5) CSAC supports legislation or policy to incentivize intergovernmental agreements between counties and Tribes concerning an application to acquire additional trust lands. Agreements should include provisions related to environmental review and mitigation measures for off-reservation impacts of projects planned at the time of the acquisition, as well as future, projects that would represent a material change in land use from the projects envisioned and described by a fee-to-trust application.
- 6) CSAC supports Bureau of Indian Affairs standards and regulations requiring justification of the need and purpose for acquisition of additional trust lands. CSAC also supports a lower threshold for acquisition of trust land that will be restricted to only non-gaming or non-intensive economic purposes, including development of housing for tribal members, and religious, cultural, and governmental uses for tribes that lack sufficient trust lands for these purposes.
- 7) CSAC opposes the practice commonly referred to as “reservation shopping” where a tribe seeks to place land into trust outside its aboriginal territory over the objection of the affected county.
- 8) CSAC will support federal legislation that addresses “reservation shopping” or consolidations in a manner that is consistent with existing CSAC policies, particularly the requirements of consent from Governors and local governments and the creation of judicially enforceable local agreements.
- 9) CSAC supports the use by a tribe of non-tribal land for economic development purposes. CSAC recognizes that existing law requires tribes to fully comply with state and local laws and regulations applicable to development projects, including environmental laws, health and safety laws, and mitigation of environmental impacts on the affected community.
- 10) In recognition of the unique relationship between tribal governments and the federal government, CSAC will support changes in federal law that further the ability of counties to enforce compliance with all environmental, health and safety laws. CSAC opposes legislation to authorize the Secretary of the Interior to take land into trust for tribes that were not under federal jurisdiction in 1934 unless it includes additional reforms that ensure a meaningful role for counties in the fee-to-trust process and includes standards requiring justification of the need and purpose for acquisition of additional trust lands.
- 11) Class II bingo-style video gaming devices have similar off-reservation impacts to the environment and local government services as those of class III devices. CSAC supports requiring tribes that operate such machines to work with local governments to mitigate all impacts caused by such businesses. This would require an amendment to the Indian Gaming Regulatory Act.

Section 4: Intergovernmental Relations

The relationships between tribes and counties are not limited to gaming and issues related to development on tribal lands. Counties and tribes have shared interests in promoting economic development and self-sufficiency for their overlapping constituencies, promoting the general health, safety and well-being of the entire community, and protecting natural resources.

- 1) CSAC supports policy to encourage and incentivize collaboration between counties and tribes on state and federal grant applications and other funding sources.

- 2) CSAC supports policies, including the recently-created tribal nations grant fund, which will devote a portion of tribal gaming revenues to provide equitable opportunities for economic development for tribes and tribal members that do not participate in gaming.

Section 5: Tribal-State Gaming Compacts

CSAC recognizes that Indian Gaming in California is governed by a unique structure that combines federal, state, and tribal law.

While the impacts of Indian gaming fall primarily on local communities and governments, Indian policy is largely directed and controlled at the federal level by Congress.

The Indian Gaming Regulatory Act of 1988 (IGRA) is the federal statute that governs Indian gaming. IGRA requires compacts between states and tribes to govern the conduct and scope of casino-style gambling by tribes. Those compacts may allocate jurisdiction between tribes and the state.

While subsequent compacts provide a better framework to promote effective intergovernmental relationships between counties and tribes that seek to develop a casino and supporting facilities, CSAC believes that the 1999 Compacts fail to adequately address these impacts and/or to provide meaningful and enforceable mechanisms to prevent or mitigate impacts. Recent negotiations between Governor Brown and tribes have already resulted in new and extended compacts that address many issues with the original 1999 agreements.

The overriding purpose of the principles presented below is to harmonize existing policies that promote tribal self-reliance with policies that promote fairness and equity and that protect the health, safety, environment, and general welfare of all residents of the State of California and the United States. Towards that end, CSAC urges the State to consider the following principles when it negotiates or renegotiates Tribal-State Compacts:

- 1) Compacts should require a tribal government operating a casino or other related businesses to analyze and mitigate all off-reservation impacts caused by that business through the development of tribal environmental impact reports. In order to ensure consistent regulation, public participation, and maximum environmental protection, Tribes will promulgate and publish environmental protection laws that have standards for environmental analysis and mitigation that are at least as stringent as state and federal environmental laws, including the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) with judicial review in the California courts.
- 2) Compacts should require tribes to meet and negotiate judicially-enforceable mitigation agreements with local jurisdictions prior to the construction of new or expanded gaming facilities.
- 3) Compacts should include robust mechanisms for mitigation of the impacts on local government services of casino developments that pre-exist the date of the compact. The compacts should consider the differences between tribes with very small pre-existing casinos and those that are permitted to operate larger facilities.

- 4) Compacts should impose binding “baseball style” arbitration on the tribe and county if the parties cannot agree on the terms of a mutually-beneficial enforceable agreement related to mitigation of the impacts of a new or expanded casino or related project.
- 5) Compacts should provide a process to determine whether tribal environmental impact reports are provide analysis and mitigation measures consistent with what NEPA and CEQA standards would require and provide adequate information to fully assess the impacts of a project. In order to properly address the impacts of a project, this process should occur prior to negotiation of an intergovernmental agreement between a tribe and local government, and therefore prior to construction of a new facility or an expansion of an existing facility.
- 6) The compact should require a tribal government constructing or expanding a casino or other related business that impacts off-reservation land to seek review and approval of the local jurisdiction to construct off-reservation improvements consistent with state law and local ordinances, including the CEQA with the tribal government acting as the lead agency and with judicial review in the California courts.
- 7) The compact should require counties and tribes to negotiate local agreements as to the applicability of local and state regulations concerning health and safety issues, including, but not limited to, water service, sewer service, fire inspection and protection, rescue/ambulance service, and food inspection.
- 8) A Tribal Government operating a casino or other casino-related businesses will pay to the local jurisdiction the Tribe’s fair share of appropriate costs for local government services. These services include, but are not limited to, water, sewer, fire inspection and protection, rescue/ambulance, food inspection, health and social services, the full range of public safety functions, roads, transit, flood control, and other public infrastructure. Means of reimbursement for these services include, but are not limited to, in lieu payments equivalent to property tax, sales tax, transient occupancy tax, benefit assessments, appropriate fees for services, development fees, impacts fees, and other similar payments.
- 9) To address socioeconomic impacts and other impacts of casinos that are not easily quantifiable, in addition to direct mitigation offsets, the Compact shall provide for an appropriate percentage of Net Win to go to the affected county to address in-direct impacts.
- 10) The Indian Gaming Special Distribution Fund (SDF) has not been sufficiently funded, nor has it been adequate to serve as the exclusive source of casino mitigation funding for many counties. If the SDF is retained in new and amended compacts, it should serve as an additional mechanism to ensure that counties are guaranteed funds to mitigate off-reservation impacts caused by tribal gaming. Special Distribution Funds should be provided directly to the Indian Gaming Community Benefit Committee in each county that receives this funding. The SDF program should be amended to provide greater reliability of local government funding, as well as increased flexibility in the use of mitigation funding to reasonably address casino impacts.
- 11) The Governor should establish and follow appropriate criteria to guide the discretion of the Governor and the Legislature when considering whether to consent to tribal gaming on lands acquired in trust after October 17, 1988 and governed by IGRA (25 U.S.C § 2719). The Governor

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

- 12) Compacts should be specific to a particular tribal casino location rather than pertaining to a potential casino an indeterminate location.

Section 6: Sacred Sites

California's ever-increasing population and urbanization threatens places of religious and social significance to California's Native American tribes.

In the spirit of government-to-government relationships, local governments and tribal governments should work cooperatively to ensure sacred sites are protected at the earliest possible time, without undue delay to the development process, and ideally well before environmental review for a specific development project begins.

- 1) Local governments should consult with tribal governments when adopting or amending general plans to ensure that long-range development plans do not interfere with efforts to preserve and/or mitigate impacts to Native American historical, cultural, or sacred sites.
- 2) Local governments should also consult with tribes during the review of individual development projects to avoid and mitigate impacts to tribal cultural resources.
- 3) The state should provide counties with technical and financial assistance in identifying tribes whose cultural resources may be affected by a plan or project, and in determining how to mitigate or avoid impacts to these resources.
- 4) In the spirit of government to government collaboration, tribes should also consult with counties on the off-reservation impacts of projects proposed on tribal lands early in the development process.

Glossary of Terms

Fee Simple (Fee Land)

Land ownership status in which the owner, for instance a tribal government, holds title to and control of the property. The owner may make decisions about land use or sell the land without federal government oversight.

Fee-to-Trust Conversion

When fee simple lands are converted to trust status and title is transferred to the federal government. Tribes or individual Indians can initiate the process on fee lands they already own or lands they acquire.

Indian Gaming Regulatory Act (IGRA) of 1988

The United States Congress passed IGRA and President Reagan signed it into law on October 17, 1988. The Act established a statutory framework for tribal government gaming operations and regulation. Among others, the Act defines three classes of gaming and requires negotiation of a Tribal-State gaming compact before an Indian tribe can conduct Class III (casino style) gaming on their lands.

Tribal Gaming

A business enterprise of a tribe. Tribal governments initiated gaming on reservations to create jobs and generate revenue for tribal government operations, programs and services and to create/sustain an economy on reservations.

Tribal-State Gaming Compact

IGRA requires states to negotiate in good faith with Indian tribes that seek to enter into Tribal-State compacts to conduct Class III gaming on Indian lands. Class III gaming includes slot machines and banked card games. Although the content of these compacts vary from state-to-state and from tribe-to-tribe, the Act specifies that these agreements cover two primary issues: 1) the scope of gaming that is to be conducted at the tribal gaming facility, and 2) a system of regulation for the gaming activity on Indian lands. In California, the Tribal-State gaming compact provides for revenue sharing with tribes that have little or no gaming, funding and mitigation agreements for local governments to assist in addressing the impacts of tribal gaming, and the Tribal Labor Relations Ordinance, which prescribes a process for collective bargaining.

Trust Land

Land owned either by an individual Indian or a tribe, the title to which is held in trust by the federal government. Most trust land is within reservation boundaries, but trust land can also be off-reservation, or outside the boundaries of an Indian reservation.