

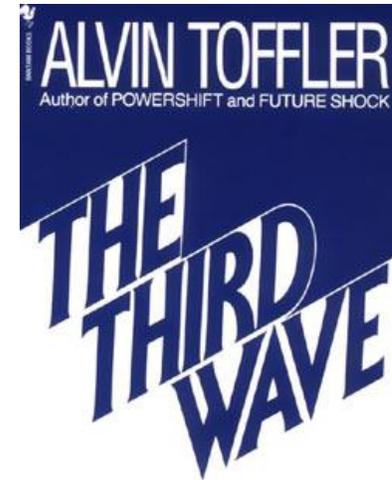
Local Inter-Governmental Agreements (non-compact)

Bruce Goldstein
Sonoma County Counsel
July 7, 2016

“The Third Wave”

“It does little good to forecast the future of semiconductors or energy, or the future of the family (even one's own family), if the forecast springs from the premise that everything else will remain unchanged. For nothing will remain unchanged. **The future is fluid, not frozen.** It is constructed by our shifting and changing daily decisions, and each event influences all others.”

- Alvin Toffler, *The Third Wave*



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Tribal Waves

First Wave

Tribal Recognition
and Restoration

Second Wave

Indian Casino
Expansion

Third Wave

Economic
Diversification

Tribal
Government
Development

Homeland
Re-Acquisition

Tribal Sovereignty

“Tribal sovereignty is not just a legal fact; it is the life-blood of Indian nations. This is obviously true in the political sense: Without self-rule, tribes do not exist as distinct political entities within the U.S. federal system. Moreover, economically and culturally, sovereignty is a key lever that provides American Indian communities with institutions and practices that can protect and promote their citizens’ interests and wellbeing. Without that lever, the social, cultural, and economic viability of American Indian communities and, perhaps, even identities is untenable over the long run.”

- Joseph P. Kalt & Joseph William Singer, *The Myths & Realities of Tribal Sovereignty*

California's Tribal Landscape

- ▶ 109 federally recognized tribes
- ▶ 60 tribal casinos
- ▶ 26 counties with tribal casinos
- ▶ 33 counties containing fee-to-trust land
- ▶ Fee-to-trust land in California:
 - By 2002, over 900,000 acres accepted into trust
 - From 2002-2011, approx. 10,000 acres accepted into trust
 - As of April 2015, over 10,000 acres in pending fee-to-trust applications

Drivers of Inter-Governmental Agreements

- ▶ Expanding tribal government functions
 - I.e., New tribal consultation responsibilities under AB 52
- ▶ Increasing tribal courts
 - 23 tribal courts
 - Number of tribal courts has more than doubled since 2003
- ▶ Rising casino revenues
 - 2013: \$7 billion
 - 2014: \$7.3 billion
 - 2015: to be determined
- ▶ Tribes' desire for control over safety and other governmental services
- ▶ Land trust acquisitions

Legal Frameworks for Inter-Governmental Agreements

- ▶ Tribal-State Compacts
- ▶ Joint Powers Agreements (Gov. Code, § 6500)
- ▶ SB 18 Conservation Agreements
- ▶ Temporary Assistance for Needy Families (TANF) (42 U.S.C. § 601 et seq.)
- ▶ Mitigation Agreements (Fee-to-Trust)

Fee-to-Trust

▶ Old Rule

- Quiet Title Act (28 U.S.C. § 2409a) and Bureau of Indian Affairs (BIA) regulations
- 30 days to seek judicial review of fee-to-trust decisions

▶ “Patchak Patch”

- *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 132 S. Ct. 2199 (2012)

▶ New Rule

- New BIA regulations
- Land is immediately taken into trust after approval of a fee-to-trust application

▶ **Fee-to-trust process discourages collaboration**

Inyo County v. Paiute-Shoshone Indians

- ▶ Inyo County executed search warrant against tribe for tribal employee records located on tribe's reservation.
- ▶ Tribe brought suit seeking injunctive and declaratory relief and damages under 42 U.S.C. § 1983.
- ▶ Ninth Circuit held that County did not have jurisdiction to execute a search warrant against tribal property under Public Law 280:
 - ▶ “The County and its officials have other **less intrusive** means to investigate allegations of welfare fraud by tribal members. . . . The Supreme Court has concluded that even though tribal sovereignty might prohibit the states from conducting law enforcement through the most effective means, **other adequate alternatives exist,**” such as inter-governmental agreements.
- ▶ Supreme Court vacated, finding tribe could not bring suit under § 1983, but did not reach questions of jurisdiction or tribal sovereign immunity.

Opportunities for Inter-Governmental Agreements

Inter-governmental agreements can be as broad as needed and are limited only by the parties' creativity.

- ▶ Consultation agreements
- ▶ Sharing of census information
- ▶ Cross-deputization of law enforcement officers
- ▶ Collection of evidence
- ▶ Service of subpoenas
- ▶ Land use
- ▶ Mitigation agreements
- ▶ Adult and youth probation services
- ▶ Child welfare services
- ▶ Marijuana
- ▶ Animal control services
- ▶ Law enforcement services
- ▶ Need waiver of sovereign immunity/judicial enforceability

Sample Agreements

Memorandum of Agreement Between the County of Sonoma and the Lytton Rancheria of California

Fee to Trust Lands

March 10, 2015

“The Tribe agrees to comply with the Sonoma County General Plan and Zoning Ordinance, as they exist on the Effective Date of this Agreement, for uses related to the land parcels listed in Exhibit B”

“If the Tribe chooses to develop a Winery and/or a Resort the Tribe agrees to prepare an Environmental Impact Statement(s) (EIS), as defined in NEPA, to determine the off-trust land impacts and the appropriate off-trust land mitigations.”

Sample Agreements

“Agreement to Agree”

*Memorandum of Understanding Between the County of Sonoma and the Federated
Indians of Graton Rancheria*

November 1, 2004

WHEREAS, the County has an interest in ensuring that off-Reservation impacts of the Gaming Project are adequately mitigated; and

WHEREAS, the County and Tribe are willing to negotiate an Intergovernmental Agreement to mitigate off-Reservation impacts of the Gaming Project upon publication of the Draft EIS; and

WHEREAS, such an Intergovernmental Agreement is necessary to make enforceable certain environmental mitigation measures identified in the EIS which are not otherwise enforceable by other Public Entities; and

Sample Agreements

Protocol Between the Colusa Indian Community Council and the County of Colusa for the Service of Process on the Colusa Indian Reservation and Responses to Subpoena Duces Tecum in Criminal Prosecutions

April 30, 1999

“If a County agency . . . desires to serve a summons, writ, subpoena or other civil process on any person living in a dwelling on the Reservation, the County agency shall first contact the Tribal Chairperson [or another elected Tribal official] and request the Tribe to contact the person to be served and arrange to meet the serving officer at the Tribal office or another convenient location for the purpose of effecting service. . . . Nothing herein shall require notification to the Tribe if, in the reasonable judgment of the County’s agent, such notification would compromise or interfere with a criminal investigation, or would likely result in the flight of the person to be served.”

Sample Agreements

Memorandum of Understanding Between the Washoe Tribe of Nevada and California and the County of Alpine, California

March 4, 2014

“The purpose of this MOU is to share resources and expertise between the Tribe and the County thereby increasing the provision of comprehensive child welfare services to children and families within the Parties’ service areas.”

“The Parties agree to work closely to provide comprehensive child welfare services and supportive services to residents on Trust Lands.”

“The Department and the Tribe hereby commit to open communication and sharing of information with regard to accessing and making services available to residents on Trust Lands.”

“The Tribe hereby grants to the County access to the Trust Lands to provide comprehensive child welfare and family preservation services to children and families on Trust Lands pursuant to procedures developed by the Parties.”

Sample Agreements

Memorandum of Understanding Between the Federated Indians of Graton Rancheria and County of Sonoma for Administering Tribal TANF Program

March 26, 2009

“The purpose of this MOU is to outline the County and Tribe’s responsibilities in administering [Temporary Assistance to Needy Family] services to Tribal Members within the County of Sonoma.”

“The Parties are committed to insuring both the smooth and efficient transition of Tribal Members currently served by the County to the [Tribe’s] TANF.”

“The Tribe shall assign a liaison to County in the Tribal TANF program office to assist in the resolution of issues that may arise during the implementation and operation of the Tribal TANF program.”

Sample Agreements

Joint Powers Agreement Between the Hoopa Valley Tribe and the County of Humboldt

May 30, 1995

“The Tribe and the County find that the health and safety of persons residing on the Hoopa Valley Indian Reservation are enhanced by close cooperation and continuous communication between the Hoopa Valley Tribal Police and the Humboldt County Sheriff’s Office.”

“The County shall . . . deputize Hoopa Tribal Police on completing the training course for deputy sheriffs . . . ; the Tribe shall deputize Humboldt County deputy sheriffs upon completion of a course in Hoopa Tribal law and history.”

“The Hoopa Valley Tribal Police are authorized and permitted to carry out inquiries in support of civil or criminal investigations on reservation and, upon request of the Humboldt County Sheriff’s Office, off reservation in Humboldt County.”

How Do You Get There?

Creating an environment conducive to inter-governmental agreements:

- ▶ Start before you need one
- ▶ Identify leverage points/mutual interests
- ▶ Communication
- ▶ Relationship building
- ▶ Show respect for tribal government practices, standing, and sovereignty
- ▶ Understanding of history and differing perspectives
- ▶ Listen to and learn about the tribe's concerns
- ▶ Keep secret and privileged information confidential

Additional Considerations

- ▶ Supervisor Roles
- ▶ County Officers
- ▶ Brown Act
- ▶ Sovereignty

The Fourth Wave?

“If you don't have a strategy, you're part of someone else's strategy.” - Alvin Toffler

“You've got to think about big things while you're doing small things, so that all the small things go in the right direction.” - Alvin Toffler

Thank You!

Questions?